

Case No. 23-19  
Date Filed: 20 May 2019

### RECORD OF PROCEEDINGS

I, Lisa C. Morrison, assistant to the Zoning Board of Appeals of the town of Edgartown, hereby certify that the following is a detailed record of proceedings pertaining to the appeal by Judith Villa under M.G.L. Ch 40A, Section 15, of the Building/Zoning Inspector's issuance of a cease and desist order based on the Building Inspector's determination that the appellant is exceeding the terms of the special permit issued in 2007 by operating an insect spraying business and a nursery on property located at 32 & 38 Clay Pit Road, Assr. Pcls. 21-53 & 54 in the R-20 Residential District.

1. On 20 May 2019 the application, a true copy of which is marked "A," was presented to the Town Clerk.
2. On 13 June 2019 the appellant's attorney, Howard Miller, requested that the hearing be postponed until August or September to accommodate planned knee surgery.
3. The Zoning Board and the Building/Zoning Inspector agreed to the continuation.
4. On August 2<sup>nd</sup> and August 9<sup>th</sup> 2019, an advertisement, a true copy of which is marked "B," was published in the Vineyard Gazette.
5. Notice of the hearing, a copy of which is marked "C," was mailed, postage prepaid, to the petitioners; the abutters - owners of land adjacent to the subject property within 300 feet of the property lines - all as they appear on the most recent, applicable, certified tax list; and to all the proper town boards and departments.

On Wednesday, 21 August 2019 at 7:00 p.m. the public hearing was held in the Town Hall. The following board members were sitting for this hearing: Martin Tomassian- chairman, John Magnuson, Carol Grant, Nancy Kelly - alternate, and Gerry Conover, alternate.

Attorney Howard Miller began the presentation by stating that Ms. Villa has been doing business on the premises for almost 30 years. He said that the business has expanded, just not on this property. He said that he believed Mr. Jason was mistaken in his determination that the mosquito and tick spraying business and the nursery were not part of the original special permit issued by the ZBA in 2007. Miller said that most landscape contractors provide pest control services and Ms. Villa has been doing it since the start of her business. Likewise, the majority of landscape contractors have some nursery stock stored on their

property. Both these uses were noted in the 'Best Management Practices' plan that was submitted to the Board of Health in 2007.

Attorney Miller noted that Ms. Villa had purchased a mosquito/tick control business from a Chappy resident some years back, and began marketing that service under the name 'MV Mosquito & Tick,' but that business is part of Working Earth - Ms. Villa's business - and consists of one truck that is registered to Ms. Villa. The pick-up comes to the Clay Pit Road property once in the morning to pick up supplies and assignments.

Miller said that the nursery is a natural part of any landscaping business and Ms. Villa has been storing plants on her property for 30-years. He said there has been no expansion of this use and no customers come to the property for the purpose of buying plants.

Attorney Miller said that these are the only two issues before the board tonight. Miller said that certain neighbors seem to be under the impression that the business has expanded. Again, he said, the business *has* expanded – just not in this location. Ms. Villa has rented space at Goodale's and in the Dark Woods lot to park large trucks and heavy equipment.

When the special permit was granted in 2007, 9 vehicles parked on the property overnight. Now it is down to 5. Generally, an increase in traffic occurs for about ½ an hour from about 7:45 a.m. to 8:15 a.m. when trucks come by to pick up materials and assignments.

Attorney Miller submitted a petition signed by a majority of neighbors on Clay Pit Road attesting to their support of Ms. Villa and Working Earth. More than 16 names appear on the petition. Miller said he thought it was significant that back in 2007 Clifton Freedman was opposed to the special permit. Now in 2019, he is a firm supporter of Ms. Villa and her business. Mr. Miller concluded the presentation by noting that the only issue before the board tonight is whether or not Mr. Jason made a mistake in his determination.

Mr. Tomassian then asked for any letters from town boards or departments. There were none. The assistant then read letters of support from abutters Sarah Monast of 62 Clay Pit Road and Paul & Monique Pelletier of 19 Clay Pit Road. Both were effusive in their praise for Ms. Villa and the way she runs her business. They noted that Ms. Villa maintains the road at no cost and is thoughtful, approachable, and generous. Mr. and Mrs. Pelletier's letter also mentioned that they believe a lot of the traffic on Clay Pit Road is the result of people using the road as a short-cut and to avoid the traffic on Edgartown-Vineyard Haven Road and at the triangle. Ms. Monast was concerned that another neighbor, who she believes is the complainant, blocked the road with boulders, plants, and markers.

Mr. Tomassian asked who was responsible for the boulders. Ms. Nichols said that she had put them there to protect her property from damage from Working Earth's vehicles. She noted that the issue had been resolved with the Homeowner's Association, and she has moved several of the boulders.

