



Town of Pepperell
BOARD OF APPEALS
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Pepperell, Massachusetts 01463
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Zoning Board of Appeals Meeting Minutes of September 21, 2011

PRESENT: Sherrill Rosoff, Mark Walsh, Sean McCaffery, Jan Adamczyk, Cheryl Lutcza (ZBA Assistant) and Ned Richardson (Town Counsel).
Not Present: Annette McLean.

7:00P.M. Sherrill Rosoff (Chair) opened the meeting and announced that Board Member Annette McLean is not present, and Associate Board Member, Sean McCaffery, will be sitting on this evening's hearing in her place.

Chair introduced the Board's new Associate Board Member, Jan Adamczyk.

Chair announced the first agenda item is a hearing on an application for an ADMINISTRATIVE APPEAL by Frederick E. Farmer, requesting that pursuant to Section 9223 of the Town of Pepperell Zoning By-Law, the Zoning Board of Appeals reverse the determination of the Building Inspector, in his letter of July 29, 2011, requesting that the greenhouse on the subject property be moved the required 10 feet from the side lot line by August 10, 2011. Subject property is located at 56 Wheeler Street, Pepperell, MA, as shown on Assessor's Map 7 as Parcels 24 and 24-1.

Applicant, Frederick E. Farmer is present. Also present, on behalf of the Applicant, is Brad Mitchell, Director of Government Affairs for the Massachusetts Farm Bureau.

Applicant paid postage fee of \$30.75 and legal advertising fee of \$153.00.

Chair invited the Applicant to address the Board regarding the relief being requested. Applicant requested that Brad Mitchell from the Massachusetts Farm Bureau speak on his behalf. Mr. Mitchell addressed the Board as follows:

- Believes that Applicant may be covered by Massachusetts General Law (MGL), Chapter 40A, Section 3, and explains what is reasonable for a resident versus a farmer.
- Questions whether the Building Inspector's ruling imposes an unreasonable regulation for agriculture.

Town Counsel, Attorney Edward Richardson, addressed the Board as follows:

- Gives history of agricultural exemptions in the State of Massachusetts
- Agricultural exemption has always gotten more liberal
- Believes that if ZBA imposes the 30-foot setback for residential structures in the Zoning-By-Law that it would not hold up under appeal.
- Greenhouse currently has plants that are growing in the ground.
- Recommends ZBA perform a Site Visit.

Board Member, Mark Walsh, comments that encroachment onto the property of others is not before the ZBA. Town Counsel comments that he does not want to substitute his judgment for that of the Board.

Mr. Mitchell, addresses the Board again, and speaks on MGL Chapter 40A, Section 3, as follows:

- There is a public benefit to agriculture and applying residential zoning is negative to agriculture.
- Applicant is not ignorant to the concerns of his neighbors (abutters) and intends to plant trees.

Board Member, Sean McCaffery, comments that there is a statutory question as to the primary purpose of the property. Town Counsel responds that if you live on the premises, agricultural use is a parallel use of the property.

Sean McCaffery inquires if there is ambiguity about the property line. Mr. Mitchell responds that none of the property lines suggest an encroachment and that the Applicant has his surveyor present this evening.

Sean McCaffery inquires if the survey is an instrument survey? Applicant explains what he feels is his property line. Town Counsel responds that the Plan shows two lines with two, separate title references. Sean McCaffery responds that this is not for the ZBA to decide. Board members discuss that this is a “grey” area. Town Counsel comments that the Board needs to determine what the applicable facts are.

Abutter, Peter Koutrouba, 58 Wheeler Street, addresses the Board and explains that he has a document from the Town signed by the Planning Board. Town Counsel responds that the ZBA should view the property, as there appears to be a conflict of plans. Town Counsel reviews the plan submitted by Mr. Koutrouba and informs the Board that it is an “ANR” Plan from 2000 and that it is not going to do anything for the Board.

Chair, Sherrill Rosoff, asks the Applicant if his surveyor is present. Applicant responds, yes.

