



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

Zoning Board of Appeals Remote Meeting Minutes of May 18, 2022*

**This meeting was recorded for future cablecast by Pepperell Community Media*

**This meeting was held remotely via GoTo*

Present: Annette McLean (Chair), Alan Leao, Jr. (Clerk) and Heather Hampson. Also present, Cheryl Lutcza (ZBA Assistant)

Attendees: Pepperell Community Media, Attorney Douglas Deschenes, Jeff Chabot, Jack Visniewski, Jennifer Gingras, Susan Smith, Ken Roberts, Jen Masserelli, Casey Campetti, Bentley Herget, Ryan Dupont, Steve Cortese.

1. Call to Order: 7:01P.M.:

Annette McLean, Chair, opened the meeting, and introduced the Board Members and Staff to the audience. Ms. McLean provided an explanation of the remote meeting and hearing process to those in attendance.

2. Review and/or Approve ZBA Draft Meeting Minutes of April 13, 2022:

Ms. McLean asked for a motion to approve the meeting minutes of April 13, 2022, as amended. So moved by Ms. Hampson, seconded by Ms. McLean. All in favor. Mr. Leao abstained.

3. 7:05P.M.: Public Hearing – 96 Park Street (Homes by Jeff & Sons) – ZBA-2022-03:

Ms. McLean opened the public hearing at 7:06P.M.

Mr. Leao read the Notice of Public hearing into the record as follows:

An application has been submitted by Homes by Jeff & Sons, Inc., requesting three (3) Zoning Board of Appeals **VARIANCES**, under M.G.L. Ch. 40A, Section 11, and Sections 9222, 4140 and 7521 of the Town of Pepperell Zoning Bylaw, which if granted, would allow the creation of three building lots having less than the required land area as follows: Proposed Lot 1 to contain 119,650 square feet where 167,120 square feet is required; Proposed Lot 2 to contain 52,189 square feet, where 80,000 square feet is required; Proposed Lot 3 to contain 113,521 square feet, where 167,120 square feet is required. The subject property is located at 96 Park Street, Pepperell, MA, as shown on Tax Map 9 as Parcel 134-0, in the Rural Residence District. A public hearing on this matter will be held remotely on May 18, 2022, at 7:05P.M. Please see the Calendar on the Town of Pepperell Homepage (posted 48 hours prior to the Public Hearing) for a link to access this remote meeting from your phone or computer. All interested parties are invited to remotely attend the public hearing and provide oral and/or written comments to the Zoning Board of Appeals. Written comments should be submitted on or before May 11, 2022. The application may be reviewed on the Town's website at: <https://town.pepperell.ma.us/478/Public-Hearings-and-Decisions>

Ms. McLean asked Ms. Lutzka if all fees associated with the application have been paid. Ms. Lutzka confirmed that they have been paid.

Ms. McLean invited the Applicant, Homes by Jeff & Sons, Inc., Pepperell, MA, to address the Board. Attorney Douglas Deschenes (Finneran & Nicholson, P.C., Westford, MA and Newburyport, MA) addressed the Board, on the Applicants behalf, and explained that he was representing the Applicant, Homes by Jeff & Sons (Jeff Chabot), who was also present. Mr. Deschenes stated that the Applicant's Engineer, Jack Visniewski (J.A. Visniewski, LLC, Pepperell, MA) was also present.

Attorney Deschenes gave the following presentation to the Board:

- The property consists of 5.7 acres and has an older/historic home located on it. The applicant purchased the property with a distinct plan to sub-divide the property into 2 lots and remove the existing home in the process, via an ANR from the Planning Board. Either two single family homes, or two duplexes (would need a Planning Board Special Permit for duplexes) could be built.

