

Zoning Board of Appeals Application

For Town Clerk's Use Only	
Filing Fee Received:	
Administrative Appeal:	\$115.00
Special Permit:	\$115.00
Non-Conforming Use Special Permit:	\$115.00
Variance:	\$115.00
Modification to Existing Permit:	\$115.00
40-B Comprehensive Permit:	\$575.00*
*plus per unit review fees and technical/review deposit, please see attachment for details of fees required.	

Application Type: Administrative Appeal Variance
 Special Permit Modification to Existing Permit
 Non-Conforming Use Special Permit 40-B Comprehensive Permit*

Name of Applicant(s): John Lynch

Relationship of Applicant to the subject property:
 Owner *Purchaser under agreement with owner Appellant *Other

Address of Applicant(s): 57 Hollis St Pepperell, MA 01463

P.O. Box if applicable: _____

Subject Property Address: 222 South Rd Pepperell MA

Zoning District: RURAL RES Assessors Map and Parcel No.: 32-31-0

State Nature of the action or relief requested:
Applicant request an administrative appeal from the determination of the Buildings Commission in his letter dated, ~~January 27, 2022~~ ^{MARCH 17, 2022}, that the subjects property is not a building lot.

Please list all applicable section(s) of the Town of Pepperell Zoning Bylaw:
9.2.2.3

Letter/correspondence from the Inspector of Buildings/Zoning Enforcement Officer regarding this matter must be attached. Please see ZBA Information Packet for required attachments to application.

I/We hereby request a hearing before the Zoning Board of Appeals with reference to the above noted request. I/We agree to pay prior to the public hearing all costs of the certified mailing and the advertising of the notice of public hearing and understand that it is my/our obligation to establish at the public hearing, the factual and legal basis for the relief requested. This request is accompanied by all the required submissions and I/we have reviewed the Rules and Regulations of the Zoning Board of Appeals as most recently amended.

John Lynch John Lynch 433-9725

Applicant Signature/Date Print Name Day phone Eve phone

*Owner's Acknowledgement
 As the owner of subject property, I concur with the application, and if granted, authorize it to be recorded in owner's name and, if land is registered, noted on owner's certificate of title.

Owner's Signature(s)/Date ZBA-2022-04 April 14 2022
 222 South Rd. (John Lynch)
 ADMINISTRATIVE APPEAL

RECEIVED
 APR 14 2022
 Town of Pepperell
 Office of the Town Clerk

In 1973 I purchased property known as the Hallet Property. I needed 4 lots on South Rd. (119) to make the property work for me. The first plans drawn up looked great until we surveyed the lots one by one. There were two house lots, one on lot D and one on lot C. we found out there were out buildings to close to the lot line on D. We tried several different layouts. Using one as a hammer head lot plus 3 regular lots ment removing a stone wall, as a lot line came through the middle. In a meeting with the Planning board and Historical members they did not like it. Agreed on the present layout and go for a variance for lot B 40A10.

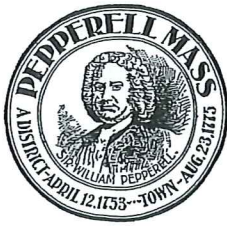
I applied for a hearing with the Appeals Board, my lawyer and myself were completely surprised as the chairman got up and left (no explanation). I was disappointed and completely confused. We had our meeting and my lawyer asked what just happened. I lost without knowing what went on.

I guess the problem being, I was in town services over 40 years, as part of the Board of Selectman I appointed the Building Inspector, Town Counsel and several members of miscellaneous boards including the Board of Appeals. I'm sure some people were happy and some people not so happy with our decision.

My main concern is the land hasn't changed in over 45 years. I had two approvals of intent to build and rejection from Appeals Board on a parcel of land that is larger than well over 500 lots in Pepperell. None of these have over 100 foot frontage. With this plan I have kept the stone wall, and met all side, front and back lot requirements.

I kept this land for retirement and I consider this to be an extreme hardship as there is no way my wife will be able to stay in our home as my county retirement ends when I die.

John Lynch



Town of Pepperell
INSPECTOR OF BUILDINGS
1 Main Street
Pepperell, Massachusetts 01463-1644
(978) 433-0329 Fax (978) 433-0338

March 17, 2022

John W. Lynch
57 Hollis Streets
Pepperell, MA 01463

Dear Mr. Lynch,

I have reviewed your Notice of Intent regarding your property at 222 South Road. The property is located in the Rural Residence District.

