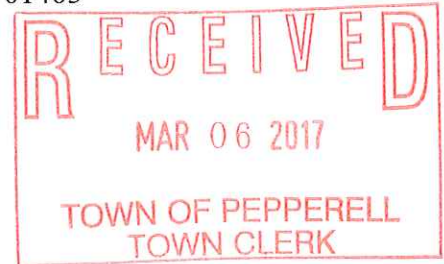




*Town of Pepperell*  
**BOARD OF APPEALS**  
One Main Street  
Pepperell, Massachusetts 01463



**NOTICE OF DECISION: Special Permit**

**ZBA File No:** 2016-06

Notice is hereby given that a Zoning Board of Appeals Special Permit has been **granted**:

**To:** Brenden Mahoney

**For:** Special Permit

**Property Located at:** 47-53 South Road, Pepperell, MA, as shown on Assessor's Map 40 as Parcel 1, Lot Number 1A, as shown on the Plan submitted with the ZBA application by GRAZ Engineering (Job 16013).

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 6th day of March 2017.

Zoning Board of Appeals: \_\_\_\_\_

  
Cheryl Lutzka, 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.

\_\_\_\_\_  
Lisa Ferolito, Town Clerk

**NOTICE TO APPLICANT:**

Having received certification from the Town Clerk, it shall be the responsibility of the Applicant to have recorded both this NOTICE OF DECISION and the SPECIAL PERMIT DECISION at the South Middlesex Registry of Deeds and indexed in the grantor index under the name of the owner of the record or recorded and noted on the owner's certificate of title. Fee for recording shall be paid by the owner or applicant. **NO BUILDING PERMITS or CERTIFICATES OF OCCUPANCY** shall be issued by the Building Inspector until notice of attestation by the Registry of Deed is made to the Town Clerk by filing a copy of this notice with the recording date and document number noted.

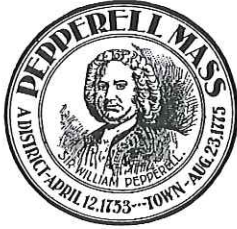
**ATTESTATION:**

Received and entered with the Registry of Deeds in the County of Middlesex, South

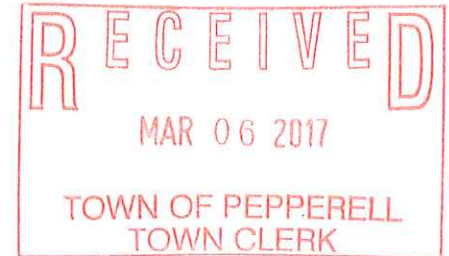
ATTEST:

\_\_\_\_\_  
Register of Deeds

**Town of Pepperell ZBA Decision No: 2016-06 (47-53 South Road: Special Permit)**



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



**DECISION**

**APPLICATION #:** 2016-06

**APPLICANT:** Brenden Mahoney

**OWNER OF PROPERTY:** The Estate of Theresa R. Stefan and Louise Taylor

**LOCATION OF PROPERTY:** 47-53 South Road, Pepperell, MA, Lot Number 1A, as shown on the Plan submitted with the ZBA application by GRAZ Engineering (Job 16013).

**RELIEF REQUESTED:** Special Permit

**DECISION OF BOARD:** Granted

**DATE OF DECISION:** February 8, 2017

**STATEMENT OF FACTS:**

Application submitted to Town Clerk: November 29, 2016

Cited Section(s) of Zoning Chapter of the Code of the Town of Pepperell and any other applicable Zoning Law: Sections 9221 and 3230-3234.

Application copied to the Assessor's Office, Inspector of Buildings, Planning Board, Conservation Commission, Pepperell Police Department, Pepperell Fire Department, Town Engineer, Highway Department, Board of Health, Water Department, Sewer Department, Communications Director, Historical Commission, Treasurer/Collector and Town Counsel: December 5, 2016

Dates of Published Notice of Hearing: January 13, 2017 and January 20, 2017 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: January 11, 2017.

Date of Public Hearing(s): February 1, 2017 and February 8, 2015; and Public Work Session of February 15, 2017

Board of Appeals Members Present at Public Hearing of February 1, 2017: Mark Walsh, Jan Adamczyk and Sean McCaffery. Also present: Cheryl Lutzca (Assistant to Zoning Board of Appeals).

Board of Appeals Members Not Present at Public Hearing on February 1, 2017: Annette McLean.

**Town of Pepperell ZBA Decision No: 2016-06 (47-53 South Road: Special Permit)**

**STATEMENT OF FACTS: (continued)**

Board of Appeals Members Present at Public Hearing of February 8, 2017: Mark Walsh, Jan Adamczyk and Sean McCaffery. Also present: Cheryl Luteza (Assistant to Zoning Board of Appeals).

