

West Stockbridge Board of Appeals  
West Stockbridge, MA 01266  
1.9.20 7:00 PM

## Record of Proceedings

Regarding a Public Hearing on January 9, 2020 at 7PM at the West Stockbridge Town Hall, 21 State Line Rd. West Stockbridge, MA.:

The applicant, Lamke Properties LLC, is seeking a Special Permit under Section 6.1 of the Zoning Bylaws for the construction of a 50'x65' garage on property located at 52 Baker St. West Stockbridge. This garage will be used for the storage of equipment used in connection with the pre-existing, non-conforming gravel operation at the site. A Special Permit granted in 2012 for the construction of a 60'x80' garage has since expired. The application and plans are on file at the Town Clerk's office and available for review during regular business hours. Any person interested or wishing to be heard is invited to attend the hearing.

Meeting came to order at 7:00PM.

Board members present at the hearing were Chairman Randy Thunfors, James Pinkston IV, Jack Houghton, Jr, Joe Roy, Jr, Jim Clary and alternate Thom Lipiczky. The Applicant was Lamke Properties LLC [Dennis Lamke] of 52 Baker Street, West Stockbridge, MA 01266. He was represented by Lori A Robbins, Esq. of Heller & Robbins PC of 36 Cliffwood Sreet, Lenox, MA 01240. Also present was West Stockbridge Building Inspector Brian Duvall, WS Planning Board Chairperson Dana Bixby and WS Planning Board member Susan Coxon. Abutters Kevin and Ben Holden of Kevin Holden, Inc, PO Box 37, Richmond, MA 01254. They have part of their operation on Baker Street in West Stockbridge. Abutter Jeff Viera was also present. He resides in Richmond just across the street from Lamke Properties LLC on Baker Street Extension.

Chairman Randy Thunfors brought the meeting to order. He pointed out that the published notice of the hearing had the incorrect date [year 2000 instead

of 2020,] and asked the applicant if there was any objection to that. Attorney Robbins stated that there was no objection. He then asked Joe Roy, Jr to read the published notice of this hearing [which he did.] Chairman Thunfors asked Attorney Robbins to present the information in the application to the Board.

Attorney Robbins explained that in 2012 the Applicant was granted a Special Permit from this Board for the "...expansion of a pre-existing non-conforming use (gravel excavation) and construction of a garage for vehicle storage." This is detailed at length in an Addendum which accompanied the application for this request. Mr Lamke then acted on that permit by extracting gravel from time to time as needed since then. When he was able to begin construction on the garage structure, he applied for the Building Permit for the garage, but he was denied the Building Permit because three years had passed [which is the limit to act on a Special Permit as per MGL Chapter 40A, Section 9.] Rather than appeal the denial of the Building Inspector, Mr Lamke decided to apply for a new Special Permit.

The Applicant has changed plans for the size of the garage [50 X 65 and 20 ft in height.] The original request was for a 60 X 80 garage. Site Plan and elevations were provided in the application. From 2012, the use will not change. Copies of plans are all on record as part of the application. Attorney Robbins pointed out that the location of the proposed garage has not changed, but the "rotation" is now parallel to the property line instead of at an angle, but the map clearly shows that it complies with all setbacks.

Attorney Robbins stated that the proposed site is heavily buffered from the adjacent streets and that the use of the structure is strictly for use of the owner. There will be no storage or repairs of any other vehicles and equipment but his own. It is therefore not considered a "commercial" garage. She also pointed out that there have been no changes on the premises or in the neighborhood since 2012.

Attorney Robbins read from her updated addendum by listing the reasons for approval of this application. She stated that the use is not substantially more detrimental to the neighborhood than the existing non-conforming use of the property. The structure conforms with open space and off street parking requirements. The business provides needed services to the public good because the product and landscaping service is in demand. The structure is 775 feet from the road and has natural screening & buffer in the form of trees and current land formation. She stated that it will create no more traffic congestion

or public pedestrian safety. And she also pointed out that the use does not cause any undue strain of public water or sewer, and does not subject any hazards to public health, welfare or safety.

Joe asked if the trees and buffer is still there and will it remain. The answer was yes.

Dutch asked if there will be restroom facilities. The answer was yes and the approved septic design by Foresight Land Services was provided with the Application.

Randy summarized the progress through time that rendered the property a pre-existing, non-conforming, “grandfathered” use. There was some discussion regarding the Zoning District. The new Zoning Map shows the entire lot in a Manufacturing Zone. After a brief explanation, Dana Bixby opined that the Lot must be in The Manufacturing Zone.

