

**TRANSCRIPT OF PUBLIC RECORD**  
**ZONING BOARD OF APPEALS MEETING**  
**JUNE 27<sup>th</sup>, 2007**

This Special Meeting of the **Zoning Board of Appeals** was held in the Great Hall of Searles Building, City Hall, and was posted for 7:03 PM.

**MEMBERS IN ATTENDANCE:**

*Mr. Matthew D'Agostino, Chairman*  
*Ms. Laura Walta, Vice Chairman*  
*Mr. Jesse Ramirez, Clerk*  
*Mr. Richard Lacroix, Vice Chairman*  
*Mr. Silvio P. Uliano, Sr., Member*

**MEMBERS ABSENT:**

*Mr. Peter Giordano, Alternate Member*

**OTHERS IN ATTENDANCE:**

*Ms. Gwen Martone, Public Recorder*

**STATEMENT BY THE CHAIRMAN:**

Matthew D'Agostino read a statement prior to the opening of this meeting advising appeal rights.

**ROLL CALL:**

Mr. Jesse Ramirez, Board Clerk, called the roll with only five (5) members present at this meeting.

**NEW BUSINESS:**

**#2007-44      HB & CS, LLC, 85 Hidden Valley Road, Groton, MA 01450**

Special Permit required under Section V-D of the Comprehensive Zoning Ordinance of the City of Methuen for a contractor's yard in an Limited Industrial (IL) District at AM10-10, Block 79, Parcel 16 Old Ferry Road.

Steven Selby appeared before the Board on this petition. According to Mr. Selby they are proposing a construction yard to store typical construction equipment on site such as excavators, trucks, tractors and trailers. Chairman D'Agostino questioned the use of the proposed building. Mr. Selby indicated that it's main use would be to repair their equipment.

Chairman D'Agostino opened the meeting to Public Participation and no one spoke either in favor or in opposition of this application. Having no discussion, Public Participation was closed.

Vice Chairman Walta indicated that there was a discrepancy with the size of the building, that the application and the plan had conflicted sizes. It was determined that there was a typo on the application and that the plan reflected the true size of the proposed building which will be 48' x 100'.

Mr. Ramirez questioned if there would be any signage associated with this site. Mr. Selby indicated that there would be none.

**ROLL CALL:**

*Mr. Richard Lacroix – yes, per plan*

*Mr. Jesse Ramirez – yes, per plan*

*Mr. Silvio P. Uliano, Sr. – yes, per plan*

*Ms. Laura Walta – yes, per plan*

*Mr. Matthew D'Agostino – yes, per plan*

**VOTE:** 5-0-0 UNANIMOUSLY APPROVED

**#2007-45      Arthur Munger & Ronald Simonian, 532 Merrimack Street, Methuen, MA 01844**

Variance requested under Section VI-D of the Comprehensive Zoning Ordinance of the City of Methuen to construct an addition for a three season room that will be too close in a Residential B (RB) District at # 532 Merrimack Street.

Michael Mahany of Patio Enclosures appeared before the Board on behalf of the petitioners. According to Mr. Mahany they are seeking relief from the front yard setback to construct an unheated, three season, sunroom addition. The size of the room would be 12' x 16' and will be attached to the south side of the building, which faces Renfrew Street.

Chairman D'Agostino question if there would be any additional street access would be required. Mr. Selby indicated that there would not, that driveway access on that side was existing.

Chairman D'Agostino opened the meeting to Public Participation and no one spoke either in favor or in opposition of this application. Having no discussion, Public Participation was closed.

**ROLL CALL:**

*Mr. Richard Lacroix – yes, per plan*

*Mr. Jesse Ramirez – yes, per plan*

*Mr. Silvio P. Uliano, Sr. – yes, per plan*

*Ms. Laura Walta – yes, per plan*

*Mr. Matthew D'Agostino – yes, per plan*

**VOTE:** 5-0-0 UNANIMOUSLY APPROVED

**Donald J. DeSantis, Jr., 168 Hampstead Street, Methuen, MA 01844**  
**# 2007 – 46 Co Applicant: Katia Hashem, 115 North Street, Methuen, MA 01844**

As a party aggrieved, requesting a Cease & Desist from operating a landscaping business in an Agricultural Conservation (Ag/Con) District in violation of Section V-D of the Comprehensive Zoning Ordinance of the City of Methuen at # 160 Hampstead Street.

