



Town of Pepperell
BOARD OF APPEALS
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Zoning Board of Appeals Meeting Minutes of October 1, 2008

PRESENT: Thomas McGrath, Sherrill Rosoff, Annette McLean, and Mark Walsh; also present, Cheryl Lutcza (ZBA Assistant) and Attorney Ned Richardson (Town Counsel).

7:00P.M. Chair announces that the first agenda item is a continuation hearing on a Remand from Middlesex Superior Court regarding an application submitted by Louise Taylor, the Zoning Board of Appeals, by Decision filed with the Town Clerk on April 2, 2008, granted SPECIAL PERMITS, under Sections 3200, 3230, 3232, 3233, 3234, 3500, 3520, and 9223 of the Town of Pepperell Zoning By-Law, allowing the conversion of the existing non-conforming use as a retail tack shop to a garden center; allowing a portion of the premises to be used as a landscaper's and contractor's yard; and, permitting the operation on the premises of five commercial vehicles for haulage of commercial quantities of gravel, mulch and other materials. The Special Permits granted by the Board of Appeals were subject to conditions set forth in the Decision filed on April 2, 2008, from which the Applicant appealed to the Middlesex County Superior Court in Case Number MI CV 2008-01530-L. The appeal of the conditions has been remanded to the Board of Appeals for further review or modification. The property affected 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.

Chair further explained that the Board conducted a Site Visit to the subject property on September 27, 2008. Board Members present at the Site Visit were: Thomas McGrath, Sherrill Rosoff, Annette McLean, and Mark Walsh; also present, Ned Richardson (Town Counsel). Since the Site Visit, the Board has received written comments from Attorney Alex Parra, legal counsel to Louise Taylor, and Attorney Michael Fee, legal counsel for Mr. and Mrs. Cirrone, Mr. and Mrs. Baldwin and Mr. and Mrs. Wright.

Clerk reads legal notice into the record.

Applicant, Louise Taylor, and her husband, Bruce Taylor, are present and are being represented by Attorney Alex Parra, who is also present.

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

- Written submission to Board on September 30, 2008 (Exhibit S).
- Revised document setting forth conditions (17) that the Taylor's propose the Board adopt. Attorney Parra asks Board to discard previous submission.
- Garden Center doesn't require a Special Permit. Only thing that requires a Special Permit is the overnight parking of the trucks.
- Proposed conditions we are submitting address parking area.

Attorney Michael Fee, legal counsel for Mr. and Mrs. Cirrone, Mr. and Mrs. Baldwin and Mr. and Mrs. Wright addressed the Board as follows:

- Explained that he disagrees with Attorney Parra's assertion that the only use that should be regulated here is the parking of the trucks.
- The Board has issued more than one Special Permit and Applicant asked for the Special Permits (Sections 3232, 3233, as well as several others).
- The Board relied on amendment by Taylors and the Special Permit took into consideration that they were asking for multiple forms of relief, and now the Applicant is not pleased with the conditions. The original conditions crafted by the Board were sound.
- Gave an overview of his written submission to the Board of September 29, 2008 (Exhibit R), which addressed the three major concerns of his clients (the abutters) and what each abutter is requesting.
- Points out an area on the Plan of Land (Exhibit Q) that was submitted by the Applicant on September 29, 2008.

Board Member, Sherrill Rosoff, inquired about the bins that are located along the Baldwin's property line, and would it be practical for the applicant to locate the bins closer to the trucks. Mr. Taylor responded that this is a safety issue. Discussion ensued.

Ms. Rosoff inquired about request by Attorney Fee for soil testing and if there is any maintenance of trucks performed where there could be the potential for leakage of fuel, etc.? Town Counsel explained that there was to be no non-emergency work performed on the trucks at the site. Mrs. Taylor added that there are five wells located on the property. Attorney Parra explained that the drainage pattern slopes to Route 119. Board Member, Annette McLean, inquired if there is a possibility of moving the bins further away from the abutter's property line. Mrs. Taylor explained that the material has always been in that area for easy access by equipment and proximity to greenhouse.

Board Member, Mark Walsh, inquired if existing screening has always been as it currently exists. Mrs. Taylor responded that it has been there for a long time, 35 to 40 years. Mr. Taylor added that the tree lines are all the way back to the old horse fence.

Attorney Parra presents an aerial photo from September of 1992, and explained that it essentially shows the same cleared area that presently exists, and that they are proposing to fill the only gap in the proposed plan.

Sherrill Rosoff asks Attorney Fee about the screening they are requesting along the Wright property line, a series of arborvitaes. Attorney Fee responded that this is specified in his letter to the Board of September 29, 2008 (Exhibit R). Attorney Fee gives a visual explanation on the Plan of Land. He is suggesting 5-foot spacing, but would leave the spacing at the Board's discretion, and that three-quarters of the way down the property line would be sufficient.

Attorney Parra explained that where screening is such an important issue to the Wrights, he is submitting to the Board recent photos (new exhibit) of the Applicant's and Wright's property line to the Board this evening. Town Counsel commented that the Board did get a lengthy view of the property at the Site Visit.

Mark Walsh inquired about Attorney Fee's request for soil testing. Attorney Parra responded that soil testing is a new request, and that it is entirely unnecessary, especially given the drainage pattern. Town Counsel commented that if the Applicant takes the soil offsite, he would have to get a Special Permit from the Board of Selectmen. Discussion ensued on potability standard on wells; depth of groundwater. Mrs. Taylor stated that one well is over 700-feet deep. Town Counsel added that the Conservation Commission commented that there were no wetlands on the subject property.

Town Counsel advised that the Board not make a decision before reviewing Attorney Fee's written submission of September 29, 2008 and also the file on this case.

Richard Baldwin addressed the Board as follows:

- My company used to own the subject trucks, and no longer own them due to them becoming uneconomical and that they do leak.
- Doesn't understand why front acre isn't being used.

Mrs. Taylor responded that she has thousands and thousands of dollars of receipts for repairs in the past few years. The trucks back into the bins to dump and this takes five to ten minutes, and this is much quicker than if they had someone come in to do this. It is natural for the tailgates to bang. This is part of what is done in this area; Wilkins Farm is also doing it.

Mrs. Baldwin addressed the Board as follows:

- Applicant was inaccurate when they said they didn't cut any trees along their property line. C. Fey was a witness. Asked Mr. Taylor if she could have trees and he said no.

John Stefan addressed the Board, and explained that he planted the trees when he was in high school.

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

Sherrill Rosoff explained that the Board needs to take some time to review the conditions in their original Decision on this matter; and also review Attorney Fee's letter.

Discussion ensued regarding the date for a Work Session. Annette McLean motioned that Board conduct a Work Session on Sunday, October 5, 2008 at 1:00P.M., Town Hall, Conference Room A. Sherrill Rosoff seconds. All concur.

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

Old and New Business:

Sherrill Rosoff motioned to approve ZBA Meeting Minutes of September 17, 2008. Annette McLean seconds. All concur.

Meeting Adjourned at 8:20P.M.

ZBA Minutes of October 1, 2008 filed with Town Clerk: November 17, 2008

Cheryl Lutcza
Assistant, Zoning Board of Appeals

cc: Town Clerk
Building Inspector
ZBA Minutes file
ZBA Members
ZBA Application File(s)