

Zoning Board of Appeals Minutes, 01/06/2016

Zoning Board of Appeals Minutes January 6, 2016 Landuse Meeting Room

Members present: Chair Ethan Berg, (EB); Shawn Leary Considine, (SLC); Robert Fuster, (RF); Al Harper (AH) and Ned Douglas, (ND)
Absent with notification: Clifford Snyder (CS)
Staff present: Don Fitzgerald (DF), Lenox/Lee Building Commissioner

14 Sunset Avenue, Mr. Michael Albert, (Map 43, Parcel 57) Petition for a Special Permit and Variance per Section 3.3.4 of the Lenox Zoning Bylaw.

EB opened the hearing and introduced each sitting board member, along with DF to the applicant, Mr. Albert. He provided a summary of the hearing format. He advised Mr. Albert of his right to withdraw the petition w/o prejudice after the close of the hearing if he felt the result would not be his favor, as a petitioner must wait two (2) years to refile an application if the board denied the special permit and/or variance.

Mr. Albert questioned whether or not the notice had been sufficient in the newspaper as he did not believe it referenced his proposed side landing extending further in to the side setback and the need for a variance. Discussion followed, w/ SLC explaining the legal significance of an accurate notification to abutters. EB stated he thought the notice did describe the need for both a special permit and variance. He found the notice and confirmed it mentioned the side landing and the need for a variance. DF stated he had coached Mr. Albert to include a request for a variance to further project the landing into the side setback. Mr. Albert noted he had shown the full plans to neighbors which included the side landing, and the neighbors expressed approval.

SLC read the notice, and the Board was comfortable that it contained sufficient information describing the work requiring both a special permit and variance.

Mr. Albert explained he had purchased the property in November, knowing it was tired and could use some updating to make it code compliant in terms of plumbing and wiring. His intent is to make the home an asset for the neighborhood and a place to make him happy. He described an overview of the proposed work, depicting the existing building footprint and the proposed building footprint. He stated the two new porches and the side landing would update the property and make it a pleasing property for both he and the neighborhood.

He provided further detail: he would provide a little porch going three feet from the door, and another little porch going two feet from the door, with an overhang as a welcoming area.

ND confirmed that he would encroach five (5) feet. EB elaborated: part of it would encroach five (5) feet, part of it two (2) feet. Mr. Albert confirmed. He further demonstrated this with his plans.

RF asked why the current three foot encroachment did not conform. Mr. Albert stated it was not far enough back from the street to comply w/ the existing zoning bylaw. RF asked how far back it is from the street. Mr. Albert referenced the surveyor drawing he provided, with a distance of ~28 feet. Mr. Albert further noted that in his request, all of it was on the house side of the driveway. ND noted except for one component, that of the side porch.

ND asked what the encroachment of the side porch would be. Mr. Albert said the encroachment would be three (3) feet. DF stated that landings have to be three (3) feet per building code.

DF asked Mr. Albert to point out where the driveway is located on the survey plan. Mr. Albert again stated that all the proposed work would be before the driveway.

DF asked Mr. Albert if the landing would have a roof or if it would solely be a landing. Mr. Albert said there would be small shed roof.

ND asked if the second landing was required for fire egress. DF stated Mr. Albert has two current means of egress. ND asked why the bump out was part of the design. Mr. Albert said he wanted to get things in and out of his kitchen, mostly for convenience. He felt it would enhance the cottage appearance. Mr. Albert also stated it would be easier for friends with mobility challenges to enter his home via the side entry and avoid going all the way around to the front of the home and up steps. ND said that would pose a hardship, and EB said that such improvement would help people age in place.

RF asked if the bump out required a variance, since the extension would make the structure more non-conforming. He cited the bylaw which states that an increase to nonconformity can be granted a special permit if the Board deems to be not more detrimental to the neighborhood. SLC recommended granting both a special permit and a variance since both had been noticed. EB said he thought it met the variance criteria. The siting of the home is unique to the neighborhood. RF asked EB if he felt his lot was configured differently than others in the neighborhood. EB confirmed this, as the home at 16 Sunset is closer to lot lines.

EB said one (1) piece of correspondence had been received. SLC read the letter from Mr. Albert's neighbors, Lauryn Franzoni Pederson and Stanley Pederson which expressed enthusiastic approval of the plan presented.

No members of the public were present. The Board did not find it necessary to conduct a site visit. EB and AH mentioned they had taken look at the property prior to the hearing. The public hearing concluded with a motion made by EB, seconded by RF and approved by all members.

