



Town of Pepperell
BOARD OF APPEALS
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Pepperell, Massachusetts 01463
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Zoning Board of Appeals Meeting Minutes of March 27, 2007

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

6:50 P.M. Thomas McGrath, Chairman, convened the meeting at the Pepperell Senior Center. Also present, were Christine Morrissey, Cheryl Lutcza and Ed Wirtannen. Chairman announced that the meeting would immediately recess and reconvene at Pepperell Town Hall, Conference Room A.

7:00 P.M. Chairman reconvenes hearing. First agenda item is a continuation hearing regarding an application submitted by Clark's Retirement Homes and Parks, Inc., George E. Clark, President, requesting a SPECIAL PERMIT under Sections 3520 and 3521 of the Town of Pepperell Zoning By-law, which if granted, would allow an increase in the number of manufactured housing units located at the retirement park. The subject property is located at 4 Mason Street, Pepperell, MA, as shown on Assessor's Map 20 as Parcels 100 and 85-1 and a portion of Assessor's Map 34, as Parcel 21.

Applicant, George Clark is present. Attorney John Lorden, is also present on the Applicant's behalf.

At the Chairman's request, Town Counsel addressed those in attendance and explained that he had written a letter to the Board, dated February 6, 2007, which summarized the case. Town Counsel further explained that the current application before the Board cannot be granted due to the Agreement for Judgment/Superior Court Case No. 80-3835, dated October 31, 2005, and that the Park cannot be expanded beyond 84 units. Town Counsel further explained that the ZBA could make a Decision to the Applicant granting up to 84 units, as described in the Decision of the Superior Court Case No. 80-3835, as the Board does not have any authority to allow more than 84 units due to the Court's Decision.

Attorney John Lorden addressed the Board and explained that he had sent a letter to the Board and that he agreed with Town Counsel's opinion, and that at this point, the Applicant is requesting that the Board grant a decision only in as much as they are now only requesting an allowance of 84 units and hereby the withdraw portion of the application requesting more than 84 units.

Town Counsel explained that it is important that this Decision gets recorded at the Registry of Deeds. Attorney Lorden responded that the old Decision was never recorded because it was appealed.

Abutter, Bernadette McQuilken, addressed the Board and inquired about failed septic systems. Attorney Lorden explained that the Applicant would not be putting in any more units until town sewer is connected, then all of the units would be connected. Board Member asks how many units are currently at the Park. Applicant, George Clark, responded that there are currently 73 units and he can't put more in until the sewer system is in place.

Christine Morrissey motioned to approve application for the purpose of reaffirming the Decision of Superior Court Case No. 80-3835, dated October 31, 2005, where said premises could include up to 84 units, subject to conditions included in said Decision. Annette McLean seconds. All concur.

7:30 P.M. Second agenda item is a hearing regarding an application submitted by JKA Builders, L.L.C., Mark Sullivan, Member, having a business address of 199 Old Westford Road, Chelmsford, MA 01824, requesting a Variance from the provisions of the Town of Pepperell Zoning By-Law Sections 3556 and 4140, which if granted pursuant to the provisions of Section 9222, would allow a bulkhead to be located within the side yard setback. The subject property is located at 11 Railroad Street, Pepperell, MA, as shown on Assessor's Map 26 as Parcel 68.

Clerk read legal notice into the record.

Chair announces that there was a "typo" in the legal notice published in the Messenger, regarding the lot number. Town Counsel explained that this is considered to be a "harmless error", as the street address and assessor's map number were correct.

Applicant, Mark Sullivan is present. Attorney Ernest Sheldon is also present on the Applicant's behalf.

Attorney Sheldon addressed the Board and submitted a handout (Exhibit X) detailing his presentation to the Board. He further explained the following points:

- Subdivision of the lots was in.
- A Building Permit was issued for the foundation, not showing a bulkhead or provision for a bulkhead.

- Engineers said that the bulkhead was not considered to be part of the foundation, and that there was a failure on the part of the engineers to show location of the bulkhead. Applicant relied on Engineers word, and rather than create an issue, they'd like to solve a problem.
- 1960 zoning could be used to allow variance for the bulkhead
- There is confusion surrounding the surveying on the whole street and we could agree to take position of where boundary is as they intrude into 15-foot setback and a variance is needed.
- Not convinced we know where boundary is between two lots.
- Applicant was of the belief that an honest mistake was made, as he did not believe a bulkhead would not be part of a foundation, but a necessary egress from the basement, and he thought he was putting it where he could put it.
- Request that Board consider granting the variance, as bulkhead is in the best location they could put it due to topography and runoff.

The following discussions ensued between members of the Board, Applicant and Attorney Sheldon:

- Confirmation that the building is new.
- Discussion regarding whether the bounds were clear on the bulkhead plan.
- Confirmation that there is a building on Lot 67.
- Distance between buildings on Lot 69 and Lot 67.
- Builder has been building for 28 years.

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

- Conservation Commission
- Water Department
- Police Department
- Highway Department
- Assessor's Office
- Planning Board
- Fire Department
- Board of Health
- Letter from Town Counsel
- Town Engineer

Chairman inquired if anyone in attendance would like to speak in favor or opposition to application.

- Jim Gangi of 13 Railroad Street addressed the Board and explained that he had no issue with the bulkhead, as long as no structure is built on top of it.

