



Town of Pepperell
BOARD OF APPEALS
One Main Street
Pepperell, Massachusetts 01463
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Zoning Board of Appeals Meeting Minutes of April 9, 2008

PRESENT: Thomas McGrath, Annette McLean, Mark Walsh, and Cheryl Lutzca (ZBA Assistant). Also present, Town Counsel, Edward J. Richardson.
Not present, Sherrill Rosoff.

7:00 P.M. Chairman convenes the meeting. First agenda item is a continuation hearing, which was previously opened on February 27, 2008, regarding an ADMINISTRATIVE APPEAL of the determination of the Building Inspector dated December 12, 2007, by Richard Baldwin and John Cirrone, direct abutters to the Nashoba Valley Garden Center, pursuant to Section 9223 of the Town of Pepperell Zoning By-Law, and M.G.L. Chapter 40A, Section 8. Subject property is 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.

Applicants John Cirrone and Richard Baldwin are present, and are being represented by Attorney Scott Fenton of Bowditch and Dewey of Worcester, MA.

Attorney Fenton addressed the Board as follows:

- Clients are appealing Decision of the Building Inspector
- Garden Center is not primary use of property, and that the non-Garden Center uses should be subtracted from the 5.4 acres.
- Requests Board uphold Special Permit Decision of February 20, 2008, and enforce screening around property in accordance with Section 5400; hours of operation; recognize a second business at property; and that Special Permit should not run with the land.

Town Counsel reads Sections 5400 and 5410 of the Zoning-By-law.

Board Member, Annette McLean, commented that there is a condition in the Taylor Special Permit of February 20, 2008, mandating screening. Attorney Fenton inquired if that screening is applicable to the entire Garden Center. Discussion ensued. Town Counsel advised that the Board not vote on matter this evening. Board Member, Mark Walsh, commented that he would like time to review application and exhibits.

Clerk reads the following exhibit into the record:

- Response from Assessor's Office, dated February 27, 2008.

New Exhibit entered into the record: Zoning Board of Appeals Special Permit Decision for Taylor (49 South Road) of February 20, 2008.

Attorney Marc Joubert of Morrissey and Parlow, who is representing Louise Taylor of the Nashoba Garden Center, addressed the Board as follows:

- Ms. Taylor is requesting that the Board deny the Administrative Appeal by Mr. Baldwin and Mr. Cirrone, because the Board has already ruled on this piece of land.
- Time for clarification has passed, and Mr. Cirrone and Mr. Baldwin have had time to appeal.
- Our position is that this hearing be closed and the Board deny this application.

Town Counsel commented that the appeals period on the Taylor Special Permit Decision is not up, as it was filed with the Town Clerk on April 2, 2008. Discussion ensued regarding relief granted in the Taylor Special Permit Decision and Town Counsel suggested that the Board review the prior Taylor Decision.

Board Member, Mark Walsh, again stated that he would like more time to review application before making a Decision.

Chairman inquired if there was anyone in the audience who would like to speak in favor of, or opposition to the application. No one speaks.

Annette McLean motioned to close the record. Mark Walsh seconds. All concur.

Annette McLean motioned to close the hearing. Mark Walsh seconds. All concur.

Discussion ensued regarding a date for a Work Session to be held for the purpose of voting and writing the Decision on this matter. Chairman announced that the Board will hold a work session on Wednesday, April 30, 2008 at 7:00p.m., for the purpose of voting and writing the Decision on this matter.

An Extension Agreement was signed by the parties.

8:40 P.M. Chairman announced that the second agenda item is a hearing regarding an application submitted by Sandra Proctor requesting Zoning Board of Appeals SPECIAL PERMITS, under Sections 3300, 3320, 3322, and 3324 of the Town of Pepperell Zoning By-Law, which if granted, would allow the addition of two, non-residential employees to the existing hair salon; and also allow an additional home occupation for the purpose of conducting massage therapy. Subject property is located at 19 Tarbell Street, Pepperell, MA, as shown on Assessor's Map 26 as Parcels 155 and 154.

Clerk read legal notice into the record.

Applicant, Sandra Proctor, was present and addressed the Board as follows:

- Her daughter is a hairdresser and would like to bring her into the business and have one more hairdresser join the business.
- Would like to add massage therapy.
- They would all be working different hours, so there would be enough spaces for parking.
- There are currently four people living in the residence at 19 Tarbell Street.
- Current employees are herself and her daughter, who helps part-time.

Board Member, Annette McLean, asked Applicant, Sandra Proctor, if she resides at 19 Tarbell Street as her primary residence. Applicant responded, "Yes."

Chairman, Thomas McGrath, inquired if Applicant has hired a massage therapist? Applicant replied that she has not, but that she is looking. Applicant explained that Cathleen Calawa, who is also present at this evening's hearing, would be the massage therapist, and that Ms. Calawa is currently residing at the premises at 19 Tarbell Street.