A plan dated June 7, 1973, and endorsed by the Planning Board on June 11, 1973, shows four lots on South Road identified as Lots A, B, C and D. Lots A, B and C have 150 feet of frontage and Lot D has 186 feet of frontage and all complied with the applicable frontage requirements under zoning at the time. On September 17, 1973, the Planning Board endorsed a plan dated September 8, 1973 that identified Lots C and D. Lot C has 150 feet of frontage and Lot D now has 245.5 feet of frontage. Both complied with the applicable frontage of 150 feet at the time. Lots A and B were not shown on this plan.

On September 27, 1973, you transferred Lot C as shown on Plan 1226, dated September 8, 1973 to Stephen Ross and Sandra Ross. On December 7, 1973, you transferred Lot A as shown on Plan 706, dated June 7, 1973, to Lewis Lunn. Research shows that the effect of the two lot transfers and realignment of lot lines in 1973 reduced the frontage of 222 South Road (aka "Lot B"), as shown on Plan 706, from the then compliant 150 feet of frontage to the present 87.68 feet of frontage and reduced the lot area from the existing 44,250 square feet.

The plan of land prepared by New England Engineering on June 8, 2021 and submitted with your Notice of Intent shows the property has 24,258 square feet of land area.

The current frontage requirement in the Rural Residence district is 200 feet. A buildable lot also needs to have 80,000 square feet of area with 30,000 contiguous dry area. In the alternative, a reduced frontage lot needs 40 feet of frontage, 3.84 acres of land (167120 square feet) and 30,000 contiguous dry. The property does not meet any of these requirements.

My decision is that 222 South Road, former Lot B, is not protected under MGL Chapter 40A section because it was changed from having the compliant frontage and land area to being noncompliant due to lot transfers and the realignment of lot lines.

You filed an application with the Zoning Board of Appeals in 2018 requesting a variance to allow a reduction in the minimum lot area for a rear lot or in the alternative, a variance in the lot area and frontage for a full frontage lot. The Board of Appeals denied your request.

Two years have passed since your application was heard by the Zoning Board of Appeals. You have the right to appeal my decision with the Zoning Board of Appeals under Section 9223 of the zoning by-laws that this not a buildable lot. An appeal must be filed within thirty (30) days.

Respectfully,



Bentley Herget
Building Inspector/Zoning Officer

CC: Zoning Board of Appeals
Assessor's Office
File

Recd 10/27/15
SHS

TOWN OF PEPPERELL
NOTICE OF INTENT

ZONING DISTRICT: Rural MAP/PARCEL: 32-31 DATE: Aug 2015

APPLICANT: JOHN W. LYNCH
STREET: 57 Hollis Street
TOWN: Pepperell, MA
PHONE NUMBER: 978-433-9725

LOCATION OF PROPOSED PROJECT: 222 South Road
MAILING ADDRESS: Pepperell, MA
NAME OF PROPERTY OWNER: John W. Lynch
PRIOR HOME OR BUSINESS USE: undeveloped
CURRENT HOME OR BUSINESS USE: undeveloped
PROPOSED NEW USE: single family home
IS THE BUILDING CONNECTED TO TOWN SEWER NONE SEPTIC SYSTEM Planned
WILL THE NEW USE REQUIRE ANY CHANGES TO THE EXISTING STRUCTURE? Yes-the land
COMPLETE DESCRIPTION OF PROPOSED USE:
Construction of Single Family Home
Foundation (footprint)
See Attached plan

BUSINESS USE ONLY

WILL THE BUILDING CONTAIN HAZARDOUS OR COMBUSTIBLE MATERIALS? _____
DOES THE BUILDING HAVE A FIRE SUPPRESSION SYSTEM? _____
DOES THE BUILDING HAVE A FIRE DETECTION SYSTEM? _____
ARE THERE FLOOR DRAINS IN THE BUILDING? _____

SIGNATURE: ✓ John W. Lynch
TELEPHONE: 978-433-9725

APPROVED: 4 NOT APPROVED: _____ DATE: 11/3/15
INSPECTOR OF BUILDINGS: [Signature]

IN ORDER FOR US TO PROCESS YOUR APPLICATION, THE FOLLOWING INFORMATION IS REQUIRED:

1. Floor plan showing how the home or business is going to be changed.
2. Certified plot plan showing where you are providing adequate parking.
3. All new signs require a sign permit.
4. Should your application be denied, you may file an appeal with the Zoning Board of Appeals
5. A Business Certificate must be filed in the office of the Town Clerk (Business Use)

OPINION LETTER
222 South Road
Pepperell. MA

THIS LETTER IS WRITTEN ON BEHALF of John W. Lynch in order to express the legal opinion that the lot known and referred to as # 222 South Road (Route 119) Is a good and valid building lot under the grandfathering provisions of MGL Ch. 40A. and Pepperell Planning Board approvals. It is also based on plans and deeds referred to below as well as the affidavit of Mr. Lynch attached hereto and incorporated by reference.

