



Town of Pepperell
BOARD OF APPEALS
One Main Street
Pepperell, Massachusetts 01463
(978) 433-0333
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Zoning Board of Appeals Meeting Minutes of June 18, 2008

PRESENT: Thomas McGrath, Sherrill Rosoff, Annette McLean, Mark Walsh; and Cheryl Lutcza (ZBA Assistant).

6:30P.M. Chairman convenes the meeting and announces that there will be a slight change in the Agenda this evening, as the Board received communication late this afternoon that the final plans for the Emerson Village project will need to be reviewed/endorsed this evening. Applicants Kevin Slattery and Dave Petropolis are present, and present the final plans to the Board. Mr. Slattery addressed the Board and stated that he would provide copies of the plan to the Board, once it has been recorded.

Sherrill Rosoff motions to endorse plan for recording. Annette McLean seconds. All concur.

6:50P.M. Next Agenda item is to consider the application for a Special Permit, which has been submitted by Kimberley H. Gordon, for the property located at 75 Groton Street, Pepperell, MA, as shown on Assessor's Map 27 as Parcel 5. Said application for Special Permit is considered to be a repetitive petition, pursuant to M.G.L. Chapter 40A, Section 16, and requires the vote of the Zoning Board of Appeals to hear the petition.

Clerk reads legal notice into the record.

Applicant, Kimberley Gordon, is present, and is being represented by Christine Morrissey of Morrissey and Parlow, Pepperell, MA, who is also present. Attorney Morrissey addressed the Board on the Applicant's behalf as follows:

- Presented a plan previously presented to the Planning Board and a letter from the Planning Board.
- Attorney Morrissey explained Applicant would be constructing a new driveway, which was a concern of abutters in the past, and that this would be a change sufficient change for the Board to hear the application again.

The Board makes a finding that the new application is substantially different than the application previously submitted to the Board on August 21, 2007.

Sherrill Rosoff motions to close meeting. Annette McLean seconds. All concur.

7:00P.M. Next agenda item is regarding an application submitted by Kimberley H. Gordon requesting a Zoning Board of Appeals SPECIAL PERMIT, under Section 3320 of the Town of Pepperell Zoning By-Law, which if granted, would allow a Home Occupation for the collection and sale of collectables and various items both owned and by consignment. Subject property is located at 75 Groton Street, Pepperell, MA, as shown on Assessor's Map 27 as Parcel 5

Applicant, Kimberley Gordon, is present, and is being represented by Attorney Christine Morrissey, of Morrissey and Parlow, Pepperell, MA.

Clerk reads legal notice into the record.

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

- Applicant has had a sign business at the subject property for 30 years.
- Subject property is a 3-family home.

Sherrill Rosoff inquired if the shop will be in the barn. Attorney Morrissey responded that it would.

Attorney Morrissey continues her presentation to the Board:

- People will bring collectibles and antiques to the barn to be stored.
- There is a sensor light in the back of the house and a sensor light would be installed on either side of the house for the new driveway. A regular light currently exists for the shop.
- Sign business is located in same building.

Sherrill Rosoff inquired if there are any combustible paints for the sign business. Applicant, Kimberley Gordon, responded that they were pretty much depleted.

Sherrill Rosoff inquired if the Applicant would be fixing or restoring furniture. Applicant responded that she would do repairs with glue and clamps.

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

- Response from Town Counsel
- Response from Conservation Commission
- Response from Water Department
- Response from Town Engineer
- Response from Building Inspector
- Response from Police Department
- Response from Planning Board
- Letter of Opposition from John Cotton. Attorney Morrissey addressed Board and objected to this letter being entered into the record.
- Response from Fire Department
- Response from Highway Department

Chairman inquired if there was anyone in the audience who would like to speak in favor or opposition to the application.

- Attorney Morrissey presents numerous letters of support from neighbors and residents of Pepperell and surrounding towns (Exhibit Y).
- Kathy Parker, 5 Merrimac Drive, speaks in support of application.
- Miriam Flamino, 77 Groton Street, speaks in support of application.
- Richard Lewis, Groton, MA, speaks in support of application.
- Rita Pollard, 34 Provence Street, speaks in support of application.