SLC made a motion to approve the request for a special permit and variance to add to and alter a preexisting nonconforming single family dwelling. AH seconded. All members approved the motion to approve the request for a special permit and variance to add to and alter a preexisting nonconforming single family dwelling.

AH said it was a lovely idea, and that the lot and the placement of the home gives little option but to request a variance; he found a demonstrated hardship in the home's access, and felt that the variance for the side entrance should be granted and that the variance into the front setback was a small change. SLC agreed, she felt the petition met the standards for both a special permit and a variance. RF agreed that the standard for a variance was met due to the home's location on the lot, and he thought the petition met the standard for a special permit issuance. ND agreed with all the members, as did EB. He reiterated how tight the lot is, and the neighborhood character would not be impacted by the alteration. All members voted in favor of granting both the special permit and variance. The group agreed there was no need for conditions. EB stated the decision would be filed in fourteen (14) days w/ the Town Clerk, and that abutters wishing to appeal the special permit would have twenty (20) days. Work begun prior to the 21st day would be at the risk of the petitioner. After twenty (20) days, Mr. Albert should go to town hall and take the special and permit to the registry so it will be recorded. Mr. Albert asked if he could commence roof work before the twenty (20) days. DF told him that any work on the dwelling started before the twenty (20) days would be at his own risk. Mr. Albert asked if his contractor could pour the footing for his landings. DF reiterated it would be at his own risk.

55 Pittsfield Road, Lenox Woods/Lenox Commons/Lenox Gateway, Attorney Phil Heller representing LD Builders

Attorney Phil Heller was present to provide clarification on the existing special permit for the condominiums at 55 Pittsfield Road, Lenox Woods. DF explained that the special permit has been modified over time, and in the original special permit, there was a condition for affordable units at one point and there had been discussion about whether the modification of the special permit resulted in the removal of the provision of affordable units. He said there had been discussion but nothing put into the record removing the provision for affordable units. DF said he wanted to refresh the Board's memory and have something in writing that he can clearly enforce.

Attorney Heller said he would go through the history of the special permit. He had reviewed the material w/ DF and the Town Planner, Gwen Miller. In May of 2010, there was a vote to reduce the number of condominium units from twelve (12) to four (4), which is the vote he now seeks to clarify. He explained the different documents shared w/ the Board of Appeals: the original site plan for the Country Shops, which contained a proposal for eight (8) affordable units on the second story of additional buildings on the commercial part. That is still part of the permit that needs to be built as part of this entire development, which has been in the process of being built over the past ten years. A second document is the minutes from July 2009, and the second page deals with the project in question. There was a building at this location w/ four (4) units. Dave came before the board to modify the building to contain 12 units instead of four, with three stories. In consideration of the board increasing from four to twelve, two of the units would be workforce units—ten of the units would be for the workforce, and two would be affordable. That was the proposal in July 2009. The third document from July 15, 2009 is the Decision, which described twelve work force units with two designated as affordable. In 2010 the foundation was built, and they were ready to get the building permit for the twelve and discovered that the building code had changed. The pressure for the sprinkler system could not be accommodated w/ twelve (12) units. It would have been very expensive to go ahead w/ the twelve (12) units. They returned to the Board of Appeals and said we have to revert back to the four (4). The fourth document provided was what he shared on May 10, 2010 w/ the Board of Appeals. In 2005, there had been 36 units; in 2006 reduced to 30, in 2009 increased to 37 units be of the twelve (12). By 2010, there were 37 units allowed. The 2010 proposal asked to modify the special permit w/o a public hearing. Attorney Heller reviewed the proposal w/ Bill Thornton and Greg Federspiel, then the respective Building Commissioner and Town Manager. He was sent to the Board of Appeals. Attorney Phil Heller then presented the Board the minutes of May 19, 2010. LD Associates had wished to modify their special permit from four buildings to four units. This was consistent w/ the 2006 plan and foundation. The reason for the change was that the building code had changed. Because it was a reduction instead of an increase in units, the Board agreed. SLC had made a motion and the Board approved it. It was both Attorney Heller and Dave Ward's understanding that the reduction of units removed the affordable component. At this point, EB and ND asked for clarification on the scale and number of bedrooms available in the apartment buildings. Attorney Heller explained that they had retained the same footprint. Attorney Heller stated that this reduction in units did not remove the project's obligation to provide eight (8) affordable units in the future. They still have to provide eight (8) units on the second story of the commercial buildings. The last document he presented was the minutes from July 2013, in which LB stated they were still committed to building 8 affordable units. Attorney Phil Heller went on to say that he had a proposed vote to respond to DF's request that something be placed in the record stating that the reduction to four units in 2010 removed the provision of affordable units. DF stated his primary concern had been the decision explicitly stated the provision of affordable units. He understands the economics of it, but needs clarification and something on the record so he can go forward with his job.

