



## Town of Groton Massachusetts Zoning Board of Appeals

Meeting Agenda and Minutes

### **October 3, 2018 –Rhodes Appeal, Platt Variance, Schwartz SP**

#### **Present**

Cynthia Maxwell, Chairman  
Mark Mulligan, Member  
Jay Prager, Member  
Jen Spencer, Associate Member  
Dan McLaughlin, Associate Member  
Deb Winsor, Associate Member

#### **Not Present**

Bruce Easom, Member

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

#### **Meeting Minutes**

##### **Rhodes Appeal– Arrow Trial, #14-18**

Chairman Maxwell convened the hearing by reading the legal notice.

Several abutters and interested parties were present.

Russ Harris, Groton Herald, said he was recording the meeting for personal use.

Jerry DeCristofaro of Medford, said he knows this is a hotly contested issue, noting that it is primarily based on State regulations, rather than town bylaws. He said he threw in a bit of a laundry list in case of an appeal, and for the benefit of town counsel. He said Mrs. Rhodes was deeded both lots as created in 1946, noting that he can go through names and dates, if necessary. He gave a history of the lots, noting that in the past more lots were sold and then separated off. He said they were all on the same deed, noting that there must be a reason for this.

Member Prager asked whether there is a building on the lot.

Atty. DeCristofaro said no, there is nothing on the lot. He said the BI issued an order to remove the cars, materials, etc. He said there is a structure but it is not his client's and is the neighbor's house. He said this is a very extraordinary circumstance, noting that he has records and there is a State law that should cover the grandfathering of the lot. He said it was used for the same purpose, noting that it is an incidental use. He said State law should prevail and that the use doesn't matter. He said that after the grandfathering statute was enacted, if the use existed prior to 1962, in the same deed and for the same residential use, it has to be grandfathered.

Member Prager said his understanding of use is not for parking or peanut growing, noting that the State bylaw speaks to use as residential.

Atty. DeCristofaro says use is any use.

Member Prager said he disagrees, for the record.

Atty. DeCristofaro said that as long as a use existed prior to 1962, it is grandfathered.

Discussion ensued regarding what constitutes a grandfathered use.

Member McLaughlin asked if the applicant could demonstrate a grandfathered use, noting that the lot has been recently cleared, filled and hard packed and it was a wooded lot.

Atty. DeCristofaro said he disagreed and furthered the discussion, noting that it is not just his client but the entire lake area. He said 43 people would testify that the lot has been used for parking.

Member Winsor said it couldn't be an accessory lot on a lot that doesn't have a dwelling on it.

Atty. DeCristofaro said state law only recognizes accessory use as prior to 1962. He said he discussed the Mavillia case as mentioned by the BI, noting that it is not relevant.

Member Mulligan said the ZBA doesn't set precedent.

Member Prager said he respects Atty. DeCristofaro's position but wants to hear from town counsel since the ZBA shouldn't be mandating State law.

Atty. DeCristofaro said the BI knows State law, noting that someone else got six signatures and he used that same State statute to allow parking on another vacant lot.

The Board asked for clarification.

Atty. DeCristofaro submitted a note about the lot at 313 Whiley Road allowing the parking of cars and boats.

Discussion ensued regarding the abutting house on the property.

Discussion further ensued regarding whether the lot is wooded or not.

Member Prager suggested that the BI might have erred in granting the grandfathered use on Wwhiley Rd.

Discussion ensued and Member Prager said he wants town counsel review.

Member Prager said he is not saying either party is right or wrong, but wants town counsel discussion and input. He said feels State law is not involved in the Morin letter, noting that they are only dealing with residents.

Atty. DeCristofaro reiterated that State law supersedes in this type of argument.

Member Mulligan said he feels that if the packet is self-explanatory, it can be given to town counsel to get input. He said the ZBA is not in a position to grant relief.

Member McLaughlin said he wants clarification, that if it is a pre-existing use since 1946, then his client wants continuation of said use.

Member Prager said use is as outlined in the Schedule of u]sse, §218-13. He said the need town counsel input as there are too many issues and he is not convinced that this is a pre-existing use.

Member Mulligan said he wants something to hang his hat on re: relief.

Atty. DeCristofaro said the format is the same as the Morin letter but with many more signatures and thus there is an obvious prejudicial issue here as his client was the only one singled out when this is happening all over the lake area. He said it is not fair that the BI only deals with compliance if there is a complaint. He asked what the benefit of an anonymous complaint is and asked why should they be paying taxes. He said making a lot with no economic value is not fair.

Member Winsor said motives are not fair to conjecture about.

Atty. DeCristofaro said that he is making a complaint about every lot doing same thing.

Discussion ensued regarding whether the BI should be there to defend his position.

