



Town of Groton Massachusetts Zoning Board of Appeals

Meeting Agenda and Minutes

February 19, 2020 – Chestnut Hill Farm/Degen Appeal

Present

Cynthia Maxwell, Chairman

Mark Mulligan, Member

Bruce Easom, Member

Dan McLaughlin, Associate Member, via teleconference

Jen Spencer, Associate Member

Not Present

Jay Prager, Member

Chris Sweeney, Associate Member

The meeting was called to order at 5:30 pm.

Meeting Minutes

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

Chairman Maxwell reconvened the hearing.

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

Many abutters and interested parties were present.

Chairman Maxwell and Member Mulligan read three letters into the record, one from Atty. Mullins, one from Atty. Gallant and one from Robert Collins.

Mr. Degen said any comments are on behalf of himself and not as an elected official nor as an appointment of ZBA members official.

Ansel Worth, Anthony Drive, said he has been resident of Groton for 20 years. He said he is here in support of Mr. Degen, noting that many citizens are in support of him and interested in the proceedings. He said there are many home occupations in town that store equipment at their residences. He said Groton is not an antiseptic suburb, noting that there are mixed neighborhoods of new and old with people working for a living and having equipment on their properties. He said that given Groton's history as a right to farm community, etc., the ZBA should support residents and voters even if sites are messy at times. He said he feels there are dozens to hundreds of home occupations that would have to "comply" if ZBA grants this appeal.

Member Mulligan said he has a question for the complainant, noting that he wants to understand the goal of this petition.

Tom Mullen, agent for appellant, said it is about the principle of the matter. He said his client, Mr. Guinee is present and wants to become a resident of Groton. He said that is why he is concerned that the gateway to his home is filled with materials that would be found in a contractor's yard. He said he doesn't want to shut down the business or punish Mr. Degen, noting that he just wants the property cleaned up so it looks like any home occupation in a residential neighborhood should. He said Mr. Herget sent a note that things were happening there that don't come under a by right home occupation permit, noting that he needs a special permit from the ZBA such that there are some controls. He said it is an illegal forbidden use as a contractor's yard.

Member Mulligan said there appears to be two solutions, either screening or (and) coming before the ZBA for a special permit home occupation. He asked whether there was also another entrance.

Atty. Mullen said his client is willing to sit down and discuss a possible solution. He said he hasn't spoken to Mr. Degen directly but has sent nice letters and Mr. Degen kept resisting removing the equipment. He said he had to file a lawsuit, noting that the equipment wasn't removed until the day before the court date. He said they wanted Mr. Degen to acknowledge he doesn't have first possession rights, but he refused and even filed a suit against them.

Member Spencer said she felt that given the size of the client's property, it would be difficult to see what is happening on Mr. Degen's property.

Mr. Guinee, owner of Chestnut Hill Farm, said when he purchased this property, he saw that there was encroachment. He said he did some research and found Mr. Degen to be litigious and had sued the previous property owner, noting that that caused him to proceed carefully. He said he was surprised that Mr. Degen was so resistant and combative, noting that he kept pushing back the dates of when he would remove his equipment. He said he grew up on a farm and knows what it takes to farm. He said this is an acre lot which should have a special permit, noting that Mr. Degen knows what a permit is. He said Mr. Degen claims to have adverse possession but that is not right. He said he doesn't want to pick a fight, noting that he is busy with his ten children and plans to build a house, but said it is not right that Mr. Degen has taken that position. He said this would have been part of the land trust but because of litigation initiated by Mr. Degen it is not. He said there is still a suit pending because Mr. Degen continues to claim to have adverse possession. He said he should have just gotten the equipment off his property, noting that he has posted signs that all have been torn down. He said this is a terrible spot to be in and he just wants to build a house on his land.

Pam Tierney, resident of Groton, said she recently found out about the issues. She said that if one is new to town and just bought 191 acres, no one is going to tell you that you can't build a house. She went by Mr. Degen's and said she feels it looks like other landscaping companies in town. She said she moved to Groton because it is the type of place you can do aggie stuff. She said 28 years of having a property serving the community, it would be too bad to have Mr. Degen lose that right. She suggested that maybe he could put up a fence.

Mr. Degen said he received a letter in September 2019 asking him to remove vehicles encroaching on Brooks Orchard. He said what was litigated before was about inappropriate development and nothing else. He said that all of this is not a ZBA problem, but whether the two BI's were correct that his business is aggie and allowed. He said he asked multiple times to meet but received a settlement agreement and nothing else. He said he has spent lots of money and wants the Mr. Cataldo's decision upheld.

Atty. Gallant said three specific uses are allowed: a residence, an aggie business and a home occupation with a permit. He said Atty. Mullins' letter is trying to confuse all three, noting that it is not a contractor's yard, but a use the BI said is specifically allowed. He said that if this use can't be done then they couldn't do much of anything aggie in an RA district. He said everything used is allowed and no screening is required. He said there is nothing in the bylaw that requires screening and it is not a contractor's yard. He said his client has an office business address at the property, which is why he got a home occupation permit. He there are two separate uses, noting that he shouldn't have to screen his pickup truck in the driveway. He said that the accusations of encroachment of the abutting property are incorrect. He said Mr. Guinee has been a bully because he used his lawyer to send a letter, noting that his client had a right to store equipment. He said his client had an agreement even if it not is filed in court, noting that he removed the equipment even though he didn't have to. He said he is not a good neighbor because he wants to shut down the business because it is a contractor's yard and not allowed. He stressed that it is not a contractor's yard, noting that no screening is required for a home occupation. He said his client got letters from the BI twice that this is allowed under aggie. He said this is not what the bylaw intends, to force a shutdown of an aggie business.

