



Town of Pepperell
BOARD OF APPEALS
One Main Street
Pepperell, Massachusetts 01463

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Town of Pepperell
Office of the Town Clerk

NOTICE OF DECISION

ZBA File No: 2022-03

Notice is hereby given that Zoning Board of Appeals Variances have been **denied**:

To: Homes by Jeff and Sons Incorporated

For: 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, to 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

Property Located at: 96 Park Street, Pepperell, MA, as shown on Assessor's Tax Map 14 as Parcel 119-0 134-0 ce

Owned by: Homes by Jeff and Sons, Incorporated

This Decision of the Zoning Board of Appeals is on file with the papers on this matter in the office of the Town Clerk. **Certified this the 14th day of June, 2022:**

Zoning Board of Appeals: 
Cheryl Luteza, ZBA Assistant

RIGHT TO APPEAL:

Appeals to this Decision are to the Court pursuant to the M.G.L., Chapter 40A, Section 17, and must be taken within twenty (20) days of the filing of this Decision with the Town Clerk.

TOWN CLERK CERTIFICATION:

I certify no appeal has been received within twenty (20) days of the filing of this notice in my office, or that if an appeal has been filed it has been dismissed or denied.

Brynn Durno, Town Clerk



 **COPY**

Town of Pepperell
BOARD OF APPEALS
One Main Street
Pepperell, Massachusetts 01463
(978) 650-1623

DECISION

APPLICATION #: 2022-03

APPLICANT: Homes by Jeff and Sons

OWNER OF PROPERTY: Homes by Jeff and Sons Incorporated

LOCATION OF PROPERTY: 96 Park Street, Pepperell, MA

RELIEF REQUESTED: Variances

DECISION OF BOARD: Denied

DATE OF DECISION: May 18, 2022

STATEMENT OF FACTS:

Application submitted to Town Clerk: March 23, 2022

Cited Section(s) of the Zoning Chapter of the Code of the Town of Pepperell and any other applicable Zoning Law: 9222, 4140 and 7521

Application copied to the Assessor's Office, Board of Health, Communications Director, Conservation Commission, DPW Business Manager, DPW Director/Town Engineer, Fire Department, Highway Department, Historical Commission, Inspector of Buildings, Planning Board, Police Department, Sewer Department, Town Counsel, Treasurer/Collector, and Water Department: March 29, 2022

Dates of published Notice of Public Hearing: April 29, 2022, and May 6, 2022, issues of the "Nashoba Valley Voice".

Notification of parties in Interest: Mailed Notice of Public Hearing to abutters and to the abutting towns of Groton, MA; Townsend, MA; Dunstable, MA; Brookline, NH; Hollis, NH; and Nashua, NH on April 26, 2022

Date of Remote Public Hearing: May 18, 2022

Board of Appeals Members present at the remote Public Hearing of May 18, 2022:

Annette McLean, Alan Leao, Jr., and Heather Hampson. Also present, Cheryl Lutzca (Assistant to Zoning Board of Appeals).

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Town of Pepperell ZBA Decision No: 2022-03-Variances: 96 Park Street - DENIED

CONTENTS OF TOTAL APPLICATION:

Exhibit A:	Certified List of Abutters – March 3, 2022
Exhibit B:	New Application Memo to ZBA Members – March 29, 2022
Exhibit C:	New Application Memo to Town Boards/Departments – March 29, 2022
Exhibit D:	Response from Treasurer/Collector – March 30, 2022
Exhibit E:	Notice of Public Hearing – May 18, 2022
Exhibit F:	Response from Board of Assessors – April 13, 2022
Exhibit G:	Response from Fire Chief – April 20, 2022
Exhibit H:	Response from Historical Commission – April 26, 2022
Exhibit I:	Hearing and Fees Letter to Applicant – May 4, 2022
Exhibit J.:	Revised/Updated Response from Historical Commission – April 30, 2022
Exhibit K:	Response from Conservation Commission – May 3, 2022
Exhibit L:	Responses Memo to ZBA from C. Lutzka – May 10, 2022
Exhibit M:	Legal Notice Copy from Nashoba Valley Voice Edition of April 29, 2022
Exhibit N:	Legal Notice Copy from Nashoba Valley Voice Edition of May 6, 2022
Exhibit O:	Revised Statement of Requested Relief & Revised Plan of Land – May 11, 2022
Exhibit P:	Remote Hearing Attendance Sheet – May 18, 2022

FEES:

Applicant paid to the Town of Pepperell (1) filing fees of \$115.00; (2) a postage fee in the amount of \$24.92, to notify Parties in Interest of the Public Hearing and Decision; and (3) a fee to the “Nashoba Valley Voice” in the amount of \$364.32, for the legal advertising of the public notices.

STATEMENT OF CASE:

The Board of Appeals conducted a remote public hearing on May 18 2022, regarding an application 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. The remote public hearing was held via the GoTo platform.