Jack clarified that there would be no “kitchen” facilities and that the garage would be for housing and maintenance of a few vehicles and equipment owned by The Applicant. It was determined that the Common Driveway serves two separate lots as per a permit from The Planning Board and is recorded at The Registry of Deeds. There was some discussion as to the proximity of “flood plains” or “wetlands.” There was some confusion between different maps regarding that determination. The most recent plan [by Foresight] identified a “wetland” nearby. Attorney Robbins suggested that the “flood plains” or “wetlands” on the lot must be determined by other boards during the remaining permitting process. That responsibility will come to bear on the applicant before the entire permitting process is complete. There was further discussion about the distance of the Common Driveway because there is a condition that no structure should be built beyond 1800 ft distance of the Common Driveway. It appeared to be less than 1800 ft, and would otherwise be taken up with The Planning Board in the next step of the permitting process.

Randy then opened the meeting to the floor and asked if there were any questions from the floor.

Dana Bixby asked if it has been determined that the property of the gravel pit never changed or stopped the existing use in order to maintain the grandfathered conditions there. Attorney Robbins produced affidavits from

William Nolan and John D’Aniello stating the existence of the continued use prior to the establishment of zoning as well as its continued use.

Kevin Holden who has a tree service operation on the opposite end of Baker Street expressed his concerns about whether or not this application was required to address the same number of permits and concerns that he did when he went into business on Baker Street. He said he had to produce the results of an “Impact Study” regarding traffic as well as building requirements. He expressed an interest that all applicants be treated similarly. He mentioned that his equipment must be stored “inside.” He asked if Mr Lamke’s building will be big enough to house all of his equipment. Mr lamke explained the his equipment has always been outside since he has never had a building to house them in. This conversation evolved into Mr Lamke being asked to describe the daily activities of his operation, including number of employees and where their vehicles are parked while they are working. He ended by saying that his business is doing what Bill Nolan has been doing for the last 3 to 4 decades. He described the “landscaping” that he does as “cleaning up” the “mess” he creates when excavating on the job [for driveways, septic systems, foundations, etc. - such as smoothing out the grade, seeding, planting grass, mulching, etc.]

Jeff Viera [an abutter across Baker Street in Richmond - opposite the entrance to the Common Driveway,] said that he noticed that this past summer, traffic in & out of the Common Driveway has increased noticeably. He noticed “dumpsters” entering and exiting and that there are soil & stone piles at the intersection of Rte 41 & Baker Street. Mr Lamke explained that that is activity from Nolan’s business, not his.

Dana Bixby suggested the application of “conditions” with a Special Permit to assure that the “expansion” of the use kept it in compliance with the provisions of 6.1.2. There was further discussion about “conditions,” during which Ben Holden, Kevin’s brother” pointed out that their setback from Rte 41 is about the same as Mr Lamke’s setback at the gravel pit, yet they were required to have all equipment housed inside overnight.

Randy explained that each application is considered based on the anticipated use, what the request involves, the surrounding conditions of the neighborhood, and many other requirements like setback, size, type of operation and the general merits of each case.

Jack asked which plan shows the elevation of the proposed new structure. Attorney Robbins said that Exhibit D in her submitted presentation contains them. The question was about the height of the new building. The proposed new structure is 20 ft at its highest.

Jack asked if there would be objections to a condition that limited the number of vehicles and equipment. There was some discussion about how a business expansion could “unqualify” the existing use if increased activity that negatively impacted the neighborhood should evolve. He stated that much of the interaction rests with the abutters and the neighborhood. No action was taken at that time regarding “conditions.”

Randy asked for a motion to close the meeting to the floor. Joe made the motion. Dutch seconded. The motion carried unanimously.

Randy began the discussion with his concerns about the flood plain delineations. Attorney Robbins suggested that we leave that to the Applicant and The Building Inspector. The Applicant should determine the flood plain proximity to the satisfaction of The Building. Brian Duval [Building Inspector] reminded the Applicant that there is a 20 day “Appeal Period” if this Permit is granted, which allows plenty of time for any concerns to be raised [and hopefully resolved.] It was determined that The Applicant verify flood plain issues before he requests his building Permit with Brian, and that he submit that certification to Brian.

As a point of clarification, Randy asked Attorney Robbins if she was a member of this Board when we granted the original Special Permit to Mr Lamke in 2012. She reported that she was not and Randy asked that it be noted in the record.

Randy asked if there were any other comments.