Mr. Lynch purchased and acquired title to the subject lot as a part of a larger parcel. The transfer took place on September 27, 1973 (Book 12533, Page 334). Prior to the amendment of zoning bylaws by the Town of Pepperell which took place on February 11, 1974, the larger subject parcel was divided into lots by a subdivision plan dated June 7, 1973 by Merrill A. Brown, Surveyor. That plan was duly approved and accepted by the Pepperell Planning Board. The plan, with the necessary endorsement, was recorded at Middlesex South District Registry of Deeds as Number 706, Plan Year 1973.

The plan referred to above divided the entire parcel into four (4) frontage lots along South Road and five (5) larger lots along a way known as Lakin Street. A portion of these larger lots was located in the Town of Groton. Because the South Road lot lines, as previously approved, were drawn close to existing buildings on South Road, a new plan was developed altering the lines of the approved lots. This change resulted in the movement of the westerly lines of two lots. The larger lots to the rear did not change. The effective result of this new plan, approved on September 17, 1973 and recorded on October 3, 1973 at Book 12533, Page 260 (No. 1226, Plan Year 1973), was to alter the configuration of the four lots located on South Road. However, as required by the planning board, the total number or lot area of those lots was not changed. That was a time still before adoption of the Pepperell Zoning. Further, MGL, Ch. 41, Section 81FF affords protection of law to subdivision plans if they had received "the approval of the planning board ...". When application under this section is recognized, each parcel is entitled to be treated as one protected lot. Clows v. Planning Board of Middleton, 12 Mass. App. Ct. 129 (1981)

The lot has not been changed or altered since the time of its creation as described above. Since the planning board had properly approved the subject recorded plans, the lot is entitled to grandfather protection under Section 81FF of the Subdivision Control Law and MGL Ch. 40A, S6 even though the Town of Pepperell had adopted its own bylaws in 1974.

The "Protection Freeze" between 1965 and 1975 was established as being seven (7) years. That period was lowered to five (5) years in 1975. The result is that the approved lots received an automatic seven years of protection from changed or new zoning regulations. The 1975 rewrite of the Zoning Act changed separate lot protection for plans not previously endorsed by the planning board. As noted above, this lot was created under planning board assent.

During the period of protection Mr. John W. Lynch sold and transferred title to all lots surrounding and contiguous to the subject lot. The two side lots were sold in the year 1973. The subject lot was no longer held in common ownership with any adjoining land and it is a lot for single family residential use.

JOHN J. LORDEN
Attorney at Law
447 Nashua Road
Groton, MA 01450



TOWN OF PEPPERELL

Board of Assessors

To: Zoning Board of Appeals
From: Frank Schembari, Administrative Assessor *NSB*
Date: January 20, 2022
Re: Application submitted for the property located at 222 South Rd in the ownership of John W Lynch. The property is shown on Tax Map 32 as Parcel 31-0, and is further described by a Deed recorded at the Middlesex South District Registry of Deeds in Book 12441, Page 503.

Parties in Interest: Zoning Board of Appeals – 300' Abutters

<u>Owner & Mailing Address</u>	<u>Map & Lot</u>
JOHN W LYNCH 57 HOLLIS ST PEPPERELL, MA 01463	32-31-0
THOMAS P CAPPUCCI DEBORAH A CAPPUCCI 53 LAKIN ST PEPPERELL, MA 01463	32-28-0
SANDRA J BUSS 224 SOUTH RD PEPPERELL, MA 01463	32-29-0
ROBERT M RICH TRUSTEE MILDRED P RICH TRUSTEE MORGAN HILL REALTY TRUST 225 SOUTH RD PEPPERELL, MA 01463	32-30-0
JOSHUA A MATTHEWS JULIE A MATTHEWS 220 SOUTH RD PEPPERELL, MA 01463	32-31-A
LEONARDO A CONCEICAO ANA L MONCAO-CONCEICAO 222.5 SOUTH RD PEPPERELL, MA 01463	32-31-B

