



Town of Pepperell
BOARD OF APPEALS
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Zoning Board of Appeals Meeting Minutes of October 25 2007

PRESENT: Thomas McGrath, Sherrill Rosoff, Annette McLean, 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 submitted by James Barron, requesting a Zoning Board of Appeals SPECIAL PERMIT, under Section 3400 of the Town of Pepperell Zoning By-Law, which if granted, would allow construction of an accessory apartment, for the property located at 7 Charles Place, Pepperell, MA, as shown on Assessor's Map 7 as Parcel 11-3.

- Clerk reads legal notice into the record.

Applicant, James Barron, was present and addressed the Board as follows:

- Proposed accessory apartment would be for his Mother to reside in.
- His mother would like to screen in the deck, if possible.
- Applicant presented color photos of the property (new exhibit).
- The additional garage would be for one vehicle.
- Applicant stated that the property is serviced by a private well and by a private septic system that has a Zabel filter system.
- Applicant had previously met with Ed Wirtannen, Board of Health and Ellen Fisher, Conservation Commission.

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

- Response from Conservation Commission
- Response from Planning Board
- Response from Water Department
- Response from Highway Department
- Response from Town Engineer
- Response from Police Department
- Response from Town Counsel

Chair opens floor to the audience for comments either in support or opposition to the application. No one speaks in support or opposition to the application.

Sherrill Rosoff motioned to close the record. Annette McLean seconds. All concur.

Sherrill Rosoff motions to grant relief requested, a Special Permit to construct an accessory apartment. Annette McLean seconds. All concur.

7:30 P.M. Second agenda item is a hearing regarding an 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.

Clerk read legal notice into the record.

Applicants, John and Florence Dee are present. Also present are Thomas and Linda Dee. Linda Dee addressed the Board as follows:

- Her husband's parents, and Florence Dee, have offered property to them to build a special house for their three children (triplets). One child has Cerebral Palsy and another child has Autism Spectrum Disease.
- They are currently residing in Townsend, MA, and have searched for appropriate house to meet their needs, as their current home has doorways and hallways that are too small.
- They have been looking for an appropriate house, on a flat lot, for 10 years.
- Current home requires a lift that does not work if the power is lost.

Thomas Dee addressed the Board and gave an overview of the proposed house design and features.

Thomas and Linda Dee explain that the main objective is to design a house that will allow their children to be as independent as possible. They presented a display which gives an overview of the house design, equipment needed by their son, and a satellite photo of the subject property.

Applicant, John Dee, addressed the Board and explained that there is not a handicap-accessible house in the area that would meet the needs of Thomas and Linda's family.

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

- Letter from Town Counsel
- Response from Police Department
- Response from Water Department
- Response from Town Engineer
- Response from Planning Board
- Response from Building Inspector
- Response from Conservation Commission
- Letter of Support from Suzanne Bell, Lori Farnsworth, Hazel Jones, Scott Jones and Ann Jones, dated October 16, 2007
- Letter of Support from J. Michael Lynch and Patricia Lynch (undated)
- Letter of Support from John & Lucy Hill, dated October 13, 2007
- Letter of Information to ZBA from Jane LaGoy, dated October 18, 2007
- Letter of Support from John and Joanne Lynch, dated October 18, 2007
- Updated Response Memo from Highway Department – October 16 2007

Town Counsel addressed the Board and commented that he was in agreement with the Highway Department's memo of October 16, 2007, that if the Board was to grant relief, a condition should be included for a common drive.

Sherrill Rosoff asked Applicant why they are not requesting an accessory apartment in this application, as they had in a previous application to the Board. Linda Dee explained that the accessory apartment was supposed to have been for her Mom, and is no longer needed.

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

- Todd Marcoux, 8 Hadley Road, expresses concern that the proposal will affect his property and that he will lose privacy in his back yard if the Applicants were to cut down all the trees. Thomas Dee pointed out where the proposed house and driveway would be located. Linda Dee explained that the trees behind the home would not be removed.