Ms. Villa told the board that no one had approached her with any complaints. She said she was surprised when the Building Inspector showed up because she was not aware that there were any problems. Ms. Villa reiterated that she rents space in two off-site locations to park trucks and store heavy equipment. She said she has gone out of her way to lessen traffic on the road. Ms. Villa said that she does store plants on her property, but they are not

visible from the public way. She said she wished that her aggrieved neighbors had come to her instead of filing a complaint.

Ellen Reynolds of 31 Hamblen Way recalled that there were some issues with the business back in 2007 but that since then Jude has met with everyone on the road and radically changed the way she operates the business. She noted that she and her husband have four trucks on their ½ acre parcel.

Gary Smith of 24 Clay Pit Road said that he has been Ms. Villa's neighbor for over 30 years. He noted that she takes care of the entire road, not just the part that she uses. He said that he has found Ms. Villa to be an accommodating and concerned neighbor.

Rebecca Brown, an employee of Ms. Villa's, commented that for years Ms. Villa kept some of her equipment on her father's property, which is a testament to Ms. Villa's ability to run a well maintained business.

Mr. Tomassian then asked to hear from opponents. Candy Nichols of 21 Clay Pit Road submitted a brief to the board on what she calls the "Villa Industrial Compound." Mr. Tomassian cautioned Ms. Nichols to remain on point. Ms. Nichols said that she had lived in the neighborhood for 25 years. Ms. Nichols said that the business has expanded beyond the terms of the special permit and outlined these allegations in her complaint [See letter and attachments submitted to the board dated 21 August 2019.]

Ms. Nichols also noted that an illegal day care had been run on the property for a time.

Ms. Nichols complaint went on to document the increase in traffic and noise in the neighborhood from Ms. Villa's business and the damage to the road and her property from Ms. Villa's trucks. She said that traffic is by far the biggest problem and that she does not understand why it is necessary for so many trucks to go in and out each day. She said she counted 30 trips in and out in one half-hour period in the morning.

Judy Kitchen of 33 Clay Pit Road had several concerns that she outlined in a submission dated 21 August 2019. Ms. Kitchen said that she too was disturbed by the traffic generated by Working Earth and quoted an interview in the MV Times where Jude was interviewed and stated that her business had grown into a "full-on construction, maintenance and design business with 20 full-time employees." Ms. Kitchen said she feels the impact from living directly across from this business. She said that workers have cut branches from trees on the sides of the road and thrown them on her property. She said that several years ago Working Earth plowed and dumped gravel and road debris on her property killing vegetation as far back as six feet. She said large delivery trucks make regular deliveries of nursery plants. She said that this continues seven days a week. She said that the business has grown well beyond what was approved in 2007.

Attorney Miller said that most of what he has heard does not relate to the matter before the board tonight. In addition, he said, he would have to call most of the comments a misinterpretation of the facts. He said that the day care center was done without Ms. Villa's permission and was shut down by her. He reiterated that the business has indeed expanded over the last 12 years, but not at this site.

Ms. Villa took issue with the idea that trucks are continually going in and out of her property. She said the trucks are out working. She said that fewer employees come to Clay Pit Road now than back in 2007. She reiterated that no one had come to her with their complaints or spoken to her face to face. She commented that on a site visit, Mr. Jason had said that every landscape company should have a place to put their plants. She said that the area where the plants are stored is not visible from the road. She said she doesn't work on Sundays and does not damage trees. She noted that she tries to listen to all her neighbors as well as the zoning inspector. She said that the majority of residents support her and her business.

Mr. Tomassian asked Mr. Jason if he wished to comment. Mr. Jason said that he read the 2007 decision and the record of proceedings. He said he saw no mention of pest control or a nursery in those documents, which is why he issued the cease and desist order. He said that in his determination the issue is traffic. He said when he visited the site, the traffic on the road was not generated by Working Earth.

Mr. Tomassian then closed the public portion of the hearing for discussion among the board members. He reiterated that the only decision the board needs to make is whether or not Mr. Jason was correct in issuing the cease and desist order.

Mr. Magnuson said that in his opinion that question is answered unequivocally in the 'Best Management Practices' letter from Jude Villa to Matthew Poole, Health Agent, dated 16 November 2007. In that document reference is made to both on-site storage and maintenance of nursery stock as well as storage of pest control materials.

Ms. Grant agreed and said that she did not believe that the business had exceeded the terms of the original special permit.

Mr. Conover said that he visited the site and found it to be tidy and well organized. He said he was impressed with the neighborhood support.

Mr. Magnuson made a motion to overturn the decision of the building inspector. He said that even though it was a gray area in the decision and record of proceedings, the 'Best Practices' document makes it clear that plant storage and pest control were both part of the original approved business plan.

Ms. Grant agreed and voted to overturn the decision of the building inspector to issue a cease and desist order for those two activities.

Mr. Conover, Ms. Kelly, and Mr. Tomassian concurred and voted to overturn the cease and desist order.

Motion carries 5-0.

Respectfully submitted,

Lisa C. Morrison, Assistant