



Town of Pepperell
BOARD OF APPEALS
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Zoning Board of Appeals Meeting Minutes of July 7, 2010

PRESENT: Sherrill Rosoff, Mark Walsh, Sean McCaffery, Bruce Roberts; and Cheryl Lutcza (ZBA Assistant). **ABSENT:** Annette McLean.

7: 00P.M. ZBA Chair, Sherrill Rosoff, opened the meeting and announced that Associate Board Member, Sean McCaffery, would be sitting on this evening's hearings in the absence of Board Member, Annette McLean.

Chair announced that the first agenda item is a hearing regarding an application submitted by Keith Babin, 40 Lawrence Street, requesting a Zoning Board of Appeals **NON-CONFORMING USE SPECIAL PERMIT** under Sections 3580, 3581, and 3583 of the Town of Pepperell Zoning-By-Law which, if granted, would allow the reconstruction and expansion of a non-conforming single-family residential structure that was destroyed by fire. Subject property is located at 40 Lawrence Street, Pepperell, MA, as shown on Assessor's Map 8 as Parcel 2.

Applicant, Keith Babin, was present. Also present, Attorney Christine Morrissey, on behalf of Mr. Babin.

Chair read the Notice of Public Hearing into the record.

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

- In March of 2009, the Applicant purchased the single-family home at 40 Lawrence Street.
- Three days before Christmas of 2009, the home was totally destroyed by a catastrophic event (fire). The home was mandated to be destroyed and has since been destroyed.
- Applicant has a mortgage on the property and insurance.
- Applicant needs relief from the Zoning Board of Appeals (ZBA).

- Applicant would like to construct a new home that would be slightly larger than the original home.
- The plan that the ZBA currently has includes a front porch, which has since been revised and diminished in size.
- Applicant would like to begin reconstruction so he can get back into his home.

Chair inquired if Board Members had any questions.

Sherrill Rosoff inquired as to how big the former dwelling was. Applicant responded that it was 22-feet by 32-feet.

Sherrill Rosoff inquired if the proposed, new home to be constructed would be 24-feet by 36-feet. Applicant responded that it would be.

Discussion ensued regarding dimensions of proposed house, porch and garage. Board calculates percentage that proposed structure will increase over original structure.

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

- Planning Board (Exhibits “D” and “S”)
- Police Department
- Assessor’s Office
- Water Department
- Fire Department
- Board of Health
- Town Engineer
- Town Counsel
- Highway Department
- Conservation Commission

In response to the Board of Health’s comments, Attorney Morrissey explained that the proposed home the Applicant will be constructing, will be a one-bedroom home.

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

Jim Alger, 39 Lawrence Street, commented as follows:

- Will there be an egress from the basement or deck of the proposed home?
- The leach field is from the 1980’s, is there a plan in place if the leach field fails?

Sherrill Rosoff inquired about the leach field. Attorney Morrissey responded that the person who sold the property to the Applicant installed a leach field. Applicant responded that he thinks it is the original leach field; however, a new tank and D-box were installed at the time he purchased the house in 2009 and that it passed Title5.

Steve Lakin, 38 Lawrence Street, commented as follows:

- House is in WRPOD.
- He is concerned that proposed structure, deck, porch, and garage are larger than what was there previously.

Sherrill Rosoff inquired if Mr. Lakin was concerned that there would be more vehicular traffic. Mr. Lakin responded that he was concerned with the two-car garage and that commercial vehicles could be stored there. Applicant responded that there will be no commercial vehicles stored on the property.

Board Member, Sean McCaffery, commented that the focus of the ZBA is to look at the shape of the lot. As much as the Board wants to listen to concerns of folks, what is before the ZBA is very narrow. Discussion ensued regarding relief that is being requested regarding footprint of house.

Mr. Lakin commented that his concern, as an abutter, is that the proposed structure is 30% larger than the original structure. Applicant responded that the proposed structure will be 2-feet wider and 4-feet longer. Attorney Morrissey commented that the proposed structure meets all setbacks for the zoning district and that no variances are required.

Chair inquired if anyone present had any further questions.

Board Member, Mark Walsh, motioned to close the record and hearing. Sean McCaffery seconds. All concur.

Discussions and deliberations ensued among Board Members.

Mark Walsh made a motion to grant the requested relief, a Non-Conforming Use Special Permit, under Sections 3580, 3581, and 3583 of the Town of Pepperell Zoning-By-Law, to allow the reconstruction and expansion of a non-conforming single-family residential structure, which was destroyed by fire, at the subject property, 40 Lawrence Street, Pepperell, MA, as shown on Assessor's Map 2 as Parcel 8. Sherrill Rosoff seconds the motion. All concur.

7:30P.M. Chair announced the second agenda item is a hearing regarding an application submitted by Thomas and Heather Hawkins, requesting a Zoning Board of Appeals VARIANCE under Sections 9222 and 4140 of the Town of Pepperell Zoning-By-Law, which if granted, would allow the construction of a 10-foot by 12-foot deck, which would extend 9-feet into the required rear yard setback of 60-feet. Subject property is located at 32 Bancroft Street, Pepperell, MA, as shown on Assessor's Map 37 as Parcel 41.

Applicants, Thomas and Heather Hawkins, were present.

Board Member, Mark Walsh, read Notice of Public Hearing into the record.