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

Sherrill Rosoff motioned to grant relief requested, a Special Permit for a Home Occupation. Annette McLean seconds. All concur.

7:25P.M. Next agenda item is regarding an application submitted by Keith and Deborah Bartelson, requesting a Zoning Board of Appeals SPECIAL PERMIT, under Section 3400 of the Town of Pepperell Zoning By-Law, which if granted, would allow an accessory apartment in the existing structure, for the property located at 27 Plainfield Road, Pepperell, MA, as shown on Assessor's Map 14 as Parcel 87.

Applicants, Keith and Deborah Bartelson are present.

Clerk reads legal notice into the record.

Applicants, Keith and Deborah Bartelson, addressed the Board and made the following presentation:

- In 1997, they built an addition for an elderly parent, who is now deceased.
- Another family member is now living in the addition.
- Building Inspector visited property and there is a kitchen in the addition, which has been there since 1997.
- Total square footage of apartment is just under 800 square feet.
- Would like to make apartment legal, as neighbors don't like it.
- Property is on Town Sewer.

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

- Response from Assessor's Office
- Response from Conservation Commission
- Response from Board of Health
- Response from Police Department
- Response from Planning Board
- Response from Highway Department
- Response from Town Engineer
- Response from Water Department
- Response from Town Counsel
- Letter from Inspector of Buildings to Applicant

When asked for payment of fees for advertisements of the Notice of Public Hearing and postage associated with the Application, the Applicants informed the Board that they did not have the required certified checks or money orders with them. Applicants offered to pay fees via personal check. After discussion, the Board informed the Applicants that the Board's policy is that the payment of fees must be in the form of Certified Check or Money Order, as specified in the letter which was sent to the Applicant by certified mail on June 4, 2008. Due to this, the Board will need to continue the hearing.

Extension Agreement was signed by all parties, continuing hearing to August 13, 2008 at 6:30P.M.

Sherrill Rosoff motioned to leave record and hearing open and continue the hearing to August 13, 2008 at 6:30P.M. Annette McLean seconds. All concur.

7:50P.M. Next agenda item is regarding an application submitted by Everett Cole, requesting a Zoning Board of Appeals SPECIAL PERMIT, under Section 3400 of the Town of Pepperell Zoning By-Law, which if granted, would allow an accessory apartment in the existing structure, for the property located at 43 Mt. Lebanon Street, Pepperell, MA, as shown on Assessor's Map 33 as Parcel 57.

Applicant, Everett Cole is present.

Clerk reads legal notice into the record.

Applicant, Everett Cole, addressed the Board and explained that he does not have the required certified checks or money orders for the payment of the fees for advertisements of the Notice of Public Hearing and postage associated with the Application. Mr. Cole asked if the Board would accept cash for payment of the fees. After discussion, the Board informed the Applicant that they could not accept cash, as one of the checks needs to be payable to the Pepperell Free Press. The Board further explained that the Board's policy is that the payment of fees must be in the form of Certified Check or Money Order, as specified in the letter which was sent to the Applicant by certified mail on June 4, 2008. Due to this, the Board will need to continue the hearing.

Extension Agreement was signed by all parties, continuing hearing to August 13, 2008 at 7:00P.M.

Sherrill Rosoff motioned to leave record and hearing open and continue the hearing to August 13, 2008 at 7:00P.M. Annette McLean seconds. All concur.

8:00P.M. Next agenda item is regarding a request by the Applicants to withdraw, without prejudice, the application submitted by Bayberry Enterprise Realty Trust, K. William Krikorian and Richard Morello, Jr. Trustees, seeking a Comprehensive Permit pursuant to M.G.L. Chapter 40B, to construct forty-four units in twenty-two duplex buildings, for the property located at 14 Bayberry Street, Pepperell, MA, as shown on Assessor's Map 12 as Parcel 19 and the property located at 7-9 Ashley Street, Pepperell, MA, as shown on Assessor's Map 12 as Parcel 70.