- There is an old home located on the property, which was condemned at the time the Applicant purchased it. The Applicant cleaned out the home to make it safe, and he decided he would like to potentially restore the home rather than take it down, as it has “good bones”, some historical aspects, and is one of the older homes in Town and worthy of preserving. From a business perspective, Mr. Chabot purchased the property with the plan to develop the two lots. He could restore the home and create one additional lot; however, in light of the cost of the land to begin with and the exorbitant cost necessary to restore the home, the development of one new home would not make the project economically feasible. The Applicant worked with Mr. Visniewski who came up with a plan where the original home could be restored and they could create two back lots on the property, however there is not enough total acreage in order to provide a conforming lot for the existing home and the two back lots, and that is the basis for the requested relief in the application. What it comes down to is an economically feasible project.
- Discussed variance criteria. He had to look at the unique situation they are faced with. The lot is rectangular shaped, 5.7 acres, but does not have an abundance of frontage. The existing structure is in the center of the lot, making it difficult to carve off lots with sufficient frontage. The unique shape of the lot and consideration of the house on the lot create a hardship of achieving the goal of preserving the existing house.
- As for a hardship financial, or otherwise, unless the Variances are granted, the Applicant will not be able to save the historic structure. It won't be that he would lose profit, as we believe the preservation of the house is a “break even and labor of love”, however there is a hardship in the sense that we would be unable to preserve the house, and I think that it is unquestionable that the recognition of the historic nature of the house provides a financial and societal benefit to the Town. While the Applicant may not experience a financial hardship if the existing home is not preserved, I believe the Town of Pepperell will have a hardship if this historic home isn't restored.
- Discussed density/impact on neighbors and said that they would not be increasing density or encroaching on abutters.
- Mr. Visniewski provided a screen share of the proposed plan, and Attorney Deschenes gave an overview of said proposed plan.
- Mr. Visniewski provided a screen share of the Google map of the subject property/area. Attorney Deschenes provided an overview of said map.
- Attorney Deschenes resumed his presentation of the site plan via screen share.

Ms. McLean said that the number of acres (5.7) cited on the original application plan turned out to be calculated at 6.06 acres per confirmation submitted by Mr. Visniewski.

Mr. Leao read Responses from the following Town Boards and Departments, etc., into the record (these items were also shown via screen share):

- Assessor's Office
- Fire Department
- Historical Commission
- Conservation Administrator (P. Terrasi)

Ms. McLean asked if the Board Members had any questions.

Mr. Leao said he would like more clarification on the Board of Assessor's letter, in which they gave no support of the relief requested. Why did this proposal turn in to two lots from three. Attorney Deschenes responded and said that he is wondering if the Board of Assessor's are misinterpreting. Attorney Deschenes said that Mr. Chabot did know, when he purchased the property for \$200,000, that he could make a reasonable profit by tearing down the existing house and building on the two lots. It was only after he purchased the property and had his plan in place that he reconsidered that maybe he could preserve the existing structure. Attorney Deschenes said that he doesn't expect that there would be a lot of profit in restoring and selling the existing house. Attorney Deschenes said that he does not understand the Assessor's concerns with the proposed project. Mr. Chabot is just trying to preserve the house. If the Assessor doesn't want to see the house preserved, we can certainly build our two houses.

Ms. McLean said that she read it a little differently. The Board needs to find, when granting any variance, that the requested relief in the application meets the criteria in the Zoning Bylaw, and part of that is finding that there is a substantial hardship, however when we look at that substantial hardship, it does not consider the personal financial status of an Applicant nor his profit, nor any of those types of avenues, it's strictly related to the land, the shape, topography, etc., and doesn't look at profit. She said didn't read the Assessor's letter the same way.

Mr. Leao said he is concerned that the Applicant has not responded to Mr. Karr's (Historical Commission) letter and offer to meet with the Applicant at the subject property, there has been no effort to meet with Mr. Karr. Why has that not happened. Mr. Leao asked if the Applicant has intention to preserve the property to the standards Mr. Karr is pointing to, or just basically going to make sure that the structure is still there, and there is not going to be any sort of impression of meeting historical guidelines from various Commissions. Ms. McLean said she had the same question.