Donald J. DeSantis, Jr. appeared before the Board on this petition. According to Mr. DeSantis he is the direct abutter to this property at 168 Hampstead Street. He indicated that they attended the meeting back in 2005, when Mr. Dube, the owner of # 160 Hampstead Street was granted a Special Permit for a commercial greenhouse. He indicated that they had concerns at that time and that the plan was granted with conditions addressing these concerns with the hopes that Mr. Dube and his greenhouse business would be good neighbors.

At this time he indicated that Mr. Dube has not adhered to these conditions and stated that their lives have become a nightmare living next door. He stated that a greenhouse was never built and that it is his belief that Mr. Dube never intended to build a greenhouse and that a commercial garage was built in it's place. At this time he presented the Board with pictures of the alleged activities. Additionally he indicated that Mr. Dube has employees on site that work there after 8:00 P.M. and that he has a mechanic service his equipment on site. He further states that materials are strewn about the property, which he believes are causing the pine trees to stress and die. He further indicated that cinderblocks have been brought in to create corals for his mulch and various things. He refers to the mulch as a problem because every morning in the spring they are loading up the trucks before they leave and that idling trucks have been waking up his entire family. Additionally he claims that they are storing grass clippings and that his family cannot go into the backyard because of the smell. He further indicated that the Board of Health has ordered him to remove the clippings and that he has ignored their request. He stated that he feels like a prisoner in his home and that Mr. Dube has given them no consideration for the fact that they lived there for 15 years prior to Mr. Dube moving into the neighborhood. He further states that his co-applicant, Katia Hashem had the same concerns and that she was fearful of allowing her children out to play because of all the equipment and seasonal workers and other men lurking around the area.

Mr. DeSantis indicated that there has been quite a bit of disturbance of the land there which was once a pristine, beautiful area. Recently they have pictures of Proscap, which is landscape business located at 105 North Street. He indicated that Proscap has also been using Mr. Dube's land, having been seen picking up loam and mulch. He stated that they are afraid that both operations are going to join hands creating a complete commercial area.

Chairman D'Agostino questioned where Proscap was in relation to Mr. Dube's land. Mr. DeSantis stated that he believes Proscap abuts the rear of the Dube property, located at 105 North Street.

Mr. DeSantis indicated that he has kept a log of events detailing when they start getting busy, which is April and May. He indicated that they have called the police only twice because they had started work very early or have ended very late. He further stated that he could have called numerous times but didn't want to take that step. He did state that they start work as early as 5:45 A.M., with tractor trailer trucks delivering mulch by backing up the driveway 200 feet to get to it's destination. He further stated that just the regular routine of the landscape business at this time of the morning is extremely loud.

Mr. DeSantis stated that he knows that Mr. Dube has a building permit for the garage, which he calls a storage facility. However, he does not believe that Mr. Dube has the right to run a business there, to have employees reporting for duty there, and to run a full-blown commercial business at this location. He further indicated that they have observed men urinating on the side of the building and do not feel that they should be subjected to this type of activity in a residential neighborhood.

Mr. DeSantis stated that prior to Dube constructing the new garage, he believes he ran the business from the garage in his house. He indicated that prior to the new garage the business was tolerable but has escalated 10 times in the past year.

Chairman D'Agostino asked Mr. DeSantis what he would specifically like to see the Board do this evening. Mr. DeSantis indicated that they are looking for a Cease & Desist on that business at that location. It is his opinion that it does not blend with the residential character of the building. He further indicated that he consulted the Zoning Ordinance and could only find that the commercial greenhouse / nursery would be allowed in the agricultural conservation district and not the landscape business.

