



Town of Pepperell
BOARD OF APPEALS
One Main Street
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Zoning Board of Appeals Meeting Minutes of September 25 2007

PRESENT: Thomas McGrath, Sherrill Rosoff, Annette McLean; and Town Counsel, Edward J. Richardson.

6:45 P.M. Chairman convenes the meeting and announces that the First agenda item is administrative, and will fall under the category of Old and New Business as follows:

Old and New Business:

Suzanne Shaw of 91 Harbor Street, Pepperell, MA addressed the Board and presented a final landscaping plan, which was a condition (Condition No. 5) of the Zoning Board of Appeals Decision made on September 19, 2006 (ZBA File No. 06-376), regarding the property at 81 Harbor Street and 91 Harbor Street. The final landscaping plan Ms. Shaw presented this evening, is further identified as “Proposed Tree Location Plot Plan – Harbor Street, Pepperell, Massachusetts – January 20, 2007”, Drawing No. 8343, which was prepared by Cornerstone Land Consultants, L.L.C., P.O. Box 657, Pepperell, MA.”, and although the above-referenced plan is titled “Proposed Tree Location Plot Plan”, Ms. Shaw stated that the handwritten amendments in green ink, represent the existing conditions on the lot, i.e., new plantings and existing trees and grassy area.

Chairman asks for a motion on whether to accept the landscaping plan as presented and submitted by Ms. Shaw.

Sherrill Rosoff motioned to accept the plan and stated that said plan meets the requirements of Condition No. 5 of the Decision dated September 19, 2006, as showing existing conditions in the protected greenspace. Annette McLean seconds. All concur.

Ms. Shaw addressed the Board and requested a copy of the plan submitted. Ms. Shaw further stated that she would like something in writing stating that she has submitted the plan and that her case is final. Chairman informed Ms. Shaw that the Board will send her a copy of her plan and a letter from the Board that she has satisfactorily completed the requirement of Condition No. 5.

7:00 P.M. Second 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.

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:

- Presented information summarizing history of the site.
- Reviewed 1968 Pepperell By-laws. Property was zoned industrial and then some years later zoned as residential.
- Family business, residence and drinking wells are present at the site.
- During the 1960's-1970's business branched out to landscaping/plant business, and that has been continuous. The Stephans did sell garden supplies continuously.
- Gave summary of his opinion of the Site Visit of September 15, 2007 explaining that there no fuel depots, no soil damage and that soils were cleaned up and organized. There were no piles of construction debris, loam and some brick. There was sufficient growth of vegetation on piles. No evidence of gravel operation. No pictures from opposition. No asphalt piles. No oil. Noise was present from Route 119.
- Attorney Joubert presented traffic study regarding noise, 2006 Traffic Volume Report Northern Middlesex Council of Government Traffic Study showing Pepperell increased growth, including average daily traffic (ADT). Attorney Joubert explained that the noise is from the increased traffic on Route 119 and that the Applicants don't have 10 acres, they only have 5 acres.
- The E-Scapes trucks have been removed, there was a friendly agreement to store the vehicles, but now they are gone.
- Cut trees on the right of the Taylor property were removed, unsightly shrubs, etc. Trees were planted years ago by father (Stephan) and son. Trees were harvested for the present business.
- No oil or fuel being stored.

- Refuted that screening was removed...there are trees and shrubs present.
- Surface water on land flows towards Route 119.
- No dye for mulch.
- No gravel operation.
- No piles of rock.

Attorney Joubert read the following letters of support into the record:

- Letter of Support, September 22, 2007, from Dody Nickelsen, Pepperell, MA
- Letter of Support, September 21, 2007, from Garland J. Toney, Jr., Toney Equestrian Products, Inc., Sand Hook, VA.
- Letter of Support, September 24, 2007, from Richard W. Coughlin (no address given)
- Letter of Support, September 25, 2007, from Judy Dalton, 9 Haskell Road, Pepperell, MA
- Letter of Support, September 24, 2007, from Joseph Davolio, Pepperell, MA
- Letter of Support, undated, from Kenneth A. West, (no address given)
- Letter of Support, September 25, 2007, from Lois Pentland, Pepperell, MA

Attorney Joubert gave the following summary of the case:

- Cease and Desist Order was issued by the Building Inspector
- Receipts and testimony show that this was a continual business
- Legal pre-existing use pre-dated the Zoning By-laws
- Inaccuracies by abutters regarding gravel operation; mulching
- This is an expansion of the garden center business; large truckloads of gravel, soil, etc.
- Concludes that this is an existing business prior to zoning.

Sherrill Rosoff inquired as to when the trucking part of the operation began. Attorney Joubert responded that it was four years ago.

Attorney Joubert continued his summary of the case as follows:

- Five Mack trucks were purchased in 2003.
- Mulch, stone and gravel are from other yards, not from Nashoba Valley Garden Center.
- Changes in 1975 moving toward the Garden Center; stopped the horse business by early 1980's. Tack Shop closed 1977-1978, focusing on Garden Shop in 1980's.
- Within the last five years the trucking part has increased.
- No stone crushing.
- Material is picked up at other yards and sold to customers. No equipment onsite to load the trucks. Homeowners buy small quantities. Mulch is purchased from Bingham Lumber and no mulching is done on site.