Sherrill Rosoff asked Town Counsel if there is anything in the Zoning By-law that would allow one family to build two homes on one lot. Town Counsel responded that is not allowed; however if the existing home was demolished, a new house could be relocated on the lot. Thomas Dee explained that relatives (a retired couple) currently live in the existing house at 30 Nashua Road.

Sherrill Rosoff commented on the following:

- Overturning by-laws to grant variances is a struggle and the Board has tried in the past to find other ways of solving problems without granting variances; and, if there is any way of figuring out other solutions that would work that is what she would like to see happen.
- The memo from the Planning Board to the ZBA is one of the strongest one she has seen. Ms. Rosoff commented that a common driveway is one important possibility that might address the frontage issue.
- Has no problem with the dimensional relief being requested.
- Has concern with setting a precedent and, is there any way of reducing the number of variances being requested.

Annette McLean commented that she feels this situation is one of the reasons variances are created – for people with hardships, like these Applicants.

The following members of the audience addressed the Board as follows:

- Kim Dee, 111 Groton Street: She is related to the Applicants and has benefited from the generosity of her in-laws. The triplets were born here and have family support here. They have a family heritage here and are trying to stay together. Her mother-in-law and father-in-law can offer a tremendous gift, a portion of their land, for her brother-in-law and sister-in-law and the triplets. They would not be trying to take any wooded land away from the abutters. She asks the ZBA to help in this situation.
- Judy Burnham (no address given): Owns rental property at 26 Nashua Road and is not a permanent resident. If variance is granted to the Dees, it would set a precedent.

Chairman, Thomas McGrath, explained that he served on the Board in 2003, and that the suggestion to tear down the existing building was made at that time also.

Sherrill Rosoff asked if the Applicants could go back and look at doing a common drive. Thomas Dee responded that their intention has always been to do a common drive, and that the Planning Board told them to go to the ZBA first for variances before coming to the Planning Board for a Special Permit for a common drive. Town Counsel commented that the Board has the power to condition that the property be accessed through a common drive.

Discussion ensued on common drive regulations.

Sherrill Rosoff asked how the Applicant came up with the lot configuration. Linda Dee responded that it was due to mathematical requirements.

Discussion ensued on the following:

- Ways to make this work.
- Financial hardship of the Applicants and Dee Family.
- Whether wetland delineation had changed.

Thomas McGrath explained that he was on the Board in 2003 and voted in favor of granting relief then, and that he is as strongly in favor of application tonight as he was in 2003. He also made the following comments:

- Hardship condition is definite.
- Common drive would provide safe access onto Nashua Road.
- Tom and Linda Dee grew up in Town and he would like to see them be able to come back to Town to provide for their family's very difficult situation.

Sherrill Rosoff again asked if Applicants can think of any other way to do this. Linda Dee responded and made the following comments:

- They would not be able to do anything else in the next two years.
- If they purchased the small house that already exists, they wouldn't be able to enlarge it because it is too close to the 100-foot buffer zone and to the road. Additionally, the small house is on a slab.

Discussion ensued regarding subject property and whether or not there are other options.

Sherrill Rosoff asked Town Counsel if there would be implications if the ZBA was to grant the variances. Town Counsel commented that variances are unique and do not set precedent; in this case, considerations are dealing with topography, wetlands, lot shape – large lot with small amount of frontage and two existing dwellings that have been on the property for many years. The Applicants need to go to the ZBA for variances; the Planning Board for common drive approval; and the Conservation Commission.

Chairman inquired if anyone in the audience wanted to comment.

- Applicant, Florence Dee, asked if the Board ever does visit to properties. Chairman responded, "Yes."
- Applicant, John Dee, commented that it is a shame that the land can't be used for someone who desperately needs it.

Town Counsel explained that the Board, at its discretion, could close the hearing and set a date for a site visit to the subject property. He further commented that he does not agree with the Planning Board's comment that this would be a use variance, but that this is a dimensional variance.