At this time Chairman D'Agostino opened the meeting to public participation. Speaking in favor of this petition were the following individuals:

**Philip Saracusa**

Mr. Saracusa indicated that he owned property at 139 North Street and that he was in favor of Mr. DeSantis' request for a Cease & Desist order at this location. With reference to the questioned posed by Chairman D'Agostino; Mr. Saracusa indicated that he would like to see the Board order, what he describes as the commercial., steel, garage structure to be taken down. He alleges that the garage was constructed in the approved footprint of the proposed greenhouse. Chairman D'Agostino indicated that they do not know that as fact, that he might still have room for the greenhouse.

With reference to Proscap he indicated that the property does abut Mr. Dube and that there is presently in place, a Cease & Desist Order that was issued by the Building Commissioner. Additionally he indicated that it is his understanding that Proscap has ignored or challenged this order and is continuing to operate.

**Erin Livingston Carroll, 133 North Street**

Ms. Livingston-Carroll stated that she is in support of keeping the neighborhood as agricultural as it can be. Coming in from North Street, Proscap is on your right and she describes there are as containing traffic congestion. There are trucks pulling in and out, and employees parked on the lawns and the sides of the road adding to the congestion. She further indicated that she is all for people operating their own business but that it is not fair if she can't run a business there, then others should be considerate of the neighbors be made to follow the rules.

**Dinah Williams, 178 Hampstead Street**

She indicated that she is not directly affected by this business but that she is here this evening in support of her neighbor. Additionally she indicated that she is very concerned that their neighborhood is going to become light industrial by default with small businesses slipping in.

**Silvio & Ines Petraglia, 170 Hampstead Street**

Through an interpreter the Petraglias' indicated that they are in opposition to the landscape business at this location and were in support of the Cease & Desist Order.

**Atty. Laurence J. Rossi, 32 Chestnut Street, Andover, MA 01810**

Atty. Rossi indicated that he is here tonight representing Mr. & Mrs. Dube; who are in opposition to the complaint filed against them. Atty. Rossi stated that on May 8<sup>th</sup>, 2007, Mr. DeSantis sent a letter to the Building Commissioner that alleged that Mr. Dube was in violation of the Special Permit issued for the construction of a greenhouse in a primarily residential area zoned agricultural conservation. Mr. DeSantis stated in his letter that instead of a greenhouse, Mr. Dube constructed an industrial size, commercial garage and warehouse and was using it as a basis of operation. According to Atty. Rossi, this statement is false. He further stated that on May 16<sup>th</sup>, 2007, the Building Commissioner sent a response to Mr. DeSantis informing him that Mr. Dube had received a Special permit for a greenhouse and that as of that date no greenhouse had been constructed. Additionally he indicated that the Building Commissioner was unclear as to what Mr. DeSantis was requesting by way of enforcement and that he stated there was no violation of the special permit, as it had not yet been implemented.

Atty. Rossi informed the Board that on June 4<sup>th</sup>, 2007, Mr. DeSantis filed an appeal of the decision of the Building Commissioner requesting a cease and desist of an operation of a landscaping business from Mr. Dube's Location. Atty. Rossi stated that this request should not be granted without first requesting the appropriate relief from the Building Commissioner. He further stated that the Building Commissioner did not deny relief in his letter, but asked for further clarification, which was never done. He further stated that the alleged violation complained about in the application is not the same violation stated in Mr. DeSantis' letter and that Mr. DeSantis had not exhausted his other remedies before coming before the Zoning Board.

Atty. Rossi stated that the Board granted a Special Permit for a greenhouse in an Agricultural Conservation district, which in his opinion, is not a residential district as claimed by Mr. DeSantis. Additionally he stated that although Mr. Dube has not yet constructed the greenhouse, that he has been in the process of preparing the lot and has requested a permit from the Building Commission.

Chairman D'Agostino questioned why it has taken Mr. Dube so long to start the greenhouse. Atty. Rossi indicated that his client had to do some additional work to clear the land, but that he built the garage because he needed that as part of the greenhouse operation. Chairman D'Agostino questioned if the garage conformed to all zoning ordinances to which Atty. Rossi responded that it did because he did receive a permit. Atty. Rossi described the garage as being approximately 400 feet from Hampstead Street, 300 feet from Mr. Dubes' house and 200 feet from Mr. DeSantis' back property and 350-375 feet from house to garage.