RJ confirmed that Attorney Phil Heller's position was that the reduction of units did not include the provision of affordable units.

ND went on to state that the original special permit, not made available to the Board, was very clear that the Board required affordable units in the project, and that there was supposed to be a very nice gateway into Kennedy Park as part of the project. He noted the Board had been worried about affordable housing in Lenox at the time, and that's why the Board had included the requirement in the special permit.

Attorney Phil Heller said it is still part of the decision and he would still have to do it, for the eight (8) units. He stated that Dave Ward had put something up, a kiosk and a bulletin board behind Building 12. There is also parking behind Building 12. ND said he was content w/ that, but was concerned that original spirit of the original decision has not been maintained in terms of affordable housing.

EB said he remembered a characteristic of the project included the apartments would be structured for small families w/ sufficient incomes to afford homes at the \$240,000 to \$250,000 range. Attorney Heller said that was when the units were twelve (12) units. EB said it hadn't been a condition but that had been the spirit of the decision, and that is how he recalled the spirit of the meeting in 2010.

SLC asked Attorney Phil Heller how many affordable units are ultimately required for the site. Attorney Heller stated eight (8) units.

DL stated that there is no market for workforce housing on top of the commercial buildings at this point. ND said he was upset because when he wrote the original decision he had thought there would be affordable units as part of the project.

Attorney Heller reiterated the existing requirement for the eight (8) units, and that the project is still in the development phase. The intent was always to have the affordable over the commercial.

DL explained that he had inherited Dave Cases's dream, and the market has been tough on both the commercial and residential components of the project. RF saw two issues: the reduction in the number of units, and the provision of affordable units in the future.

The Board continued to discuss the issue about the affordability requirement.

DF stated that the reduction of twelve units to four units had not been a modification of the special permit. There was still a condition hanging out there for affordable units which had not been clearly dealt with. He still sought clarity. EB asked if there had been a requirement for affordable units when it had been four units. He was told no. DF said that when there is a condition and no modification to remove the condition, it stands. EB said it was disappointing that the Board had intended for there to be affordable units. EB said it wasn't the intent of the board to retain the affordability requirement after the units were reduced back to four.

AH asked what the standard was for workforce housing at the time of the special permit, since it would have changed over the years. He felt that the affordable housing component is very important. He would like assurance that the eight (8) affordable units are going to be built. DL said he has not found the market for people to live above the commercial spaces. EB clarified that AH wanted assurances and asked if those were available.

Attorney Heller noted the original special permit obliges the petitioner to eventually build eight (8) affordable units. He noted the statute allows for projects to be started within two years, not completed. He noted the project has evolved successfully. He reminded the Board that DF sought clarity about the reduction of the units from twelve (12) to four (4) and the subsequent provision of no affordable units. He had a proposed vote for the Board to contemplate: that the reduction of units removed the requirement of affordable units. DF wanted confirmation that the Board knew when they contemplated the reduction of units from twelve (12) to four (4) it would result in the provision of no affordable units.

SLC recalled their understanding had been that the provision of affordable units would not be part of the reduction in the number of units. Attorney Phil Heller reiterated that the 2013 modification still required affordable units, though not part of the modification.

EB asked if the vote would be legally binding. Attorney Phil Heller said they did not need a public hearing for a de minimus change. SLC said the word modification in the proposed vote raises the question for a public hearing. The Board agreed to change it to clarify.

RF proposed and EB amended the following language: To clarify the vote of the Lenox Board of Appeal's on May 19, 2010 in the matter of LD Associates to reduce the number of units in one building by eliminating the proposed twelve unit apartment building back to a four unit townhouse style building as original proposed there were no new requirements for this building to include two affordable units. DF was satisfied with that.

RF moved, and SLC seconded. All board members voted in favor of the clarification. RF asked if a signed clarification would be helpful for DF. DF said yes, as would the minutes from the meeting.

Minutes

The Board approved the minutes of: December 16, 2015

Respectfully submitted,
Gwen M. Miller