Board of Appeals Members Not Present at Public Hearing on February 8, 2017: Annette McLean.

Board of Appeals Members Present at Public Work Session of February 15, 2017: Mark Walsh, Jan Adamczyk, Sean McCaffery and Annette McLean. Also present: Cheryl Luteza (Assistant to Zoning Board of Appeals).

**CONTENTS OF TOTAL APPLICATION:**

- Exhibit A: Certified List of Abutters – November 2, 2016
- Exhibit B: New Application Memo to ZBA & Town Counsel – December 5, 2016
- Exhibit C: New Application Memo to Town Boards/Departments – December 5, 2016
- Exhibit D: Response from Fire Department – December 5, 2016
- Exhibit E: Response from Treasurer/Collector – December 5, 2016
- Exhibit F: Response from Conservation Commission – December 5, 2016
- Exhibit G: Response from Highway Department – December 5, 2016
- Exhibit H: Response from Assessor's Office – December 5, 2016
- Exhibit I: Notice of Public Hearing/Legal Ad - February 1, 2017
- Exhibit J: Response from Board of Health – January 3, 2017
- Exhibit K: Response from Planning Board – January 10, 2017
- Exhibit L: Affidavit of Mailing of Notice of Public Hearing – January 11, 2017
- Exhibit M: Response from Historical Commission – January 11, 2017
- Exhibit N: Legal Ad Copy from Nashoba Valley Voice – January 13, 2017
- Exhibit O: Hearing and Fees Letter to Applicant – January 18, 2017
- Exhibit P: Agenda – February 1, 2017
- Exhibit Q: Legal Ad Copy from Nashoba Valley Voice – January 20, 2017
- Exhibit R: Response Memo to ZBA from C. Luteza – January 23, 2017
- Exhibit S: Revised Agenda – February 1, 2017
- Exhibit T: Response from Town Counsel – January 28, 2017
- Exhibit U: Continuation Agreement to February 8, 2017
- Exhibit V: Hearing Attendance Sheet – February 1, 2017
- Exhibit W: Agenda – February 8, 2017
- Exhibit X: Description of Current Business submitted by Applicant at Continuation Hearing February 8, 2017
- Exhibit Y: Letter of Recommendation from Matthew Babich – January 31, 2017
- Exhibit Z: Letter of Recommendation from Albie Walton – January 16, 2017
- Exhibit A1: Current Building Description, Property Layout, Property Map and Photo of Subject Property submitted by Michael Blood at the continuation hearing on February 8, 2017 – undated
- Exhibit B1: Hearing Attendance Sheet – February 8, 2017
- Exhibit C1: Agenda – Work Session – February 15, 2017
- Exhibit D1: Work Session Attendance Sheet – February 15, 2017

**FEES:**

Applicant paid to the Town of Pepperell (1) a filing fee of \$115.00; (2) a postage fee in the amount of \$48.47, to notify the Applicant, Owner and Parties in Interest of the Public Hearing and Decision; and (3) a fee to the Nashoba Valley Voice in the amount of \$199.92, for the legal advertising of the public notices.

**STATEMENT OF CASE:**

The Board of Appeals conducted a public hearing on February 1, 2017, regarding an application submitted by by Brenden Mahoney, requesting a Zoning Board of Appeals **SPECIAL PERMIT**, under Sections 9221 and 3230-3234 of the Town of Pepperell Zoning By-law, which if granted, would allow a horticultural and agricultural business, a garden center and landscaping supply business, as well as the storage of commercial landscaping equipment, materials, supplies and the overnight parking of commercial vehicles related to a landscaping business. The subject property is located at 47-53 South Road, Pepperell, MA, as shown on Assessor's Map 40 as Parcel 1-0. Applicant, Brenden Mahoney, was present. Also present, were the subject property owner, Louise Taylor, as well as abutters and members of the public. The Applicant addressed the Board regarding the requested relief. Motion was made, and all Board Members concurred, to continue the hearing to February 8, 2017 at 7:00p.m., at the Pepperell Town Hall, Conference Room A. A continuation agreement was signed by the Applicant and ZBA.

On February 8, 2017 at 7:00p.m., the Board of Appeals conducted a public continuation hearing, on the above-referenced application, at the Pepperell Town Hall, Conference Room A. Applicant, Brenden Mahoney, was present. Also present were the subject property owner, Louise Taylor, as well as abutters and members of the public. The Applicant addressed the Board regarding the relief requested. Motion was made, and all concurred, to **grant** the Special Permit. A Work Session was scheduled for February 15, 2017, at 8:00p.m., for the purpose of completing the writing of the Decision.