Applicant again stated that she would like the opportunity to have two, additional employees.

Board Member, Mark Walsh, asked Applicant if she was requesting to have two, additional, non-residential employees and also the ability to conduct massage therapy. Applicant responded, "Yes."

Annette McLean asked Applicant if her daughter is living at the premises at 19 Tarbell Street. Applicant responded, "Yes."

Town Counsel explained that there can be up to three home occupations at a residence, with no more than two, non-resident employees, in the aggregate for all of the home occupations. He further explained that there could be unlimited residential employees.

Applicant explained that her daughter wants to move out of the premises at 19 Tarbell Street at some point in the future, and at that point would be a non-residential employee.

Town Counsel also explained that the Board could put a condition in the Special Permit Decision that the Special Permit shall lapse in the event that the current owner sells the property.

Annette McLean inquired as to when the Applicant moved from 24 Tarbell Street to 19 Tarbell Street. Applicant replied, "Two years ago." Applicant signed a "Statement of Residence" (Exhibit S) that her primary residence is 19 Tarbell Street.

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

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

Town Counsel read his letter to the Board into the record.

Annette McLean inquired as to the size of the breezeway and if there was a sink. Applicant responded that the breezeway is 11-feet by 11-feet and that there is water in the washer/dryer area.

Annette McLean inquired if the breezeway is used as an emergency egress for the home or hair salon. Applicant responded that there are doors on all four sides to the room, i.e., sliding glass doors and existing door and door going into salon.

Annette McLean inquired if both the patrons and residents park in the same area? Applicant responded, "Yes." Annette McLean inquired as to how many parking spaces were available? Applicant responded that there are a total of eight parking spaces; six on the side and two in the front.

Mark Walsh inquired if Applicant was currently the only employee at the hair salon. Applicant responded, "Yes, just me."

Annette McLean asked Cathleen Calawa if she was a licensed Massage Therapist. Ms. Calawa responded that she is licensed in Acton, MA, and that that her state license is pending and all paperwork is in.

Discussion ensued regarding hours of operation and signage. Applicant explained that she may add wording for massage therapy onto the currently existing sign for the hair salon. Hours of operation for massage therapy would be 9:00a.m. to 8:00p.m., Monday through Saturday.

Chairman inquired if there was anyone in the audience who would like to speak in favor of, or opposition to the application. No abutters were present, and no one speaks.

Annette McLean motioned to close record. Mark Walsh seconds. All concur.

Mark Walsh motioned to approve Application as submitted, subject to conditions of Zoning-by-law. Annette McLean seconds. All concur.

Old and New Business:

- **Extension Agreement – 196 Nashua Road (Emerson Village 40B Project)**

Chairman signed Extension Agreement, which gave the Board additional time to complete the Decision, for Emerson Village, 196 Nashua Road.

- **Review and Sign Decision – 196 Nashua Road (Emerson Village 40B Comprehensive Permit):**

Board reviewed and signed Decision for Emerson Village 40B Comprehensive Permit for property located at 196 Nashua Road.

- **Statement of Residence – Special Permits for Home Occupations:**

On a motion by Mark Walsh, and seconded by Annette McLean, and in which all concurred, the Board adopted the procedure that would require all Applicants requesting Special Permits for Home Occupations sign a “Statement of Residence.”

- **Requirement for Filing of Notice of Intent with Inspector of Buildings prior to filing of ZBA Application with Town Clerk:**

On a motion by Annette Mclean, and seconded by Mark Walsh, and in which all concurred, the Board adopted the procedure that prior to person(s) filing a Zoning Board of Appeals Application with the Town Clerk, are required to first file a Notice of Intent with the Inspector Of Buildings; and any correspondence issued by the Inspector of Buildings in response to said Notice of Intent is required to be submitted with any subsequent Zoning Board of Appeals Application filed with the Town Clerk.

Old and New Business: *(continued)*

- Mark Walsh motioned to approve ZBA Meeting Minutes of February 20, 2008. Annette Mclean seconds. All concur.
- Mark Walsh motioned to approve ZBA Meeting Minutes of February 27, 2008. Annette Mclean seconds. All concur.

Annette McLean motioned to adjourn the meeting. Mark Walsh seconds. All concur.

Meeting Adjourned at 9:50P.M.

ZBA Minutes of April 9, 2008 filed with Town Clerk: May 5, 2008

Cheryl Lutcza
Assistant, Zoning Board of Appeals

cc: Town Clerk
Building Inspector
ZBA Minutes file
ZBA Members
ZBA Application File - 07-398-Cirrone & Baldwin--49 South Road
ZBA Application File – 08-399-Proctor-19 Tarbell Street
ZBA Application File – 07-396-Emerson Village-196 Nashua Road