

**TOWN OF LONGMEADOW
ZONING BOARD OF APPEAL
Minutes of January 10, 2007**

Allen, Lot 1 & 2 Dunn Rd., requesting to be allowed to have a buildable lot, Petition #2005-29.

Petition was continued to February 13, 2007.

Kane, 1657 Longmeadow St., requesting a Special Permit to be allowed to tear down & rebuild dwelling, Petition #2006-13.

Petition was continued to January 31, 2007.

Omni-Point-T-Mobile, 260 Meadow Rd., requesting a Special Permit to allow a Cell Tower be placed on property, Petition #2006-18.

Petition was continued to February 13, 2007.

Albano, 403 Maple Rd., requesting a Special Permit to Demo existing non-conforming dwelling and replace with conforming dwelling on non-conforming lot, Petition #2006-27.

Mrs. Albano's son, Michael J. Albano of East Longmeadow, appeared before the Board on behalf of the Applicant, and was accompanied by builder Michael J. Torcia. The Applicant requests a Special Permit to allow for the demolition and reconstruction of the dwelling at 403 Maple Road which is non-conforming as to the front setback of 30 feet and is upon a lot that is non conforming due to frontage of 75 feet.

This Application had been previously scheduled for August 1, October 3, November 15 and December 6th 2006. No actions were taken and no testimony was given on August 1, October 3 or December 6th. At the November 15th hearing, member Clark noted the similarity of the Albano application to that of Number 2006-13 (Kane, Kane and McGibbon), but noted for the record that in the case of the Albano application a nonconforming dwelling would be replaced with one that was conforming to the By-Law setback requirements. Mr. Clark also noted the need for the Board to either adopt a "benchmark" definition of "reconstruction" or define it on a case by case basis.

During the January 10, 2007 hearing, Mr. Albano explained that the existing dwelling is about 750 square feet of living space and is by current standards obsolete and short of the highest and best use of the land. The Applicant proposes to completely remove the existing dwelling and reconstruct a new dwelling that will meet the requirements of the current zoning bylaw in all respects. Specifically, the proposed dwelling will have a 15 foot setback on the east side, a 15 foot setback on the west side and 41 foot primary setback on the north (front) of the dwelling. The proposed dwelling would result in the removal of a non-conforming dwelling and its replacement with a conforming dwelling, leaving the lot frontage of 75 feet as the sole non-conformity.

The Board discussed the definition of the term reconstruction for purposes of its use in connection with the instant application as well as others that are presently or will in the future come before the Board. The members agreed that the term reconstruction as more particularly identified in M.G.L. 40A Sec. 6 for purposes of this application will be defined to include the complete removal of all portions of a dwelling, including the foundation, and construction of a new dwelling in its place. It was agreed that term reconstruction as it appears in M.G.L. 40A sec 6 will also be defined so as not to require that any portion of the existing dwelling remain as a part of the new construction.

The public comment portion of the hearing was then closed when no one appeared to speak to the petition.

Member Plotkin made the following motion:

I move that we make a finding pursuant to M.G.L. c. 40A Section 6 that the proposed demolition and reconstruction of the dwelling known and designated as 403 Maple Road, per the plans as submitted, would not be more intensive than the existing nonconformity due to the fact that the new dwelling will meet the requirements of the current zoning bylaw in all respects, with a 15 foot setback on the east side, 15' setback on the west side and 41 feet on the north (front) of the dwelling. The proposed dwelling would result in the removal of a non-conforming dwelling and replaced with a conforming dwelling, leaving lot frontage as the sole non-conformity, and that no one from the public spoke in opposition to the petition.

The motion was seconded and a vote was taken. All members voting voted "yes". Voting in favor of the motion were members Preston, Bean, Lavenburg, Sirulnik and Plotkin, thus granting the Special Permit subject to the statutory appeal period.

Knight, Daniels, Mulvey, etc, 154 Williams St., Appeal of Building Commissioner Decision regarding sign for Lots for Sale, Petition #2007-1.

The Appellants, abutters to the property located at 154 Williams Street, oppose the determination of the Building Commissioner to permit the display of a sign advertising lots for sale in the new Sherry Lane subdivision. The Appellants claim that the sign is in violation of Article XIII, Sec. I, Sub-Sec. I of the Longmeadow Zoning Bylaws which permits "One unlighted temporary sign relating to a new residential subdivision during the actual period of construction." The Appellants stated in their petition that they do not question whether the sign is in violation of Article XIII, Sec. H, Sub-Sec. 3 of the Zoning Bylaw which states: "For sale, rent, or lease signs: any temporary sign advertising property for sale or lease shall be permitted provided that: a) only one unlighted sign shall be erected, it shall not exceed six (6)square feet; b) such signs shall be located only on the property which is for sale, rent or lease and c) the sign shall be removed by the owner or agent within thirty (30) days of rent, sale or lease.

The Board reviewed the letters from the Building Commissioner to Stephen G. and Sherry Danalis dated October 13, 2006, October 20, 2006, November 15, 2006 and December 8, 2006, a letter from Building Commissioner to Sherri Knight dated November 9, 2006.