On February 15, 2017, the Board of Appeals conducted a public work session for the purpose of completing the writing of the Decision. The Applicant was not present at the work session, and there were no abutters or members of the public present.

Details of these hearings and work session are available in the ZBA Meeting Minutes of February 1, 2017, February 8, 2017 and February 15, 2017.

## **FINDINGS:**

1. The subject property is located at 47-53 South Road, as shown on the Assessor's Map 40 as Parcel 1. The property is located in the Town Residence District.
2. Abutters and members of the public were present in support and/or opposition of the application.
3. The Special Permit, and location of the garden center/landscaping business is limited to Lot Number 1A, as shown on the Plan submitted with the ZBA application by GRAZ Engineering (Job 16013), of the subject property; and said Lot Number 1A will be purchased by the Applicant from the current owner(s).
4. Desirable relief may be granted without detriment to the public good.
5. The Applicant shall apply for and obtain all necessary permits in accordance with all applicable state and local codes and regulations.
6. The Nashoba Valley Tack Shop operated on the premises from 1962 to 1979 existing as a non-conforming use. The tack shop was converted to a garden center in 1980 and has been in continuous operation as a horticultural center.
7. The Town of Pepperell first enacted zoning by-laws in 1968; Route 119 was re-zoned from industrial to residential in 1974.
8. The tack shop was granted a use variance in 1974; such variances are no longer recognized in the Town of Pepperell.
9. The site in question is 2.7 acres fronting onto Route 119. The site includes a garden center with attached greenhouse; three greenhouses and one temporary greenhouse. A parking area for the business commercial vehicles is situated in the interior of the lot.
10. The Applicant operates four commercial vehicles as part of the landscaping business: four F-350 1-ton dump trucks which shall be parked overnight on-site. There is also an assortment of trailers, loaders, lawn mowers and weed wackers related to the landscaping business.
11. The Applicant desires to have the ability to store three additional vehicles on-site, each of which is not to exceed 28,000 GVW.
12. The commercial vehicles are intended to be utilized off site.
13. The existing property driveway and size of the property are adequate to support the parking of the seven commercial trucks, garden center customers' vehicles, and personal vehicles of employees and owners.
14. There is no mulching operation or stone crushing on site.
15. Non-emergency repairs to commercial vehicles are done off site.
16. Applicant intends to plant, take delivery, store and distribute products related to a landscape supply/garden center.
17. Drainage on the front side of the property appears to flow towards Route 119; drainage at the rear of the property may migrate to abutting properties.

## CONDITIONS:

1. The Applicant(s) shall apply for and obtain all necessary permits and all construction shall be done in accordance with all applicable state and local codes and regulations.
2. The Special Permit and location of the garden center/landscaping business shall be limited to the parcel identified as Lot Number 1A, as shown on the Plan submitted with the ZBA application by GRAZ Engineering (Job 16013), which is to be purchased by the Applicant from the current owner(s). Any plan submitted to the Pepperell Planning Board for endorsement as an Approval Not Required (ANR) shall delineate Lots 1A and 1B with the same dimensions as shown on the Graz Engineering plan (Job 16013) submitted with the ZBA application.
3. The Zoning By-laws of the Town of Pepperell does not allow the operation of a commercial trucking operation and, therefore, there will be no fueling, no transfer of cargo, or any other activity that can be construed as the operation of a commercial trucking business on site.
4. The number and Gross Vehicle Weight (GVW) of the trucks (as described in the Findings section of this Decision) to support the operation of the garden center and landscaping business is permitted, but there is to be no further expansion of trucking activity on the site.
5. Hours of operation shall be limited to the following: Monday through Friday, from 7:00a.m. to 6:00p.m.; and Saturday through Sunday, from 9:00a.m. to 5:00p.m.
6. All vehicles shall enter and exit the property by way of the exiting legal driveway.
7. Any vehicle rinsing or washing on the premises shall comply with all Federal, State and local laws, rules, regulations and ordinances.
8. There will be no unregistered vehicles on the premises.
9. There will be no inoperable vehicles or equipment on the premises.
10. If one of the seven commercial vehicles needs to be replaced, the replacement will be equivalent to or less in size, configuration, design and gross vehicle weight.
11. No mulching, screening or stone crushing operations are permitted on site.
12. There is to be no storage or use of hazardous materials excepting substances related to the operation of the garden center such as bagged fertilizer.
13. Any lighting that is installed to illuminate the truck parking area shall be directed towards Route 119 away from abutting properties. Lighting must be off from 10:00p.m. to 6:00a.m.
14. All bulk materials stored on site shall not exceed 5-feet in height (such as loam, stone dust, gravel and mulch) and be stored 15-feet from the Applicant's property line in outdoor storage bins.
15. This Special Permit shall lapse upon any voluntary transfer of the property to any third party other than to a relative or heir of the current holder of the Special Permit.
16. The Special Permit shall not be in limitation of any use of right, such as agricultural uses exempted pursuant to M.G.L. ch. 40A, sec. 3 which are carried on within the premises. The conditions shall, however, apply to the use, storage and transfer of bulk materials as described herein for which the Special Permit is granted.

