



*Town of Pepperell*  
**BOARD OF APPEALS**  
One Main Street  
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**Zoning Board of Appeals Meeting Minutes of November 14, 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 continuation 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.

Chairman states that the first hearing on this matter was held on August 21, 2007, with a subsequent Site Visit to the subject property by Board Members, Thomas McGrath, Sherrill Rosoff and Annette McLean on September 15, 2007; and a second continuation hearing on this matter was held on September 25, 2007.

Clerk read legal notice into the record.

Applicant Louise Taylor is present. Attorney Mark Joubert of Morrissey and Parlow, who is representing the Applicant, is also present.

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

- Response from Board of Health, dated November 5, 2007
- Response from Conservation Commission, dated November 14, 2007

Attorney Joubert addressed the Board on the Applicant's behalf as follows:

- Explained that the Taylor's wanted to make sure that the water and soils are safe for them and their neighbors. Presented a report by Thornstensen Lab, Inc. with test results.
- On October 30, 2007, he presented Attorney Fenton of Bowditch and Dewey with a proposed list of terms and Attorney Fenton responded with a list of 13 concerns.
- Would like to request a continuation of this hearing in order to allow time for him to meet with the Applicant to discuss the 13 concerns in Attorney Fenton's letter.

Attorney Scott Fenton of Bowditch and Dewey, addressed the Board as follows:

- Board of Health came last week when allot of equipment had been moved. Wish they had come sooner.
- Discussed previous zoning and evolution of business.
- Went through Zoning By-laws and met with neighbors.
- Is not in favor of a continuation of the hearing unless Taylor's cease unlawful activity on premises.
- It is unfair to his clients and the neighbors to continue the hearing.
- Feels concessions they made are fair.
- Where soil is sandy, if anything is released it will go right into the ground.

Attorney Joubert addressed the Board as follows:

- Applicant has testified that trucking operation shuts down after Thanksgiving and re-opens in March.
- Just receive Attorney Fenton's letter with the 13 concessions yesterday and needs time to review it with his client.
- Since meaningful negotiations have just begun, would like to see them continue.

Various members of the audience protest that the trucking operation has not ceased. Attorney Joubert responds and makes a clarification that he said that the business "winds down" around Thanksgiving.

Discussion ensued regarding concessions in Attorney Fenton's letter to Attorney Joubert.

Board member, Sherrill Rosoff, explained that it would seem reasonable to allow additional time for Attorney Joubert to meet with his client regarding Attorney Fenton's letter of concessions. Ms. Rosoff further explained that the Cease & Desist Order is enforced by the Building Inspector and not the ZBA.

Chairman, Thomas McGrath, inquired if the garden center closed by Thanksgiving. Applicant responded that it depends on her client's needs.

Mr. Taylor, Applicant's spouse, asked if he was to get a job in January, he can't work? Board members responded that he could not.

Attorney Fenton responded that this is an operation that shouldn't be an operation in the first place.

Ms. Rosoff explained that the Board was hoping there would be some amiable resolution of this matter since the last hearing.

Attorney Fenton addressed the Board as follows:

- In consideration of an extension of time, we are asking for a cease of operations.
- Presented recent photos showing that the Cease and Desist Order by the Building Inspector is being abused.
- Commented that he doesn't see that the Taylor's (Applicant) are acting in good faith.

Board Member, Annette McLean, commented that items in photo were present when the Board conducted the Site Visit in September.

Town Counsel explained that what's being asked of the Board tonight is:

1. A request for a continuance by Attorney Joubert
2. A request by Attorney Fenton to cease and desist the commercial trucking operation in order to agree to a continuance of this hearing.
3. The Applicant does not wish to cease and desist the commercial trucking operation.

Town Counsel further explained that the Board does not have anything before them requesting a Special Permit for a Contractor/Landscaping Yard and trucks.

Member of audience asked if trucks are there as depicted. Ms. Rosoff reads a description of trucks that were present on the property that was provided by the Applicant in a previous meeting. Member of audience inquired how trucks were used in relation to the agricultural business. Attorney Joubert responded that member of the audience could check the record.

Ms. McLean inquired as to what the drinking water standard is for “total petroleum hydrocarbons.” Attorney Joubert responded that he was not sure, but the test came back non-detectable.