Clerk reads letter, dated June 10, 2008, from Applicant's legal counsel, Deschenes and Farrell, P.C., Chelmsford, MA, in which Applicants request to withdraw, without prejudice, Zoning Board of Appeals Application No. 06-373, which was filed with the Town of Pepperell on April 14, 2006. Applicants also request release of all funds held in escrow for this Application to legal counsel for Applicants, Dechenes and Farrell, P.C.

Sherrill Rosoff motioned to accept withdrawal of application, without prejudice. Annette McLean seconds. All concur. Board signed Withdrawal Agreement.

Sherrill Rosoff motioned to approve release of escrow funds being held in regard to this Application, in the amount of \$38,783.22, to Applicants' legal counsel, Deschenes and Farrell, P.C. Annette McLean seconds. All concur.

Chairman, Thomas McGrath, approved final invoice of 40B Consultant Toby Kramer, dated June 5, 2008, in the amount of \$524.96, which will be paid by Mass Housing from the Grant.

8:06P.M. Next agenda item is regarding an application submitted by Penny Batchelder regarding an ADMINISTRATIVE APPEAL of the determination of the Inspector of Buildings/Zoning Enforcement Officer, in his letter dated April 7, 2008, rejecting a request to build a home on Lot #21 Tucker Avenue, Pepperell, MA. Subject property is located at 22-1/2 Tucker Avenue, Pepperell, MA, as shown on Assessor's Map 14 as parcel 253.

Applicant, Penny Batchelder is present, and is being represented by legal counsel, Attorney Thomas Gibbons, who is also present.

Clerk reads legal notice into the record.

Chairman announced that there was a minor typographical error in the Notice of Public Hearing as follows: The section of Town of Pepperell Zoning-By-law for Administrative Appeals, Section 9223, was inadvertently left out of the Notice of Public Hearing. This does not have any impact on this hearing.

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

- Gives history of property
- Disagrees with Inspector of Buildings that the two lots of have merged

Sherrill Rosoff asked Attorney Gibbons if he trying to argue that this is a non-conforming lot, pre-dating zoning and that the Inspector of Building's letter does not apply and the lot does not come under the Zoning-By-Law as a non-buildable lot. Attorney Gibbons replied, theoretically, yes. Discussion ensued.

Discussion ensued regarding adverse possession and history of lots.

Abutter, Patrick Carroll, 24 Tucker Avenue, addressed Board and looked at Plan of lots to identify where his property is in relation to subject property.

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

- Letter dated April 3, 2008, from Town Counsel to Inspector of Buildings.
- Letter dated June 10, 2008, from Town Counsel to the Zoning Board of Appeals.
- Response from Police Department
- Response from Conservation Commission
- Response from Assessor's Office
- Response from Water Department
- Response from Planning Board
- Response from Fire Department
- Response from Town Engineer
- Response from Board of Health

Attorney Gibbons addressed the Board, and explained that it is in the Board's jurisdiction to make a Decision based on the evidence presented tonight.

Discussion ensued regarding:

- Previous court case
- Lots and ownership
- Town Counsel's letters to Inspector of Buildings (4/3/08) and Zoning Board of Appeals (6/10/08)

Attorney Gibbons requested that Board continue hearing to a future date, in order to allow him time to confer with Town Counsel.

Sherrill Rosoff motioned to leave record and hearing open and continue hearing until August 13, 2008, at 7:30P.M., in order to allow time for Attorney Gibbons and Town Counsel to consult. Annette McLean seconds. All concur.

Sherrill Rosoff motioned that the Board authorize Town Counsel to confer with Attorney Thomas Gibbons in respect to the issues of law of this case. Annette McLean seconds. All concur.

Sherrill Rosoff motioned to approve ZBA Meeting Minutes of April 30, 2008. Annette McLean seconds. All concur.

Sherrill Rosoff motioned to enter Executive Session to discuss pending litigation on the Taylor (49 South Road) applications. Annette McLean seconds. All concur.

Sherrill Rosoff motioned to close Executive Session. 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 June 18, 2008 filed with Town Clerk: September 3, 2008

Cheryl Lutcza
Assistant, Zoning Board of Appeals

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