



Town of Groton Massachusetts Zoning Board of Appeals

Meeting Agenda and Minutes

November 13, 2013 – Groton School, Field/M&M, Mavilia

Present

Mark Mulligan, Chairman
Cynthia Maxwell, Member
Robert Cadle, Member
Alison Manugian, Member
Bruce Easom, Associate Member (Field)
Jay Prager, Member (Groton School, Mavilia)

Not Present

Megan Mahoney, Associate Member

A quorum was attained. The meeting was called to order at 7:00 pm.

Meeting Minutes

Groton School Special Permit

Chairman Mulligan convened the Groton School special permit hearing by reading the legal notice.

Atty. Collins was present, noting that usually an educational institution doesn't need to come before the ZBA but this came up after both site plan and HDC review. He said the building exceeds the height requirement of current zoning, was built in 1908 and added onto in the 20's, 30's and 60's, noting that the addition is going on to a structure that doesn't comply with zoning. He said the building/additions are shaped like an odd "C", noting that the 1960's addition will be demolished and the new addition will close in the "C" and look like the front part of the building. He said they will be carrying forth the cornice line around to the back and stylistically it will be a nice building. He said to achieve cohesiveness, the addition needs to be higher than 35 feet, noting that most of the other buildings in the school exceed the height requirements. He said this is a unique situation, noting that the topography slopes to the rear so that the addition could measure even higher than 42 feet. He said his client wants to apply for a building permit within the month and construction would begin in the spring.

Member Cadle said the Groton School Quarterly shows better which building will be added to.

Atty. Collins said the front is staying the same, noting that it is part of the historic register. He said they are here because the ZBA has to make a finding that the addition won't negatively impact the surroundings and is not more harmful to zoning than what exists now.

Member Cadle asked whether height is the only thing not complying.

Atty. Collins said yes, noting that all other aspects of size, parking, etc. were dealt with in site plan review because they are not exempt.

Member Cadle made a motion to grant a special permit for an increase in height in excess of 35 feet for an addition as set forth in the Groton School application dated 10/9/13. Member Manugian seconded and the motion passed unanimously.

Mavilia Appeal

Chairman Mulligan reconvened the hearing.

Several abutters were present.

Atty. Collins said the area of land is in contiguous ownership, noting the need to look back at the title to show this. He said the title goes back to 1926, a small parcel sold to a Mr. English which was lost to taxes during the Depression.

Atty. Haverty said he doesn't think it necessary to spend a lot of time on this because there is no dispute.

Atty. Collins said the deeds didn't exclude the fee to the road, noting that the house lot wasn't sold by Lost Lake Development so there is a different chain of titles. He stressed that his client doesn't want to cause difficulty with anyone, noting that the parking of a vehicle and boat caused the problem. He said he sent a letter stating that his client will remove his property and will only use the lot for the tenants who rent and live across the street. He said this would be an accessory use to the property across the street, which is also owned by the applicant. He said this could have been addressed specifically in the bylaw but it wasn't because there are so many lots with accessory use across the street in the lake area.

Member Prager asked for clarification.

Paul Haverty, attorney for the Mendels, said he appreciates the stipulation, but feels this would be an enforcement nightmare from his client's perspective. He said Atty. Collins is asking for something he is not entitled to in the zoning bylaw. He said the Sears case specifically states that land obtained under the derelict fee standard can't be used to make a zoning compliance, noting that he knows there is discussion about how this decision could affect other properties. He said they are trying to make two lots into one by using the derelict fee standard, but because these are not adjacent lots, they can't be merged. He said this is an attempt to try to create more non-conformity rather than decreasing it, which the merger law tries to do.

Chairman Mulligan asked generally whether Mr. Mavilia has any use for this land.

Atty. Haverty said they couldn't use that property as accessory to the lot across the street, noting that any use should be totally separate. He said it is not a grandfathered lot because it less than 4000 square feet. He said maybe it could be used as a garden, noting that it is the same as any substandard lot.

Chairman Mulligan asked about the 60 or so other lots/properties that have similar across the street uses.

Atty. Haverty said other lots may be non-conforming lots of record and there may be older grandfathered uses.

Atty. Collins said there are many similar situations.

Atty. Haverty said just about any property in town has the benefit of derelict fee structure. He said the law is very clear, and one can't take it and turn it into one lot.

Member Prager asked Town Counsel whether deed ownership to the center-line would change the merger standard.

Atty. Doneski said no because they are two different concepts.

Atty. Haverty said under subdivision law, two lots cannot be made into one.