Applicant, Homes by Jeff and Sons, Incorporated (Jeff Chabot), Attorney Douglas Deschenes (Finneran & Nicholson, P.C., Westford, MA and Jack Visniewski, P.E., Pepperell, MA, were all present at the remote public hearing and addressed the Board regarding the requested relief. There were abutters present at the remote public hearing. There were members of the public present at the remote public hearing. Motion was made, and all Board Members concurred, to **deny** the requested relief, three Variances.

Details of the remote public hearing are available in the Zoning Board of Appeals Meeting Minutes of May 18, 2022. This remote public hearing was recorded for future broadcast by Pepperell Community Media, Inc.

Town of Pepperell ZBA Decision No: 2022-03-Variances: 96 Park Street - DENIED

FINDINGS:

1. The subject property is located at 96 Park Street, Pepperell, MA, as shown on Tax Map 9 as Parcel 134-0.
2. The property is located in the Rural Residence District.
3. Abutters were present at the remote public hearing.
4. Members of the public were present at the remote public hearing.
5. Subject property is to be serviced by municipal water (Per DPW Office).
6. Subject property is serviced by a private septic system (Per DPW Office).
7. Pursuant to Section 9222 of the Town of Pepperell Zoning Bylaw, the Board finds that the requested relief does not meet the variance criteria as described below [Note: Criteria in Italic, Finding in plain text]:

a. Circumstances relating to the soil conditions, shape or topography of such land or structures:

The Board notes that based on the size of the lot and the configuration, the lot could be divided by-right through an Approval-Not-Required (ANR) process into two (2) lots which would meet the zoning requirements of the zoning bylaw. Additionally, the Board finds that there are no unique circumstances of the lot related to soil conditions or topography as it is not affected by wetlands or protected resource areas and is a generally flat lot.

b. Circumstances especially affecting the parcel or the structures but does not affect generally the zoning district in which the land or structures is located:

The Board finds that there are not any unique circumstances that affect the parcel or the structures. The existing structure on the lot was constructed in approximately 1822. There are many historic homes along Park Street. The lot is located in the Rural Residential (RR) zoning district, which has a lot size requirement of 80,000 square feet. The size of the existing lot exceeds 80,000 square feet and is therefore conforming. Additionally, the size of the lot is similar to other lots along Park Street. Lastly, the existing dwelling meets the setback requirements for the lot and is setback approximately the same distance as most other dwellings on adjacent lots.

- c. *How a literal enforcement of the provisions of the Bylaw would involve substantial hardship, financial or otherwise, to the petitioner or appellant:*

The applicant states in his application that the existing condition does not create a financial hardship and that the stated hardship is a personal one. The Board finds that a personal hardship does not meet the variance criteria. Due to the lot size and dimensions, the applicant would be able to divide the lot into two (2) separate lots by right, without zoning relief.

- d. *How desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Bylaw:*

The Board finds that granting the relief would substantially derogate from the intent and purpose of the Bylaw. The existing lot currently meets the zoning requirements and by right the applicant would be able to divide the lot into two (2) separate lots without zoning relief. The applicant's request for variances to create three (3) lots would cause detriment to the public good.

CONCLUSION:

The Board of Appeals finds that the requested relief 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, to 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, would be detrimental to the public good, would nullify or substantially derogate from the intent or purpose of the Town of Pepperell Zoning-Bylaw, and owing to the circumstances of the land, 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, a literal enforcement of the Bylaw would not involve substantial hardship, financial or otherwise, to the petitioner, and that desirable relief may not be granted without substantial detriment to the public good and would nullifying or substantially derogate from the intent or purpose of such Bylaw, the Board of Appeals finds that the requested relief for three Variances is **denied** for the subject property located at 96 Park Street, Pepperell, MA, as shown on Tax Map 9 as Parcel 134-0, in the Rural Residence District.

DECISION:

Based on the foregoing findings and conclusions, the Board **denies** the requested relief, 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, to 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 for the subject property located at 96 Park Street, Pepperell, MA, as shown on Tax Map 9 as Parcel 134-0, in the Rural Residence District.

So decided this 18th day of May 2022 by roll call vote as listed:

Annette McLean: Aye

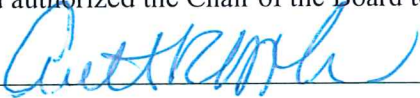
Alan Leao, Jr.: Aye

Heather Hampson: Aye

RECORD OF VOTE

The members of the Board of Appeals of the Town of Pepperell, attended and participated in all of the hearings, the Decision and the order of the above matter. Said hearings and Decision were made at public meetings of the Board and the foregoing Decision was made with the members voting by roll call vote.

The Zoning Board of Appeals, by a roll call vote, **denied** the Variances subject to the above-stated terms and authorized the Chair of the Board to sign on its behalf.



Annette McLean, Chair of the Board of Appeals

A copy of this Decision was transmitted to the Town Clerk on: June 14, 2022



Cheryl Lutzca, Assistant to the Board of Appeals

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