

Minutes of a Meeting of the Edgartown Zoning Board of Appeals.

On Wednesday, 12 November 2014, the following members of the Board of Appeals met in the Selectmen's Meeting Room of the Town Hall: Martin Tomassian, Richard Knight, Carol Grant, John Magnuson, and Nancy Whipple. The purpose of the meeting was to conduct a review of the landscaping business of Donna Kelly located at 46 East Cape Poge Avenue, Assr. Pcl. 34-79 in the R-120 Residential District as per the conditions of the special permit issued in November of 2013.

Donna Kelly was present, as was her attorney, Sean Murphy.

Mr. Tomassian asked if there were any letters from town boards or departments.

A letter from the zoning inspector, Lenny Jason, was read. Mr. Jason stated that he had received two complaints, as well as some photographs from Jeff Gould showing alleged violations taking place in late July and early August. Mr. Jason said he was also contacted by Joe Sullivan. Mr. Jason said that he went to the property on several occasions and did not find any violations: he saw no debris stored and no vehicular or other activity that would indicate that the property was being used commercially.

A letter from abutter, Jeff Gould, was read. Mr. Gould said that he did not believe that the conditions of the special permit have been adhered to. He said that employees arrive in separate vehicles and are making trips to and from the property several times a day. He said that the hours of operation, 8:00 a.m. to 4:30 p.m., have not been followed. He said that he has witnessed debris being brought back to the property in violation of condition 5. He said the driveway has not been reconfigured, as required by condition 8, and he does not believe that any grading of the road has been performed as stated in condition 10. A series of photographs were submitted, allegedly documenting these violations.

Joe Sullivan, an abutter, also spoke in opposition. He said that he is a direct abutter and has been coming to the Vineyard for 40 years. He said he has real concerns about the operation and believes that many of the conditions have been violated. He said he believed that the board made a bad decision by allowing the business to operate in the first place. He said that it is a commercial enterprise operating in a residential neighborhood. He said that he called the zoning inspector, Lenny Jason, a number of times, but had never seen him on the site.

Mr. Sullivan said that his concerns are similar to Mr. Gould's. He said that he has observed Ms. Kelly working at 7:30 a.m. and many times on Saturdays. He said that there has been

burning on the property, and believes there have been retail sales as well. He said that he has seen heavy equipment on the site and debris as well.

He said he can see the operation from his second floor porch, which looks down into Ms. Kelly's property. Because of this, he and his wife hardly use the porch anymore. Mr. Sullivan said that Ms. Kelly's operation has had a negative impact on his family's quality of life.

Pat Rose, another direct abutter, took issue with the previous negative comments. She said she finds Ms. Kelly to be a good neighbor who has done much to improve her operation. She said that she is not bothered by it at all. She said that Ms. Kelly put up quite a bit of new fencing and that she has, in fact, graded the road on several occasions.

Norris Jones, another abutter, agreed that Ms. Kelly has made a lot of improvements to her operation. He said that he has not noticed any noise or excessive traffic or disruption. He too attested that the road had been graded by Ms. Kelly.

Barbara Jones said that she too takes exception at the criticism of Ms. Kelly. She said that Ms. Kelly has been a good neighbor who works hard and runs a good operation.

Mr. Murphy, attorney for Ms. Kelly, noted that - once again - Mr. Sullivan and Mr. Gould's experience is in conflict with the experience of Ms. Kelly's other neighbors. Mr. Murphy said that Ms. Kelly never starts before 8 a.m., occasionally someone will return after 4:30, but noise is kept to a minimum. He said that the employee meetings are held indoors or off-site. He said that occasionally Ms. Kelly has stored some debris on her property, but it is just material that is headed to the dump the next day. He said that there has been absolutely no burning or retail sales or storage of heavy equipment on the property. He said that the driveway was widened, rather than reconfigured, so there is now space for vehicles to turn around. He said that Ms. Kelly continues to add more fencing and more vegetative screening to her property. He said that he believes Ms. Kelly has been diligent in following the conditions of the special permit and believes she should be allowed to continue.

Mr. Tomassian said that it appears that the conditions of the permit have not been adhered to and the permit should be revoked.

Mr. Magnuson disagreed. He said that the time stamps on the photographs indicate that they were taken just five or ten minutes past 4:30 p.m. He said that such complaints are petty, especially considering the traffic on Chappy in the summer. Mr. Magnuson said that it seems to him that no matter what Ms. Kelly does, it is not enough for two of her neighbors.

Mr. Knight asked Ms. Kelly about chipping on her property. Ms. Kelly said that the original plan was to bring debris to Jerry Jeffers' place to be chipped, but the arrangement didn't work out. She is in the process of figuring out an alternative arrangement. She said that perhaps three times a year, Keene has brought a chipper to her property. Mr. Knight said that chipping probably exceeds what could be considered residential use. He asked that Ms. Kelly refrain from further chipping on her property.

Mr. Knight said that he has driven by the property on many occasions and finds it to be well run and tidy. He noted that the neighborhood is not a gated community and contains a lot of diversity. He suggested that Ms. Kelly and Messrs. Sullivan and Gould try mediation. He said that he was in favor of allowing the special permit to stand with no further reviews required.

Mr. Magnuson made a motion to allow the special permit to continue with no further annual reviews. He said that there should be no chipping on the property and that Ms. Kelly should find another place to store debris.

Ms. Whipple seconded the motion and voted to allow the special permit to continue with no further reviews.

Mr. Knight voted to allow the special permit to continue with no further reviews.

Ms. Grant also voted to allow the special permit to continue with no further reviews.

Mr. Tomassian voted to revoke the special permit.

The vote therefore was 4-1 allowing the special permit to continue.

Respectfully submitted,

Lisa Morrison
Assistant to the Board of Appeals