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THE COMMONWEALTH OF MASSACHUSETTS
TOWN OF LUNENBURG
ZONING BOARD OF APPEALS

March 18, 2015

Special Permit for Dimensional Variation

A Special Permit for Dimensional Variation was granted to Sharon S. Vincent, 43 Oak Avenue, Lunenburg, MA 01462, under the Lunenburg Protective Zoning By-Law Section 8.3.2.1.b)4. The petitioner was seeking a Special Permit for Dimensional Variation to maintain the grandfathered status on a parcel of land. The subject property is located at **53 Oak Avenue, Lunenburg, MA 01462.**

The Board of Appeals of the Town of Lunenburg hereby certifies that a Special Permit for Dimensional Variation has been granted pursuant to the Protective Zoning By-Law of the Town of Lunenburg, Section 8.3.2.1.b)4.

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

Special Permit for Dimensional Variation has been issued to Sharon S. Vincent, 43 Oak Avenue, Lunenburg, MA 01462, affecting the rights of the owner with respect to land and buildings at **53 Oak Avenue, Lunenburg, MA 01462**, Book 4118, Page 372 and dated March 11, 2002 as described in plans submitted with the petition. Assessors Map 60, Lot 33.

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.

MAR 23 2015

LUNENBURG TOWN
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Chairman Raymond Beal opened the hearing and explained the meeting procedure to the applicant. Lisa Normandin read the petition into the record. In the application Mrs. Vincent indicated that she purchased the vacant parcel abutting her home in 2002 as an investment and to take control of any development that could possibly occur as a result of an upcoming sewer line that was proposed on Oak Avenue. She felt that she had done her due diligence to insure that the status of the property would remain a buildable lot after she took ownership. The deed was drawn up listing the husband and wife as owners of the parcel not knowing that it would no longer enjoy single lot status. A few months after purchasing the parcel she learned that having the same ownership as the abutting home created a problem with regard to maintaining the grandfathered status of the vacant parcel. Six months later Mrs. Vincent had the deed corrected and the property was then listed in Sharon Vincent's name only. Mrs. Vincent maintains that she thought the matter was cleared up; however, when she approached the Building official in 2015 she realized that this was not the case.

Raymond Beal reported that he had a conversation with the building commissioner regarding the merger doctrine and that he did some research prior to the meeting and accessed a document with regard to Grandfathered lots and plan protections. This document was prepared by Donald J. Schmidt with the Department of Housing and Community Development in November of 2009. In this document it outlines in section 1B that "Substandard building lots must be combined to form one lot that will meet or more closely approximate the minimum lot area and frontage requirements of a local bylaw". Mr. Beal pointed out that the existing home occupied by the Vincent's is a conforming lot so he feels that the merger doctrine does not apply. He feels that the merger applies to substandard lots and, therefore, does not force the merger in this case where one parcel is conforming and one is not. He also feels that since the Board has the authority to grant a Special Permit for Dimensional Variation for the lot size, we should decide upon granting that permit. Mr. Beal noted that in (RA) Residence A zoning district the bylaw requires that a lot be 40,000 square feet with 100 feet of frontage and the required lot width through building be 175 feet.

Paul Doherty was in agreement with Mr. Beal and the Building Official in that the common lot merger doctrine does not apply. Alfred Gravelle felt that the only issue before the Board is "is it a grandfathered lot or not" and grandfathered lots are protected.

Sharon Vincent was confused about the fact of whether or not the special permit for dimensional variation should be considered or not. Raymond Beal felt that it was important to rule on the case in both ways in the event that the decisions were challenged in the future.

Donald Bowen asked several questions regarding the assessment of the property. Ms. Vincent indicated that the property record card was changed in the assessor's office and it changed the amount of land and the assessed value as well. She said that the classification is noted as potentially buildable land at the assessor's office and the change in lot area and value was an administrative error. Raymond Beal agreed that the record that he examined differed from the amount of land outlined in the Assessors records (actual 26,136 square feet). Sharon indicated that it has since been corrected in the assessor's office.

MAR 23 2015

LUNENBURG TOWN
CLERK OFFICE

Hans Wentrup was curious to know why the Building Official felt that the common lot merger doctrine applied in this case to the subject property. Raymond Beal explained that he thought that, at the time the Building Official and the Town Counsel discussed it, the assumption was that there were two substandard lots.

Alfred Gravelle asked Mrs. Vincent why she approached the Building Official in the first place. She replied that the new school is currently being constructed directly across the street from the property. An abutters meeting was held regarding the proposed crosswalk in that area. She wanted to provide input at the meeting because she did not want to be prohibited from where a driveway may be located if a home was built there in the future.

Brian Swift, 63 Oak Avenue an immediate abutter to the property felt that the property owners made an investment in the property and felt that the Vincent's should be able to move forward with the property.

Chairman Beal polled the Board and asked if they agreed that the merger doctrine does not apply. Alfred Gravelle, Donald Bowen, Hans Wentrup and Paul Doherty all agreed that it does not apply in this case. He next asked the Board members if they felt that the Special Permit for Dimensional Variation should be acted upon. He suggested that if it was approved, the applicant would not have any problems moving forward if the decision was ever challenged. Mr. Beal felt that it is clearly within the Board's powers to do so.

While the Board members agreed that the merger doctrine did not apply in this case, the members were not all in agreement that a Special permit for dimension variation was needed. Raymond Beal and Alfred Gravelle were in agreement that the approval would serve to be an affirmation of the grandfathered status.

Raymond Beal reiterated the fact that if the Special Permit for dimensional variation were to be granted this was in no way indicating that the parcel was considered a building lot. A building permit would be sought through the building department and would be handled by them.

MOTION

After due deliberation Alfred Gravelle made a motion to grant the Special Permit for Dimensional Variation to maintain the "Grandfathered status" on 53 Oak Avenue in accordance with the plans submitted and subsequently on file with the Zoning Board of Appeals. Paul Doherty seconded the motion.

After closing the discussion, the Board acting in its capacity as the Special Permit Granting Authority, granted the Special Permit Dimensional Variation 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 Dimensional Variation.
Alfred Gravelle voted in favor of granting the Special Permit Dimensional Variation.
Paul Doherty voted in favor of granting the Special Permit Dimensional Variation.
Hans Wentrup voted in favor of granting the Special Permit Dimensional Variation.

Donald Bowen abstained from voting.

MAR 23 2015

LUNENBURG TOWN
CLERK OFFICE**FINDINGS**

In granting a Special Permit for Dimensional Variation the Board of Appeals specifically found:

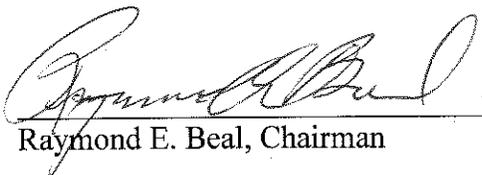
- a. The specific site is an appropriate location for such building or alteration.
- b. The proposed building or alteration is compatible with the existing neighborhood with regard to size, location and architecture.
- c. The granting of the special permit for dimensional variation will not adversely affect the neighborhood.
- d. The granting of the special permit for dimensional variation will not unreasonably diminish the available light, air, sunlight and other amenities: and there will be no nuisance or serious hazard to vehicles or pedestrians as outlined in Section 8.3.2.1.

The Special Authorization is granted with the contingency that Sharon S. Vincent comply with all licenses, regulations, statutes and ordinances of any and all applicable state, local and federal board or agencies with jurisdiction over the premises.

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.

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

Voted and executed,

 3/23/15
Raymond E. Beal, Chairman Date

Lunenburg Zoning Board of Appeals
Special Permit Granting Authority