Atty. Rossi indicated that his client's property was a tree farm for many years and that an access road existed between the Dube property and the DeSantis properties. He claimed that after speaking to Mr. DeSantis; Mr. Dube changed his original proposal and relocated the access road to the left hand side of his own property. He further stated that Mr. DeSantis was in agreement with this and appeared at the original hearing, speaking in favor of the petition. He further indicated that Mr. Dube was required to build a small bridge to relocate and build this new access road in compliance with Conservation requirements. He indicated the cost of this was in excess of \$10,000.00. Additionally he indicated that his client has adhered to the all of the quality of life issues that were set as conditions for granting of the Special Permit.

Vice Chairman Walta stated that there was some concern with the storage of grass clippings on the premises that are not allowed under the terms of the Special Permit. Atty. Rossi stated that his client has informed him that the clippings are removed within a day. Ms. Walta indicated that it was her understanding that they were removed only twice a week. Chairman D'Agostino indicated that regardless of when they are being removed, they are not allowed under the terms of the Special Permit. Chairman D'Agostino stated that he is trying to stick to the facts in this case because there are a lot of accusations going across the podium.

With reference to the allegation that Mr. Dube is operating his landscaping business at this location he stated that this is his primary residence and that he does not operate the business at this location. He further stated that Mr. Dube is storing his vehicles and equipment on his property in an AG/CON District, which he believes, is permissible. He further stated that no landscape work is being done on the premises that all work is done at his customers' home. Additionally he indicated that his employees do report for work there and leave their cars in the back. He indicated that there is some internal record keeping and a telephone line on the property and that this use of the property is "deminimum" and uses just like it are found in residentially zoned areas throughout Methuen. He describes Mr. Dubes' business use of the property as incidental, subordinate and minor in significance to the residential use. He further stated that storing of vehicles is an accessory use in the Ag/Con District and that there is no restriction in said district as to the number of trucks that Mr. Dube could store on his property. He further stated that the Special Permit granted only required no increase in size of trucks or equipment other than those presently used for his landscaping.

At this time Atty. Rossi addressed the issues sited in Mr. DeSantis' letter. He indicated that Mr. Dube spoke with his employees relative to the allegation of public urination, that it was inexcusable and will not happen. He further addressed the incident relative to the truck delivering mulch, maintenance of trucks on the property, congregation of employees, increase of thefts in the neighborhood; details of each can be found in Atty. Rossi's prepared statement attached to the rear of these minutes. At this time Atty. Rossi presented pictures of Mr. Dubes' property to the Board.

Board Clerk, Jesse Ramirez commented that the pictures presented by Atty. Rossi did not show any of the equipment stored on the property. Atty. Rossi responded that he has four (4) trucks, and some plows. Chairman D'Agostino invited him to view the pictures presented by Mr. DeSantis.

At this time Mr. Dube addressed the Board and indicated that he believes that he is in compliance with the Special Permit granted by the Board. He further stated that he constructed the garage before the greenhouse because of the cost associated with its' construction. He further explained the before he could even access the site for the greenhouse he had to build the bridge to fulfill the requirements from Conservation. With this being such a long process he felt that it was more of an eyesore to his neighbors to have his equipment in the open and that is why he opted for constructing the garage to store his equipment. He did acknowledge having his storage bins on that side of his property but indicated that there were no restrictions as to where they were to be located in the granted Special Permit. He claimed that he has altered his plans to accommodate Mr. DeSantis so that the garage would not be closer to his property. He also indicated that with setback requirements from the conservation land behind the garage, he was limited to where it could be placed. Chairman D'Agostino stated that the Board is in agreement that the garage is located properly and is appropriately shielded from Mr. DeSantis' home.

Mr. Dube stated that he has no place else to put his trailer and that he goes out on a daily basis to make his living and that this is making it very difficult. Chairman D'Agostino indicated that what's in question here is if a landscaping business can be operated legally from someone's home. He further stated that the Board realizes that he is a hard worker and is sincere and that he has compromised with Mr. DeSantis and that they have granted him permission to operate the greenhouse with a few conditions. He acknowledged that Mr. Dube has complied with most of the conditions associated with gasoline storage, mulch and visual appearance. He further stated that the other issues before the Board this evening are whether this can carry into also operating a landscaping business at this location.