Sherrill Rosoff motioned to close the record. Annette McLean seconds. All concur.

Annette McLean motioned to grant relief requested. Thomas McGrath seconds. Sherrill Rosoff stated that she would like to view the subject property. Annette McLean withdraws motion to grant relief requested.

Town Counsel explained that the Board could do the site visit and then come back and vote at the next scheduled ZBA meeting under "Old and New Business."

Sherrill Rosoff motioned to close the hearing and set a date to conduct a site visit. Annette McLean seconds. All concur. Date for site visit to the subject property of 30 Nashua Road, is set for Saturday, November 10, 2007 at 10:00a.m.

9:10 P.M. Third agenda item is a hearing regarding an application submitted in connection with it's proposal to install and operate a Wireless Communications Facility on the subject property (subject to special permit approval of the Planning Board), a Zoning Board of Appeals application has been submitted by Bell Atlantic Mobile of Massachusetts Corporation, Ltd., d/b/a Verizon Wireless, on behalf of itself and for Sprint Spectrum, L.P., d/b/a/ Sprint PCS, requesting relief in the form of variances , to the extent required, from the following provisions of the Zoning By-laws: (1) Section 4140, minimum lot area and lot frontage; and (2) Section 4411, to allow an accessory structure to be located within the front yard setback area; and such other relief as may be required in the view of the Board, for the property located at 104A Townsend Street, Pepperell, MA, in the ownership of Town of Pepperell/Water Department, as shown on Assessor's Map33 as Parcel 8.

Chairman announced that there was a minor typographical error in the Notice of Public Hearing/Legal Ad, and that Town Counsel has advised the Board that it would not create a negative impact on the application.

Clerk read legal notice into the record.

Attorney Timothy Twardowski of Robinson and Cole, L.L.P, is present and addressed the Board on the Applicant's behalf. Attorney Twardowski explained that they had been before the Planning Board on September 24, 2007 and October 21, 2007. At this point, the Planning Board is in the process of acquiring the services of an expert consultant. Given the involvement of an expert consultant, the Applicant would like to request to continue this matter to a date beyond their next scheduled meeting with the Planning Board of November 26, 2007; however that may not be until December 10, 2007, and therefore they would like to request a continuation with the ZBA for sometime after December 10, 2007. Attorney Twardowski said that they would also be open to continuing to a "date uncertain" and they would pay for the cost of the advertising and mailing of the Notice of Public Hearing.

Town Counsel responded as follows:

- Request for relief before the ZBA is strictly dimensional.
- Land is owned by the Town of Pepperell.
- Planning Board hasn't hired the expert yet.
- Final application is probably going to change to some degree.
- Prudent to continue hearing until Planning Board votes, based on finalized plans.

Discussion ensued between Town Counsel and members of the audience regarding process for application being heard by ZBA and Planning Board.

Thomas McGrath advised that the Board will accept written comments from concerned parties.

An Extension Agreement was signed by the parties to continue the hearing to Wednesday, January 16, 2008 at 7:00p.m.

Annette McLean motioned to leave the record open and continue the hearing to, Wednesday, January 1, 2008 at 7:00p.m. Sherrill Rosoff seconds. All concur.

Old and New Business:

Sherrill Rosoff motioned to approve ZBA Meeting Minutes of September 25, 2007 with no changes. Annette McLean seconds. All concur.

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

Meeting Adjourned at 10:15 P.M.

ZBA Minutes of October 25, 2007 filed with Town Clerk: January 15, 2008

Cheryl Lutcza
Assistant, Zoning Board of Appeals

cc: Town Clerk
Building Inspector
ZBA Minutes file
ZBA Members
ZBA Application File – 07-393-Verizon-104A Nashua Road
ZBA Application File - 07-394-Barron-7 Charles Place
ZBA Application File – 07-395-Dee- 30 Nashua Road