

Zoning Board of Appeals Minutes, 06/07/2017

**Zoning Board of Appeals
Minutes
June 7, 2017
Land Use Meeting Room**

Members in Attendance: Shawn Leary Considine, (SLC); Robert Fuster Jr. (RFjr); Cliff Snyder, (CS); Ned Douglas, (ND); Robert Fuster, (RF); Clayton Hambrick (CH); Albert Harper, (AH)

Absent with notification: Ethan Berg, (EB)

Staff present: Peggy Ammendola, Land Use Clerk, (PA); Gwen Miller, Land Use Director/Town Planner. Also present during portions of tonight's meeting was Building Commission B.J. Church.

Gizwood Properties, LLC, 82 West Street (Map 42 Parcel 60). a second curb cut on the property, per Section 7.1.8, #7(b), to install a circular drive. *On April 5, 2017, this matter was first heard. The Board members agreed to individually go to the site to assess and to continue the hearing to May 3, 2017. On May 3rd, Petitioner requested a continuance to June 7, 2017.* Sitting on this case were: Shawn Leary Considine,(SLC); Robert Fuster Jr. (RFjr); Cliff Snyder, (CS); Robert Fuster, (RF); Al Harper, (AH)

Ned Douglas did come to the meeting, but was not feeling well. Al Harper reviewed the full application and documents prior to the opening of the meeting as well as went to the site on an earlier date and filled in for ND.

The hearing was reopened at 7:07 PM.

Present were Tonya DeFriest and Donald Moore. There were no members of the public present.

Further correspondence from Chief of Police Steve O'Brien and Renee and John Mizia was read into the record.

Chief O'Brien said that having a second curb cut would not be an impediment.

Renee and John Mizia of 85 West St., referring to the April 5, 2017 minutes, claim that Mr. Moore had made non-factual statements. They suggested alternative solutions neighbors on West Street have used. They do not support the petition as they feel this will change the character of the neighborhood and it will set a precedent.

Mr. Moore, using diagrams, pointed out the locations of his property and the Mizia's property. The Petitioners felt strongly that there was just cause for their request as there are safety issues.

RFjr made a motion to close the public hearing. RF seconded the motion and the Board voted to agree 5-0.

RFjr made a motion to grant the petition to allow for the installation of a second curb cut at pursuant to Section 7.1.8, #7(b). AH seconded the motion.

Discussion ensued and while AH supported the Petitioner's request stating that there was good evidence that backing out presented a danger, other members of the Board felt that granting the petition would set precedence and suggested that a remedy could be the creation of a turn-around.

The Petitioners were advised that if they wanted to re-apply, they could after two years unless they were able to present a substantially different plan.

The Board voted to oppose by a vote of 1-4.

Anthony Chojnowski, 50 Church Street (Map 43, Parcel 120) extension of existing Special Permit. The petitioner wishes to demolish the existing multifamily structure at 50 Church Street, and reconstruct a similar building solely for retail use. *There was not a quorum for the originally scheduled hearing of May 17, 2017.*

Neither Mr. Chojnowski nor a representative was present at tonight's hearing.

There were no members of the public present and there has been no correspondence.

GM said she contacted AC yesterday to remind him of tonight's hearing. Mr. Chojnowski hasn't started the project. The Board had previously approved the petition, which also included a variance pertaining to parking, on May 20, 2015 and it was filed on June 23, 2015. In April 2017, the Decision was filed at the Registry. She added that until the bank approves, Mr. Chojnowski cannot file for a demolition permit.

The Special Permit is good for two years and the Variance is good for one year. Since May of 2015, Annual Town Meeting approved to exempt the portion of the parking bylaw from which the Variance was granted, therefore the only issue is the extension related to the Special Permit.

The consensus of the Board was that they could not act on this request without the representation of Mr. Chojnowski.

BJ Church, Building Commissioner, was present and she said that she has spoken a few times with Evelyn Pascal, who is working closely with Mr. Chojnowski on this project. Ms. Church said that they are going forward and are waiting for bank approval.