Applicant's surveyor, Rosemary Chaulk, addresses the Board and gives an overview of the Plot Plan she had prepared.

Discussions ensued regarding property lines, deeds, etc.

Mark Walsh comments that the boundary issue is not what is before the Board and that the fundamental question before the Board regarding this application is whether there is unnecessary regulation of an agricultural use.

Town Counsel responds that the Board has three choices:

1. No setback required
2. Full setback (30 feet)
3. Residential grandfathered setback imposed by the Inspector of Buildings (10 feet)

Discussions ensued as to what is within scope of Board this evening. Chair comments that if the Board has to decide if this is an exempt (agricultural) use, the property line issue does not come into play.

Abutter, Mark Hald, 60 Wheeler Street, addressed the Board and asked if the Inspector of Buildings "makes the call" as to where the property line is? Mark Walsh responds that whatever line the Inspector of Buildings went by in his letter to the Applicant is the line that is being used.

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

- Letter from Inspector of Buildings to Applicant, dated June 29, 2011
- Water Department
- Town Engineer
- Planning Board
- Town Counsel
- Highway Department
- Police Department
- Historical Commission
- Conservation Commission

Chair asks those in attendance if there were any more comments or questions on the agricultural use of the subject property. The following members of the audience offered comments:

- Adam Frye, Dunstable, MA: Has heard from MA Farm Bureau and Applicant regarding impact if greenhouse has to be moved.

- Louis Lunn, River Road: Greenhouse is not a structure and setback does not apply.
- Mark Hald inquired what the greenhouse is, if it is not considered to be a structure. Discussion ensued.
- Attorney Jonathan Roth, Boston, MA: Equipment for farm use is defined in many different ways in Massachusetts. Excavation took place on his client's land (Koutrouba – 58 Wheeler Street) illegally and until the Applicant can determine where his property line is the Board should apply the 10-foot setback. Comments that from his point of view, the Inspector of Buildings is right.
- Brad Mitchell: The only thing being argued is if regulation of the greenhouse is reasonable. This is land in production and the intent of legislation is to keep land in production under MGL, Chapter 40A, Section 3. It would be unreasonable to regulate the structure.
- Abutter (name not announced) comments that the Applicant did a lot of grading and dirt was brought in.
- Peter Koutrouba: What has not been addressed here is the initial complaint we put in. The grading is not a 3 to 1 ratio; it is probably a 1 to 1 ratio right now. Mark Walsh responds that the 10-foot setback issue, not grading, is what is before the Board. Mr. Koutrouba inquires why? Sean McCaffery responds that the enforcement of that issue (grading) falls with the Inspector of Buildings. Town Counsel agrees.
- Jim Friend, 41 Dow Street: Explains that he is a member of the Agricultural Board, and that their opinion is that tension fabric structures/greenhouses fall under the category of not being permanent structures under zoning; some of what the ZBA decides here could set precedent for a lot of agricultural uses. Important to think about what harm this structure is causing and what harm will be caused if it is moved. Mark Walsh responds that the ZBA does not set precedents. Discussion ensued.

Chair asks if there is a motion to close the public portion of the hearing. Mark Walsh motioned to close the public portion of the hearing. Sean McCaffery seconds. All concur.

Board enters into discussions and deliberations.

Mark Walsh makes a motion that the Board grant the requested relief, a Zoning Board of Appeals Administrative Appeal to Applicant, Frederick E. Farmer, pursuant to Section 9223 of the Town of Pepperell Zoning-By-Law reversing the determination of the Building Inspector in his letter of July 29, 2011, that the greenhouse on the subject property be moved the required 10-feet from the side lot line by August 10, 2011. Sean McCaffery seconds. All concur.

Old and New Business:

- Mark Walsh motioned to approve the ZBA Meeting Minutes of June 15, 2011. Sean McCaffery seconds. All concur.

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

Meeting Adjourned at: 9:00 P.M.

ZBA Minutes of September 21, 2011 filed with Town Clerk: December 5, 2011

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)