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THE COMMONWEALTH OF MASSACHUSETTS
TOWN OF LUNENBURG
ZONING BOARD OF APPEALS

March 5, 2015

Certificate of Granting a Special Permit for Dimensional Variation

Special Permit for Dimensional Variation has been granted to Peter M. Kelly, 841 Valley Road, Randolph, NH 03593, affecting the rights of the owner with respect to land and buildings located at **36 Summer Street, Lunenburg, MA 01462**. Assessors map 115/8 under the Lunenburg Protective by Law Section 7.4.1. Recorded in Worcester Northern District Registry of Deeds May 7, 2010, Book 7171, Page 353, as described in plans submitted with the petition

The applicant was seeking a Special Permit for dimensional variation to construct an addition to the existing building to include two garage bays and a second floor apartment at 36 Summer Street, Lunenburg, MA 01462. Currently an auto sales business exists at the subject property and this use will continue as previously permitted in May 2009.

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

Board Members present: Raymond Beal Chairman, Donald F. Bowen, Alfred Gravelle, James Besarkarski and Hans Wentrup. Associate member Paul Doherty was present but not voting.

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

Chairman Raymond Beal opened the hearing and explained the procedure to the audience. Lisa Normandin, Board secretary read the application into the public record as well as a memo submitted by the Lunenburg Board of Health.

The applicant Peter M. Kelly was seeking a Special Permit for dimensional variation to construct an addition to his existing building located at 36 Summer Street. The addition proposed would be an expansion to the existing garage from two to four bays and add an apartment on the second floor. Mr. Kelly owns the subject property and operates an auto sales business at this address known as PMK Motor Sales. A Special Permit was granted in April 2012 to Alain LaChance for an automotive repair garage at this address, however, Mr. LaChance has since moved his business to a larger facility in Fitchburg.

Mr. Kelly told the Board that he currently resides in NH and he has family living in the Lunenburg area, the apartment would allow him and his family to be closer to one another, he also intends to continue the auto sales business at this location.

Raymond Beal pointed out that the **Summer Street Revitalization Overlay District** allows residential uses as defined in Section 4.14 of the Lunenburg Protective Zoning By-law. The reason Mr. Kelly was before the Board is that the side yard regulation is fifteen feet and the proposed addition is five feet from the property line.

James Besarkarski asked Mr. Kelly why the addition was not being proposed on the other side of the lot that is a much larger area. Mr. Kelly indicated that the existing utilities (water/sewer) are located in the middle of the existing building making it difficult to propose in that area. Mr. Besarkarski proposed staggering the addition and Mr. Kelly did not feel that it would be aesthetically pleasing.

Paul Doherty asked questions regarding egress safety for the upstairs apartment. Mr. Kelly indicated he would follow all building and fire codes with regard to ingress and egress standards. Alfred Gravelle asked what his plans were for the addition of the two garage bays. Mr. Kelly wanted to rent out the two bays with potential renting all four bays to one or more tenants.

Jams Besarkarski had concerns about fire department access around the building as the five foot offset was very close to the property line. Mr. Kelly said that there are no fences around the existing parcel and his brother owns the abutting property, in addition there was a large area in the front and all other sides of the building.

James Besarkarski asked that if all bays were rented how would (Mr. Kelly) access the apartment? Mr. Kelly said that an interior enclosed walkway would be constructed in the left garage bay upstairs to the apartment.

Mr. Kelly was apprised of the fact that if he rented the garage bays to outside vendors that they (vendor and or tenants) would need to come before the Zoning Board for approval, also that the current conditions outlined in the special permit issued and modified in April 2012 are still in effect.

Chairman Beal reviewed Section 4.14 Summer Street Revitalization overlay district and its stated objectives. He felt that the objectives are clearly met, and the ten foot special permit for dimensional variation is the significant issue. Mr. Beal informed Mr. Kelly that if the petition were granted a development plan review by the Planning Board would also be required. Mr. Kelly acknowledged that he has been notified of that fact.

The Board members asked several questions of the applicant and were satisfied that the business would not be detrimental to the abutting properties.

MOTION

After due deliberation Alfred Gravelle made a motion to grant the Special Permit for dimensional variation to add a 40x52 foot addition with apartment above subject to the conditions outlined in the previous granting and in the memo submitted by the Board of Health. This motion is based on the finding that the proposed addition will not be substantially more detrimental to the neighborhood. Donald Bowen seconded the motion.

CONDITIONS

1. Depending on the proposed use of the commercial space the Board of Health may have concerns with the potential noise, odor and or fumes as they may affect the health of the occupants of the residential space.
2. No floor drains allowed.
3. All hazardous materials, as defined by the Department of Environmental Protection in accordance with 310CMR 40.000, the materials shall be handled, stored and disposed of in accordance with the aforementioned regulations.
4. The cars must be placed not less than twenty (20) feet from the street.
5. All loading and unloading of vehicles to be done off-street for safety purposes
6. No parts, materials or tools shall be displayed or stored out of doors.
7. No junk (as that term is hereinafter defined) shall be stored or maintained out of doors. As used herein, the term "junk" shall mean any work out, castoff or discarded articles or material which are ready for destruction or which have been collected or stored for salvage or conversion to some use.
8. The business hours for the sale of new and used cars will be 8:00 A.M. to 8:00 P.M. Monday through Thursday, Friday and Saturday 8:00 A.M. to 6:00 P.M. and Sunday 12:00 P.M. to 5:00 P.M.
9. The petitioner shall conduct the business at all times in a manner so as not to be offensive to the residential abutters.
10. The granting of this special authorization shall inure to the benefit of the applicant, and shall cease in the event the business is sold or sublet to another party.
11. The permit will be subject to a periodic review by this Board or the Zoning Enforcement Officer. If the restrictions noted as part of this granting of this permit are not adhered to, or if operated in any way offensive or detrimental to the neighborhood, this Board would ask the enforcement officer to begin the procedure to rescind this permit.
12. The petitioners shall abide by all requirements of the Department of Public Works in the Town of Lunenburg and the State of Massachusetts with respect to ingress and egress at the property.
13. The petitioners must comply with the Town of Lunenburg By-law regarding signage.
14. Any lighting shall not be offensive to the abutting properties.

The 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:

- 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.
- Will not have a material adverse effect on the value of land and buildings in the neighborhood or on the amenities of the neighborhood.
- Will be operated with reasonable regard for order and sightliness.
- 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 Peter M. Kelly d/b/a PMK Motor Sales 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.

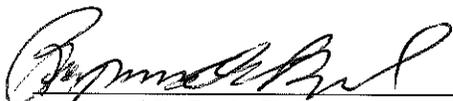
VOTE

Raymond Beal voted in favor of granting the Special Permit.
Donald Bowen voted in favor of granting the Special Permit.
Alfred Gravelle voted in favor of granting the Special Permit.
Hans Wentrup voted in favor of granting the Special Permit
James Besarkarski 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

 3/9/15
Raymond E. Beal, Chairman Date

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