Parties in Interest: Zoning Board of Appeals – 300' Abutters (Continued)

STEVEN D BOUTIN 32-32-0
VICTORIA STUCCHI
221 SOUTH RD
PEPPERELL, MA 01463

CONSTANCE PARE LE 36-1-0
MICHAEL R PARE
218 SOUTH RD
PEPPERELL, MA 01463

FIRST BAPTIST CHURCH 36-106-0
365 MAIN ST
GROTON, MA 01450

BRIAN J MILLER 36-107-0
KATHERINE E MILLER
930 TOWNSEND RD
GROTON, MA 01450

MICHAEL F KILROY 36-105-0
47 LAKIN ST
PEPPERELL, MA 01463

MATTHEW S. MARRO ENVIRONMENTAL CONSULTING

45 Lisa Drive
Leominster, Ma
Phone (978) 314-7858
Fax (888) 435-5999
www.marro-consulting.com

Mr Ron Koivu

Harbor Classic Homes

493 Lancaster St #1

Leominster, MA 01453

Dear Sir,

On December 3, 2021, Matthew S. Marro Environmental Consulting performed an evaluation at 222 South Rd, Pepperell, MA accordance with MA DEP policy 95-1. The results of the evaluation are outlined below

Summary:

The lot in question is a 0.56 acre undeveloped residential lot.¹ The lot was inspected for the presence of wetland resource areas. Noted on the lot was the absence of any water bodies, such as streams and ponded areas. The vegetation on site was typical of thinly wooded upland areas.

I did, however, note a wetland on the abutting lot that was a fair distance away from the subject lot. I enclose a basic representation of where I would interpret that wetland area to be located with respect to the subject lot. At this point, I do not see any work proposed to develop the lot that would require a filing with the Conservation Commission.

Please feel free to call on me with ay questions

Sincerely,



¹ As per mass GIS 2021

PLAN OF LAND
FOR
PEPPERELL, MASSACHUSETTS
JOHN W. LYNCH

NEW ENGLAND ENGINEERING

601 SHEA STREET
FITCHBURG, MA 01420
888-633-6412
www.NeeGLC.com



OWNER:
JOHN W. LYNCH
57 HOLLIS ST.
PEPPERELL, MA 01463

REFERENCES:
PLAN NO. END - 706 OF 1973 (LOCUS)
PLAN BOOK 12454
PLAN NO. 644
PLAN BOOK 12344
PLAN NO. END - 247 OF 1976
PLAN BOOK 12955
PLAN NO. 334
PLAN BOOK 12553

