



Town of Pepperell
BOARD OF APPEALS
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Zoning Board of Appeals Meeting Minutes of April 15, 2009

PRESENT: Sherrill Rosoff, Annette McLean, Mark Walsh, Sean McCaffery, Robin Oinonen; also present, Cheryl Lutcza (ZBA Assistant) and Pepperell's Town Counsel, Attorney Ned Richardson.

7:00P.M. First agenda item was for the Board to select a new Chairperson to replace Thomas McGrath, who resigned from the Board after many years of service on December 31, 2008. Discussion ensued and Annette McLean nominates Sherrill Rosoff as new Chair of the Zoning Board of Appeals (ZBA). Mark Walsh seconds the nomination. All were in favor, and Sherrill Rosoff is named as new chair of the Board. Board Member, Annette McLean, will continue in the role of Clerk of the Board. Sherrill Rosoff introduced new Associate Board Member, Robin Oinonen, who was appointed to the ZBA as of January 2009.

7:10P.M. Chair announced that the second agenda item is a hearing regarding an application which has been submitted by Michael Blood (Scotch Pine Farm), requesting a Zoning Board of Appeals Special Permit, Non-Conforming Use Special Permit and Administrative Appeal, under Sections 3521, 9221 and 9223 of the Town of Pepperell Zoning-By-Law, which if granted, would allow the installation of a temporary tent (150-person capacity) on the subject property from May 1st to September 30th, for the purpose of hosting outdoor events such as weddings, class reunions, corporate barbeques. Subject property is located at 34 Shirley Street, Pepperell, MA, as shown on Assessor's Map 34 as Parcel 35.

Clerk read the Notice of Public Hearing (legal ad) into the record.

Applicant, Michael Blood, was present and addressed the Board and explained that he would like to put up a temporary high-peak tent, which would be located on the right side of the Elm Street driveway. This would enable him to hold outdoor events, such as weddings, BBQ's, and has received many requests to offer this type of service. These events would end early in the evening.

Sherrill Rosoff inquired if Mr. Blood has a site plan? Mr. Blood responded that this was submitted with his ZBA application. Ms. Rosoff commented that the site plan does not show slope and asked if Mr. Blood knew the slope. Mr. Blood responded that this has been addressed and that the area is a flat section, which has already been leveled off professionally.

Mr. Blood continued his presentation to the Board as follows:

- Guests will be contained to the tent and will not be allowed to roam the property.
- No private function (over 50 people) will occur while the restaurant is also open, due to parking and kitchen capacity.
- Current parking capacity is about 61 to 65 parking spots, which are not paved or marked.
- During functions of over 50 people, parking attendants will be utilized. Discussion ensued regarding parking capacity and the driveway. Mr. Blood commented that the Planning Board will require another site review for the parking.
- The main access to the property will be off of Elm Street.

Town Counsel, Edward Richardson, commented that even though the tent is a temporary, it is considered to be a structure. He further clarified the section of the by-law relative to structures and site plan review requirements.

Mr. Blood continued his presentation as follows:

- Tent may be taken up or down, depending upon length of timeframe between events for which it will be used.
- Only electrical will be for strings of lights.

Town Counsel explained that the Planning Board would determine if parking and driveway access are adequate.

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

- Response from Board of Health (Exhibit S)
- Superseding Response from Board of Health (Exhibit T)
- Response from Conservation Commission
- Response from Town Engineer
- Response from Water Department
- Response from Planning Board
- Response from Highway Department
- Letter of Support from Harvey and Judy Serreze
- Response from Town Counsel (Town Counsel read & summarized)

Town Counsel made the following comments:

- Board must find that the relief being sought is not more detrimental than the existing non-conforming use.
- A Decision by the Board will not dispose of issues pertaining to the Board of Health or Planning Board.
- Issues surrounding sanitary facilities triggered by this being a place of public establishment (i.e. restaurant) must be ruled on by Board of Health one way or the other.

Ms. Rosoff asked Mr. Blood to confirm the dates the proposed tent would be in operation. Mr. Blood responded that the dates of operation would be May 1st to September 30th, and that the contract for the tent was only good for that timeframe. However, if there was an Indian Summer, they may extend a little bit into October. He also commented that the tent would be put up and taken down by the contractor. Discussion ensued regarding insurance issues.

Mark Walsh inquired if functions were currently being held in the restaurant. Mr. Blood responded that they were, however the maximum number of people allowed is 46. He further explained that he lives at the property.

Mr. Blood stated that the restaurant currently operates on the following days/hours:
hours:

- Tuesday through Friday (11:00a.m.-2:00p.m.)
- Wednesday through Friday (5:00p.m.-9:00p.m.)
- Saturday and Sunday (8:00a.m. – 1:00p.m.)

Mr. Walsh inquired as to whether they anticipate having musical entertainment. Mr. Blood responded that they would and that weddings would bring in some type of music. Mr. Blood further explained that he had done a 3-hour sound check on March 16, 2009, and he submitted a copy of the police log from that date into the record.

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

Joseph Blood (the Applicant's Father) spoke in support of the proposal.

Abutters, Eric and Paula Jamison, 40 Shirley Street, explained that they had the following concerns:

- Concerned with noise and traffic that will most likely occur.
- They have lived at this address for approximately 20 years and feel what is being proposed is not compatible with the houses that abut the Applicant's property on the Shirley Street side.