Discussions ensued on the following issues:

- Applicant confirmed that utilities come into the front of the property.
- Applicant confirmed that the other side of the building also has a bulkhead.
- Applicant confirmed that the structure is a two-family dwelling and is a mirror image.
- Applicant explained that if the bulkhead was located in the rear of the building, runoff could enter under the bulkhead, so he had it located on the side of the building.
- Attorney Sheldon explained that it would be a financial hardship to remove the bulkhead and cut a new hole in the foundation; additional hardship is the water runoff on the lot.
- Board member inquired if Applicant could take off bulkhead and put in a door. Applicant responded that he could not do that, as runoff is an issue, and that perimeter drains had been installed around the building. Further discussion ensued regarding option of moving bulkhead vs. runoff issues.
- Board member inquired as to whether there is a “water issue” in the backyard. Applicant responded that the cement foundation in the back of the building created a water barrier and that bulkheads were known to leak. Further discussion ensued regarding water in the rear of the property.
- Applicant explained that if he moved the bulkhead to the rear of the structure it could encroach into the 45-yard rear setback.
- Discussion ensued regarding the possibility of using a steeper-angled bulkhead.
- Board member inquired as to when the Applicant found out that the bulkhead was encroaching. Applicant responded that it was when they were framing and the land had already been backfilled.
- Applicant explained that removing the bulkhead would create a fire safety issue and that some towns don’t consider bulkheads to be part of a foundation.
- Town Counsel responded that the Applicant made the statement that in some towns bulkheads aren’t considered to be part of a foundation and this is where the engineering mistake could have been made. Attorney Sheldon responds that there is ambiguity in the law.
- Discussion ensued regarding builders common practice of cutting a hole for bulkheads in foundations and that the Building Inspector inspected the foundation and it got by him.
- If the bulkhead is removed there would be no access out of the basement and this could create a safety issue if there was a fire.

Christine Morrissey motioned to close record. Sherrill Rosoff seconds. All concur.

Discussion ensued among Board members.

Christine Morrissey motioned to approve application as submitted. Sherrill Rosoff seconds. All concur.

8:35 P.M. Third agenda item is a hearing regarding an appeal by Patricia E. Terrell-Holt, 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, which if granted, would allow the replacement of a sign (billboard) at the property located at 185 Nashua Road, Pepperell, MA, as shown on Assessor's Map 6 as Parcel 109. This matter has been remanded to the Zoning Board of Appeals by the Superior Court for a Decision consistent with the judgment of said Court, dated February 7, 2007 and entered February 12, 2007 (See Superior Court Civil Docket No. MICV-2004-02362-L2)

Clerk read legal notice into the record.

At the Board's request, Town Counsel provided some background on the history of the appeal as follows:

- A pre-existing billboard sign, approximately 4-feet by 8-feet in size was located on an island on Nashua Road.
- There had been a question as to how long the sign had been up or down.
- The Applicant filed two applications with the Board of Appeals. One for a Special Permit and one for a Reversal of the Building Inspector. Both applications were denied by the Board.
- The Applicant appealed both cases to the Superior Court and they were tried in January 2007.
- After the trial, the Judge entered a decision that the free-standing sign was not down or abandoned for more than two years and was grandfathered.
- The Special Permit is moot.
- The Court remanded the ZBA to make a new Decision with findings consistent with those of the Superior Court Decision.

Attorney Sheldon responded that the sign was 8-feet by 16-feet.

Attorney Sheldon stated that Applicant is hereby withdrawing the application for the Special Permit, as it was not granted.

Christine Morrissey motioned to grant the request to overturn the Building Inspector's Decision and to consider the sign grandfathered and allow the replacement or repair of the pre-existing, non-conforming sign, represented by the Applicant to be 8-feet by 16-feet. Sherill Rosoff seconds. All concur.

At the direction of the Board, Town Counsel will write a letter on the Board's behalf, overturning the Decision of the Building Inspector.

Old and New Business:

ZBA Meeting Minutes of February 26, 2007:

- Meeting minutes were reviewed and approved as amended.

Lowell Place Regulatory Agreement (131 Lowell Road):

- Attorney Melissa Robbins addressed the Board and explained that she had sent a letter to the Board, dated February 16, 2007, along with copies of the Regulatory Agreement, to be signed by the Board. Attorney Robbins further explained that she is here this evening to answer any questions that the Board may have regarding the Regulatory Agreement and would also be requesting that the Board sign the Agreement this evening.
- Chairman, signed Regulatory Agreement on the Board's behalf and Attorney Robbins notarized his signature. Attorney Robbins explained that she would send a copy of the Regulatory Agreement back to the Board, once it has been signed off by all parties.

Bayberry Estates Extension Agreement:

- The Board reviewed the latest Extension Agreement for Bayberry Estates.
- Town Counsel explained that the Applicant plans to make major changes, which will require a new Site Eligibility Letter from MHFA. If the Applicant does obtain a new Site Eligibility Letter, they would need to submit a new ZBA Application.
- Town Counsel informed Attorney Robbins, legal counsel for the Applicant, that the best way to handle this would be to withdraw the current application before the Board and submit a new application incorporating the changes.
- Attorney Robbins informed Town Counsel that they did not want to withdraw the current application before the Board, because if the Applicant is unable to obtain a new Site Eligibility Letter from MHFA, that they would go forward with the old application currently before the Board.
- The Board agreed to the Extension Agreement, which would continue the hearing to May 22, 2007 at 7:00 p.m., at the Senior Center, pending verification that the Senior Center is available for a meeting on that date. Board directed ZBA Assistant to contact Senior Center as to its availability for May 22, 2007. Once a date has been confirmed, Attorney Robbins will forward an Extension Agreement for the Board to sign.

Christine Morrissey motioned to adjourn meeting. Sherrill Rosoff seconds. All concur.

Meeting Adjourned at 9:50P.M.

ZBA Minutes of March 27, 2007 filed with Town Clerk: June 5, 2007

Cheryl Lutcza
Assistant, Zoning Board of Appeals

cc: Town Clerk
Building Inspector
ZBA Application File
ZBA Minutes file
ZBA Members