



Town of Pepperell
BOARD OF APPEALS
One Main Street
Pepperell, Massachusetts 01463
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Zoning Board of Appeals Meeting Minutes of August 21, 2007

PRESENT: Thomas McGrath, Sherrill Rosoff, Annette McLean, Mark Walsh; and Cheryl Lutcza (ZBA Assistant). Also present, Town Counsel, Edward J. Richardson.

7:00 P.M. Chairman convenes the hearing. First agenda item is a hearing regarding an application for an Administrative Appeal by Kimberley Gordon, requesting that the Zoning Board of Appeals reverse the Decision of the Building Inspector, pursuant to Section 9223 of the Town of Pepperell Zoning By-Law, refusing to allow a business selling collectibles, art, antiques and consignments with limited days and hours as a permitted home occupation, at the property located at 75 Groton Street, Pepperell, MA, as shown on Assessor's Map 27 as Parcel 5.

- Clerk reads legal notice into the record.

Applicant, Kimberley Gordon, was present and addressed the Board as follows:

- She is not seeking to have huge store that would be open every day; only asking to be open limited hours.
- Shop is tucked behind her home and she doesn't feel it would have a negative effect on the neighborhood.
- Shop is located on a main route and in close proximity to commercially zoned property. Other business located nearby, include a carwash and Brooks Pharmacy. Traffic pattern is already high due to these businesses.
- Rail Trail is located nearby.

Clerk read responses from the following Town Boards/Departments and/or concerned parties into the record:

- Response from Assessor's Office
- Response from Town Engineer
- Response from Conservation Commission

- Responses from Water Department
- Response from Board of Health
- Response from Town Counsel
- Response from Planning Board
- Letter of Opposition from Owners and Residents of Groton Street
- Letters of Support from Abutters

Chairman inquired if anyone in attendance would like to speak in favor of, or opposition to, the application

The following members of the audience spoke in support of the application:

- Richard Lewis, Groton, MA
- Mary Femino, 77 Groton Street

Board Member inquired if there would be more than one parking space for the residents of the property and if the residence is more than a single-family home. Applicant responded that the home is multi-family.

Town Counsel gave an overview of his letter to the Board and referred to the Table of Uses in the Zoning-by-law. He further explained that according to zoning, the Building Inspector made the correct decision in this case.

Applicant, Kimberley Gordon, again addressed the Board as follows:

- Doesn't want to be different than other business in Town, The Bronze Bell and The Auto Clinic, which are currently located in a residential district.
- Not looking to be open everyday and would have limited hours.
- Business would be very small.
- Business would add great character to Town.

Sherrill Rosoff motioned to close the record. Annette Mclean seconds. All in favor.

Discussion ensued.

Sherrill Rosoff motioned to deny the relief requesting to reverse the decision of the Building Inspector. Annette Mclean seconds.

Roll Call Vote taken to deny the relief requested as follows:

Sherrill Rosoff:	Nay
Annette McLean:	Nay
Thomas McGrath:	Aye

7:30P.M. - Old and New Business:

Suzanne Shaw addressed the Board to give an update for property located on Harbor Street as follows:

- Was not prepared for letter she received from Building Inspector regarding Condition No. 5 of the ZBA Decision for her property.
- No ground has been broken on the lot and she doesn't feel she is in violation of Condition No.5
- She has an appointment with a landscape architect to revise the landscaping plan.

Board Member, Sherrill Rosoff, explained to Ms. Shaw that the Board sought to create an undisturbed buffer zone and that the Board wanted a description of existing conditions.

Chairman inquired if Ms. Shaw would have an updated plan by the Board's next meeting date. Ms. Shaw responded that it was never her intention to not comply with Condition No. 5, and that she could bring a plan into the next scheduled ZBA Meeting. Chairman explained that ZBA Assistant, Cheryl Lutcza, would be contact Ms. Shaw once the next ZBA meeting date is scheduled.

7:40 P.M. Second agenda item is a hearing regarding an application submitted by Louise Taylor, requesting a Zoning Board of Appeals SPECIAL PERMIT and/or ADMINISTRATIVE APPEAL, under Sections 3500, 3520, and 9223 of the Town of Pepperell Zoning By-Law, which if granted, would allow the appeal of the Decision of the Building Inspector, dated June 19, 2007, and permit the continuation of the present non-conforming use of the premises for commercial transportation and storage of fuel, sand, cement or other goods; or, in the alternative, to grant a Special Permit to allow the conversion of the existing non-conforming use to commercial transportation, storage and accessory uses pursuant to Section 3520 of the Town of Pepperell Zoning By-Law, for the property located at 49 South Road, sometimes known and numbered as 47-53 South Road, Pepperell, MA, as shown on Assessor's Map 40 as Parcel 1.

Clerk read legal notice into the record.