Applicant, Jeff Chabot/Homes by Jeff & Sons, 7 Powhatan Road, addressed the Board as follows:

- He said that he was never asked to meet with Mr. Karr.
- He said that he has reached out to Mr. Karr several times and they talked about Mr. Karr writing a letter, as did the Daughters of the American Revolution (DAR).
- We opened the house up to the DAR and the Library. Mr. Parker was kind enough to donate a rifle that was used in the Bunker Hill Battle, a chest, and a few other things to the Library so that they can preserve them.
- The problem here is having me reach out to someone who will dictate what needs to be done to bring this back to a historical home, that unfortunately costs a small fortune.
- I went into this house to work with Mr. Parker. I spent a year cleaning the house, bringing specialists in. After that I couldn't see tearing something down that meant so much to the Town. I would like to re-side the house where it is damaged. Sand blast and paint doors. Replace windows that would be replicated, with Anderson windows, to replace what is there. The house needs to be gutted as it was condemned. It needs new insulation, plumbing, etc., to make it a purchasable home by today's standards. The Board of Assessor's is not aware of what things cost to fix them. There is a small fortune to be spent in that house to bring it back to its original condition. There isn't much profit, which we aren't after.
- My hardship, in my own mind, is tearing down a beautiful home that was built in 1822, and that's what I'm hoping the Town finds as a hardship and that they are going to help me bring it back to its original condition without spending a fortune and hiring specialists. I will sign whatever I need to show that it's not going to be changed, torn down, or anything else, but that's how far I'd like to go.

Ms. McLean asked if the Board Members had any questions. Both Mr. Leao and Ms. Hampson said they were all set for now.

Ms. McLean invited members of the audience/public to address the Board:

- Jenn Masserelli (100 Brookline Street) addressed the Board and said her land abuts the subject property. She asked if the proposed homes would be duplexes and are they planning on raising the existing house. Attorney Deschenes responded and said the Applicant is proposing, in the first instance, to take down the existing home and create 2 building lots that could have a single family home on each lot by right, or put up two duplexes, which would require a Special Permit from the Planning Board. He said tonight they are seeking variances to allow them to save the existing home and still get two new building lots of which his client has committed he would put new single family homes on each of the two new building lots.

Discussion ensued between Attorney Deschenes and Ms. Masserelli. Ms. Masserelli said she doesn't understand the financial hardship given the property values in Pepperell over the past year and asked if Mr. Chabot has previous experience restoring homes.

Attorney Deschenes responded and said they are not claiming that Mr. Chabot has a financial hardship, however in order to restore the home he cannot give up one of the building lots. If the variances are granted, it gives Mr. Chabot the opportunity to save the house. Ms. Masserelli said that she thought Mr. Parker's intention was to donate the land and it bothers her that something is going to be there, as people use that land to access the Keye's property.

- Jennifer Gingras (67 Townsend Street) addressed the Board and stated that she is also the Town Planner. She said that she had a question for the Applicant regarding the hardship. Attorney Deschenes made a comment that you are not claiming a financial hardship, so what is the hardship related to the variance criteria that you are stating. Attorney Deschenes responded and said if you look at the criteria under a variance there is actually a need to show two hardships, the first has to be a hardship owing to the soil, shape or topography of the lot and our position is the shape of the lot, being of good size, but reduced frontage, and having the house being located in the dead center of the lot provides for a shape hardship that doesn't allow us to carve this property up. The law says that you have to have another hardship, financial or otherwise, and for that hardship we are not claiming a financial hardship. The other hardship that the law asks us to show, is a hardship that without these variances, Mr. Chabot cannot restore that house. The project doesn't make sense without the variances. Restoring the house doesn't make sense without the variances. That is a hardship on Mr. Chabot, because he can't achieve a very noble goal; and it creates a hardship for the Town of Pepperell and it's citizens in that this historic home would be lost. There are other hardships associated with this scenario. Ms. Gingras said that she is familiar with the requirements for a variance. A substantial hardship has to be related to the soil conditions, shape or topography of the land or structures, and she doesn't see that the Applicant has that. You are stating that you do have a hardship because it's not feasible to keep the home if you have three lots. Do you have financial documentation showing what the cost would be to rehabilitate the existing home and what the profit would be, etc.? This seems to be where you are going with this, even though you said you are not claiming a financial hardship. Attorney Deschenes responded and said that in terms of finances they can take the house down create two lots and build two new homes, as Mr. Chabot has already intended to do. However he would very much like to restore this home, but he cannot just restore the home and break even on that and get one new lot. Makes no sense.
- Steven Cortese (101 Park Street) addressed the Board said he is an abutter across the street from the subject property. He asked if the plan was to build two duplexes if he raises the existing home. Ms. McLean responded and explained that they are just focusing on what was submitted to the ZBA. Attorney Deschenes responded and reiterated what the Applicant could do with the property, single-family home on proposed new lots by-right; or duplexes on proposed new lots by Special Permit by the Planning Board. Mr. Cortese responded and said that it is unfortunate that there is an insinuation

that the Applicant will build duplexes if the variances aren't approved. Ms. McLean agreed.

