



Town of Pepperell
BOARD OF APPEALS
One Main Street
Pepperell, Massachusetts 01463
(978) 433-0333
Fax: (978) 433-0335

Zoning Board of Appeals Meeting Minutes of September 17, 2008

PRESENT: Thomas McGrath, Sherrill Rosoff, Annette McLean, and Sean McCaffery. Cheryl Lutcza (ZBA Assistant) was present for 49 South Road hearing.

7:00P.M. Chair announces that the first agenda item is a continuation of a hearing previously heard on August 13, 2008, 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, was present. Also present, was Joan Lemire, who also owns and resides at the subject property.

Clerk reads legal notice into the record.

Board Member, Sherrill Rosoff reads letter from Harry Cullinan, Zoning Enforcement Officer/Inspector of Buildings (Exhibit D1), dated September 15, 2008, into the record.

Abutter, Martin Beck, 39 Mount Lebanon Street, addressed the Board, and read a letter of opposition (Exhibit E1), dated September 12, 2008, into the record. Discussion ensued between Board Member, Sean McCaffery and Mr. Beck regarding contents of the letter.

Ms. Lemire addressed the Board and stated that the conditions that exist at the property have been there for many years.

Sherrill Rosoff reads email from Town Counsel to Board (Exhibit F1), dated September 17, 2008, into the record.

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

Discussion ensued among Board Members.

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

7:30P.M. Second Agenda item is a hearing regarding an application submitted by James Barron requesting a VARIANCE under Sections 9222 and 4140 of the Town of Pepperell Zoning By-law, which if granted, would allow the construction of a garage within the required side yard setback of 30-feet, with the proposed encroachments being 1.6-feet and 3.6-feet. The subject property is 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, is present and addressed the Board as follows:

- Gives history of property and explained why he is requesting variance. After doing calculations, architect did preliminary measurement (property measured by Meisner Brem)
- Property consists of five acres and is sloped; about 10 lots in area ranging from four to six acres in size.
- A letter of support, dated June 10, 2008, from abutter, Jaroslav Stekl, 5 Charles Place, was submitted with the ZBA application.

Discussion ensues between Applicant and Board Members regarding the following:

- Surrounding properties
- Easements on the side of Mr. Barron's property
- New Garage
- Access doors and windows

Sherrill Rosoff reads letter of support from abutter, Jaroslav Stekl, 5 Charles Place, dated June 10, 2008, which was submitted with the ZBA application

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

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 record and hearing. Sherrill Rosoff seconds. All concur.

Discussion ensued among Board Members.

Sherrill Rosoff motioned to grant relief requested, a Variance. Annette McLean seconds. All concur.

8:00P.M. Third Agenda item is a 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.

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 (D'Agostine, Levine, Parra & Netburn, P.C. of Acton, MA), who is also present

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

- Submitted Order to Remand (Exhibit K) from Middlesex Superior Court, dated September 4, into the record.
- Submitted copies of their proposal to amend (Exhibit L) the Special Permit Decision, into the record.
- Visual explanation of the plan, entitled "Plan of Land in Pepperell, MA, Prepared for Theresa R. Stefan and Louise Taylor.", dated June 2008 by David E. Ross Associates, Inc. (Plan No. L-10890), (Exhibit M) Gave lengthy overview of what the Applicant is proposing to do, which is further detailed in Finding No. 18, of Exhibit L (Applicant's proposed amendment to original Special Permit Decision), as follows: Applicant proposes to remove one greenhouse and grade the area shown on the Plan as "Proposed Stone Dust Vehicle Parking" ("Parking Area") to create an adequate parking area for the commercial vehicles. The proposed parking area would be screened to the north by an earth berm approximately 8-feet high, with an additional screen on the berm of 4'-5' high Dark American Arborvitae to be planted 5' on center. To the east, the Parking Area will be screened by an existing vegetative screen which will be preserved. To the west, the Parking Area will be screened by the existing greenhouses. The Parking Area is approximately 230 feet from the eastern boundary of the property, approximately 140 feet from the land of Baldwin Realty Trust, to the north; and approximately 180 feet from the westerly boundary of the Property.
- The most material change to the conditions they are requesting deals with the prohibitive cost of the screening and they don't believe that it is necessary to screen to that extent.
- Their request to change the conditions deals with the hours of operation, and given limited nature of business, Applicant does not believe hours of operation will have any impact on the abutters.
- Applicant will have one of the trucks running during the Site Visit and the Board can walk the property.
- Would like to be able to rinse mulch and loam, only, out of the trucks.
- Would like to be able to transfer materials used for garden center.

