

Minutes of the Town of Lee Planning Board  
September 27, 2021  
6:00pm Via Zoom

A regular meeting of the Lee Planning board was held virtually in accordance with Governor Baker's Order suspending certain provisions of the Open Meeting Law (MGL Chapter 30A, Section 20) on Monday, September 27, 2021 at 6:00pm on Zoom.

Present: Buck Donovan (Chair), Peter Bluhm, Peg Biron, Matt Carlino, David Forrest and Gordon Bailey (alternate).

Others Present: Kathy Hall, Mark Smith, Kathy Daoust, Mark Hallock, Gail Ceresia, Sean Regnier, Patty Carlino.

**Call to Order**

Chairperson Donovan called the meeting to order at 6:00 p.m. For the record he informed those in attendance that the meeting was being recorded.

**Special Permit Hearing – 175 George Street**

Chairperson Donovan opened hearing for a non-conforming use on 175 George Street.

Member Bluhm suggested to review that the hearing was sent to abutters, posted in the newspaper and have the applicant present the project.

Admin. Assistant Mead confirmed the newspaper postings and mailing to abutters.

Applicant Smith stated he had his property surveyed by Taconic Land Consultants and spoke with the Building Commissioner Fitzgerald. He stated Mr. Fitzgerald recommended he apply for a Special Permit from the Lee Planning Board for relief from the required 25 ft setback.

Applicant Smith stated that Mr. Fitzgerald also stated that the proposed 10.9 ft side setback may be acceptable under the Special Permit because the current lot is smaller than the current zoning district size stipulations.

Chairperson Donovan read the Lee Zoning Bylaw Section 6.1 (b).

Chairperson Donovan stated the "open space" refers to the full density of the structure vs. the lot size. The applicant's frontage is set up at 100 ft and that zone should be 125 ft. Chairperson Donovan also stated he believed this situation is why they have the provision in the bylaws.

Member Biron stated that she agrees with Chairperson Donovan. The proposed addition is certainly desirable and Mr. Smith really tried to work with the Planning Board. Member Biron also stated that some of the older lots are not always as conforming and she has no problem with this.

Member Carlino stated that he is on board.

Member Forrest stated he is good with this. Member Forrest also stated he thinks this is a smaller lot, through no fault of his own, and it will not have an adverse effect on the community.

Alternate Member Bailey stated the Section 6.1 (b) is not applicable because it is a pre-existing nonconforming lot and suggested Town Counsel to advise. Alternate Member Bailey pointed out that Taconic Land Consultants advised the applicant to apply for a variance and also spoke with Building Commissioner Fitzgerald to discuss the need for a variance. Alternate Member Bailey stated it is not about creating a new side lot nonconformity and that is what would occur

by adding on to the side of the house and entering in to the side yard side set. He also stated that it is a variance issue and not a special permit issue because the house is not already in the side set.

Chairperson Donovan stated the whole lot is a nonconforming lot.

Alternate Member Bailey stated that this is looking at creating a new nonconformity because the house is currently not nonconforming in the setbacks. It fits within the buildable area. The other option if applicant wants to connect it would make it one car garage. Another option would be 10 ft from the house and 10 ft from the boundary, then it would be an accessory building and it could be closer to the boundary but still could not be connected to the house. Alternate Member Bailey encouraged the Planning Board to put this off until the next meeting and speak with Town Attorney. Alternate Member Bailey stated that the fact that it is 100ft and not 125 ft does not come into play. It makes it nonconforming but you still can't create a new nonconformity in the setback when there is no house structure in the setback.

Chairperson Donovan confirmed that the property is in the RA-40 zone.

Member Bluhm stated concerns with granting the application would be carte blanche to grant deviations from almost everything in zoning provided that the lot was undersized. Member Bluhm questioned what the side yard allowance is between proposed garage and the side yard. Applicant Smith stated it is 10.9 ft.

Member Bluhm discussed the option of having an unattached garage as an option.

Member Carlino stated he was looking at it as a nonconforming lot and understands Alternate Member Bailey's argument. Member Carlino stated that there is no way it will get a variance, the ZBA does not ever give a variance in a setback. He also stated his frustration that the applicant could have a detached garage that is going to be closer than the proposed attached garage is now so the structure would be there and would have the same visual effect of a setback encroachment but yet can't be attached.

Alternate Member Bailey stated he wants to make sure they stay within the confines of the law. After brief discussion of next meeting the Planning Board decided to hold next meeting on Tuesday October 12 due to Columbus Day.

Member Forrest questions the distance from the proposed garage to the house.

