

Town of Scituate

ZONING BOARD OF APPEALS

600 CHIEF JUSTICE CUSHING WAY
SCITUATE, MASSACHUSETTS 02066
(781) 545-8716



Decision of the Scituate Zoning Board of Appeals (hereinafter referred to as the "Board") on an appeal filed by Eliot C. Beal of 255 Thomas Clapp Road, Scituate, Massachusetts (hereinafter referred to as the "Appellant"). The Appellant appealed a Decision of the Scituate Building Inspector/Zoning Enforcement Officer, Neil F. Dugan (hereinafter referred to as the "ZEO") in which he denied the Appellant's request for enforcement.

The appeal was received, advertised, and a public hearing was duly held on June 21, 2007, with the following members of the Zoning Board of Appeals hearing the appeal:

Albert G. Bangert, Chairman
Brian B. Sullivan
Sara J. Trezise

The property which is the subject of this appeal is a piece of land known as "Appleton Field" located behind 253 and 255 Clapp Road. It is approximately 10 acres in size and lies within the A-1 Residential District. The subject property is owned by the Town of Scituate Conservation Commission.

The Appellant represented himself at the hearing. He stated that he and his wife are owners of abutting property known as the Crosby Farm, totaling over fifty acres.

On March 26, 2007, the Appellant filed a complaint with the ZEO. In the complaint, the Appellant stated that Mr. V. Bucca leases the subject property from the Scituate Conservation Commission and that Mr. Bucca is using the property to raise 5 pigs. The Appellant asked the ZEO to issue a Cease and Desist order on the basis that the Scituate Zoning Bylaw Section 420.1, paragraph I, specifies that a "piggery" is not a use permitted as of right in a Residential District.

On March 27, 2007, the ZEO issued a written response to the Appellant's request stating that the raising of pigs at the subject property is an agricultural use and that Massachusetts General Law (MGL) Chapter 40A, Section 3 exempts agricultural uses from unreasonable zoning regulation. Accordingly, the ZEO denied the request for enforcement.

The Board received testimony from the Appellant in which he stated that he found the use of the Appleton Field as a "piggery" offensive. He provided photographs showing the animals in movable pens and dirt left on Clapp Road by vehicles exiting the unpaved cart path to the Appleton Field.

No one in attendance at the hearing rose to give supporting or contrary testimony.

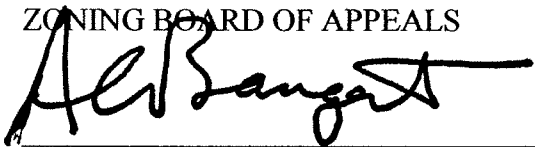
Second Page/Appleton Field- Beal

The Board reviewed MGL Chapter 40A, section 3 which states in the first paragraph that "No zoning ordinance or by-law shall ... prohibit, unreasonably regulate, or require a special permit for the use of land for the primary purpose of commercial agriculture." In the same paragraph, the law goes on to state that "the term 'agriculture' shall be as defined in Section 1A of Chapter 128," of MGL. Chapter 128, Section 1A, states that " 'Farming' or 'agriculture' shall include ... the keeping and raising of poultry, swine, cattle, and other domesticated animals ... performed by a farmer, who is hereby defined as one engaged in agriculture ... "

After deliberation the Board found that the Scituate Zoning Bylaw Section 420.1, Paragraph I, which prohibits piggeries, is inconsistent with MGL Chapter 40A, section 3 and is therefore enforceable.

THEREFORE, the Board voted unanimously to DENY the Appeal of the Appellant from a decision of the Zoning Enforcement Officer.

ZONING BOARD OF APPEALS



Albert G. Bangert, Chairman



Brian B. Sullivan



Sara J. Trezise

Filed with the Town Clerk on 7-11-2007

Appeal of any decision of the Zoning Board of Appeals may be made pursuant to M.G.L. Chapter 40A, Section 17, and shall be filed in a court of competent jurisdiction. Proof of that filing shall be provided to the Town Clerk within twenty (20) days of the date of the filing of the decision with the Town Clerk.