**CONCLUSION:**

The Board Finds that:

1. The Nashoba Valley Garden Center is an existing non-conforming use and is a business similar in affect, nature, and impact to the pre-existing Tack Shop. The garden center business is located on a 2.7-acre property, identified as Lot Number 1A, shown on the Plan by Graz Engineering (Job 16013) submitted with the ZBA application, in an area of residential and farm properties and is therefore considered to be in an appropriate location which does not alter the character of the zoning district.
2. The use of the existing garden center and greenhouses is allowed in the zoning district (Town Residence) in accordance with the Town of Pepperell Zoning By-laws, Sections B and D of the Table of Uses.
3. The proposed residential accessory use of a contractor's yard at the garden center for the storage of landscaping materials and the overnight parking of commercial vehicles (as identified in the findings section of this decision) are customary to the operation of the garden center, are allowed in the zoning district in accordance with the Town of Pepperell Zoning By-laws Section F of the Tables of Uses, and are permitted by special permit under sections 3230, 3232, 3233, and 3234 of the Town of Pepperell By-laws. The Board finds that with adequate and appropriate conditions as described in this decision, the accessory use is not detrimental to the neighborhood.

**DECISION:**

Based on the foregoing findings and conclusions, the Board **GRANTS** the requested relief, a Zoning Board of Appeals SPECIAL PERMIT, under Sections 9221 and 3230-3234 of the Town of Pepperell Zoning By-law, which if granted, would allow a horticultural and agricultural business, a garden center and landscaping supply business, as well as the storage of commercial landscaping equipment, materials, supplies and the overnight parking of commercial vehicles related to a landscaping business. The subject property is located at 47-53 South Road, as shown on Assessor's Map 40 as Parcel 1-0, Pepperell, MA, Lot Number 1A, as shown on the Plan submitted with the ZBA Application by Graz Engineering (Job 16013), and does not substantially derogate from the intent and purpose of the Town of Pepperell Zoning-By-law, and therefore will not be substantially detrimental to the surrounding neighborhood considering the factors listed in Sections 3400 of the Town of Pepperell Zoning By-Laws.

**So decided this 8th day of February 2017 by role call vote as listed:**

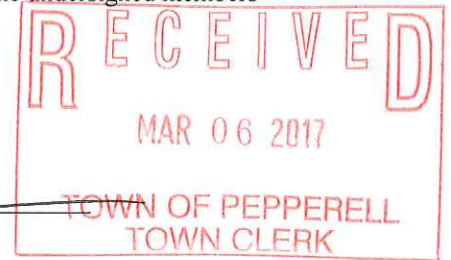
Mark Walsh:	Aye
Jan Adamczyk:	Aye
Sean McCaffery:	Aye

**CERTIFICATIONS:**

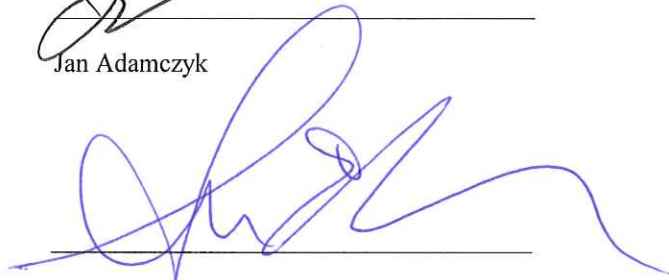
We, the undersigned members of the Board of Appeals of the Town of Pepperell, certify that we attended and participated in all of the hearings, the decision and the order of the above matter, that said hearings and decision were made at public meetings of the Board and that we made the forgoing decision with the undersigned members voting by role call vote.



Mark Walsh



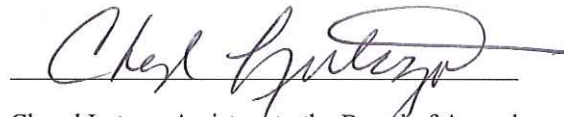
Jan Adamczyk



Sean McCaffery

**ASSISTANT TO THE BOARD OF APPEALS**

A copy of this decision was transmitted to the Town Clerk on March 6, 2017



Cheryl Lutzka, Assistant to the Board of Appeals