

Minutes of the Town of Lee Planning Board
October 12, 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 Tuesday, October 12, 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, Jonathan Magnotti, Caroline Young, Josh Bloom, David Carrington.

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 (continued) – 175 George Street

Chairperson Donovan stated that it was a pre-existing nonconforming use permit and town council came up with a land court case from the state of Massachusetts showing the property does qualify as pre-existing nonconforming.

Alternate member Bailey stated that the issue was with creating a new nonconformity with a special permit and not by variance.

Member Carlino stated the issue was with the structure versus the lot.

Alternate member Bailey stated if there is a new nonconformity created, that was not there before, it can only be done by variance.

Member Biron stated that after reading the case provided by Attorney Pollard it was changing the way municipal lawyers are looking at property.

Member Carlino stated that based on the Gale case the board could allow it if they did not think it was more detrimental to the neighborhood.

Member Bluhm stated when he read the Gale case he understood it to state basically if there is any kind of nonconformity on the lot, the board can use Massachusetts statute that parallels 6.1(b) to grant a special permit to vary any parameter of zoning that would otherwise apply so long as the board make a required finding that it was not substantially more detrimental.

Member Bluhm also questioned the applicant if he had done any reconsideration of the size of the garage that might be more in compliance with the bylaw.

Mr. Hallock, the contractor for the applicant, stated that due to elevation a small set of stairs needed to be added therefore the garage could not be any smaller.

Brief discussion occurred about reaching out to the town of Lenox Zoning Board of Appeals to inquire what precedent they use to approve setback variances.

Member Forrest moved that the Board accept the plan as presented, Member Biron seconded.

Member Bluhm stated he had an amendment to specify in the motion that it is a 24 by 24 garage that is attached to the building, Member Biron seconded. Planning Board voted (5-0). (Bluhm – aye; Biron – aye; Forrest – aye; Carlino – aye; Donovan – aye).

Member Bluhm stated he can't vote on #1 until the Board determined that it's not substantially more detrimental to the neighborhood and the Board should vote on findings in 6.1 first. He also stated the Board can't find it in compliance with the law unless they have already found that it's not substantially more detrimental.

Chairperson Donovan stated such change, extension, or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. Reason is that most of the neighborhood already has such structures, it would not be much of a change for the neighborhood and it is a small building with not much impact.

Member Bluhm stated that Mr. Smith has consulted neighbors and has not found anyone who appeared to object and the Board had not heard any objections directly from the neighbors. He also stated there is a small line of trees between the two houses which would break up the visual impact.

Chairperson Donovan stated such extended, altered, or reconstructed structure or change of use shall not be in greater nonconformity with open space, yard, and off-street parking. It is not going to be overly large on the lot and it is not going to affect off-street parking.

Chairperson Donovan stated that it is in compliance with all provisions and requirements of this chapter and in harmony with this general intent and purpose. Because of the latitude that 6.1(b) offers the Planning Board, it is in compliance. It is in an essential or desirable to the public convenience or welfare at the proposed location. The homeowner desires a garage, it'll increase tax base for the public. It will not be detrimental to adjacent uses or to the established or future character of the neighborhood. It is not a large increase in size. No complaints from neighbors, already has a natural buffer, and will not create undue traffic congestion or unduly impair pedestrian safety. It will not overload any public water drainage or sewer system or any other municipal facility to such an extent that the proposed use or any existing use in the immediate area or in any other area of the town will be unduly subjected to the hazards affecting public health, safety, or general welfare. Runoff would be minimal and no added sewer impact.

Member Bluhm proposed a further amendment that the Board amend the motion to endorse the findings, Member Carlino seconded. Planning Board voted (5-0). (Bluhm – aye; Biron – aye; Forrest – aye; Carlino – aye; Donovan – aye).

Member Bluhm moved that the Board grant a Special Permit for a 24 by 24 attached garage based on the seven findings that the chairman described and with the reasons therefore shown in the record and that the permit be issued, Member Carlino seconded. Planning Board voted (5-0). (Bluhm – aye; Biron – aye; Forrest – aye; Carlino – aye; Donovan – aye).

Form A – 545 Stockbridge Road

Chairperson Donovan introduced Jonathan Magnotti, representing Foresight Land Services. Mr. Magnotti discussed the lot with frontage on Stockbridge Road. Application is to create a 3.08 acre lot, shown as lot six. The lot provides 285 feet of frontage and satisfies the zoning requirements.

Brief discussion occurred confirming the lot is within table of dimensional requirements.

Member Bluhm moved that the Planning Board endorse the Form A, Member Biron seconded.

Planning Board voted (5-0). (Bluhm – aye; Biron – aye; Carlino – aye; Forrest – aye; Donovan – aye).

Approval of Minutes – 9/27/2021

Member Carlino moved to approve the minutes of September 27, 2021, Member Biron seconded. Planning Board voted (5-0). (Bluhm – aye; Forrest – aye; Carlino – aye; Biron – aye; Donovan – aye).

Any Other Topics

Chairperson Donovan stated it appears the Town of Lenox can approve a variance easier. Suggested a letter to the department to inquire what basis they are using.

Planning Board discussed property on Meadow Street, Drake's Auto Parts. Board confirmed the property is pre-existing (before 1975) and nothing could be done. Member Bluhm stated he would like to look into it. The Board took no action.

Planning Board discussed Eagle Mill Development project. Update given by Admin. Assistant with ground breaking date of November 10, 2021.

Resident Bloom questioned the Board asking why they are looking to give more authority to the Building Commissioner. Member Carlino stated the Public Hearing was closed and continued to November 8, 2021 and suggested Mr. Bloom email any questions to be addressed at said meeting.

Resident Daoust stated she was watching the process and admiring the Board Member's input. Brief discussion occurred regarding Board Member's status and background.

Resident Young expressed concerns with not allowing residents to own roosters. Ms. Young acknowledged the Public Hearing process and will email the department with any questions she may have.

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

Chairperson Donovan declared the meeting adjourned at 7:22 pm.