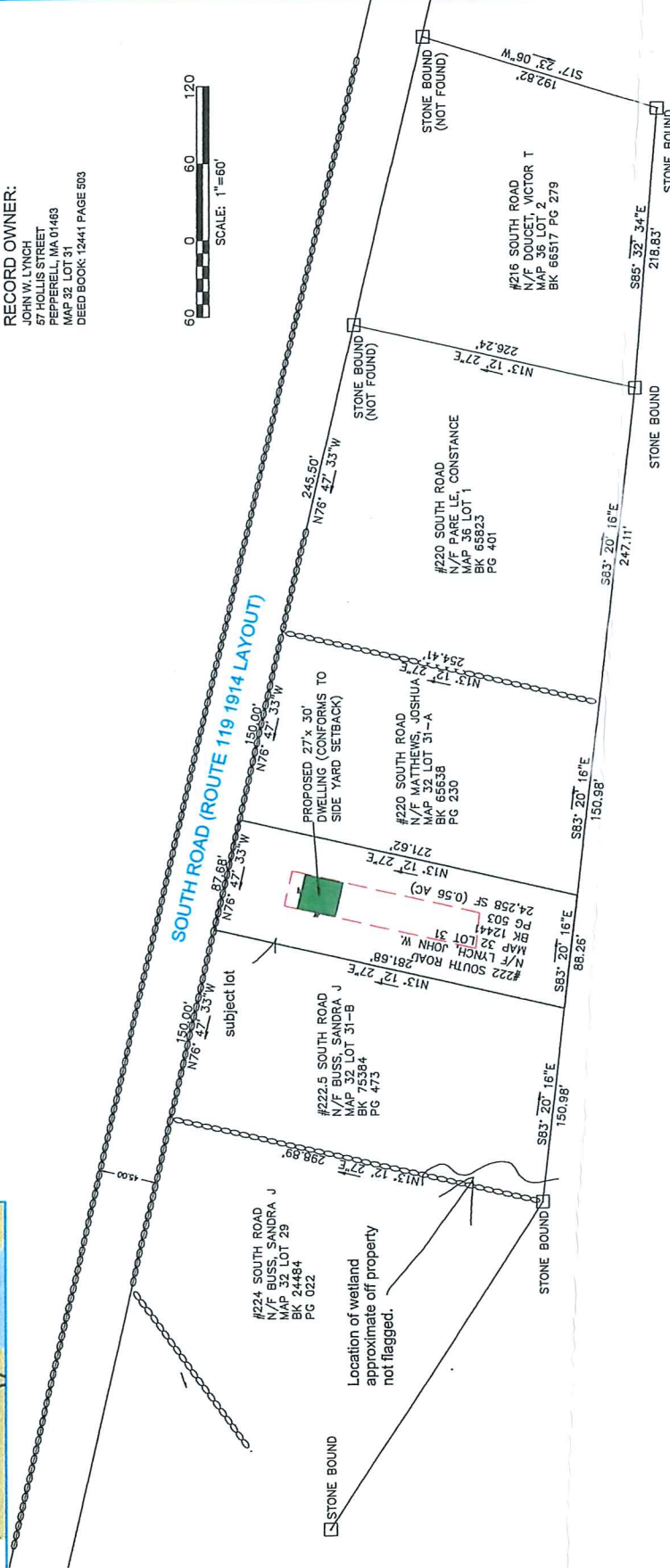
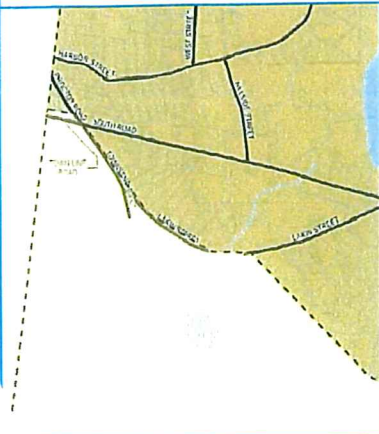
DEED 24484 PAGE 022 (224 SOUTH)
DEED 66517 (216 SOUTH)
PAGE 279 (222.5 SOUTH RD)
DEED 76346 PAGE 473 (222.5 SOUTH RD)
DEED 66538 PAGE 230 (220 SOUTH RD)
PAGE 473 (219 SOUTH RD)
DEED 66563 PAGE 448 (219 SOUTH RD)
DEED 13577 PAGE 041 (226 SOUTH RD)

ZONING:
RR
ZONE: 80,000 SF
AREA: 200 FEET
FRONTAGE: 50 FEET
FRONT YARD: 30 FEET
SIDE YARD: 75 FEET
REAR YARD: 75 FEET

RECORD OWNER:
JOHN W. LYNCH
57 HOLLIS STREET
PEPPERELL, MA 01463
MAP 32 LOT 31
DEED BOOK: 12441 PAGE 503



LOCUS MAP
(Zoning Map)
Scale: 1"=1000±



CHAPTER 380, ACTS OF 1966
AMENDING CHAPTER 40, SECTION 81-X

I HEREBY CERTIFY THAT THESE PLANS WERE PREPARED BY ME AND/OR UNDER MY DIRECTION. THESE PLANS HAVE BEEN DESIGNED IN COMPLIANCE WITH ALL APPLICABLE ZONING AND SUBDIVISION REGULATIONS.

I CERTIFY THAT THIS SURVEY AND PLAN WERE PREPARED IN ACCORDANCE WITH THE PROCEDURAL AND TECHNICAL STANDARDS FOR THE PRACTICE OF LAND SURVEYING IN THE COMMONWEALTH OF MASSACHUSETTS.

I CERTIFY THAT THIS PLAN CONFORMS TO THE RULES AND REGULATIONS OF THE REGISTRY OF DEEDS.



BRUCE K. KINSMAN, P.L.S. 34617 DATE: 6/8/2021

Variance Request Section 7521: Subject lot is shown as Assessors' Parcel 32-31-0 and consists 0.589 acres. The required lot area in the Rural District is 2 Acres with an additional 2 acres for under Section 7521. Therefore a variance is requested to reduce lot area at 222 South Road to 0.589 acres.

