



Town of Pepperell
BOARD OF APPEALS
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Zoning Board of Appeals Meeting Minutes of January 13, 2010

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

7: 10P.M. Chair announced that the first agenda item is a hearing regarding an application submitted by William N. Blood, III, requesting a Zoning Board of Appeals **ADMINISTRATIVE APPEAL** of the action of the Building Inspector per Section 9223 of the Town of Pepperell Zoning-By-Law, to determine relief appropriate to allow the accessibility of the premises for handicapped foster care adult residing at the premises; including a **VARIANCE**, if necessary per Section 9222 of the Zoning-By-Law. Applicant is also requesting a **SPECIAL PERMIT** per Section 3560 of the Zoning-By-Law to increase the non-conforming nature of the existing principal structure on the premises. Subject property is located at 29 Groton Street, Pepperell, MA, as shown on Assessor's Map 25 as Parcel 47-0.

Clerk read the Notice of Public Meeting into the record.

Applicant, William N. Blood, III, is present and is being represented by Attorney Christine Morrissey, who is also present. Attorney Morrissey made the following presentation to the Board:

- The lot owned by Mr. Blood (Applicant) is quite small, approximately 3400 square feet in area. The property is zoned industrial. There is a single-family home with an attached garage on the lot.
- History of property and easements.
- Applicant is the foster parent to Nick Zemke, who suffered a brain injury and is handicapped. Nick attends ARC in Worcester, MA.
- Submitted a letter to the Board (Exhibit V) from Nancy Hubbard, Program Manager, Caregiver Homes.
- Applicant constructed handicapped ramp after speaking with former Inspector of Buildings, who was not acting in capacity of Inspector of Buildings, regarding construction.

- Applicant was issued a Cease and Desist Order from the current Inspector of Buildings, Harry Cullinan. Applicant did speak with Mr. Cullinan in 2009, however did not finish ramp, but made it safer. Applicant was attempting to “do the right thing,” but didn’t know what the right thing was. Attorney Morrissey shows Board additional photos of subject property (Exhibit W) that were taken by Mr. Cullinan and explained that Applicant invited Mr. Cullinan to the subject property for a site visit and Mr. Cullinan informed Applicant that he would never give him a permit and wanted everything taken down; fines were issued.

Town Counsel explained that he has postponed a hearing in Ayer District Court regarding this matter.

Attorney Morrissey’s presentation (continued):

- Attorney Morrissey explained that Nick Zemke, the Applicant’s foster child, is present this evening, and that Nick suffered a severe brain injury playing in a high school football game in California. Preferred means of egress is to have a covered walkway for Nick to walk on.
- Asked that Board consider the neighborhood, consisting of Covered Bridge, Shattuck Oil and Ms. Willett’s property.

Board Member, Mark Walsh, inquired if the bulkhead is covered?

Town Counsel discusses zoning and scenarios relative to whether or not ramp is egress/ingress for a handicapped person. Town Counsel recommended that the Board might want to consider taking a view (site visit) to the subject property.

Board views photo (Exhibit U) submitted by Harry Cullinan, Inspector of Buildings/Zoning Enforcement Officer.

Town Counsel read letter he sent to Harry Cullinan on September 29, 2009.

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

- Board of Health
- Conservation Commission
- Highway Department
- Police Chief
- Town Engineer
- Water Department
- Inspector of Buildings/Zoning Enforcement Officer

Town Counsel read his letter/email to the Board (Exhibit S), of January 5, 2010, into the record.

Discussions ensued between ZBA and Town Counsel regarding Town right-of-way.

Mark Walsh noted that the subject property is very close to the road; however the Board did not receive any comments from the Highway Department.

Discussion ensued relative to subject property being located in the Industrial District.

Chair, Sherrill Rosoff, commented that the letter from Nancy Hubbard of Caregiver Homes stated that a nurse and Caregiver Homes visits the subject property every month to insure the safety of the handicapped foster care client.

Board Member, Annette McLean, inquired if there are any laws relative to the covering of a handicapped ramp? Town Counsel responded that the statute does not specify anything relative to covered handicapped ramps.

Abutter, Nandee Willets, 22 Groton Street, gives Board a description of the handicapped ramp.

Sherrill Rosoff inquired if the extension from the covered area to the driveway is 8-feet? Applicant responded that it was.

Ms. Rosoff inquired if Caregiver Homes was okay with the remainder of the ramp being uncovered? Applicant responded, yes, and that he usually walks beside Mr. Zemke.

Member of the Audience, Representative Bob Hargraves, Groton, MA, addressed the Board in support of the Applicant. Mr. Hargraves explained that he worked with the Applicant when he was going through the long process to bring Nick to his home, and that he is familiar, as a former Principal, with these types of injuries. He further explained that Nick cannot afford to hit his head and that having a covered ramp will help protect the ramp from getting rain, ice or snow on it. He commented that Nick can be unpredictable, and could dart out and hurt himself and that he should be protected in those instances. Mr. Hargraves explained that he has the Applicant for a long time and his whole thought process has been to do the best for Nick and help prevent Nick from injuring himself.

Sherrill Rosoff inquired if they had an opinion from Caregiver Homes as to whether they would prefer that the remaining 8-feet be covered also? Attorney Morrissey responded that they did not give an opinion on that.

Nandee Willets commented that one of the reasons the structure was enclosed was so that Nick could not come out of the house and walk straight out into the road. She further commented that the Applicant is a good neighbor and the house looks so much better now. She explained that no one sits out there and that it is not a porch, it is an access route.

Mark Walsh inquired if the door was moved. Attorney Morrissey responded that it was not. Discussion ensued regarding door location and ramp length/width.

Sherrill Rosoff asked if they had the option to cover the ramp all the way to the driveway, would they want to. Applicant responded that there is a flat roof at the other end, which would create a problem. Discussion ensued.

Town Counsel commented that despite his initial recommendation that the Board entertain taking a site visit to the property, he no longer felt that was necessary.

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

Board enters deliberations and discussions ensue.

Annette McLean motioned to grant an Administrative Appeal that the proposed structure, consisting of the present covered landing area and the handicap ramp, once completed in accordance with applicable regulations governing handicap access, will constitute a handicap ramp governed by the provisions of M.G.L. Chapter 40A, Section 3, and is exempt from dimensional requirements of local zoning. By virtue of granting the Administrative Appeal, Applicant's request for a Special Permit and/or Variance is moot. Mark Walsh seconds. All in favor.

Old and New Business:

Annette McLean motioned to approve the ZBA Meeting Minutes of November 18, 2009. Mark Walsh seconds. All concur.

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

Meeting Adjourned at 9:45P.M.

ZBA Minutes of January 13, 2010 filed with Town Clerk: **April 5, 2010**

Respectfully submitted by:

Cheryl Lutcza,
Assistant to the Zoning Board of Appeals

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