Atty. DeCristofaro said his client has no place to park, noting that because of this, she has to park in street and that is dangerous. He said the value of the land is lessened by not allowing this use, as mentioned in several sections of the bylaw. He said this is not protecting the value of property.

Member Prager said he is going on the record that some of the zoning bylaws are not perfect but they are what the board has to work with.

Atty. DeCristofaro said if there is any ambiguity in the bylaw, it must be interpreted to benefit townspeople, the applicant, etc. He said that to be consistent with §218-23C, which leaves out R-A, then the statute doesn't apply that his client can't park there.

Discussion ensued regarding deeded together vs. abutting and what that means.

Atty. DeCristofaro said he doesn't think any other BI has enforced parking like this in the lake area.

Member Mulligan said the materials are self-explanatory but he wants town counsel to review and determine what remedies are available, how State law could affect it, and to make a determination whether the contrary decision about a lot that seems similar on Whiley Road is different.

Atty. DeCristofaro also asked why R-A is deleted related to parking on accessory lots, as it may be that they can be used for parking. He said this creates an ambiguity and feels that State law takes precedence.

Discussion ensued regarding 218-16, etc. Mr. appellant discussed what was done in terms of tree removal and car parking, etc., noting that he wants the BI to come down and look at other lots.

Rob Ancil, representative for abutters, said they are here on a peace mission, noting that they want the appellants to be able to park there and are in support of them being able to park there. He said he is from the lake and understands how crazy the lot lines are. He said he wants to come up with a solution and it is a problem the town needs to address. He said he watched the Planning Board meeting on the town meeting warrant and the PB is interested in addressing this article. He said the time frame is about six months and in the mean time wants to get a stay on the parking ban on this site. He said he wonders under what authority it could be done, noting that he is aware that the problem needs to be addressed. He said he felt the town could have a stay until the town meeting such that the BI doesn't have to enforce the parking ban.

Member Mulligan suggested contacting the BI to work things out.

Atty. DeCristofaro said he wants town counsel's opinion.

Member Mulligan said the board would contact town counsel.

Atty. Ancil suggested that a stay could be enacted.

Paul Martel, Arrow Trail, said he has two detached lots behind him. He said the number of Town of Littleton trucks that drive past his house is significant, noting that the lot has also changed significantly. He asked what the definition of changing the lot is, noting that it seems like there is approximately 4000 square feet of filled in space. He said it is a bigger lot than at Cravens and Filhos. He said there were a lot of vehicles on the lot when the complaint came in. He said he is concerned that someone could do the same thing on the lots behind him and it would look like his backyard was filled in with cars.

Member McLaughlin asked what the change was.

Mr. Martel said it was originally a slanted tree filled lot and provided access to a trail.

Member Prager asked when the changes happened.

Mr. Martel said it was filled in 2014, in about a month's time. He said there was no parking prior to that time other than a vehicle maybe. He said it was not like it is now.

Discussion ensued regarding how long abutters lived in the area and what constitutes change.

Caitlin Kirk, 43 Tavern Road, said the parking area seems larger because they removed trees that were rotting.

John Valentine, 313 Whiley, said he is the subject of the other order from the BI, noting that he gave the same verbiage to him about his lot. He said the BI took it and was apologetic. He said this is just like his situation, noting that as far as he knows it has been used for parking. He said the land was not bought for the sake of the land but to be used in conjunction with the house. He said the BI is arbitrary and capricious, noting that he thinks the ZBA has power to reverse or stay the order. He said the PB is going to work on the bylaw, noting that the Lost Lake area has problematic lots but is charming. He continued to argue that the board has the power to overrule the BI.

Discussion ensued regarding how to continue.

George Wheatly asked whether the ZBA could strongly recommend a stay to the BI.

Discussion ensued regarding how to word stays, etc.

Member Prager said ZBA decisions are made not just upon what transpires in a room, but upon town counsel recommendation. He said the ZBA couldn't make decisions like that.

Larry Hurley asked who could issue a stay.

Member Prager said he doesn't know.

Discussion ensued regarding the logistics of a potential stay.

Bob Hargraves said he suggests that the Chair go to the town manager to ask about town counsel.

Mr. Valentine said he spoke to Mr. Haddad about the Planning Board, noting that he wants a zoning law that doesn't allow for prosecution.

Member Prager said a good bylaw is what the town needs.

Discussion ensued regarding purview of ZBA.

Member Prager made a motion to continue the hearing to November 7, 2018 at 7 to allow for input from town counsel. The motion was seconded and passed unanimously.

**Platt Variance – 31 Adam Ave., #17-18**

Chairman Maxwell convened the hearing by reading the legal notice.

Several abutters and interested parties were present.