Ms. McLean spoke and said that the ZBA is looking at what's before the Board and that she needs to table any discussion regarding duplexes, as that is not what is before the Board.

- Casey Campetti (14A Cottage Street) addressed the Board and stated that she is also a member of the Historical Commission. There are a couple of things that she has seen in the application and has heard spoken to tonight that she agrees with and would be supportive on. She said that there are a couple of clarifications she wanted to make, particularly with regard to the importance of historic preservation and the difference between simply saving a structure and actually having an appropriate historic preservation project. On the hardship issue, she would encourage the Board to consider this structure as a resource, much in the same way we might consider other types of resources such as natural resources or wetlands. There are characteristics to old structures, the way that they are situated on lots, the nature of them as non-renewable resources that we have, that I would encourage be considered as a reason why there might be a hardship in this case, that is something that is in keeping with what we as a Town have stated over and over again, most recently in our Master Plan, as being relatively important to the residents of Pepperell. On the hardship issue I would encourage consideration on that issue. To the other point of the Historical Commission's letter/request for some sort of requirement for either a preservation easement and the involvement of some sort of historic professional she is a little concerned about the lack of financial statement, not necessarily for demonstrating the financial hardship component of this, but that it is not clear what is planned for the historic preservation. There have been some vague statements about how expensive it is to hire professionals that specialize in this type of work. As someone with 15 years of experience working in historic preservation and someone who meets the Secretary of Interior Standards for Archeology and has worked as a project manager for cultural resource projects for many years, I don't think that that is an abstract argument is a very useful one to make. There are lots of ways that appropriate work can be done to standards that are befitting a structure such as this that aren't necessarily overly expensive. If doing things the right way is too expensive, it gives me a bit of worry about what is actually planned. I certainly can only speak for myself personally, as a member of the Historical Commission, but as the primary author of the letter that was sent by the Commission, I think that there is certainly a great opportunity here. I would like to see the conditions that were presented by the Historical Commission's letter integrated into a Decision, should the Board see fit to grant the variances this evening. I believe that resources like this should be considered in these conversations and I wanted to offer my perspective on that.

- Bentley Herget (25 West Street) addressed the Board and stated that he is the Building Commissioner/Zoning Enforcement Officer for the Town of Pepperell. He said that he is concerned because the Applicant could have one reduced frontage lot which would meet the four acre minimum in the back land. We would be setting a really bad precedence, in my opinion, to go away from our zoning to give this variance, because then everybody is going to expect the same thing on other lots. As far as the old house, people buy and renovate houses all the time. As the Building Commissioner, I see this every day. It's done every day, people buy and sell houses, they are called "flippers."
- Ms. Masserelli spoke and said that she feels like the Applicant is holding this house hostage to get what he wants. She agreed with what Mr. Herget said in regards to setting a precedence. What is the Applicant's previous experience in restorations?
- The Applicant responded to Ms. Masserelli's question and Mr. Herget's comments and said that he has no historic preservation experience. As far as Mr. Herget's comments, he said that if we do this we set a new precedence. Everyone is overlooking the fact that he wants to save an old home for the Town. There were months and months of work cleaning this house and the house was condemned. There are a lot of people who buy homes and flip them, but that is not his intention. You can't just flip a house like this if you want to bring it back to its original shape.. He is afraid of going down the road of having a professional telling him what he can and can't do, it's very expensive. He believes that due to the financial condition this Country is in, that seeking grants would be a long and difficult road,. He knows how to get into a home like this, keep what's there, and restore it without changing or modernizing it, and that's what he intends to do. It's up to the Board whether to decide if they want to keep this old home in the town to preserve it because it was built in 1822.
- Ms. Gingras spoke and said that while she is sensitive to the preservation of historic homes, she really believes in it, there is nothing in MA General Law (M.G.L.) for the variance criteria that would justify this as a hardship. There is nothing unique about this lot that makes zoning unfair, so there is a possibility that you can preserve the home by right, and rehabilitate it and create another lot, that was also stated in your application that can still be done by right. There is nothing in M.G.L. that would allow for a hardship to be related to the retention of a historic home, in this case especially it is up to you to keep the historic home and rehabilitate it. It's not up to the Board or the Town. You are making that decision to tear it down or to rehabilitate it.