Atty. Collins said merger is irrelevant here, noting that zoning defines a lot as an area of land owned in contiguous ownership. He said it makes it legitimate to have an accessory use across the street. He said the derelict fee standard doesn't negate zoning, setback, etc, but it allows an owner to use property such as this as an accessory use. He said he thinks this is because so many lots are like this in town, noting that when the town adopted the bylaw, an accessory use like this was not specifically prohibited by the bylaw. He said this occurs not just in the lake area but in other areas in town as well. He said this situation is unique, noting that he doesn't think the Sears case is on point because it is a slightly different issue. He said Mr. Mavilia is trying to make this as uncontroversial as possible, noting that his client will remove his property and let the tenant use it. He said the BI would be called upon to do enforcement orders at the other properties if this was not allowed under the bylaw, noting that the bylaw doesn't specifically prohibit this. He stressed that his client is trying to be neighborly, noting that he also thinks it is unreasonable for the town to say the property can't be used for anything when he bought it from the town.

Atty. Haverty said that if Atty. Collins is saying merger is not applicable then it is easy for the ZBA to make a decision. He cited the bylaw that states that this does not meet the definition of a lot. He said they could only go to the PB and the PB is not allowed to make this decision. He said Mr. Mavilia bought it as a non-conforming lot and it should be treated as such.

Member Prager said he is troubled that there is not a recorded deed or plan.

Atty. Collins said there are deeds for each lot.

Member Prager said he would like a recorded deed or a recorded plan, not deeds.

Discussion ensued regarding how to construct a lot, particularly in the Lost Lake area, and whether the bylaw is defective in that it doesn't prohibit across the street lots specifically.

Atty. Collins said he thinks that if it were the tenant's boat and not his client's, we would not be here. He said he has tried to make it easier by limiting the use as accessory to the house across the street.

Member Prager said Atty. Collins' argument that because many lots have across the street accessory uses and thus that must be what the bylaw means is not a fair argument because it is not that cut and dry.

Atty. Haverty said he thinks the bylaw is quite clear and one can't have accessory use divided by a street.

Member Prager asked where the difference lies between two lots side-by-side or on either side of the road.

Atty. Haverty said two side-by-side lots can be used to alleviate zoning and they merge.

Atty. Collins said the cases don't clarify whether this can't be done on an accessory use basis. He said this isn't a merger issue but the relationship of the derelict fee structure and how our bylaw is written.

Atty. Haverty said the bylaw only allows accessory use on an adjacent lot.

Member Prager said the bylaw specifies accessory use on the same lot.

Member Maxwell asked what qualifies as accessory use.

Atty. Haverty said it is in association with uses incidental to the principal use/building.

Discussion ensued regarding what could be an accessory use and what lots could be used for accessory uses that abut.

Member Prager said the bylaw is not clear with respect to this issue and suggested that maybe this should be handled by town meeting.

Atty. Collins said this is true but noted they have an enforcement order.

Member Prager said he doesn't want to create a hardship but feels his client can't use a lot as accessory that is across the street.

Atty. Collins said the board could make a decision or wait to see if the PB could or would grant any relief. He said they also could ask the zoning enforcement officer whether a boat owned by the tenant there would be an issue.

Atty. Haverty said his client doesn't want to have to deal with the enforcement of who owns what is stored on the lot, noting that there was a lot more stored than just a boat that created the problem.

Atty. Doneski said this is an appeal of the cease and desist order issued in February 2013, to cease all outside storage on the parcel. He said he understands that the offer made by Mr. Mavilia is that he won't make any further use of the property, noting that the board could uphold the directive of the temporary enforcement officer because it is directed at Mr. Mavilia. He said it would then be open for the ZBA and PB to address the larger issues of accessory use on lots across the street.

Atty. Collins said that would be a reasonable course of action.

Atty. Haverty said he wants the ZBA to determine that no use is allowed at all.

The board disagreed that they need to make that determination, noting that they are just dealing directly with the appeal.

Discussion ensued regarding how to proceed.

Atty. Doneski said the basis for the cease order is based on accessory use, noting that the board can be as broad or as narrow as it wants. He said it would be inferred that if the board upholds the zoning enforcement officer that they agree with the language in cease order, noting that it is likely to percolate in some way in the future.

Discussion ensued regarding whether to state that the board is rejecting the appeal because the use was by the owner and not the tenant. Atty. Doneski recommended that the board should not say that.

Mrs. Collette said she is re-entering into the record a copy of the original enforcement order, noting that this has been going on for a long time and has become very contentious. She said there have been instances where resolution has almost been obtained, noting that she feels compromise from both parties is necessary and important. She said she would like an agreement to come back to the table.

Atty. Collins thought taking his client out of the picture would be helpful.

Mr. Mendel said he doesn't want to make Mr. Mavilia have a non-useable lot and said he thinks he should get his money back.

Atty. Haverty said they were never close to an agreement, noting that other situations in town are not done in a hostile manner like here. He said he understands policy concerns but stressed that it is not fair to his client to leave this unresolved.

Atty. Collins said his client has been similarly situated, noting that this has been a terrible situation for him also. He said he wishes to withdraw from the situation and reiterated that the suggested use is not repugnant to the law. He said he is trying to quell a raging wildfire.

Member Prager made a motion to reject the appeal. Member Cadle seconded, noting that these are not contiguous lots and thus there is no accessory use. He said he also agrees with Atty. Doneski that the board can't speculate on what the intent of the bylaw is.

