



## Town of Groton Massachusetts Zoning Board of Appeals

Meeting Agenda and Minutes

### February 5, 2020 – Chestnut Hill Farm/Degen Appeal

#### Present

Cynthia Maxwell, Chairman  
Mark Mulligan, Member  
Bruce Easom, Member  
Dan McLaughlin, Associate Member  
Jen Spencer, Associate Member

#### Not Present

Jay Prager, Member  
Chris Sweeney, Associate Member

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

#### Meeting Minutes

#### Chestnut Hill Farm/Degen Appeal –409 Martins Pond Rd., #21-19

Chairman Maxwell convened the hearing by reading the legal notice.

Russ Harris, Groton Herald, was present and recording the hearing.

Several abutters and interested parties were present.

Chairman Maxwell read several memos into the record.

Atty. Tom Mullin said he represents Chestnut Hill Farm, LLC, who purchased the property next to 409 Martins Pond last year, noting that both properties are in RA zones. He said he asked the BI to enforce zoning but was denied, noting that the BI has been very helpful. He said it is clear that some uses are okay under R/A but not all, noting that he understands Mr. Degen has some plantings that could be construed as a nursery. He said what is not allowed are contractors storage yard or business or professional lots. He

then cited a list of what Earthscape, the business does, primarily focusing on landscaping with stone and also plowing. He said there is an unsightly contractors yard used for storage of construction vehicles and pieces of construction materials. He said some vehicles have Earthscape logos, noting that there are many pallets containing stone, etc. He said these uses are forbidden, as well as the property being used for a business office. He then cited numerous ways to contact the company in order to do business with Earthscape. He said the BI is relying on an older BI decision to make his current decision. He said no horticultural or nursery business requires the storage of the type of vehicles there that are used for construction or landscaping/plowing. He said when his client purchased Brooks Orchard, Mr. Degen had vehicles spilling out onto his client's property. He said these vehicles were only removed after a lawsuit was filed, noting that Mr. Degen admitted to using Brooks Orchard to store some of his equipment and materials. He then handed out for the record the current lawsuit citing Mr. Degen's admission. He said Mr. Degen is not here with a permissible home occupation, noting that if it were legal everything would need to be screened from the boundaries, and everything is clearly visible from his client's property and the road. He said he has to demonstrate that there is only one employee not living on the property. He also noted a 1998 approval for a home occupation permit with no attachments. He said Bentley Herget wrote to Mr. Degen that several violations were occurring re: the home occupation, which also notes that a ZBA special permit could be a remedy but no such permit was ever obtained. He then submitted the letter from Mr. Herget, noting that just because an illegal use has been going on for some time, that is not a reason to allow it to continue.

Mr. Degen said he filed a disclosure with the town clerk. He said he looked at many towns before he settled in Groton that were not affordable. He said he settled on Groton because it is zoned R/A, noting that he has spent a lot of dollars over the years to accumulate plant materials for a nursery. He said he received permission and was told it was okay to operate. He said he has attempted to meet with the new neighbors and has been rebuffed, noting that the Town seems to want to grow houses rather than R/A businesses. He said he grows and buys plants. He said all of the equipment is used for the landscape and nursery part of the property. He said he does not understand why Atty. Mullin's client would buy the property when he saw what was going on there before. He said the nature of Groton is aggie uses.

Atty. Gallant said the motivation of Chestnut Hill Farm re: this appeal is related to an appeal of a previous use. He said Mr. Degen got permission to use Brooks Orchard from the Webers and Marian Campbell. He said his client removed materials as a good faith effort but is still involved in a lawsuit because he never got easement permission in writing. He stressed that this is the motivation of Chestnut Hill Farm and reiterated the legality of aggie use. He said no clients are seen on the property and the lawsuit is about the abutting property. He said that this use is allowed and has been going on for the last 28 years. He said it is not a contractor yard, noting that just because the website lists the address for the business, it is not a violation. He said no clients are seen there and stressed that the BI agrees.

Member Mulligan asked where the appellant's property is on the map.

Mr. Degen described how the abutting property has been used, with permission from past owners. He said everything is temporary, noting that all the permanent stuff is on 409 Martins Pond Rd.

Discussion ensued regarding where Mr. Degen wanted to operate his business. He said there is now nothing on the abutting lot.

Member McLaughlin asked Atty. Mullin what type of permit was issued in 1991 and whether that would be okay.

Atty. Mullin said not it is not a proper permit, noting that no building permit was issued for this particular use so there is no statute of limitations.

Discussion ensued regarding what section of the bylaw is relevant. Atty. Gallant said that since it has been used as a nursery for more than ten years, it is protected, noting that structures, alterations and uses are protected.

Member Mulligan said he feels this only applies to structures.

Atty. Gallant said he was not familiar with that case but feels any use, etc. is protected related to land.

Discussion ensued.

Atty. Mullin said his client is not objecting to any alteration of the land. He said that it is the use as an eyesore, contractor's yard that bothers his client, noting that he feels Mr. Degen should go before the ZBA for a special permit.

Member Spencer asked why his clients bought land without stipulating that Mr. Degen's business not be allowed as it was already there.

Atty. Mullin said they love the property and want to be good farmers, noting that they shouldn't have to look at an eyesore business that has many zoning violations.

Member Mulligan asked Atty. Mullin what most bothers his client.

Atty. Mullin said it is the storage of vehicles and materials which are mostly used for a contractor's business and not for a nursery.

Member Spencer asked whether a fence would work.

Atty. Mullin said no.