- Concerned that there is no way to really control people having a good time at weddings, etc. If an issue arises during a function, what do the abutters do (i.e., call police, call Mr. Blood)? Who do they call for noise control?
- Concerned with the impact on property values.
- Had a past issue with the Mr. Blood regarding security lighting being left on at the subject property too late at night, even though Mr. Blood had assured them it would be put out earlier. .
- Concerned with people consuming liquor making wrong decisions or coming onto their property.
- Don't feel there would be control of staff.

Milton Starr, 46 Shirley Street:

- Has resided at his home for over 40 years.
- Has no problem at all with the proposal for a tent.
- Has no problem with the restaurant.

Annette McLean inquired if Mr. and Mrs. Jamison have a buffer of trees. They responded that they do, but they drop their leaves (deciduous). They explained that their property sits up higher and they can see straight down to Scotch Pine Farm.

Town Counsel commented that the Board may want to consider doing a site visit to the subject property. Annette McLean inquired if there was to be a site visit, could music be played.

Ms. McLean asked how tall the proposed tent would be. Mr. Blood responded that it would be 20-feet at the highest point and that the tent would be completely behind the existing restaurant building.

Ms. Mclean asked if Mr. Blood used a dosimeter when he conducted his noise survey. Mr. Blood respond that he had not.

Mr. Blood commented that he understands the neighbors concerns, and that he sent his neighbors a letter letting them know what he proposed to do. He further commented that he resides on the subject property and has a baby on the way and does not want allot of noise.

Discussion ensued regarding the time that the lights go off and on at night.

Mike Blood commented that a liquor permit is only good until 9:00p.m.

Town Counsel made the following comments:

- Liquor permit is under the exclusive jurisdiction of the Board of Selectmen.
- Zoning Board of Appeals could limit the end time of event hours and that the Inspector of Buildings would enforce this.
- Planning Board would deal with driveway and parking issues.

Mr. Jamison commented that the changes that are going to take place at the facility will affect all of the neighbors. This would be an ongoing concern. He asked if the Board members could look at the quality of life impact.

Ms. Rosoff inquired if Mr. Blood was contemplating holding events on Sunday nights? Mr. Blood responded that he was.

Annette McLean motioned to leave the record and hearing open and continue to a Site Visit to the subject property on Sunday, April 26, 2009 at 12:00p.m., with a subsequent continuation hearing to be held on Wednesday, May 6, 2009 at 7:00p.m. at Town Hall, Conference Room C. Mark Walsh seconds the motion. All concur.

Old and New Business:

Kevin Slattery and Dave Petropolis of Jayron Realty, Inc., addressed the Board, and explained that they are present this evening to review a letter they sent to the Board, dated April 6, 2009, regarding changes to house plans and prices at the Emerson Village project at 196 Nashua Road.

Mr. Slattery made the following presentation:

- Showed drawings of house plans from the original 40B application.
- Explained that due to market conditions, they have been trying to develop houses they can get into the market at lower prices.
- They would like to eliminate one of the two-bedroom colonial-style plans for a two-bedroom, cape-style home, which could be offered at a significantly lower price. They would also offer a 3-bedroom cape and straight-front colonial

- The cape-style homes would be 1336 square-feet to 1472 square feet. The straight-front colonial would be 1604 square feet to 1724 square feet.

Town Counsel inquired if they were proposing to increase the aggregate number of bedrooms for the entire project. Mr. Slattery responded, no, that the number of bedrooms is identical to what was in the original plans.

Town Counsel summarized his letter to the Board of April 13, 2009.

Discussion ensued regarding decks.

Ms. Rosoff inquired if heights were being increased. Mr. Slattery responded that they were not.

Discussion ensued regarding substantial versus insubstantial changes.

Mr. Slattery explained that on the original plans, there were sliders depicted off of one of the rooms, and that they would like to offer a homebuyer the option of one of the following:

- 10-foot by 12-foot patio
- 10-foot by 12-foot deck
- 10-foot by 12-foot, 3-season sunroom by Harvey Industries

Discussion ensued regarding the 8-foot fence that is on the property line abutting Holt Lumber. Mr. Slattery explained that they fence does not come within 20-feet of Nashua Road.

Discussion ensued and the Board made a finding that the following issues raised in the letter from Kevin Slattery, Jayron Realty, Inc, dated April 6, 2009, requesting: 1) changes in architectural plans; and 2) allowance of decks, patios or sunrooms limited to 10-feet by 12-feet in size, are deemed to be insubstantial changes in the 40B Comprehensive Permit governed by: 760 CMR 56.05(11) and 760 CMR 56.07(4).

Annette McLean motioned to approve the above-mentioned changes as insubstantial. Mark Walsh seconds. All concur.

The Board requests that Cheryl Lutcza write a letter to Mr. Slattery regarding the above.

Mark Walsh motioned to approve the ZBA Meeting Minutes of November 12, 2008. Annette McLean seconds. All concur.

Mark Walsh gives an overview of his April 9, 2009 interview with NMCOG representative, George Russell.

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

Meeting Adjourned at 9:30P.M.

ZBA Minutes of April 15, 2009 filed with Town Clerk: May 18, 2009

Cheryl Lutcza
Assistant, Zoning Board of Appeals

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