

**DECISION
LONGMEADOW ZONING BOARD OF APPEALS**

Applicants: David Kane, Richard Kane, David McGibbon

Property Address: 1657 Longmeadow Street

Deed Reference: Hampden County Registry of Deeds, Book 15150,
Page 461

Filing Date: March 21, 2006

Public Hearing Opened: October 3, 2006

Public Hearing Closed: January 31, 2007

Decision Date: March 21, 2007

BACKGROUND

The Applicants requested in the Application for Hearing filed March 21, 2006 (the "Application") that the Longmeadow Zoning Board of Appeals (the "Board") approve a special permit to demolish the existing structures at 1657 Longmeadow Street (the "Property") and build a new dwelling with an accompanying breezeway and two car garage (collectively the "proposed structure"). The Application included a certified plot plan which evidences siting of the existing structures and the siting of the proposed structure (the "Plot Plan"). After a series of continuances, the Board held the following hearings on the Application as follows:

1. October 3, 2006. The Applicants appeared through counsel, and presented their detailed proposal to demolish and reconstruct the existing structures on the Property in accordance with the Plot Plan.

2. November 15, 2006. The Applicants appeared again through counsel and continued their presentation of the Application. In so much as the proposed structure would be larger than the existing structures, discussion ensued concerning the proximity of the proposed structure to abutters residing north and south of the Property. Further discussion with the Applicants involved the definition of the word "reconstruction" as it appears in M.G.L. ch. 40A §6. As the term is not defined in the statute, the Board discussed the need to define the term for inclusion in its decision. The Board considered several possible

definitions of the term “reconstruction” to include a complete demolition of the existing structures and replacement with a structures larger than the footprints of the existing structures, demolition with a limitation placed on the dimensions of the replacement structures to conform to the area footprint of the existing structures and demolition with a requirement that some portion of the existing structures remain as part of the replacement structures.

The Applicants identified the Property’s existing nonconformities with Longmeadow’s by law as follows: 1) the lot lacks the required frontage of 125 feet and 2) the existing structure does not comply with the minimum primary setback requirement of 40 feet. Further written analysis including a plan of the proposed structure was then presented as to how these nonconformities would be affected by the proposed structure with specific attention to the side, front and rear setbacks.

At this time, the public comment portion of the hearing was opened and interested parties and abutters were allowed to come forward and view the plan. Discussion then ensued concerning whether the existing non conformities would be increased in any way by the proposed structure. The Applicants’ position on this issue was that the proposed structure would not increase the existing nonconformities. The participants from the public included but were not limited to Elizabeth A. P. McEvoy, 28 Bellevue Avenue, Longmeadow, Thomas and Jeanne Z. Lachiusa, 1651 Longmeadow St., Longmeadow and Elizabeth H. Port, 212 Farmington Rd., Longmeadow and Derek Ottani, 1661 Longmeadow St., Longmeadow

The participants from the public raised many issues in opposition to the Application pertaining to the style of the proposed structure, whether the submission of a detailed plan of the proposed structure in addition to the plans submitted to date was required, the distance from the driveway servicing the proposed structure to the abutter’s property lines, the proximity of the proposed structure to the lot lines. A number of the participants claimed that the existing structure had historical significance to Longmeadow and should not be demolished for that reason.

The Board considered the foregoing issues raised by the public and discussed same with the Applicants. Notably, the Applicants raised the option of increasing the distance from the proposed structure to the lot line on the southerly side to provide greater separation between the proposed structure and the abutter on that side, Mr. Ottani. The public comment portion of the hearing was then closed and the hearing was continued on December 6th which was further continued to January 10th. During the interim period, the Board received various correspondences from the public which related to the foregoing issues including a letter from Mr. Ottani.

3. January 10, 2007: The hearing was re-opened for public comment by the Board to accept further commentary on the issue of whether the proposed structure would increase either of the two existing non conformities. Specifically, the Board noted that the proposed structure would be larger than the existing structure and questioned the Applicants on whether the width of the proposed structure along Longmeadow Street would result in an increase in the non conformity relating to the primary setback, namely, that the existing and proposed structure would both have a primary setback of only 23.05 feet.

The Applicants addressed the Board taking the position that the proposed structure would not increase the existing non conformity relating to the primary setback. The Applicants also indicated that it would be willing to amend the Application and the proposed plan to provide for a primary setback of forty feet thereby making the proposed structure in compliance with the requirement of the by law.

In response to questions by the Board and the public concerning the style of the proposed home, the Applicants compared the proposed structure to 912 Longmeadow Street, Longmeadow and submitted a photograph of same noting that the proposed structure would be a colonial with four windows down and five windows up, with clapboard siding and a thirty-three foot roof peak.

Participants from the public then addressed the Board in response to the Applicants' comments including Thomas Dignazio, 18 Bellevue Avenue Longmeadow, Mr. Ottani and Mrs. McEvoy. In summary, these residents and other participants from the public argued that the proposed structure would increase the existing nonconformity relating to the primary setback and that it would also be substantially more detrimental to the neighborhood than the existing structure on the basis of the siting of the home in relation to Mr. Ottani's home and the overall size and dimension of the proposed structure.

The hearing was then continued to January 31, 2007.