Applicants addressed the Board as follows:

- They just built an addition off of the house and would like to construct a new deck, which would be 10-feet by 12-feet in size. Deck would come off of the house and they need a Variance.

Sherrill Rosoff inquired if the deck could be located on the side of the house, rather than the back. Mr. Hawkins responded that the boundary line is even closer on the side. Ms. Rosoff asks why the deck can't be put on the other side of the house and Mr. Hawkins responded that there is a pool on that side. Mr. Hawkins further commented that the new addition is located where the old deck was.

Ms. Rosoff asked what else is in the back of the property. Mr. Hawkins responded that there are woods and lawn; there are no residences as property backs up to Mt. Lebanon Street.

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

- Conservation Commission
- Planning Board
- Police Department
- Fire Department
- Highway Department
- Water Department
- Town Counsel

Chair inquired if there were any abutters present. There were no abutters present.

Board Member, Sean McCaffery, motioned to close the record and hearing. Mark Walsh seconds. All concur.

Discussions and deliberations ensued among Board Members.

Mark Walsh made a motion to grant the requested relief, a Variance under Sections 9222 and 4140 of the Town of Pepperell Zoning-By-Law, to allow the construction of a 10-foot by 12-foot deck, which would extend 9-feet into the required rear yard setback of 60-feet. Subject property is located at 32 Bancroft Street, Pepperell, MA, as shown on Assessor's Map 37 as Parcel 41. Sean McCaffery seconds the motion. All concur.

Old and New Business:

- Mark Walsh motioned to approve the ZBA Meeting Minutes of May 5, 2010. Sean McCaffery seconds. All concur.

- 131 Lowell Road (Lowell Place Realty Trust) – Request for 1-Year Extension:

Attorney Douglas Dechenes of Dechenes and Farrell, addressed the Board and explained that he was representing Lowell Place Realty Trust. Dennis Page, Principal, Lowell Place Realty Trust was also in attendance. Attorney Dechenes made the following points:

- Lowell Place Realty Trust was granted a 40B Comprehensive Permit in November of 2005, for the property located at 131 Lowell Road.
- Installed a water main to the property in June of 2006.
- Later in 2006 the project was put on hold due to the economy.
- In March 2010 it came to their attention that the project would not be completed within the five-year timeframe stipulated in the Comprehensive Permit and therefore they have a request before the ZBA for a one-year extension.
- Town Counsel (Attorney Edward Richardson) and Attorney Melissa Robbins, of Dechenes and Farrell, have determined that the request for a one-year extension is a minor modification and does not require notification to the abutters.
- Question was raised by Town Counsel as to whether any construction had commenced within three years of the Comprehensive Permit being granted. Attorney Dechenes explained that any physical action on the project site can signify commencement of construction, *i.e.*, the installation of the water main connection in June of 2006.
- His clients would like to commence the project as soon as possible, and they are confident the project can be completed in one year, and that is why they are only asking for a one-year extension.
- Gives an oral history of the application process and project.
- Asks that in lieu of efforts put in to date and the economy, that the Board consider granting his clients the one year extension to complete the project.
- Informs Board that his client, Mr. Dennis Page, is present if the Board would like to ask him any questions.

Sherrill Rosoff asked if, when they refer to a water main hookup, they paid for the Town to extend the water line and feed line? Attorney Dechenes responded, yes. Discussion ensued.

Dennis Page commented that they never would have put a larger water main in to just service the single family home that is presently on the site. He further commented that they feel confident that they can move forward and get the project done and that the economy is not that great, but the housing market has improved.

Discussion ensued as to what constitutes commencement of construction.

Sherrill Rosoff commented that she is not so sure a water hookup constitutes commencement of construction.

Mark Walsh commented that they need to take into account all mitigating factors, *i.e.*, time and investment.

Attorney Dechenes explained that they the house presently on the site was not demolished because it is a rental property that generates income. Mr. Page is still paying taxes on and maintaining the property.

Discussion ensued regarding opposition of abutters during 40B hearing process.

Sherrill Rosoff commented that she is angry about this and that the work that has been done so far is “de minimis”.

Mark Walsh commented that the ZBA has voiced their displeasure that they are being asked for a one year extension at the eleventh hour; however some work (water hookup) has been done. Also, he stated, that there was a lot of office work (ZBA) that had already been done.

Sherrill Rosoff asked where the Board will be a year from now if we allow the one year extension. She commented that if the project is not completed by the time the one year extension is up, that another extension will not be allowed.

Attorney Dechenes commented that an upgrade two-inch line was put in to satisfy the requirements of the project.

Sherrill Rosoff commented that she is disappointed that they (the developer) didn't engage the ZBA in a conversation a year ago that an extension was going to be needed.

Mark Walsh motioned that the Board finds that the installation of the water service on the premises constituted the commencement of construction on the Lowell Place Condominium and the Comprehensive Permit is in full force and effect. The Board also finds that the request for a one (1) year extension for the completion of the project is reasonable and grants that extension. Sean McCaffery seconds. All concur.

Mark Walsh motioned to adjourn the meeting. Sean McCaffery seconds. All concur.

Meeting Adjourned at 9:45p.m.

ZBA Minutes of July 7, 2010 filed with Town Clerk: January 11, 2010

Respectfully submitted by:

Cheryl Lutcza,
Assistant to the Zoning Board of Appeals

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