The Board discussed the "life cycle" of a Special Permit and believes that the two year period may begin with the date of filing of the Decision and not the date of the Decision hearing.

SLC opened the hearing. RF made a motion to continue the hearing to June 21, 2017 at 7:00 PM. RFjr seconded the motion and the Board voted to agree 5-0.

Note: The next hearing, AT&T, was posted to begin at 7:45 PM; therefore there was a period of approximately 15 minutes to fill. Building Commissioner BJ Church was available to discuss a situation regarding Morrison's Home Improvement.

Other Business:

Building Commissioner/Zoning Enforcement Officer BJ Church came before the Board to relate her experiences regarding Morrison's Home Improvement- 25 Pittsfield Road (Map 17 Parcel 37). Ms. Church said that Steve Morrison first failed to get a building permit to erect his sign, and has erected the sign on state highway department. Violations have been noted and Mr. Morrison has been fined. The sign was eventually removed.

History- Mr. Morrison had appeared before the ZBA on two dates and in both were approved:

August 17, 2016 -Special Permit and or Variance under Sections 5.2.4, 5.2.6 & 5.2.0. The Petitioner seeks to place a free-standing commercial business sign with LED time and temperature indication within 6 feet from Pittsfield Road (Route 7).

December 7, 2016-(Petition was filed by My Four Daughters, LLC) Section 7.2 "Signs" to permit signs for additional vendors and to exceed the 36 square foot maximum for a sign in the C-3A district.

The sign was erected following the approval by the ZBA on December 7th.

Ms. Church stated that Mr. Morrison has been fined twice and he has advised her that he will appeal. So far there has been no indication of an appeal. He did take his sign down, but she said that he then put a sign up on his building without a permit. She said that Mr. Morrison claimed that the state agreed he could put his sign on the state highway property, but the state said that they did not give him permission, Ms. Church wanted the Board to know what had happened and said that in her opinion she found Mr. Morrison disrespectful and acted unprofessionally toward the Town of Lenox, the zoning bylaw and the Zoning Enforcement Department.

Mr. Morrison had been granted a TIF, Tax Increment Financing, by the Town of Lenox, and GM stated a requirement in receiving a TIF, one is to be in compliance with the Special Permit and it would be in Mr. Morrison's interest to comply.

GM told the Board that Mr. Morrison requested to be on the agenda tonight and she scheduled him for after the Carpenter hearing.

RF said that the Board must support the Zoning Enforcement Officer.

AT&T, 169 Main Street (Map 46, Parcel 18) renew an existing Special Permit pursuant to Section 10.3 "Wireless Telecommunications Overlay District" of the Lenox Zoning Bylaw to add, remove, modify and replace transmission equipment enclosed within the Church on the Hill steeple. *There was not a quorum for the originally scheduled hearing of May 17, 2017.*

Sitting for this petition were the following: SLC, CS, AH, RF, RFjr.

Presenting the application was Attorney Mike Dolan of the law firm of Brown Rudnick who represents AT&T. He stated that in 2003 his client added wireless antennas in the steeple and have been in since then. They are requesting to renew the Special Permit and also seeking approval of site modifications under the Eligible Facilities Request to add and replace transmission equipment, specifically the removal of two cabinets from the equipment room, adding a new one and adding three additional remote radio units. All of these changes are all within the interior and invisible to the public.

Attorney Dolan said that his client does not need a new Special Permit as they are allowed by right to make these minor changes and referenced Section 6409 (a) of the Middle Class Tax Relief Act.

There was neither correspondence nor any members of the public present.

RF made a motion to close the public hearing. RFjr seconded the motion. The Board voted 5-0 to close the hearing.

RF made a motion to grant the petition to renew the Special Permit to add, remove, modify and replace transmission equipment enclosed within the Church on the Hill steeple. RFjr seconded the motion and the Board voted to approve 5-0.

Informal: Morrison's Home Improvement- 25 Pittsfield Road (Map 17 Parcel 37)

Present were Steve Morrison and his daughter, Ashley Morrison.

SLC started the conversation stating that the Board had received a report from the Zoning Enforcement Officer, BJ Church regarding the placement of their new sign being on Mass Highway's property.