Memorandum

The subject property was originally shown on a plan dated June 7, 1973 as Lot B. The June 7, 1973 plan created 4 lots identified as Lot A, Lot B, Lot C, and Lot D all owned by **John W. Lynch, Jr.** by deed of Hallet dated **May 25, 1973**.

Lot A December 5, 1973 Conveyed to Lewis L. Lunn as vacant land
June 6,, 1974 Conveyed to C.D. C. Realty Trust, Charles Lorden, III, Trustee O-
2 family home constructed on Lot A.

Lot B Subject Property; vacant land

Second Plan: September 8, 1973 showing just Lots C and D.

Lot C In 1973 parcel was site of a home and detached garage (eventually removed to build the new home currently on site.

September 27, 1973 Conveyed to Stephen J. Ross and Sandra Ross

Lot D As of the date of the June 7, 1973 plan, Lot D had an existing home on the lot.
The September 8, 1973 plan increased the lot area from 45,570 square feet to 61,055 square feet and increased the frontage from 186 feet to 245.5 feet.

On September 17, 1973 a plan of Lot C and a reconfigured Lot D was endorsed by the Planning Board.

The effect of the September 17, 1973 plan was that the frontage for Lot B became ~~186~~ ^{87.68} feet as it remains today.

Lot B is 222 South Road and is shown as Assessor's Parcel 32-31-0 and has an assessed value of \$74,500.00 and it has no other practical/reasonable use than for residential purposes due to its location in the Rural Residence District and the use of the surrounding properties.



PART I ADMINISTRATION OF THE GOVERNMENT
(Chapters 1 through 182)

TITLE VII CITIES, TOWNS AND DISTRICTS

CHAPTER 40A ZONING

Section 6 Existing structures, uses, or permits; certain subdivision plans; application of chapter

Section 6. Except as hereinafter provided, a zoning ordinance or by-law shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued before the first publication of notice of the public hearing on such ordinance or by-law required by section five, but shall apply to any change or substantial extension of such use, to a building or special permit issued after the first notice of said public hearing, to any reconstruction, extension or structural change of such structure and to any alteration of a structure begun after the first notice of said public hearing to provide for its use for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent except where alteration, reconstruction, extension or structural change to a single or two-family residential structure does not increase the nonconforming nature of said structure. Pre-existing nonconforming structures or uses may be extended or altered, provided, that no such extension or alteration shall be permitted unless there is a finding by the permit granting authority or by the special permit granting authority designated by ordinance or by-law that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. This section shall not apply to establishments which display live nudity for their patrons, as defined in section nine A, adult bookstores, adult motion picture theaters, adult paraphernalia shops, or adult video stores subject to the provisions of section nine A.

A zoning ordinance or by-law shall provide that construction or operations under a building or special permit shall conform to any subsequent amendment of the ordinance or by-law unless the use or construction is commenced within a period of not more than six months after the issuance of the permit and in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

A zoning ordinance or by-law may define and regulate nonconforming uses and structures abandoned or not used for a period of two years or more.

Any increase in area, frontage, width, yard, or depth requirements of a zoning ordinance or by-law shall not apply to a lot for single and two-family residential use which at the time of recording or endorsement, whichever occurs sooner was not held in common ownership with any adjoining land, conformed to then existing requirements and had less than the proposed

Don't know

requirement but at least five thousand square feet of area and fifty feet of frontage. Any increase in area, frontage, width, yard or depth requirement of a zoning ordinance or by-law shall not apply for a period of five years from its effective date or for five years after January first, nineteen hundred and seventy-six, whichever is later, to a lot for single and two family residential use, provided the plan for such lot was recorded or endorsed and such lot was held in common ownership with any adjoining land and conformed to the existing zoning requirements as of January first, nineteen hundred and seventy-six, and had less area, frontage, width, yard or depth requirements than the newly effective zoning requirements but contained at least seven thousand five hundred square feet of area and seventy-five feet of frontage, and provided that said five year period does not commence prior to January first, nineteen hundred and seventy-six, and provided further that the provisions of this sentence shall not apply to more than three of such adjoining lots held in common ownership. The provisions of this paragraph shall not be construed to prohibit a lot being built upon, if at the time of the building, building upon such lot is not prohibited by the zoning ordinances or by-laws in effect in a city or town.