In Summary, in the October 13th letter, the Building Commissioner directed the Danalis' to remove a sign located in the front yard of the subject property because it was illuminated and was erected prior to the start of construction in violation of Article XIII, Section I. The Danalis' were ordered again to remove the sign pursuant to the October 20th letter which remained on the property as of the date of that letter. According to the November 9th letter, the Building Commissioner advised one of the Appellant that a new sign erected at the property, replacing the previous illegal sign, which read, "Lots for Sale, Carlson GMAC Real Estate, New Development, Sherry Lane, ..." was legal because it complied with the provisions of Article XIII, Section H, Sub-sec 3 of the Zoning Bylaw. The Building Commissioner wrote to the Danalis' on November 15th to advise them to remove the former sign which was still left on the property. On December 8th, The Building Commissioner ordered the Danalis' to remove the sign placed in their window which replaced the sign previously located on the front yard of the property and ordered removed in the October 13th and October 20th letters.

The question before the Board is whether the sign erected by the Danalis' advertising the lots for sale and deemed legal by the Building Commissioner is in violation of Article XIII, Sec I, Sub-sec. I of the Zoning Bylaws. After explaining the background of the appeal, the Chair asked the Appellants to give their arguments supporting their position. Tom Paone explained that the provisions of said sub-sec I prohibit the sign because it advertises the lots for sale. He reads sub-sec. I as prohibiting the advertising of lots for sale before construction of the subdivision begin. Steve Danalis countered the argument by stating that the two signs are distinguishable; sub-sec i addresses signs which show the layout of the subdivision, not signs which advertise

the lots for sale. Following Mr. Danalis, Margaret Daniels, Dan O'Malley, Tom Paone and Vicki Shotland all spoke in support of their petition arguing that the "For Sale" sign was not different than the earlier sign erected by the Danalis and should be ordered removed.

The Chair closed the public portion of the hearing and the Board deliberated. The members discussed that although the language of the Bylaw was not entirely clear, it is typical that two signs be erected for subdivisions, a sign advertising the lots and a sign identifying the name of the subdivision and showing the layout of the lots. It appeared to certain members that the Zoning Bylaw addressed these two different types of signs, one in Article XIII, Section H, Sub-section 3 (lots for sale) and in Article XIII, Section I, sub-section I (identification of subdivision). Board member Freyman made a motion to accept the following findings:

- A) that the purpose of Article XIII, Section I, sub-section I was to address the signs erected by developers to identify the subdivision and to show the layout of the lots;
- B) the sign erected by the Danalis' described in the Building Commissioners letter of November 9, 2006 was a sign erected for the purpose of showing the layout of the lots under Article XIII, Section I, Subsection i, which can only be erected after construction has commenced.

Upon a vote of the Board Members, the findings were unanimously adopted by a vote of 4-1, Board members Plotkin, Lavenburg, Preston and Freyman voting in favor and Board member Bean voting against. Freyman then made a motion that the Board uphold the decision of the Building Commissioner that the sign located on the property at 154 Williams St. was legal and not in violation of Article XIII, Section I, subsection i of the Zoning Bylaw. Board members Plotkin, Lavenburg, Preston and Freyman voted in favor of the motion; Board member Bean voted against the motion. Based on the 4-1 vote, the decision of the Building Commissioner was upheld.

Rachele, 357 Maple Rd., requesting a Special Permit to replace screened porch with a four season room, Petition #2007-2.

Mark Brousseau of Better Living Sun Rooms appeared before the Board on behalf of the petitioner. Mr. Brousseau explained that the Special Permit is sought to allow for the removal of an existing 12' X 25' screened porch and its replacement with a weather-tight enclosed room that will occupy the existing footprint and be 12' X 25'.

The Board identified and discussed the nature of the existing non-conformity; that being a non-conforming front yard setback of only 30' and non-conforming lot frontage of only 79', confirmed that the entire structure is non-conforming and agreed that the proposed construction would not intensify the existing non-conformities.

The meeting was opened to the public for comment. Don Campbell of 327 Maple Road spoke in favor of the petition. No other members of the public spoke for or against the petition therefore closing the public portion of the meeting.

The following motion was made and seconded: That we find pursuant to M.G.L. C. 40A, Section 6, that the proposed 12' X 25' enclosed, weather-tight room would not be more intensive than the existing nonconformity.

Voting in favor of the motion were Board Members Lavenburg, Plotkin, Sirulnik, Freyman and Preston therefore granting the Special Permit.

Lynaugh, 123 Hopkins Pl., requesting a Special Permit to add a rear dormer in existing attic space, Petition # 2007-3.

Mr. Lynaugh appeared before the Board requesting a Special Permit to add a rear dormer to the third floor attic space of pre-existing non-conforming dwelling. Mr. Lynaugh explained the new dormer is to be placed on the

rear of the dwelling to increase the light and ventilation of the attic space. The plans show a 30' wide dormer centered in the rear roof area of the dwelling. The new roof line will be approximately 7' off the existing roof and will not be higher than the existing ridge line. The existing house is 35' long, centering the dormer will allow approximately 2'-6" from either side of the existing structure.

No one spoke for or against the petition.

The Board noted that the existing nonconformities of the property consist of the frontage is only 80', the primary setback to the line of street is only 24' and that the setback to the westerly side lot line is only 14'.

A motion was made and seconded to make a finding under MGL c. 40A Section 6, that the proposed dormer addition to the rear of the third floor of the dwelling does not increase the existing non-conformities per the plans submitted.

Board Members Freyman, Lavenburg, Plotkin, Bean and Preston all voted in favor of the motion therefore granting the Special Permit.