Atty. Mullin said no one is attacking anyone's right to operate a real aggie business such as a nursery. He said just not a contractor's yard with stone, wood, excavators, etc., noting that this is a landscaping contractor's yard.

Atty. Gallant said his client has a special permit that allows the storage of stone, etc., noting that all equipment is tied into the aggie use.

Mary Livingston, neighbor, said she moved to Groton 13 years ago, noting that Mr. Degen has done a lot of improvements to her property. She said she has gotten a lot of landscaping materials, including plants and stone from him because he has the equipment to move them. She said Mr. Degen is a terrific neighbor.

Member Spencer said she feels this started with the encroachment issue, but the equipment has been moved. She asked what the problem is currently.

Atty. Mullin said the lawsuit continues because Mr. Degen is insisting he has the right to put his equipment back.

Mr. Degen said he refused to sign the first settlement agreement, noting that there is a second settlement agreement that they refuse to sign. He said the second involves an easement to keep a drainage facility open and only that. He said he thinks he will be a terrible neighbor.

Mr. Guinee said Mr. Degen couldn't access his nursery and swimming pool except through his property.

Both Mr. Degen and Atty. Gallant said that is not true.

Member McLaughlin said Mr. Degen has a point that he started business almost 30 years ago, but there is also a valid point that a special permit should be required. He said he thinks this could be settled with Mr. Degen coming to the ZBA for a special permit.

Atty. Gallant said the letter of 2009 was amended twice by two different BI's, noting that an aggie zone means no special permit is required.

Member Easom said that aggie activities are permitted either as a main or accessory use in a residential zone. He said this boils down to what are the activities related to aggie and is the use grandfathered. He said he feels the landscaping activities on site are substantial and aggie is being used as an excuse. He said there seems to be a reasonableness test to determine what activities actually fall under the aggie umbrella. He said he saw that half of the activities are part of the landscaping business. He said that if there is a new application, he expects that the applicant would file for a special permit from the ZBA. He said there is disagreement also as to what actually could be grandfathered, noting that he wants an opinion from town counsel as to whether the use is grandfathered. He said if it is not grandfathered, a special permit would be required due to impacts on the neighborhood, etc., noting that he feels the grandfathering issue is more straight forward and should be addressed first. He said it is not a hardship to request a special permit for activities that are allowed with a special permit via the bylaws. He said that if he does not like the decision, then he needs to work to change the bylaws. He said it is not the intent of the ZBA to negate the intent of town meeting votes.

Member McLaughlin said a crucial question to ask town counsel is whether the 1998 home occupation permit affords the same protection as a building permit.

Member Easom said it is important to frame the question properly to town counsel to get a good informed answer.

Discussion ensued regarding whether to get an opinion from town counsel.

Atty. Gallant suggested requesting a special counsel due to Mr. Degen's status as a selectman.

Member Easom made a motion to request permission from Mark Haddad to obtain an opinion about whether the grandfathered status of the operation at 409 Martins Pond Road is valid, from independent counsel as necessary.

Member McLaughlin also wanted clarification as to whether the letter from the BI in 1998 works like a building permit in terms of grandfathering.

Atty. Mullin said it makes sense to seek advice from counsel, asking whether an illegal use is grandfathered if it has been going on for more than ten years and whether the 1998 home occupation permit is the kind of permit that gives rise to grandfathering protection under §218-7.

Atty. Gallant said they won't agree to that wording. He said the question should be just is the use grandfathered with the second part asking whether the home occupation permit provides grandfathered status. He said it has never been a contractor's yard.

Atty. Mullin said it should be easy to handle, noting that the board should send the letters to counsel and ask them to determine which is valid.

Mr. Degen said his house was built in 1882 and asked if the original building permit, which went with the whole property and was used as a farm would count.

Member Mulligan suggested submitting the two letters from Attys. Gallant and Mullin.

Atty. Gallant said he will submit a supplemental letter and Mr. Degen asked that both Mr. Herget's and Mr. Kinney's letters be submitted as well.

Member McLaughlin made a motion to ask Mark Haddad for permission to have town counsel review the 1998 home occupation permit, three letters from the Building Inspectors and subsequent letters provided by Attys. Mullin and Gallant to determine whether grandfathered status is provided under chapter 40a seconded and all yeas via roll call vote.

Mr. Degen said he had a problem with using town counsel.

Member McLaughlin made a motion to amend that special counsel instead of town counsel be consulted. The motion was seconded and passed all ayes via roll call vote.

A motion to approve as amended seconded and passed with all ayes via roll call vote.

A motion was made to continue the hearing to March 4, 2020 at 7 PM. The motion was seconded and passed via roll call vote.

Other business

Minutes and Bills

No Groton Herald bills were signed.

No minutes were approved.

The meeting adjourned at 6:51 pm by unanimous roll call vote.

Approved 8/19/20.