Atty. Gallant said they have tried to meet with the appellant, noting that it is not the job of the ZBA to determine what Mr. Degen needs to do to operate his aggie business. He said there is nothing different from what started over 28 years ago. He said it is not up to the board to determine how many trucks he can have to operate his aggie business in an RA district.

Member McLaughlin asked at what point it becomes a big business, ie, how many trucks are allowed, etc.

Atty. Gallant said it is up to the BI. He said there is no allegation that there are 15 trucks or clients seen on site, noting that it is his client's home.

Member McLaughlin said there should be common sense about how many trucks allowed, noting that the bylaw says two.

Member Mulligan asked whether there is a difference between aggie by right or home occupation.

Atty. Gallant said storage of stone is right on the permit granted 1998.

Mr. Degen said his home occupation is different than the aggie use. He said the vehicles for the home occupation are his truck and his wife's car and a computer and filing cabinet. He said the other trucks and equipment are used in conjunction with his nursery operation, an adjunct to the aggie use as allowed in town. He said that if his operation isn't allowed then the town should just get rid of hay, farming, etc.

Atty. Mullins said the bylaw has a lot to say about home occupations, noting that he feels snowplows and sanders have nothing to do with a nursery. He said there are places for contractor's yards, but not here.

Dick Staub, abutter, said he is interested but has no comment.

Dean Luther, abutter, said he lives two yards away, noting that 10 years ago he bought Bill Miller's property and he had looked at it for four years before that. He said he went to Groton to get away from all the development in Westford, noting that he loves the RA feel about Groton. He said he also knew about Josh's business before he bought and said it hasn't grown in size, noting that the office is mostly in his truck. He said he thinks it's hypocritical for a new owner to ask him to close down his business. He said nothing is better if attorneys are involved. He said he is in the automotive business and has a new large ramp truck parked in his yard. He asked whether this would be prohibited, noting that one of his trucks has a sander.

Ms. Norrish, 126 Chestnut Hill Road, said she walks her dog by the property and is very supportive of Josh.

Mr. Luther said the trucks are parked neatly and the site is generally neat. He said the new owners knew what they were getting, noting that it would be wrong to try to put someone out of business.

John Bunny said he lives two houses down, noting that Josh is already established and is not a problem.

Member Easom said he is not persuaded by the business office argument, noting that he thinks most business does happen in his truck. He said the issue of most interest to him is the possible grandfathering of uses. He said that if the use is grandfathered, they are done and if not then more conversation is needed. He said he thinks there is a reasonableness standard for aggie use also, ie. one can't just plant a tree and say it is an aggie use. He said he would like a sitewalk if the uses are not determined to be grandfathered.

Member Mulligan asked for clarification about grandfathered uses, noting that they are not subject to the statute of limitations. He said that is about claims against but not the use itself.

Atty. Gallant said he is arguing that any alteration that has been going on for more than 10 years is grandfathered.

Atty. Mullin said there is no statute of limitations with uses.

Member McLaughlin said he got a home occupation permit and built a business under those pretexts.

Atty. Gallant said he got a letter from the next BI that everything complies.

Member McLaughlin said one BI suggested that Mr. Degen can get a permit from the ZBA.

Member Spencer said Mr. Degen also got letters from two Building Inspectors after that the operation is okay, noting that no abutters are complaining.

Member McLaughlin said this needs to be treated like any other situation.

Discussion ensued regarding what avenues to pursue.

Member Mulligan suggested working on a compromise and continuing the hearing to another date.

Mr. Degen said that Atty. Mullen contacted him first, and he has tried to meet but has been bullied. He said that the owner told an abutter that he would be suing up to superior court.

Atty. Mullin said his client does not want to be bullied, noting that he had to file a lawsuit to get Mr. Degen to remove his equipment and only after that, that he agreed to remove the vehicles, etc. He said when his client builds his home it will not be near the Degens, but he will have to drive by. He said a ZBA permit with screening may be acceptable. He said he wants a good claim on the record that there is no adverse possession. He said bullying is happening here, and draining issues are being threatened.

Atty. Gallant said his client removed his equipment in good faith and the neighbor wants to force him out because he has limitless pockets. He said his client won't agree to talk and wants this resolved.

Member Easom asked Atty. Mullins whether he thinks the ZBA could issue a special permit to allow the storage and landscaping business to operate.

Atty. Mullins said no because it is not allowed under the current bylaw and not allowed as an accessory use.

Member Easom asked how the sander could be construed as an accessory use for a nursery.

Member McLaughlin said he wants a legal opinion as to what is actual aggie use.

Atty. Gallant said there are two aspects: one is what is part of the aggie operation and what is part of the home occupation. He said some are used for each and Mr. Degen has a permit from town.

Atty. Mullin said the Town would be wrong he were allowed to store vehicles and materials out there for public view.

Member Spencer said she feels sorry that this couldn't be addressed between neighbors and suggested they get together to discuss the situation.

Atty. Mullin said he can't say for sure but thought it could help.

Mr. Degen said he won't put a fence up or do anything else because it will never be good enough for the appellant.

Member Easom said he wants a site walk.

Discussion ensued regarding how to proceed.

A site walk was scheduled on Saturday at noon at 409 Martins Pond Rd.

Member Easom made a motion to continue the hearing to 2/19/20 @ 5:30 pm and a site walk on Saturday at noon. The motion was seconded and passed unanimously

## **Other business**

## **Minutes and Bills**

One Groton Herald bill was signed.

Minutes from November 20<sup>th</sup> and December 4, 2019 were approved unanimously.

The meeting adjourned at 8:45 pm by unanimous vote.

Approved 3/4/20.