4. January 31, 2007: It was noted that the hearing remained open for the public's comments and questions. Discussion between the Board, the Applicants and members of the public ensued concerning various issues including the siting of the proposed structure in particular the width of the structure as it relates to the side yard setbacks, the intended style of the house and whether the Board has the power to impose restrictions on the style of the proposed structure and the height of the proposed structure. Speaking for the public on these issues were Ms. Port, Henry Cropsey, 862 Longmeadow Street, Mrs. Lachiusa, Mr. Ottani and Leslie Clement, 87 Forest Glen, Longmeadow. Importantly, the Applicants verbally agreed to an amendment to the Application such that the proposed structure would have a twenty two foot side yard setback to the south of the proposed structure and a sixteen foot side yard setback to the north of the proposed structure. In addition, the height of the proposed structure will be no higher than thirty-three feet. The Application was verbally amended to incorporate these changes resulting in a reduction of the width of the proposed structure to thirty six feet. The Applicant agreed to submit a revised plan. A revised plan dated February 1, 2007 was submitted and is attached hereto and is incorporated herein by reference (the "Revised Plan")

DECISION

From the Application inclusive of the Plot Plan, the Revised Plan and the testimony from the Applicants and the public, the Board makes the following findings:

1) The Applicants are the owners of 1657 Longmeadow Street, Longmeadow, Massachusetts by deed of Jean Guzik dated June 15, 2005 and recorded in Hampden County Registry of Deeds in Book 151250, Page 461.

2) The property described on the Revised Plan for consideration before the Board consists of 21,787 square feet of frontage of 73.08 along Longmeadow Street. The property is currently improved by a two story single family residential dwelling together with a detached garage and shed. The property is located in RA-1 zoning district which currently requires a minimum lot size of 18,750 square feet and 125 feet of frontage.

3) As sited on the property per the Plot Plan and Revised Plan, the lot lacks the required frontage under the current by law and that the existing dwelling does not comply with the minimum primary setback requirement of 40 feet. The existence of the home and garage before enactment of the current zoning by law confers upon the property the status of a lawful, pre existing nonconforming structure within the meaning of M.G.L. ch. 40A §6.

4) The proposed dwelling as more particularly described and sited on the Revised Plan will be larger in width along Longmeadow Street than the existing dwelling resulting in an increase of the nonconformity relating to the primary setback.

5) The general size of the proposed structure as set forth in the Revised Plan conforms to the

neighborhood in that no particular style, size or salient features are common to the majority of thirteen homes along the east side of Longmeadow Street, south from 1657 to 1675, and north from 1657 to 1607, and inclusive of 1656, 1650, 1648, 1644, 1636 and 1630 on the west side.

6) The living area of the proposed structure set forth in the Revised Plan is 1825 SF, and the average living area of the thirteen aforementioned homes, including 1657 as it is currently constructed, is 2002 square feet. Therefore, the living area of the proposed structure is generally consistent with the average for the neighborhood.

7) The north to south frontage of the proposed dwelling is thirty-six feet in accordance with the Revised Plan, and the average of the aforementioned thirteen homes is thirty-nine feet.

8) The height of the proposed structure will be no more than thirty-three feet based on the representations and agreement of the Applicants at the January 31, 2007 hearing.

9) Based on the foregoing findings, the Board finds that the proposed structure per the Revised Plan inclusive of the attached breezeway and the two car garage would not be substantially more detrimental to the neighborhood than the existing structures.

At the hearing, the following motion was made:

“I move that for purposes of this petition, “reconstruction” shall include complete demolition and removal of the existing dwelling and outbuildings and include complete removal of all existing foundations.”

The motion was seconded and a vote was taken. Members Plotkin, Lavenburg and Preston, and Associate Members Bean and Sirulnik voted in the affirmative and in favor of the motion.

Subsequently, a second motion was made:

“I further move that we find pursuant to M.G.L. C. 40A, Section 6, that the proposed reconstruction of the pre-existing and nonconforming dwelling known and designated as 1657 Longmeadow Street, and sited per the plans as submitted and modified (by verbal agreement) on January 31, 2007, such that the proposed dwelling width would be thirty-six feet and the height would be thirty- three feet and the north side yard setback would be sixteen feet and the south side yard setback would be twenty two feet would be more intensive than the existing nonconformity by virtue of the fact that the proposed dwelling extends further south and north within the area which is already less than forty feet from the street line, thus increasing the living space within the only area which makes the siting of the present dwelling nonconforming. In other words, the proposed structure will result in an increase of the width of the building along the primary setback.

The motion was seconded and a vote was taken. Members Plotkin, Lavenburg and Preston, and Associate Members Bean and Sirulnik voted in the affirmative and in favor of the motion.

Subsequently, a third motion was made:

“I move that we make a finding that the proposed construction referred to in the previous motion, would not be substantially more detrimental to the neighborhood than the existing nonconforming structure by virtue of the facts that the proposed dwelling is sited within the required side lot setbacks of 15 feet on either side and sited no closer to the street line at Longmeadow Street than the existing dwelling.”

The motion was seconded and a vote was taken. Members Plotkin, Lavenburg and Preston, and Associate Members Bean and Sirulnik voted in the affirmative and in favor of the motion.

Based on the findings set forth herein and the motions approved at the January 31, 2007 hearing, the special permit is hereby granted.

We, the undersigned, certify that based on the information furnished by the Applicants, the subject property is owned by David Kane, Richard Kane and David McGibbon by a deed recorded in the Hampden County Registry of Deeds, Book 15150 , Page 461 .

Appeals, if any, should be made pursuant to Section 17 of the Massachusetts Zoning Act, Chapter 40A and shall be filed within twenty (20) days after the date of filing of this decision with the Clerk and the Planning Board for the Town of Longmeadow.

LONGMEADOW ZONING BOARD OF APPEALS

David A. Lavenburg, Esq.
Chairman

Mark Sirulnik

Daniel D. Plotkin

Kate Bean

Russell H. Preston, III