

MAY 25 2016

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THE COMMONWEALTH OF MASSACHUSETTS
TOWN OF LUNENBURG
ZONING BOARD OF APPEALS

May 25, 2016

Certificate of Granting a Special Permit

Special Permit granted to **Stanley Miller, 233 Summer Street, Lunenburg, MA 01462** and affecting the rights of the owner with respect to land and buildings located at **234 Summer Street, Lunenburg, MA 01462**, Assessors Map 117/31 under the Lunenburg Protective by Law Sections 7.4.1, 7.4.1.1 & 7.3.2. and recorded in Worcester Northern District Registry of Deeds, Book 7705, Page 205, August 23, 2012, as described in plans submitted with the petition.

The applicant was seeking a Special Permit to demolish an existing retail building and to construct a new five bedroom home and office as per submitted plans. The action required an increase in nonconformity and a change of use.

The Board of Appeals of the Town of Lunenburg hereby certifies that a Special Permit has been granted pursuant to Protective By-Law of the Town of Lunenburg.

Board Members present: Raymond E. Beal Chairman, Alfred Gravelle, Hans Wentrup, James Besarkarski and Paul Doherty.

And the said Board of Appeals further certifies that the decision attached hereto is a true and correct copy of its decision granting said Special Permit, and that copies of said decision, and all plans referred to in the decision, have been filed with the Planning Board and the Town Clerk.

The Board of Appeals also calls to the attention of the owner or applicant that General Laws, Chapter 40A, Section 11 (last paragraph) provides that no variance or special permit, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the Town Clerk that twenty days have elapsed after the decision has been filed, that it has been dismissed or denied, is recorded in the Registry of Deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The owner or applicant shall pay the fee for such recording or registering.

DISCUSSION

The public hearing was opened and Chairman Raymond Beal introduced the Board members and explained the hearing procedure to the audience. Lisa Normandin, Board secretary read the petition into the public record and a letter of opposition submitted by abutter Dino Piermarini, property owner at 236 Summer Street Lunenburg, MA .

Mr. Gary Shepard of David E. Ross Associates of Ayer, MA was representing the Miller family. He explained that the Millers wish to demolish an existing retail structure on Summer Street and replace it with new five bedroom home and office as per submitted plans. The action required an increase in nonconformity and a change of use. Mr. Shepard explained the parcel is located in the Office Park & Industrial District and the Summer Street Revitalization Overlay District. The existing structure was built in 1963 prior to the adoption of the Lunenburg Protective By-law. The request before the board was to permit the demolition of the existing structure and the construction of a residence and requested that the Zoning Board find that the reconstruction, extension and alteration of the structure not be substantially more detrimental to the neighborhood than the existing non-conforming structure and will not be more substantially detrimental to the neighborhood.

Mr. Shepard explained that he had previously met with the Planning Director and Building Commissioner with his clients and the consensus was that petitioning the ZBA for a Special Permit was the way to begin the process. He explained that the Miller's currently live across the street from the lot and own two contiguous parcels next to 234 Summer Street. The proposal is to remove the existing structure that is in poor condition and replace it with a new structurally sound, energy efficient residence. The site plan shows the location of both the existing and the proposed structures and their relationship to property lines and existing site features. The new building will be built on the existing foundation and have a slightly larger footprint as there will be a 15 foot by 25 foot ell on the northwest side and a 55 foot by 7 foot porch across the front of the building. The gross square footage will be larger as a portion of the house will have a second floor. Mr. Shepard felt that the new home would blend in with the residential properties on the opposite side of Summer Street as the existing structure is run down and unsightly and that the new structure would significantly improve the aesthetics of the neighborhood.

Hans Wentrup had concerns with a residential home being placed in the middle of an industrial zone. Mr. Shepard explained that while it wouldn't be ideal for everyone, the Miller's want to live and work close to their existing business rather than moving to another location. He felt that it would clean up and improve the existing neighborhood and encourage revitalization the by-law allows.

The Board had a discussion with regard to the blue barrels on the west side of the property. Lydia Miller, 233 Summer Street explained the existing driveway on that side of the property provides a rear access to the building. Dino Piermarini, 236 Summer Street explained that the barrels belong to him and served as the property line. Currently there is ten feet between the buildings and sufficient area for a turnaround area in the rear of the property for the Millers. Mr. Piermarini had several objections including noise coming from his property during which he conducts his work car repairs and complaints about invasion of privacy issues due to the fact that he (Piermarini) has surveillance cameras. He also cited liability issues and resale value of his commercial property.

Mr. Miller, 233 Summer Street explained that he is not concerned with noise coming from the abutting property as he starts up five or six trucks every morning and has trucks in and out all day long for his business. Mr. Miller is willing to put up a fence between the existing properties to appease the neighbor. Mr. Miller added that his neighbors across the street are in favor of the new home and said that it will improve their view.

John Crowley from Leominster indicated that he drew the design for the proposed residence. While he didn't understand the nuances of the By-law he said that if it was a mixed use zoning it would present a hardship in that the construction would be more of a commercial nature and thought that the home office would need to be handicapped accessibility to the office and that the plumbing would need to be copper instead pvc piping and it may be determined that a sprinkler system be installed. The project is a big expense to invest in that area and if the financing would be of a commercial nature it would increase the costs considerably.