Mr. Morrison said that the sign was placed 10 feet from the curb believing that was what the Board had agreed to. He presented documentation with regards to what he had done as well as notification to move the sign within 30 days. Now that he knows that he was on state property, he would like to move the sign back onto his property by a distance of 5 feet. RFjr responded that the Special Permit provided that the sign could be placed back 10 feet *from his property line*. So to change that Mr. Morrison would have to come back to the ZBA to request a modification. RFjr also pointed out that the sign that was erected was partly made of aluminum, and the ZBA allowed a wood sign. .

Ms. Morrison accepted responsibility for not seeking a building permit for the sign. She thought that when the ZBA granted the Special Permit, it superseded a building permit. She also explained that in the minutes of their hearing, it is stated that the sign could be 10 feet from the curb. The Board stated that the representation at the hearing was that the subject property line went to the curb and that it is up to the petitioner to know where their property lines are. Ms. Morrison said that they are trying to work things out and make it right.

SLC advised the Morrisons that they would need to file a petition with the Town Clerk for a modification. There would be another public hearing which again requires advertising. The time from filing to the time of the hearing is no less than 5 weeks usually, depending on the next available meeting date.

RF suggested that the Morrisons work with the Zoning Enforcement Officer regarding the fine. Another issue was that Ms. Church had informed the Board that when the sign was finally taken down, another sign was put up on the building. RF said that Mr. Morrison needed to get a permit for any signage.

Anne Sheridan, 23 Kemble Street (Map 40, Parcel 41), Variance from Section 6.1.1, "Table of Dimensional Requirements" to construct a new, attached garage to the pre-existing, non-conforming single family house.

Presenting the application was Ms. Sheridan who has an agreement to purchase the property from John Davidson. Ms. Sheridan detailed her plans.

In attendance were the Bourquards, next door neighbors at 19 Kemble Street. They wanted to know what the new garage would look like. The Board advised Ms. Sheridan that applicants usually come with a sketch of the proposed project. Ms. Sheridan explained that she didn't want to invest in having an architect draw up plans if her proposal was not approved. She answered questions posed by Mr. Bourquard, and they had no objections.

After discussion, RFjr made a motion to close the hearing. RF seconded the motion and the Board voted to agree 5-0.

RF made a motion to grant a Special Permit under Section 5.3.3 (not the Variance) to construct a new attached garage to the pre-existing, non-conforming single family home. CS seconded the motion and the Board voted to approve-5-0.

Neal Carpenter, 170 Hubbard Street (Map 45, Parcel 38-1), Special Permit for a pre-existing, non-conforming Accessory Dwelling Unit (ADU) under Section 5.3 and Section 9.2.

RF recused himself as he is Mr. Carpenter's attorney. CH sat in his place. Other members sitting were: SLC, RF, RFjr, and CS.

There was no correspondence. Mary Jane Mattina and Michael Lane, both adjacent abutters to the Carpenters, were present.

Mr. Carpenter presented his application. He stated that he built his home 30 years ago, meeting the approval of the Building Inspector and receiving a Certificate of Occupancy. An apartment within the structure was to accommodate his mother in law who lived there seven years before her death. For the next two years he rented the space during the period between Memorial Day and Labor Day, which is allowed pursuant to the zoning bylaw. Following that period his daughter and her family lived there for seven years and now he rents the apartment from Memorial Day to Labor Day.

At some point, as a result of a complaint by abutting neighbors to the east, Charles and Mary Jane Mattina, of 176 Hubbard, Inspector Thornton went to the premises and advised Mr. Carpenter that the apartment was not "legal" due to the fact that there was a stove within the kitchen, therefore Mr. Carpenter would have to remove the stove to be in compliance with the zoning bylaw. Mr. Carpenter removed the stove and notified the Building Inspector of such.

RFjr stated that zoning bylaws change over the years, and that at the time this home was built, if there wasn't a stove, a space was not a kitchen. He would not himself use the word illegal as Mr. Carpenter had, but removing a stove would change the status from "illegal" to "legal".