Board Member, Sherrill Rosoff, explained that the Board just got all of this information (Applicant's proposed amendments to original Special Permit Decision), and that the Board would like to focus on the Conditions and tighten them up. When the original Decision was made by the Board, the Board didn't have a landscaping plan or aerial. Board wants to review the Conditions for the purpose of clarity. She further explained that the Board did not want their Findings, from the original Decision, to be edited, as the Findings are what the Board knows exist at the time a Decision is rendered. As for the Conditions, the Board needs much discussion on this, and the Board wants to be fair. The Board has many questions on lighting and screening.

Board Member, Sean McCaffery, commented that there is underlying litigation on many issues, and that many of the items being proposed by the Applicant in their amendment to the Board's Original Decision are off limits.

Sherrill Rosoff reads email to ZBA from Town Counsel (Exhibit J), dated September 17, 2008, into the record.

Attorney Parra addressed the Board and explained that he has no problem with the position recommended by Town Counsel that the Board should focus on the Conditions only.

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

Attorney Michael Fee (Pierce and Mandell, P.C., Boston, MA) addressed the Board as follows:

- Explained that he represents the Baldwin and Cirrone families.
- Makes sense to tighten Conditions, if possible
- Screening and Hours of Operation are the most important issues to the abutters, as materials being stored are right up to the Baldwin property line and the operation of the trucks is near the Cirrone property line.
- A Site Visit should be focused on the full extent to which the Applicant is using the property to store materials.
- It is not the intention of the abutters to reverse the Special Permit Decision or take away the Applicant's right to do things the Board feels is appropriate at the site.
- They would like to take part productively in dialogue.

Sherrill Rosoff explained that the Board hopes that everyone can live amicably after this is all done; clearly at this point it is essential to prevent the Zoning Enforcement Officer/Inspector of Buildings from having to enforce issues.

Attorney Parra responded that there is some issue as to what applies to the Zoning Enforcement Officer/Building Inspector's determination that the Garden Center is a permitted use in the district and no operation on Sundays, would not apply to the Garden Center, but only to the commercial vehicle operation.

Attorney Fee commented that the abutters can hold their concerns at this time with the understanding that they are allowed to be present at the Site Visit and also be allowed to submit written comments after the Site Visit.

Applicant Louise Taylor, and her husband Bruce, addressed the Board and stated that the trucks leave at different times, not all at the same time. They will have a truck running during the Site Visit.

Sherrill Rosoff explained that the Board would like to see clarification on where screening currently exists and would like to be able to view this at the Site Visit.

Mr. & Mrs. Taylor responded that they will mark the site with stakes, etc.

Sherrill Rosoff explained that the Board would also like to see visually on a plan exactly where screening is to be planted and also show the 8-foot berm.

Attorney Parra submitted a new exhibit (Exhibit M) into the record: "Plan of Land in Pepperell, MA, Prepared for Theresa R. Stefan and Louise Taylor.", dated June 2008, (Plan No. L-10890), by David E. Ross Associates, Inc.

Sherrill Rosoff explained that the Board had concerns with lighting, and that there should be no lighting in that area other than what currently exists. Mr. Taylor stated that they currently have lights on the back of the greenhouse. Mr. and Mrs. Taylor both stated that no lighting would be installed in the parking area.

Annette McLean motioned that the Board conduct a Site Visit to the subject property, 49 South Road, Pepperell, MA, on Saturday, September 27, 2008, at 1:00p.m. Sherrill Rosoff seconds. All concur.

Annette McLean motioned to leave record and hearing open and continue hearing to Wednesday, October 1, 2008, at 7:00p.m. at Town Hall, Conference Room A. Sherrill Rosoff seconds. All concur.

Board instructs Cheryl Lutzca, ZBA Assistant, to contact Town Counsel to confirm that he will be in attendance at the October 1, 2008 continuation hearing.

Board instructs Cheryl Lutcza to contact Town Counsel to verify as to whether or not the deadline of October 15, 2008 for a Remand Decision can be extended.

Old and New Business:

Sherrill Rosoff motioned to approve ZBA Meeting Minutes of August 13, 2008.
Annette McLean seconds. All concur.

Meeting Adjourned at 9:20P.M.

ZBA Minutes of September 17, 2008 filed with Town Clerk: October 14, 2008

Cheryl Lutcza
Assistant, Zoning Board of Appeals

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