If a definitive plan, or a preliminary plan followed within seven months by a definitive plan, is submitted to a planning board for approval under the subdivision control law, and written notice of such submission has been given to the city or town clerk before the effective date of ordinance or by-law, the land shown on such plan shall be governed by the applicable provisions of the zoning ordinance or by-law, if any, in effect at the time of the first such submission while such plan or plans are being processed under the subdivision control law, and, if such definitive plan or an amendment thereof is finally approved, for eight years from the date of the endorsement of such approval, except in the case where such plan was submitted or submitted and approved before January first, nineteen hundred and seventy-six, for seven years from the date of the endorsement of such approval. Whether such period is eight years or seven years, it shall be extended by a period equal to the time which a city or town imposes or has imposed upon it by a state, a federal agency or a court, a moratorium on construction, the issuance of permits or utility connections.

When a plan referred to in section eighty-one P of chapter forty-one has been submitted to a planning board and written notice of such submission has been given to the city or town clerk, the use of the land shown on such plan shall be governed by applicable provisions of the zoning ordinance or by-law in effect at the time of the submission of such plan while such plan is being processed under the subdivision control law including the time required to pursue or await the determination of an appeal referred to in said section, and for a period of three years from the date of endorsement by the planning board that approval under the subdivision control law is not required, or words of similar import.

Disapproval of a plan shall not serve to terminate any rights which shall have accrued under the provisions of this section, provided an appeal from the decision disapproving said plan is

made under applicable provisions of law. Such appeal shall stay, pending either (1) the conclusion of voluntary mediation proceedings and the filing of a written agreement for judgment or stipulation of dismissal, or (2) the entry of an order or decree of a court of final jurisdiction, the applicability to land shown on said plan of the provisions of any zoning ordinance or by-law which became effective after the date of submission of the plan first submitted, together with time required to comply with any such agreement or with the terms of any order or decree of the court.

In the event that any lot shown on a plan endorsed by the planning board is the subject matter of any appeal or any litigation, the exemptive provisions of this section shall be extended for a period equal to that from the date of filing of said appeal or the commencement of litigation, whichever is earlier, to the date of final disposition thereof, provided final adjudication is in favor of the owner of said lot.

The record owner of the land shall have the right, at any time, by an instrument duly recorded in the registry of deeds for the district in which the land lies, to waive the provisions of this section, in which case the ordinance or by-law then or thereafter in effect shall apply. The submission of an amended plan or of a further subdivision of all or part of the land shall not constitute such a waiver, nor shall it have the effect of further extending the applicability of the ordinance or by-law that was extended by the original submission, but, if accompanied by the waiver described above, shall have the effect of extending, but only to extent aforesaid, the ordinance or by-law made then applicable by such waiver.

John Lynch, property owner since 1973, proposed to construct a ~~27~~ by 30 single family residence. The proposed location of the house is over 50' from the road. The set back on the west sideline will be 30' as will the east sideline set back. The setback on the rear will exceed 75'.

The two story structure will contain 1620 square feet of floor space and contain no more than 3 bedrooms.

ISSUE

The current zoning dimensional controls for the rural residence district require lots size of 80,000 square feet and frontage of 200 feet. Consequently, under the Zoning By-Law there is no place to build anything on the lot as no dwelling can comply with the dimensional controls.

In light of this the Applicant has filed a Variance seeking relief from both the lots size and frontage requirements.

The requirement that the variance not be contrary to the public interest relates to the requirement that it be consistent with the spirit of the ordinance and as the Supreme Court has instructed, the Zoning Board must determine whether granting the variance would "unduly and to a marked degree conflict with the ordinance such that it violates the ordinance's basic zoning objectives". The Court has recognized two tests for determining whether granting a variance would violate the ordinance's basic objectives. One is to determine whether the variance would "alter the essential character of the neighborhood". The next is to determine whether granting the variance would "threaten the public health, safety, or welfare".

Granting the requested Variances would not "unduly and to a marked degree" conflict with the Town of Pepperell Zoning By-Law such that it "violates that ordinance's basic zoning objectives"

Section 1000 specifically provides that the regulations contained in the By-Law are "enacted to promote the general welfare of the Town of Pepperell, to protect the health and safety of its inhabitants, to encourage the most appropriate use of land throughout the town". At Section 2100 the By-Law divides the town into several districts in order to group similar uses within a district and at Section 4140 adopts standards for minimum lot size, frontage, and setback within the designated districts.