Atty. Doneski proposed basing the motion to deny the appeal due to provisions of the zoning bylaw.

Member Prager modified the motion, which was seconded, and passed unanimously.

Field Special Permit

Chairman Mulligan reconvened the Field hearing.

Atty. Collins said there was some confusion and thus the continuation, noting that he thinks it is somewhat cleared up. He said there was a septic permit issued but no notice was sent from the BOH because no variances were required. He said normally they would come before the ZBA first but the bylaw envisions that a Title V system needs to be approved first. He said the existing house is an eyesore, noting that the former owner allowed people to use it as a dumping ground. He said that because there is an ugly cottage there, it is not a grandfathered lot of record. He said the replacement will be a big improvement over what is there now, noting that it is a decent looking two-bedroom house with a garage. He said much debris would need to be removed, noting that the only better thing would be if the abutter purchased the lot and merged it with his property. He said the neighborhood will be enhanced and this will add to the affordable housing stock in town.

Dave Heffner, 8 Tavern Road, said Mr. Field was rude to him, noting that he tried to sneak the project in, but agrees that a new dwelling would be an improvement.

Discussion ensued regarding the septic permit approval process.

Discussion ensued regarding the non-use issue.

Atty. Collins said the only way to get rid of the cottage is this way.

Member Easom asked about non-use and cited the bylaw.

Atty. Collins said that if taxes are being paid, then there is a use. He suggested referencing the plan and the septic permit. He then submitted floor plans of the proposed house.

Member Manugian asked whether if there is a determination of non-use, could a house still be built if it complies with zoning.

Atty. Collins said that doesn't even apply and feels the use issue should either not be addressed or the board should find it is a matter of fact that it is not an issue because taxes have been paid and permits are being applied for. He said that if the building was not there, this could be done by right.

Of note: The lot is slightly more than 10,000 square feet; the house has a 1932 sq. ft. footprint and two bedrooms.

Member Easom asked why paying taxes is an indication of use.

Member Manugian said she has trouble with this being a used property with no electricity and no running water, noting she is concerned re: precedent.

Atty. Collins said each case stands on its own merits, noting that he has an affidavit that explains the use. He said there is also no opposition to the proposal because it is better for the neighborhood.

Member Easom said he feels that payment of taxes means there is no abandonment but doesn't prove use. He said he feels non-use is a barrier that the board can't pass.

Atty. Collins said there is a septic permit and personal property stored in the house and on the property.

Member Easom said there is evidence of non-use, both with the electricity turned off and testimony of the abutter.

Atty. Collins said the affidavit from the owner should stand on it's own.

Member Manugian said she wanted to go over 218-6 for clarification.

Dave Heffner said he wants the dwelling torn down but doesn't want to set a precedent that someone can come to town and ignore bylaws and run roughshod over the town.

Atty. Collins said he is not asking for a seasonal conversion. He said he is asking for a special permit to replace a non-conforming structure.

Mr. Heffner said he has worked on everything in the building trade and this situation reeks.

Atty. Collins said he agreed that the way his client has gone about things is not great but he can get a special permit to replace a non-conforming structure. He said this meets requirements under 218-32 in spades.

Mr. Heffner said the property is much more ugly since Mr. Field cut down all the trees.

Atty. Collins said it is better to approve the permit to get rid of the building.
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Discussion ensued regarding whether to deny and just have the town require the structure be torn down.

Atty. Collins said the property right is supreme and the town can't take what someone had when zoning came into affect. He said the camp has been there for almost 90 years and owned by the same family.

Discussion ensued regarding the neighboring setbacks and whether the proposed dwelling could meet setback requirements.

Member Manugian said she is still uncomfortable with the non-use issue.

Discussion ensued re: whether a special permit could be granted.

Atty. Collins said that if the board has any hesitation, he would ask for a continuation so he could gather more material. He said the board could make a finding with what he has submitted.

Member Cadle said he would like to see the structure torn down.

Chairman Mulligan said non-use is tough because it is taking away rights of the property owner.

Atty. Collins said this house started life as all other 1920's cottages there, as a shell.

Member Easom said the unfairness of non-use should be removed at town meeting and not just ignored.

Members Manugian and Easom said they were not comfortable with this. Member Cadle said he feels the board could grant a special permit, but doesn't believe the affidavit.

Atty. Collins asked for a continuation.

Member Easom made a motion to continue to 10/21/13 at 6:30 PM.

Other business

Discussion –Letter to BOS re: SH money for affordable housing only. The memo will be sent to the BOS.

Minutes and Bills

No bills were signed.

Member Maxwell made a motion to approve the 9-25-13 minutes as drafted. The motion was seconded by Member Manugian and passed unanimously.

Member Manugian made a motion to adjourn at 9:20 pm. The motion was seconded by Member Cadle and passed unanimously.

Minutes approved 1/29/14.