Ms. McLean said that looking at the layout of the lots in the area, and having seen historical buildings and lots, typically the houses are centered on the lot and close to the road or to the access, so that doesn't make it unique in that sense. I'm still trying to figure out how to meet the criteria, as Ms. Gingras said, I'm not finding that either. I don't see the uniqueness of the lot. It looks like any other lot with an old home on it. That's how the lots were set up.

Ms. McLean asked if there were any more comments.

Ms. Hampson said that she feels it is unfair of the Applicant, and the representative, to pin this on the Board that if the house gets torn down it is somehow our fault. We have no say over what happens to the house, we are only looking at granting three size variances for three different lots. What happens on those three lots has nothing to do with what this Board does, that is purely on the Applicant, and it is unfair for him to constantly be sitting there saying that if the house gets torn down, somehow its insinuating that it's the Zoning Board of Appeals fault, it's not. I don't see the need of a variance for any of them, considering it is by right to be built on to have two lots. The only need for the variance is for three lots, which has no outcome as we have absolutely no decision on the outcome of those three lots, just the actual construction on paper of those three.

Ms. McLean spoke in summary and said that she has lived in Pepperell a long time. She has seen a lot of stuff go on in the Town and as part of the Town it is every citizen's responsibility to care for the Town. Ms. Hampson said it correctly, it does not lie on the ZBA's shoulder's to save this house, or not. We are hearing this application as the evidence is presented and we must meet the variance criteria to make a valid decision that will stand up in Court. If Mr. Chabot has been in Town for a long time, maybe making a step out to meet with the Historical Commission to see what options there are for grants, I know there are still grants out there that are available.

Ms. McLean asked if there were any more public comments:

- Ms. Masserelli asked when the variance determination would be made. Ms. McLean explained the process that the Board needs to follow.

Ms. McLean asked for a motion to close the public portion of the hearing. So moved by Ms. Hampson, seconded by Mr. Leao. All in favor.

Board enters into deliberations:

Mr. Leao spoke and said that he doesn't see how the Board can justify granting the variances.

Ms. Hampson spoke and said that the Board doesn't have any legal right to grant the variances. The variances requested don't meet the criteria for a hardship.

Ms. McLean spoke and said that she does not see the hardship. The application does not meet the criteria in the Zoning Bylaw. She agrees with both of the other Board Members.

Ms. McLean asked for a motion to **deny** the three variances, as requested. So moved by Ms. Hampson, seconded by Mr. Leao. All in favor:

Roll Call Vote Taken as follows:

Ms. McLean: Aye
Mr. Leao Aye
Ms. Hampson: Aye

Ms. McLean asked for a motion to close the public hearing. So moved by Ms. Hampson, seconded by Mr. Leao. All in favor.

4. Old & New Business: *(Matters that may arise that the Chair didn't reasonably anticipate)*

- None

5. Future Meetings:

- June 15, 2022 – 7:00p.m.

6. Adjournment:

Ms. McLean asked for a motion to adjourn the meeting. So moved by Mr. Leao, seconded by Ms. Hampson. All in favor. Meeting adjourned at: 9:06p.m.

These Zoning Board of Appeals Meeting Minutes of May 18, 2022 were accepted/approved by the Board at their meeting on June 15, 2022.

Respectfully submitted by:

**Cheryl Lutzka,
Assistant to the Zoning Board of Appeals**

cc: Town Clerk
 Agenda Center
 Inspection Department/Building Commissioner
 ZBA Members (via email)
 ZBA Application File: (ZBA-2022-03): 96 Park Street (Homes by Jeff & Sons)
 ZBA Minutes file