The Chairman closed the public discussion and turned it over to the Board.

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Hans Wentrup was not comfortable making a nonconforming use more nonconforming by enlarging it with the ell portion to accommodate the home office. He was okay with addition the former's porch and thought a fence should be put up to accommodate the abutter. Mt. Wentrup referred to Section 7.3.1.1 which states "*Alterations to a legally non-conforming use that: a) do not reflect the nature and purpose of the original use; or b) result in a different in quality, character or degree from the original use and not ordinarily and reasonably adapted to the original use.*" As the by-law reads he was not satisfied that it would not be substantially more detrimental to the abutter. There were no neighbors present from across the street so he did feel the noise was not an issue for them or they would be present at the meeting. Hans Wentrup felt that it was the duty of the Board to weight all of the concerns of the abutters and understands the fact that it makes sense for the applicants to live next to where they work.

Paul Doherty agreed with Hans Wentrup. James Besarkarski skipped over the fact that the home would have an office but felt it would look out of character having a beautiful home in the middle of a commercial area.

Alfred Gravelle was hearing that the overlay district could provide for some of the requests and the underlying district for others and felt like they (engineers) were picking out the best for the applicant, and justify some he felt he could and some he could not justify. Mr. Gravelle felt that by adding to the nonconformity by increasing footprint is more detrimental, something the Board does not typically do. As far as the neighborhood, the building there now is an eyesore, so he can justify the fact that staying same footprint that what existing today could be applicable. He is sensitive to the neighbors concern and for the driveway situation.

Raymond Beal was concerned with growing the nonconformity as well, but does like the green space provided on the plan and does consider it an improvement to the neighborhood. He does not subscribe to the rationale that the Overlay district allows that kind of a mix of residential and commercial, they are separate in this case and what is trying to be addressed. Mr. Beal's interpretation of the overlay district is that it allows for a mixed use to create a kind of village atmosphere where there you have a residential use over retail, whereas this is not. Improvement of the lot is nice but he feels uncomfortable with growing the nonconformity in so many ways and felt that the increase in the amount of floor space by eighty three (83) percent is very significant.

Hans Wentrup was willing to compromise and felt that if the office space addition went away and the applicant satisfied the neighbor with regard to the fence he would me more amenable. Mr. Wentrup was comfortable with the porch because it is not considered living space and understands the fact that they want to live near where they work, and felt that was not more detrimental.

Alfred Gravelle was comfortable with the building maintaining the same footprint, the patio area and porch. He had no concerns with the driveway on the left side of the property as long as there was a stockade type fence. He also mentioned that he was okay with granting the request and if the applicant did not exercise the Special permit that was their choice to make. Gary Shepard indicated that the applicant was okay with the proposal of removing the office area and could make the necessary changes to the plan prior to the Planning Board meeting.

MOTION

After due deliberation Alfred Gravelle made a motion to grant the Special Permit with the condition that the new home maintain the existing footprint and provide a solid construction fence on the west side of the property based on the finding that the proposal would not be substantially detrimental to the neighborhood. Paul Doherty seconded the motion

And the said Board of Appeals further certifies that the decision attached hereto is a true and correct copy of its decision granting said Special Permit, and that copies of said decision, and all plans referred to in the decision, have been filed with the Planning Board and the Town Clerk.

FINDINGS

In granting a Special Permit, the Board of Appeals found that the proposed use:

- a. Will not be injurious or dangerous to the public health, or unduly hazardous because of traffic congestion, danger of fire or explosion, or other reasons.
- b. Will not have a material adverse effect on the value of land and buildings in the neighborhood or on the amenities of the neighborhood.
- c. Will be operated with reasonable regard for order and sightliness.
- d. Will not produce noise, vibration, smoke, dust, odor, heat or glare observable at the lot lines in amounts clearly detrimental to the normal use of adjacent property.

The Special Permit is subject to a periodic review by the permit granting authority (Zoning Board) or the Enforcement Officer, to insure compliance with the enumerated conditions. Non-compliance to these conditions may result in revocation of this permit.

The granting of the Special Permit shall inure to the benefit of the applicant Stanley Miller and shall cease in the event the business is sold or sublet to another party.

After closing the discussion, the Board acting in its capacity as the Special Permit Granting Authority, granted the Special Permit with the above members present and voting as follows with respect to the issuance of the Special Permit dimensional variation.

VOTE

- Raymond E. Beal voted in favor of granting the Special Permit.
- Hans Wentrup voted in favor of granting the Special Permit.
- Alfred Gravelle voted in favor of granting the Special Permit.
- James Besarkarski voted in favor of granting the Special Permit.
- Paul Doherty voted in favor of granting the Special Permit.

In making this determination, the Board specifically found that the granting of this Special Permit would not contravene the purpose of the Protective Bylaws or the provisions of Chapter 40A of the Massachusetts General Laws.

Voted and executed,

Lunenburg Zoning Board of Appeals
Special Permit Granting Authority

 5/25/16
 Raymond E. Beal, Chairman Date

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