Mr. Carpenter stated that the apartment consists of 920 square feet and the home is 2774 square feet. The apartment size is larger than the maximum 800 feet allowed, but less than 40 percent of the gross floor area. Section 9.2 of the Lenox Zoning Bylaw, Accessory Dwelling Unit, reads:

Maximum unit size. The gross floor area, calculated from finished wall to finished wall, of an existing structure, an addition, or new detached structure, converted to, or constructed for the purpose of creating an ADU shall not exceed 40 percent of the gross floor area of the principal single family structure, not including garage and/or detached accessory buildings or 800 square feet, whichever is less.

The apartment is on the left side of the house. Access is through a front door, the garage, and the deck. Mr. Carpenter said that he is assessed on all of the property, and repeated that when he was advised that the zoning bylaw at the time did not allow the stove, he removed it. The Accessory Dwelling Unit bylaw was added in 2008.

Ms. Mattina argued that Mr. Carpenter had not "played by the rules" by disregarding the Zoning Bylaws in 1986 and 1987 and building an illegal house. Mr. Carpenter responded that the house was not illegal, the stove was illegal, and that upon being advised of that, the stove was removed. Ms. Mattina said that multi-family was not allowed in the 20-30-40 zone at the time his home was built. Mr. Carpenter responded that it was within his right to have family living with him. She inquired as to why Mr. Carpenter waited for 30 years before seeking a permit. Mr. Carpenter said that an Accessory Dwelling Unit is now allowed under the current zoning bylaw.

Ms. Mattina, referring to the map that was included in Mr. Carpenter's petition, said that she was confused as she did not think that it corresponded to an aerial perspective. Discussion ensued regarding building setbacks. The side setback is 25 feet, and the nearest point of Mr. Carpenter's home is 63 feet from the property line shared with the Mattinas, thus well beyond the setback. Mr. Carpenter also stated that the drawing in his petition to which Ms. Mattina referred was not drawn to scale. Ms. Mattina felt that it was not an accurate representation.

Michael Lane of 168 Hubbard St., whose property abuts the Carpenters on the west side, said that he supported the petition.

CS asked Ms. Mattina if her contention was that the setbacks were illegal. Her response was that she did not know about setbacks as she had never measured. SLC advised Ms. Mattina that the ZBA was concerned with setbacks, which in this zone is 25 feet from side yard property lines. There are no issues here as the distance is 63 feet.

SLC explained that when the Certificate of Occupancy was issued, the home was not illegal as there were no appliances. She then explained the difference between a Variance and a Special Permit. The ZBA considers Mr. Carpenter's acknowledgement that he created an illegal dwelling by putting the stove in. At one time, a petitioner could ask for a variance, something not allowed, but hardship would have to be proven. In this situation, the ZBA is to determine if this petition meets the requirements of a Special Permit.

CS made a motion to close the public hearing. CH seconded the motion and the Board voted to agree 5-0. The Public Hearing was closed. Mr. Carpenter chose to proceed to the decision phase.

CS made a motion to approve the Special Permit for a pre-existing, non-conforming Accessory Dwelling Unit (ADU) under Section 5.3 and Section 9.2. AH seconded the motion and the Board voted to agree 5-0.

The Board stated that while it is not fair for one to simply take the law in their own hands, he felt that was not Mr. Carpenter's intention and that he was coming before the Board to abide by the rules and regulations and rectify. The long term use was for family members, and the only non-permitted use was a stove. It was noted that the use of extra rooms has been utilized for some time, and while not appropriate at one time, the law was changed and can now be permitted. The Board discussed the size of the dwelling unit exceeding the stated 800 square feet limitation. Applying the 40 percent limitation to the total square footage would be approximately 1,000 square feet. It was agreed that because this is a pre-existing non-conforming structure, the additional 120 square feet would be acceptable and this petition meets all of the other standards for an ADU. The Board voted in favor by a vote of 5-0

Approve Minutes:

October 24, 2016 -(SLC, AH, JH, CH, RF) Approved by consensus.

May 3, 2017-(SLC, RFjr, CS, ND) Approved by consensus.

Respectfully submitted,
Peggy Ammendola