Discussion ensued regarding well testing.

Discussion ensued between Town Counsel and Board regarding Cease and Desist Order.

Abutter commented that six or seven people from three different neighborhoods are present tonight and have also attended the previous meeting.

Town Counsel made the comments:

- Board could uphold determination of the Building Inspector regarding the Cease and Desist Order.
- Applicant could modify their application to request a Special Permit for a Landscaper’s Yard.
- Board could allow a continuation to next available hearing date.

Sherrill Rosoff motioned to deny the Administrative Appeal by the Applicant to overturn the Cease and Desist Order of the Building Inspector, dated June 19, 2007. This will uphold the Cease and Desist Order of the Building Inspector. Annette McLean seconds. All concur.

Sherrill Rosoff motioned to continue the hearing to December 12, 2007 at 7:00p.m., in order to provide Attorney Joubert time to review Attorney Fenton’s letter of concessions. Annette McLean seconds. All Concur.

## Old and New Business

### ZBA Application #07-395 (30 Nashua Road – John & Florence Dee):

Second agenda item is a review of a site visit the Board conducted on Saturday, November 10, 2007, to 30 Nashua Road, the hearing and record of which were closed on October 25, 2007, regarding the application submitted by John F. Dee, Jr. and Florence Dee, under Sections 7522, 4234, 7521 and 7524 of the Town of Pepperell Zoning By-Law, requesting multiple variances, for the property located at 30 Nashua Road, Pepperell, MA, as shown on Assessor's Map 25 as Parcel 19. Variances being requested are 1) Variance from the required frontage for Lot 1 from 40 ft. to 20 ft.; 2) Variance from the required frontage for Lot 2 from 40 ft. to 22 ft.; 3) Variance from the required shape coefficient of Lot 1 from >0.4 to 0.27; 4) Variance from the required shape coefficient of Lot 2 from >0.4 to 0.23; 5) Variance from the required lot size for Lot 2 from 3.84 acres to 3.60 acres; 6) Variance to have two reduced frontage lots to have contiguous frontage. Board Members present at the Site Visit were Thomas McGrath, Sherrill Rosoff and Annette McLean.

Thomas and Linda Dee addressed the Board as follows:

- At the site visit they took a walk with the Board to show how big the property is and how far away the proposed house would be from the neighbors.
- Show location of driveway access and common drive.
- Show location of proposed house.

Ms. McLean explained that it was helpful to see distance proposed house would be from the abutters in the back.

Mr. McGrath explained that it was helpful to see the proposed location/layout of the proposed driveway.

Ms. Rosoff explained that she has never sat on an application that has been so difficult in so many respects. She walked the lot and has read past ZBA Decision on the property. She feels that this Decision could have potential impact on future decisions. She further explained that she has issues that they are unique in requesting six variances.

Town Counsel responded that variances are by definition deviations from the Zoning By-law. The size of the lot is far more than required and that the lot has a unique shape and that he doesn't feel density control would be undermined.

Discussed ensued regarding variances and whether they set a precedent or not. Town Counsel commented that variances do not set precedence; however, waivers do set precedence.

Discussion ensued regarding Planning Board's response memo to the ZBA.

Discussion ensued that this would be a straight dimensional variance and not a use variance. And that a decision could be written to meet all the criteria of Chapter 40A as follows: unique lot; hardship, financial or otherwise; doesn't deviate from the intent and purpose of the by-law; adequate access could be provided by a common driveway.

Thomas Dee explained that these would still be the biggest lots in that area of Town.

Linda Dee explained that they cannot find a house in Pepperell or the surrounding towns to accommodate the special needs of their family. If we cannot build on property, in-laws (Applicants) might have to sell property.

Town Counsel explained that the Board could define what constitutes exercise of the variances.

Ms. Rosoff explained that she has really struggled with this and that Town Counsel was able to address her concerns.

Town Counsel explained that the variances, if granted, would be recorded at the Registry of Deeds in full text and that this could be a condition.

Annette McLean motioned to approve application for variances as submitted. Sherrill Rosoff seconds. All concur.

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

Meeting Adjourned at 10:30 P.M.

ZBA Minutes of November 14, 2007 filed with Town Clerk: January 15, 2008

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**Cheryl Lutzka**  
**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 – 07-395-Dee- 30 Nashua Road