Mr. Hallock introduced himself as the contractor to the job and discussed the attachment being directly attached to the house with no walkway. He discussed relocating the garage to a different location being out of the budget.

Member Bluhm moved to table the Special Permit Hearing until 6:15pm at the next meeting, October 12, 2021, Member Carlino seconded. Planning Board voted (5-0). (Biron – aye; Carlino – aye; Forrest – aye; Bluhm – aye; Donovan – aye).

### **Public Hearing – Zoning Bylaw Changes**

#1 – Chairperson Donovan stated it is the general provision that says people in town must comply with zoning regulations. The current version seems to apply “uses” but not to structures. The proposal includes structures, and is modeled on the Lenox bylaw.

Member Bluhm moved to report this favorably with the recommendation of adoption by the town and to be put on the warrant for the next town meeting, Member Carlino seconded. Planning Board voted (5-0). (Biron – aye; Carlino – aye; Forrest – aye; Bluhm – aye; Donovan – aye).

#2 – Chairperson Donovan stated this proposal is to delete the business multiple dwelling zone that does not exist.

Member Carlino moved that the Planning Board approve the question and send to the Selectboard to be added to the warrant for the next town meeting, Member Bluhm seconded. Planning Board voted (5-0). (Biron – aye; Carlino – aye; Forrest – aye; Bluhm – aye; Donovan – aye).

#3 – Chairperson Donovan stated this came about because the Planning Board realized that parking was not an allowed use and was brought to their attention by town counsel. Chairperson Donovan discussed the difference between a by right and special permit. He also stated this is being proactive with the future of downtown.

Alternate Member Bailey clarified that the definition of parking lot is included.

Resident Ceresia concerned with the effectiveness of parking structures.

Chairperson Donovan stated a structure would only be allowed by special permit and referred to 13.4 for requirements.

Member Bluhm stated it was wiser to try and prescribe what the process would be for such structures if they ever get proposed and make sure that the town continues to have control over the circumstances under which its built and how it fits into the neighborhood.

Member Bluhm moved that the Planning Board report this favorably to the Selectmen with the recommendation to place it before the town at the next town meeting, Member Carlino seconded. Planning Board voted (5-0). (Biron – aye; Carlino – aye; Forrest – aye; Bluhm – aye; Donovan – aye).

#4 – Member Bluhm stated the current Lee bylaw has somewhat spotty provisions regarding animals. The current proposal states more explicitly what would be allowed and disallowed. Member Bluhm stated the Planning Board is proposing that traditional pets be explicitly allowed and that some limited additional uses, involving chickens and bees, be allowed in residential areas. He also stated the provision for raising larger animals requires a special permit; it does not automatically require a 300 ft animal free boundary in every case, thereby allowing case by case consideration for larger animals.

Resident Ceresia concerned with numbering limits on rabbits. Brief discussion on how many would be considered household pets compared to farming.

Member Bluhm moved that the Planning Board report this favorably to the Selectmen with the recommendation to place it before the town at the next town meeting, Member Biron seconded. Planning Board voted (5-0). (Biron – aye; Carlino – aye; Forrest – aye; Bluhm – aye; Donovan – aye).

#5 – Member Bluhm stated the bylaw uses the term special permit somewhat loosely. 6.1 allows this exemption but it calls it special permit and later in the bylaw section 13.4 there is a general provision of how to handle special permits. In 13.4 the provision has a list of criteria that has findings that have to be made to grant a special permit. He stated 6.1 is a different kind of special permit even though the wording is the same. Member Bluhm stated the language proposes to allow the board to incorporate any of the relevant findings from 13.4 that it feels are appropriate rather than mandatorily having to find all five.

Alternate Member Bailey stated that the word structure does need to be added.

Member Carlino moved that the Planning Board report this favorably to the Selectmen with the recommendation to place it before the town at the next town meeting, Member Biron seconded. Planning Board voted (5-0). (Biron – aye; Carlino – aye; Forrest – aye; Bluhm – aye; Donovan – aye).

#6 – Member Bluhm stated the board is proposing to slightly loosen the regulation of signs which need repair or adjustment. He stated that the board is narrowing the rule so that it only applies to freestanding signs so it would no longer apply to building signs.

Alternate Member Bailey stated the purpose of the original zoning bylaw was to make everything equal for everybody.

Member Bluhm stated that the way it works actually favors the sign owner who keeps repairing at 25% or less.

Member Bluhm moved that the Planning Board report this favorably to the Selectmen with the recommendation to place it before the town at the next town meeting, Member Carlino seconded. Planning Board voted (5-0). (Biron – aye; Carlino – aye; Forrest – aye; Bluhm – aye; Donovan – aye).