Chairman D'Agostino indicated that this was not an easy case for the Board to hear because there are many landscapers operating in the City, and many neighbors facing the same issues. He indicated that the Board is concerned with setting a precedent basically allowing a business to operate in area that is not properly zoned. Allowing this to happen usually makes these matters spin out of control affecting the quality of life, which is what the Zoning Board is trying to enforce and protect. He further stated that they are concerned for both sides;

protecting not only the abutters' quality of life but also Mr. Dubes' along with his right to earn a living, to support his family and to enjoy his property.

Chairman D'Agostino questioned if there was still room to locate the greenhouse on the property in accordance to the approved plan. Mr. Dube indicated that there was and that he has started to clear that location. Chairman D'Agostino explained that if the location was altered that Mr. Dube would have to come back before the Board. He further indicated that his main concern was that the garage was located where the greenhouse was proposed and now could not be located on the premises.

In closing Atty. Rossi indicated that the building Commissioner had spoken to Mr. Dube about starting before 7:00 AM and leaving his vehicles idling. He further indicated that the Building Commissioner suggested starting one vehicle at a time and vacating the premises before starting another.

### **Joseph Leone, 28 Morgan Drive**

Mr. Leone indicated that he lived about a mile from this site and that he was also the City Councilor for that district. He informed the Board that a number of years ago when Dennis DiZoglio was Mayor, there were discussions about a landscaping business operating elsewhere in the City. He indicated that after a years' worth of discussions and a special ballot question; Mr. DiZoglio issued an executive order that basically instructed the Building Inspector to ignore the existence of non-conforming businesses in residential areas unless the abutters complained. Her further stated that if the abutters complained then the Building Inspector was to investigate and take appropriate action, which he believes is the action that Mr. DeSantis is requesting the Board to take this evening.

Mr. Leone made reference to Atty. Rossi's statement that this is an Ag/Con area and that this use is not prohibited in this area. Mr. Leone further stated that definition in out zoning ordinance does refer to Ag/Con as one of our residential zones. Additionally, he stated that we have rules and regulations on the books right now as to the type and number of commercial vehicles that can be garaged in a residential zone. He further stated that employees are not allowed to report to work in residential zones and park their vehicles.

He indicated that the question before the Board in 2005 was whether or not a greenhouse could be built on this site and that the greenhouse was to support Mr. Dubes' landscaping business. Chairman D'Agostino indicated that the Board had no indication at that time that Mr. Dube was operating or planning to operate the landscaping business at this location. Mr. Leone stated that if Mr. Dube had informed the board of his attentions at that time, he believes that the answer would have been no because that would have constituted a use variance which is not allowed.

Without having to take sides, Mr. Leone stated that he has to sympathize with Mr. DeSantis because they have lived there for the past 15 years in a residential zone and had every expectation that the residential zone would remain intact. He further stated that Mr. Dube probably got some wrong information to his allowed use when he purchased the property and also incorrect vibes when the Board allowed the greenhouse. He did however state that he believed that this Board was not aware at that time, that there would be a landscaping business of that magnitude being operated by Mr. Dube. Chairman D'Agostino stated that they did not give Mr. Dube permission to operate a landscape at this location and that they did not request the location of that business because it was not a part of the request. Additionally he stated that the Board was concerned that this was not a retail business and that what was requested was allowed in the Table of Use Regulations.

Atty. Rossi returned to the podium and stated that although a residence is allowed in an Ag/Con District that it is not a residential district and that there is no restriction to the number of trucks allowed on the premises. He

further stated that several years ago there was a case that ruled against the City confirming that there was no such restriction in this zoning district.

With no further discussion, Chairman D'Agostino closed Public Participation and the petitioner returned to the podium.