Applicant Louise Taylor is present, and is being represented by Attorney Mark Joubert, who is also present. Attorney Joubert addressed the Board, on the Applicant's behalf, as follows:

- Gave a history of pre-existing use of premises.
- Business started in 1960 by Ted Stephan at 49 South Road, in same building that currently exists. Business consisted of breeding and stabling of horses; tack shop (Nashoba Valley Tack Shop); storage of stone, sand dust, shavings, truck and horse related items; parking area for arena.
- In 1969, his wife, Theresa Stephan, expanded the business to include various garden products – trees, shrubs, mulch, etc., which were trucked in and sold.
- Only change is that Nashoba Valley Tack Shop is now called Nashoba Valley Garden Center.
- Submitted a new exhibit, Exhibit V (magazine article, ad, invoices, truck expenses, invoices for loam, mulch, sand, stone dust, processed grain and pictures going back to 1968 showing trucks and horse trailers) into the record. Attorney Joubert explained that this exhibit shows a “mountain” of pre-existing uses going back many years...as far back as the 1960's, showing that they have stored various materials, and that they can prove that uses are pre-existing, continuous and pre-date zoning and that they are consistent and in close proximity to how they have always been and lawful.
- In summary, current use is clearly within the parameters of industrial at the time the bylaws were enacted. We can establish that the use has been continuous since long before the current bylaws were enacted.

Clerk read responses from the following Town Boards/Departments and/or concerned parties into the record:

- Response from Conservation Commission
- Response from Police Department
- Response from Town Engineer
- Responses from Water Department
- Response from Planning Board
- Response from Board of Health
- Letter from Town Counsel
- Letter of Opposition from Nicholas Cate
- Letter of Opposition from Maria Lombardo and Brian Siplo
- Letter of Opposition from Ronald and Maureen Pimental
- Submission from Bowditch and Dewey for John Cirrone

Attorney Scott Fenton (Bowditch and Dewey) addressed the Board on behalf of his clients, Mr. and Mrs. John Cirrone, 9 Robin Lane, as follows:

- Not here tonight to say Garden Center is not a lawful use.
- Concern is with Area B – second portion of property being used as a commercial trucking depot. Use of Area B has nothing to do with flower shop and is not incidental to flower shop.
- Gave an overview of their submission to the Board, Exhibit U, dated August 20, 2007.
- Submitted copy of ad for website for Nashoba Valley Garden Center (Exhibit W) into the record.

Attorney Joubert responded that Attorney Fenton brought some interesting, nonfactual points. Attorney Joubert informed the Board that he needs time to prepare a rebuttal and would like to request a continuation of the hearing.

Town Counsel suggested the Board may wish to do a site visit to the subject property.

Attorney Joubert submitted the following letters from interested parties to be read into the record:

- Letter of Support from Edward and Maura Schaeffer, 12 Robin Lane, Pepperell, MA
- Letter of Support from Barbara and Eric Stromsted, 36 Mt. Lebanon Street, Pepperell MA.
- Letter of Support from Jerry Auger, Owner, Nashoba Valley Auto Body, Rte 119, Pepperell, MA.
- Letter of Support from Stacey Durkin, Treasurer, Onyx Transportation, Inc., 18 Wetherbee St., Acton, MA.

Chair opens floor to the audience for comments either in support or opposition to the application.

The following members of the audience spoke in opposition to the application:

- Jim Mc Donald, 8 Brick Pond Way, Pepperell, MA.
- David Wright, 55 South Road, Pepperell, MA.
- Richard Baldwin, 10 Brick Pond Way, Pepperell, MA
- Julie Masters, 11 Robin Lane, Pepperell, MA.
- Bill Donahue, 2 Robin Lane, Pepperell, MA.

Applicant, Louise Taylor, addressed the Board and explained that the corporation was never dissolved after the death of her parents and that the business is currently an L.L.C. and owns everything. There are not two separate businesses; the old corporation was just never dissolved.

Attorney Fenton inquired about Escapes business and would like additional information from Applicant regarding L.L.C.

Chairman and Attorney Joubert both commented that this could be addressed at continuation hearing.

Town Counsel commented that Cease and Desist Order is not in effect because Applicant filed appeal to ZBA in a timely fashion.

Attorney Fenton inquired if fueling operation ceased.

Applicant, Louise Taylor, responded that the fuel truck has been removed and is off the property and was never used, that it was her father's, it wasn't usable and it is gone.

Sherrill Rosoff motioned that Board conduct a Site Visit to 49 South Road for Saturday, September 15, 2007 at 10:00A.M. Annette Mclean seconds. All concur.

Sherrill Rosoff motioned to continue hearing to Tuesday, September 25, 2007 at 7:00P.M. at Town Hall, Conference Room A. Annette McLean seconds. All concur.

Old and New Business:

Sherrill Rosoff motioned to approve ZBA Meeting Minutes of July 10, 2007. Mark Walsh seconds. All concur.

Sherrill Rosoff motioned to approve ZBA Meeting Minutes of July 24, 2007. Annette McLean seconds. All concur.

Sherrill Rosoff motioned to adjourn the meeting. Annette McLean seconds. All concur.

Meeting Adjourned at 9:50P.M.

ZBA Minutes of August 21, 2007 filed with Town Clerk: October 9, 2007

Cheryl Lutcza
Assistant, Zoning Board of Appeals

cc: Town Clerk
Building Inspector
ZBA Minutes file
ZBA Members
ZBA Application File - 07-391-Taylor-49 South Road
ZBA Application File -07-392-Gordon-75 Groton Street
ZBA Application File -06-376-Shaw-81 Harbor & 91 Harbor St.