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

- Pictures show that asphalt was present.
- Is the trucking operation an incidental trucking operation to the garden center (refers to Section 3520 of the Zoning By-law).
- Is the trucking operation more detrimental to the neighborhood, etc?
- Made reference to the following sections of the Zoning By-law: 5531, erosion controls; and 6631, no excavation of property within 50 feet.

Town Counsel, Attorney Edward Richardson, addressed those in attendance regarding when the zoning changed legally. Attorney Fenton and Attorney Joubert to research and respond.

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:

- Maria Lombardo, 18 Robin Lane
- Jim MacDonald, 8 Brick Pond Way
- Brian Supelo, 19 Robin Lane
- Rich Baldwin, 10 Brick Pond Way

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

- Joe Davolio, Lakin Street

Sherrill Rosoff inquired as to what the large truck inventory consists of. Husband of the Applicant, Bruce Taylor, responded that the truck inventory consists of:

- Four 18-wheel trucks (tri-axle dump trucks, Gross Vehicle Weight (GVW) of 77,000 lbs.)
- One semi-trailer (GVW of 99,000 lbs.)

After much discussion, Town Counsel explained that the case has some options, and that the Applicant could either go forward with the current application to overturn the decision of the Building Inspector, or amend the petition to seek approval of a landscaper's yard and storage of commercial vehicles, as residential accessory uses under Sections 3232, 3233 and 3234 of the Zoning By-law.

8:30P.M. Attorney Fenton requested to have a 10 minute break to confer with the abutters. Chairman agreed to the recess.

8:56P.M. Chairman reconvened hearing.

Attorney Fenton asked that the ZBA defer action on the case for a couple of weeks to allow time to communicate with the Attorney for the Applicant to discuss trying to come to a resolution satisfactory to both sides. Attorney Fenton further commented that in the meantime, they would like the Cease and Desist Order from the Building Inspector to stay in effect. Town Counsel responded that the Board does not have enforcement powers...that are the responsibility of the Building Inspector, and that Attorney Fenton would need to contact the Building Inspector regarding enforcement of the Cease and Desist Order, and it would be the Building Inspector's decision as to whether or not to "stay" the Cease and Desist Order.

Sherrill Rosoff explained that she would like to have the ZBA Assistant contact Ellen Fisher, Conservation Commission, to see if they would want to take another look/review the information that has been brought up at the hearings, and comment, if deemed necessary, as the Conservation had responded with "no comments" to the application. Town Counsel explained that the "no comment" from the Conservation Commission", most likely indicated that the site is not within the Buffer Zone.

Abutter, Judy Dalton, commented that we need to know when the site changed from industrial to residential. The Board commented that that was brought up already and requested that the Applicant's attorney research this.

Town Counsel addressed the audience and explained why it is important to determine when the change in zoning occurred, and that would determine what was in place at the time before the change in zoning. Town Counsel further explained that it would be good if the parties could come to an agreement/talk it over.

Sherrill Rosoff asked how many other vehicles/trucks were included in the business. Applicant's husband, Bruce Taylor, responded that in addition to the dump trucks he already mentioned, he has the following vehicles:

- One 1-ton dump truck
- One 1-ton box van (Garden Center)
- One utility service vehicle
- One ¾-ton pick-up
- Farm tractor with bush hog and attachments
- Backhoe
- Golf carts (didn't say how many)
- Snowmobile trailer

Annette McLean inquired where on the site the truck drivers park their own personal vehicles, when they arrive to drive the dump trucks. Bruce Taylor responded that they park by the house or in back up the hill.

An unidentified member of the audience asked what the plan of operation was going to be for the winter months. Applicant responded that the business closes in November and reopens in March/April, depending on the weather.

Attorney Joubert addressed the Board and requested an Extension. Board suggested a continuation date of October 25, 2007, but Attorney Joubert stated that due to his and the Applicant's schedules, they need more time than that. He further explained that he prefers to extend to a particular date, and not do a general extension, which would require re-publishing the next meeting. Board suggested a continuation date of Wednesday, November 14, 2007 at 7:00P.M. , Conference Room A, at Town Hall.

Sherrill Rosoff motioned to leave record open and continue hearing to Wednesday, November 14, 2007 at 7:00P.M., Conference Room A, Town Hall. Annette McLean seconds. All concur.

Chairman stated that the record is still open.

Attorney Joubert and the Board sign an Extension Agreement, continuing the hearing to November 14, 2007.

Annette McLean asked Town Counsel if Section 5400 of the Zoning By-law (screening, fencing, walls, barriers) applies? Town Counsel commented that it does apply, and notified attorneys to keep that section in mind during discussions between the two sides.

Old and New Business:

Sherrill Rosoff motioned to approve ZBA Meeting Minutes of August 21, 2007, with no changes. Annette McLean seconds. All concur.

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

Meeting Adjourned at 9:25P.M.

ZBA Minutes of September 25, 2007 filed with Town Clerk: October 30, 2007

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 -06-376-Shaw-81 Harbor & 91 Harbor St.