#7 – Chairperson Donovan stated this is to amend the zoning bylaw 7.6. It is related to the administration of sign permits.

Member Bluhm stated the permanent signs would go to the Building Department and be taken from the Planning Board. Member Bluhm described the process of approving the permits and that it could be done more quickly through the Building Department.

Member Carlino stated that the Building Department should still send copy to the Planning Board so they have oversight.

Member Carlino moved that the Planning Board report this favorably to the Selectmen with the recommendation to place it before the town at the next town meeting, Member Biron seconded. Planning Board voted (5-0). (Biron – aye; Carlino – aye; Forrest – aye; Bluhm – aye; Donovan – aye).

#8 – Chairperson Donovan stated this has to do with the Board's current site plan and special permit section.

Member Bluhm stated one problem is that the existing bylaw requires very complex applications. The Planning Board has developed a custom of waiving strict site plan review on nearly all projects because the bylaw is so demanding about what must be submitted as part of the application. He stated the timing requirements of 30 days do not usually work. Member Bluhm stated the proposal authorizes rapid decisions on minor projects, authorizes accepting a plan as sufficient for review, authorizes a term created called public input meetings, allows the Board 90 days as opposed to 30 days to reach a decision, and requires written decisions. For special permits changes were authorizing joint hearing if 2 or mor special permits are required, clarification of how a site plan process fits into the special permit process, and allows the Board to provide additional notices beyond the statutory minimum.

Member Carlino discussed how this proposal is for more transparency.

Member Bluhm moved that the Planning Board report this favorably to the Selectmen with the recommendation to place it before the town at the next town meeting, Member Carlino seconded. Planning Board voted (5-0). (Biron – aye; Carlino – aye; Forrest – aye; Bluhm – aye; Donovan – aye).

#9 – Member Bluhm stated there is a typographical error in definition of the Smart Growth Overlay District. Lot 65 was inadvertently omitted.

Member Carlino moved that the Planning Board report this favorably to the Selectmen with the recommendation to place it before the town at the next town meeting, Member Bluhm seconded. Planning Board voted (5-0). (Biron – aye; Carlino – aye; Forrest – aye; Bluhm – aye; Donovan – aye).

#10 – Member Bluhm stated there are two tables at the back of the zoning bylaw that contain distance requirements, square footage areas, lot sizes, lot coverage, yard setbacks, and various things. Table two has a blank line for multifamily multiple dwellings in the CBC zone suggesting there are no standards for multifamily multiple dwellings. There is actually authority for the Selectmen to approve multiple dwellings in the CBC zone. The Board proposes to add dimensional requirements for multiple dwellings to table two.

Member Carlino moved that the Planning Board report this favorably to the Selectmen with the recommendation to place it before the town at the next town meeting, Member Biron seconded. Planning Board voted (5-0). (Biron – aye; Carlino – aye; Forrest – aye; Bluhm – aye; Donovan – aye).

#11 – Member Bluhm described the town use of general code 360 which went through the Zoning Bylaw and made approximately 80 suggestions for mostly technical adjustments. Member Bluhm also stated that at town meeting the moderator can present it the same way they present the budget where people can put an item on hold.

Member Carlino stated general code is going to prepare this for an article for the meeting.

Member Bluhm moved that the Board approve these changes to the bylaws, understanding that the original suggestions may reformat these recommendations for it in different way for presentation to the voters, Member Carlino seconded.

Brief discussion occurred on when and where the town meeting will be held and also if it will fall into the 60 to 90 day deadline.

Member Bluhm moved to table the motion and continue Public Hearing until November 8, 2021 at 6:15 pm, Member Biron seconded. Planning Board voted (5-0). (Biron – aye; Carlino – aye; Forrest – aye; Bluhm – aye; Donovan – aye).

### **Sign Permit – 50 Water Street**

Chairperson Donovan shared sign permit for Omega African Fashion store sign.

Member Carlino moved to endorse, Member Biron seconded. Planning Board voted (5-0). (Biron – aye; Carlino – aye; Forrest – aye; Bluhm – aye; Donovan – aye).

### **Other Topic**

Member Biron asked if there is any news from Mr. Cohen and the Eagle Mill Project.

Admin. Assistant Mead confirmed the Mr. Cohen met with Interim Town Administrator Brittain last week and will be back next week to meet and discuss ground breaking ceremony.

Member Bluhm moved to adjourn meeting; Member Carlino seconded. Planning Board voted (5-0)

Chairperson Donovan declared the meeting adjourned at 8:11 pm.

Elizabeth Mead  
Land Use Assistant