Board member Richard Lacroix questioned Chairman D'Agostino as to what the City Solicitors' opinion was regarding this case coming before the Board this evening. Chairman D'Agostino responded that the Solicitor indicated that the Board could in fact issue a Cease & Desist Order on the landscaping business. Once again he reiterated that there is no violation of the Special Permit except for the storing of grass clippings.

Chairman D'Agostino stated that looking at the overall picture, it is apparent that the quality of life of the individuals involved is being affected. He further stated that it is being affected on many fronts, not on only one or two fixable situations, but on a stream of things that go along with a landscape business. At this time he questioned Atty. Rossi why his client didn't come before the Board and request this use. Atty. Rossi responded that he didn't know if a landscaping business would be something that was allowed in an Ag/Con District. Chairman D'Agostino confirmed that it was not an allowed use.

Atty. Rossi stated that he read the decision and minutes of the meeting and that he was surprised that Mr. DeSantis was unaware that his client was going to park trucks there. Chairman D'Agostino stated that he wasn't going to speak for Mr. DeSantis but that if you drive on certain streets within the City you will find landscaping trucks parked in yards and everyone gets along fine. He indicated that looking at the pictures presented this evening, depicted multiple pieces of equipment on the property he has concerns. Atty. Rossi indicated that those pictures were pre-garage and that he will now be storing that equipment. Chairman D'Agostino makes reference to lights on in the garage in the evening hours working on trucks, trucks with their hoods up and pallets stacked high are not typical to a landscaping business. Storage of loam, mulch, crushed stone but not grass clippings are allowed on the site.

Vice Chairman Walta stated that with respect to the Special Permit that was granted, the Board had based its' decision on the fact that this was to be a quiet operation of growing plants that also involved the outdoor storage of certain materials. She further stated that when it comes to running a business there is a responsibility on the part of the business owner to be very careful in not upsetting the neighbors. She stated that she also feels that there is no violation of the Special Permit but that this appeals deals with the effect of running the landscape business on the neighbors.

Mr. DeSantis stated that he could refute most of what Atty. Rossi has said but that he would not take the time to do that. With regards to the Special Permit, he stated that one condition was that there would be no storage of trucks or equipment within 100 ft. of the border. He indicated that the building is 70 ft. and that all of the equipment and trucks sits between the stonewall and the other end of his property and he believes that this is in violation of the Special Permit. He further stated that he does not care about the building if it could legally be there, it may be ugly but he can live with it. He said that his complaint is about him running the business, the noise, the employees, the equipment and the aggravation caused by him running his business at this location.

Board Clerk Jesse Ramirez questioned what happens to Mr. Dubes' business should the Board uphold this appeal. Chairman D'Agostino explained that he could still run the greenhouse portion of his business; and that the Special Permit will remain in place.

Discussion ensued among the Board members relative to the procedure for issuance and enforcement of a Cease & Desist Order should one be granted this evening.

Richard Lacroix indicated that he did not see any specific category in the Table of Use regulations referencing a landscaping business. He did however refer to the section on Home Occupations and indicated that he believed that this business could not be operated as such because he believes that it is detrimental to the residential character of the neighborhood due to the exterior appearance, omission of odors and noise. He makes reference to "incidence of ownership" which he explained as looking at, in this instance, what is the traditional activity that goes on in a landscaping business that would allow a reasonable person to determine that such a business is being operated at a location. He indicated that he believed that testimony presented here this evening ultimately leads to the conclusion that there is a landscaping business being operated at this location.

**ROLL CALL:**

*Mr. Richard Lacroix – yes*  
*Mr. Jesse Ramirez – yes*  
*Mr. Silvio P. Uliano, Sr. – yes*  
*Ms. Laura Walta – yes*  
*Mr. Matthew D'Agostino – yes*

**VOTE:** 5-0-0 CEASE & DESIST UNANIMOUSLY GRANTED.

**ADJOURNMENT:**

**MOTION:** *Jesse Ramirez moved to approve an 8:34 PM adjournment.*  
*Laura Walta seconded this motion.*

**VOTE:** 5-0-0 UNANIMOUSLY APPROVED

Respectfully submitted,

Gwen Martone, Public Recorder  
Methuen, MA 01844