Joe offered to make a motion to grant the requested Special Permit [pending a discussion regarding possible “conditions”] in an effort to begin a discussion toward a decision. Jack recommended we discuss granting and conditions at the same time. Randy said that any conditions may be difficult to discuss, since the proposed structure is very well buffered from most views. Dutch summarized that our concerns were about maintaining the existing buffer, determining the flood plain proximity, and whether or not to limit the number of vehicles and equipment in the site. He asked if there were there any other concerns? The question of “housing” the vehicles on site was dropped because of the existing buffer and the fact that there has never been an issue in that regard during the

ten or so years of Mr Lamke doing business there. It was determined that Brian would oversee the determination of the flood plain based on evidence that Mr Lamke would produce.

Dutch referred to Section 6.3.4 “Findings Required” in The Zoning By-Law. He read each point of 6.3.4 and there were no concerns with any of them. Randy suggested that in our findings as a Board, we collectively agree that the applicant’s request is in compliance with Sections 6.3.4a, b, c & d. We all agreed. He summarized that we all agree that Brian will attest to the flood plain question before issuing a Building Permit. We are all satisfied that the proposed structure is located in a Manufacturing Zoning District. He confirmed that the Applicant will not remove any of the existing buffering. Randy asked if there were any other conditions to consider. Jack suggested discussing some language that requires the Applicant to apply for a new Special Permit in the event that the Lamke business becomes substantially detrimental to the neighborhood. Attorney Robbins objected to the words “new Special Permit”. She stated that this permit must be valid indefinitely [unless and until it can be determined that the use has become detrimental to the neighborhood.] She pointed out that a “new” application would open up this whole process again. She further stated that any application to “expand” a specific use can be dealt with as an “expansion,” but starting over would invalidate the original permit to continue a grandfathered/protected/exempted use. Randy suggested that the neighborhood is most appropriate to judge the possible “detriment” to it. It would be very difficult to judge it any other way. There was further discussion on how an eventual and possible detriment could be monitored.

After exploring the possible “conditions” that might be imposed to potentially control any future detrimental expansion or activity, Dutch offered a motion that we grant the Special Permit with the following conditions:

1. That the Applicant produce evidence to The Building Inspector that the proposed structure is not in a flood plain.
2. That the existing burm, vegetation and buffers on Baker Street remain in place and not be removed within fifty feet of Baker Street.

When he got to #3, he struggled with possible language that would maintain the current level of activity at the proposed site. There was no “second” to the motion on the floor at that time.

Jack suggested that the Special Permit be granted as applied for "... with the condition that the Permit be valid for as long as the Applicant, his successors and assigns do not substantially increase the present business. In the event of a substantial increase, the Applicant, his successors or assigns shall apply for a modification of this Special Permit based on the then existing By-Laws of The Town of West Stockbridge."

Attorney Robbins suggested that Jack's stated condition is already inherent in the present By-Law. She asked how and who would determine the extent of the "substantial increase" in the business? Again, there was no "second" to the motion on the floor at that time.

Randy suggested the following:

"Any substantial increase in the current business will require a new Special Permit Application." Attorney Robbins objected to the word "new" again because it would basically nullify the original Special Permit and the Applicant would be required to "start all over again."

Joe suggested a motion that we grant the Special Permit with the following conditions: "... because it meets the criteria specified in 6.2.a and 6.2.b and that it continue to maintain business operations in like manner."

[Jack commented that he liked Randy's language better] -

Randy tried again [with Jack's help]:

Any substantial increase in the current business or that of its successors and assigns will require an Application for modification of the existing Special Permit.

Then Jack tried again at Randy's request:

Any substantial increase in the current business or that of its successors and assigns shall require the Applicant or his successors to apply for a modification of the existing Special Permit. Again, there was no "second" to the motion on the floor at that time.

Brian suggested adding language stipulating the use of the proposed structure as storage space for the existing business equipment.

The discussion continued for some time until Dutch attempted his original motion again:

"That this Board grant the Special Permit for the construction of a garage with the following conditions:

1. That the Applicant produce evidence to The Building Inspector that the proposed structure is not in a flood plain.
2. That the existing burm, vegetation and buffers on Baker Street remain in place and not be removed within fifty feet of Baker Street and that other natural barriers will remain in place.

Joe seconded the motion.

Randy called for a vote and it passed unanimously.

Joe explained to The Applicant how and when the 20 day Appeal Period works.

The hearing adjourned at 9:29PM PM.

All submissions by The Applicant will be marked and submitted to The Town Clerk.

Respectfully submitted,

Joe Roy, Jr

Clerk