Halsey Platt, applicant, gave a brief description of the property, noting that he has had a cabinet shop there for 21 years. He said he wants to convert a spray booth that exhausts 10% of the air, making it safer by blowing less paint, etc. out. He said it is not practical to place the addition on the other side, even though a variance would not be necessary. He said catalyzed lacquer is what is sprayed.

Member Prager asked whether anything blows out onto the rail trail.

Member Mulligan said it seems safer with the new design.

Member Prager asked what he would do if the board said no.

Mr. Platt said would they limp along and look for different space, noting that they would need to build a whole new building.

Discussion ensued regarding whether there would be another location.

Mr. Platt said no because they would need to reorient how the work flows through. He said the only remaining access is through the front as Dave Eliot is developing the property where it is currently located.

Member McLaughlin asked what it would entail to reconfigure the workflow.

Michael Woods, West Street, said he uses the rail trail a lot, noting that it would be good if exhaust flowed away from it.

Member Mulligan said it doesn't look like a lot of options are available and there is room for emergency vehicles.

Discussion ensued re: what is currently on the property.

Member Spencer asked why the board should grant a variance when there is another spot for the addition.

Atty. Collins said he has nothing to do with this application, but noted that this is unique because it is a business and it is a tight lot. He said it would be a judgment call as to whether the applicant stays at that location if the permit is not granted. He noted that this is a business building, which is different than a house.

Member Spencer said she likes that it is going from 90% to 10% emissions, as well as that it is backing up to the rail trail and not someone's back yard.

Of note: there is a potential for emergency vehicle access to a property owned by Eliot to be developed.

Member McLaughlin made a motion to grant a variance subject to the applicant purchasing and installing a high efficiency sprayer. The motion was seconded and passed unanimously.

#### **Schwartz Special Permit – 279 Main St., #18-18**

Chairman Maxwell convened the hearing by reading the legal notice.

A memo from the Water Superintendent was entered into the record.

A few abutters were present.

Atty. Collins, agent for the applicant, gave a brief history of the property, noting that the chapel was gifted from Groton School and Isabella Stewart Gardner's nephew to the Catholic Church. He then described the structure. He said his clients are restoring the existing structure inside and outside by installing new clapboarding and adding an 1800 feet addition with a three-car garage and an accessory apartment over the garage. He said there was an el shaped section that was torn off that was very like the new addition proposed. He said they are getting rid of the parking lot, replacing it with nice landscaping and plantings and a fence. He said this is a very straightforward application, noting that the building has been vacant for at least ten years and is on the verge of ruin. He said this is a nice repurposing and will give many more years of use. He said this is a less intensive use than that of a church and with less impervious cover. He said this will be a second home and an apartment that will generate tax revenue, noting that old churches are a hard sell on the real estate market.

Member Mulligan said the plan looks beautiful.

Member Prager asked whether the changes increase the nonconformity.

Atty. Collins said no because it meets all setbacks and the garage and apartment are attached with a breezeway that works without changing existing grades.

Chairman Maxwell asked whether one of the bays is in the back.

Mr. Quayle said yes, his client wanted a drive through garage.

George Wheatley, HDC, asked whether the exterior is changing due to the clapboarding.

Atty. Collins said yes, one side has a slight change.

Of note: the property is not in the HDC so no additional public hearing is necessary.

Atty. Collins said there are three different sidings on the building now that will be replaced with uniform siding.

Frank King, abutter, asked about garage door sizes.

Mr. Quayle said they are 9 ft by 8 ft

Mr. King asked about grading changes as they have water build up issues.

Atty. Collins said they are going before the storm water committee to address this since they are getting rid of the parking lot, noting that there will be a hearing also with the Cons. Comm.

Mr. King asked about the financial ability of the purchasers.

Atty. Collins said it is a cash purchase and they will have cash for all phases. He said the accessory apartment is so it is not vacant for long periods.

Of note: Garage and accessory apartment are 1800 sq. ft., and the living space in the church will have a lot of open space with the kitchen to the rear.

Of note: non-use is not an issue.

Of note: There are three garage doors and a man door.

An abutter living on West Street, said his family has lived here for many years, noting that the building has been deteriorating for many years, and asked the board to please grant the permit.

Martha West, a new resident, said she wants an approval, noting that it is a nice proposal.

Member Prager made a motion to approve as presented and described in the letter by Atty. Collins and dated September 4, 2018. The motion was seconded and passed unanimously.



## **Other business**

## **Minutes and Bills**

Member Prager made a motion to approve the minutes from 8/8/18. The motion was seconded and passed unanimously.

One Groton Herald bill was signed.

Member Prager made a motion to adjourn at 8:50 pm. The motion was seconded and passed unanimously.

Approved 12/19/18.