At Section 4140 The Rural Residence District establishes a minimum lot size of 80,000 square feet and minimum frontage of 200 feet.

The requirements of Section 4140 are not unreasonable on their face for properties that can comply with the requirements. But when applied to the subject property, which has remained unchanged almost half a century and does not meet the requirements but is similar in size to lots in the district, the requirements may be challenged as unreasonable.

A lesser showing of hardship is often appropriate for dimensional variances because they usually do not change the character of the zoning district or endanger nearby properties with an inconsistent land use. See DiGiovanni v. Bd. of Appeals of Rockport, 19 Mass. App. Ct. 339 (1984)

"[s]ubstantial hardship, financial or otherwise" is found where under the unique circumstances it is not "economically feasible or likely that the locus would be developed in the future for a use permitted by the zoning ordinance or bylaw." Cavanaugh v. DiFlumera, 9 Mass. App. Ct. 396, 402 (1980)

Grant of the Variance Will Not Substantially Harm Public Good or Substantially Derogate from Bylaw's Purpose

Allowing the subject property to be a buildable lot for a single family home will be harmonious with the current residential use evident on the westerly end of South Road, and in the rural district generally. Use of the subject property as a single family building lot does not substantially detract for the zoning plan for the district. The proposed use of the locus will not reduce the value of any property within the zoning district and no significant increase in traffic would result. As all abutting uses are residential, the best use of the subject property is residential.

Owing to Circumstances Relating to the Soil Conditions, Shape, or Topography of Such Land or Structures and Especially Affecting Such Land or Structures But Not Affecting Generally the Zoning District in Which it is Located

The subject property was configured as a lot 45 years ago and its shape has not changed in the last 45 years. The subject property can be used as a building lot but for its shape. The lot as shaped has created a lot deficient in area (if the Board will recognize the Lot as a Rear Lot). The Applicant/owner owns no land abutting Lot B and for those reasons seeks a variance. The plight of the premises in question is unique in that the premises cannot be reasonably put to a conforming use.

In conclusion, a Variance to Section 4140. Table of Dimensional Requirements for a reduction of the required lot minimum area from 80,000 doubled for a Rear Lot to the 0.56 acres is requested and if the Board is not inclined to agree to recognize the subject parcel as a Rear Lot then a Variance to the 200' frontage requirement to allow 87.68' of frontage.

Granting the variance will not alter the essential character of the neighborhood

Many lots shown on Assessor's Map 32 do not comply with the current requirements of Section 4140 therefore it is clear that the Applicant's proposal will not alter the essential character of the neighborhood.

Granting the variance will not threaten the public health, safety or welfare.

A state and town approved septic system will be required to build the house. A well meeting applicable water quality standard will be required. A three bedroom home will not have significant or adverse effect on traffic in the area.

Granting the variance would do substantial justice

The loss to the Applicant caused by the strict application of the By-law not outweighed by a gain the public is an injustice. Denying the variance will render the property unbuildable and of little use to the Applicant and will greatly diminish its value. The harm to the Applicant is not outweighed by the benefit to the general public. The proposed use is completely consistent with the neighborhood as developed. There is not a significant benefit to the public in preventing the construction of a small 27 x 30 home on the property.

Granting the variance will not cause a diminution of the value of other properties.

The Applicant's proposed use if consistent with the development of the neighborhood, the residence will be build according to all applicable codes. The home to be constructed will not detract from the appearance of the neighborhood nor add significantly to traffic in the neighborhood.

Literal Enforcement of the Provisions of the By-law would result in unnecessary hardship.

As stated, this property is located in the Rural Residence District which currently requires 80,000 square feet minimum lot area. There are many lots in the district that do not meet the standard. This lot consists of 24,368 square feet and therefore cannot meet the standard for the district. In order to build a residence, variances are necessary, not just convenient.

The primary purpose of the By-law is to create areas that share common attributes unfortunately the subject property does not match up with the minimum lot area or frontage. Granting the variances for these dimensions will allow the reasonable use of the property consistent with the development in the area.

An unnecessary hardship exists, owing to the conditions of this property that distinguish it from properties in the area as this property cannot be reasonably used in strict conformance with the By-law. Due to the size of the lot, consistent with many lots in the district, a strict application of the frontage and lot size requirements would prevent the construction of any dwelling on the property and without the variances requested, the Applicant/Owner is left with no reasonable use of the property.

For all of these reasons, the Application for Variances should be granted.

