



Planning Board – Town of Spencer  
*Minutes*  
Planning Board Meeting  
Tuesday August 20, 2013 at 7:00 PM  
McCourt Social Hall  
Memorial Town Hall

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**Planning Board Members Present:** Chair James Whalen, Shirley Shiver, Ralph DiChiara, Mary Stolarczyk, Robert Ceppi and Associate Member Jonathan Viner.

**Planning Board Members Absent:** None

**Staff Present:** Michelle Buck, Town Planner and Brynn Johnson, ODIS Clerk

Mr. Whalen opens the meeting at 7:05pm.

**1. ANR – G.H. Wilson Road,** Owner: Stiles Nominee Trust. Applicant: Ryan Maloney.

Rick Para the land surveyor is present.

Ms. Buck recommends endorsement of the plan.

The plan was not endorsed at the July 16, 2013 meeting because of questions related to the acreage of remaining land. Mr. Para says the acreage number was correct on the original plan and has not changed on this plan. He added a table with the tracks, showing remaining land and with reference numbers.

**MOTION:** Ms. Shiver makes a motion to endorse the plan. Ms. Stolarczyk seconds the motion.

**VOTE:** 5-0 in favor

**2. Public Hearing- Common Driveway Special Permit,** Applicant/Owner: Clifford Leinonen.  
Project Location: 9 R Jones Road. Cliff Leinonen is present.

Mr. Leinonen explains this property is 20 acres. He sold 65 acres to the Mass Audubon Society to qualify for a Landscape Partnership Trust grant. To make the shared driveway work has done a boundary line adjustment with his neighbor to gain frontage the ANR was approved about a year ago but not yet recorded. The driveway will serve two parcels of land on R Jones Road. He has no plans to develop the land now but the long term goal is to build two houses on this land. Although there is no development proposed yet the Conservation Commission had asked him make a plan to show the maximum extent of wetland disruption. When the time comes to build he would need a permit from the ZBA to build on a lot with insufficient frontage.

Mr. Whalen opens the public hearing.

Ms. Shiver asks how far back from the road will the driveway be. Mr. Leinonen Approximately 800-1,000 feet. There is an existing cart path that starts 600 feet from the road.

Ted Boulay of 141 Ash Street asks where this driveway is going to end in relation to the existing houses on Ash Street. Mr. Leinonen says its ends 1,000 feet or more before the wetlands and the houses on Ash Street are beyond the wetlands. He shows Mr. Boulay on the plan. Mr. Boulay is concerned about water runoff. There is a lot of water runoff this area is very wet. Mr. Leinonen is working with the Conservation Commission to control water runoff. They are issuing the stormwater permit. Mr. Leinonen invites him to come to the Conservation Commission meeting.

Ms Shiver says this plan is very hard to read it has a lot of topographical and conservation information on it. She asks for a cleaner plan that will be easier to read. Ms. Buck suggests that if it is easier he could keep this plan but just submit another sheet that removes some of the detail.

Mr. Leinonen says he will submit another sheet showing limits of pavement and location of driveway in relation to property boundaries.

There were comments from the Fire Chief regarding the width and grade of the driveway. Mr. Leinonen says all comments from Chief Parsons have been addressed in a response letter. Due to a clerical error Chief Parsons did not receive Mr. Leinonen's letter so has not yet had a chance to respond.

Mr. Whalen asks Ms. Buck comments on the fact that he does have the 25 feet of frontage. Ms. Buck explains Mr. Leinonen's argument is land owners have the right to increase the size of a nonconforming parcel. However this is not the typical nonconforming parcel. He doesn't fall under that area of State zoning law. Spencer included a sort of "grandfathering" in their bylaw (Section 5.3.11) for lots that were already in existence prior to the adoption of the new zoning in November 16, 2006; these lots could apply for a Special Permit to be built on if they met three criteria.

1. The parcel was in existence as of November 16, 2006.
2. The parcel is a minimum of seven acres in size; and
3. The parcel has at least 25 feet of frontage.

It seems clear to her that these are all preconditions; you cannot change a lot later to meet these conditions.

Ms. Shiver asks how much frontage this lot had before the zoning change. Ms. Buck says 18.92 feet. Then in November 2012 he came with an ANR for a boundary line adjustment to add some land to make it 25 feet of frontage. So this parcel didn't have 25 feet of frontage until 2012.

Mr. Leinonen says the way he read the bylaw was the parcel has to be in existence by November 16 2006, which it was. And the criteria "the parcel is a minimum of seven acres" leads him to believe that if your parcel is not seven acres you have the opportunity to make it seven acres. If it isn't possible to add land the bylaw would or should say "the parcel had to be a minimum of seven acres" or "the parcel had a minimum of seven acres". Back when this bylaw was created he gave his opinion and at that time it was his understanding that he could add land to make the seven acres.

There is much discussion on the interpretation of this bylaw.

Mr. Whalen asks when this bylaw was created was there a legal opinion on it from Town Counsel. Ms. Shiver says the Bylaw was approved by the Attorney General's office. Ms. Buck adds they did get Town Counsel's opinion on the ANR plan he submitted for this parcel. Council said the Board was compelled to endorse all kinds of plans with zoning issues as long as it's noted that it's not a buildable lot. Town Counsel's opinion did not address the issue of eligibility for Section 5.3.11.

Ms. Shiver feels Mr. Leinonen has a very good point. Maybe they should get a legal opinion.

Mr. Leinonen says they can get a legal opinion but that will cost the Town money. The bylaw in question 5.3.11 is very small only one paragraph so it leaves a lot up for interpretation. His lawyer agrees with his interpretation and can ask him to come to the next meeting or write a statement if the Board wishes.

Mr. Leinonen strongly believes land owners have the right to assemble parcels to conform to current zoning.

Mr. Ceppi notes that if the bylaw was interpreted as Mr. Leinonen suggests, someone could also add acreage later to meet the lot area requirement, which doesn't seem to be what was intended.

Mr. Whalen recommends the minutes be read from when this bylaw was discussed. Maybe the minutes would clarify the intent of the bylaw. Ms. Buck says she will review the minutes also she will contact Karen Cullen who was the Town Planning at the time.

Mr. Robert Phaneuf of 145 Ash Street came in late and asks for a recap of the driveway plan.

Mr. Phaneuf asks if this common driveway would ever become a town road. Ms. Buck says no this driveway would be too long and narrow to meet the town standards. Only the first 20 feet will be paved, the rest will be graded.

Mr. Phaneuf asks if this is the land Mr. Leinonen proposed a solar farm on. Mr. Leinonen says yes.

Mr. Whalen asks if there are any more questions. There are none.

For the next meeting Ms. Buck will review the record and talk to Karen Cullen. Mr. Leinonen will submit a cleaner, easier to read plan.

MOTION: Ms. Shiver makes a motion to continue this hearing to September 17th. Mr. DiChiara seconds the motion.

VOTE: 5-0 in favor

### **3. Town Planner Report/General Board Discussion**

- A. **Driveway Bylaw** – As noted above, the sections of the Zoning Bylaw related to driveways and common driveways were proposed for amendment in 2009 (10/29/2009, Article 7). Though this article was passed over at Town Meeting, the text of the amendment, which added an entire new section related to driveways and changed requirements for common driveways, was included in the printed version of the Zoning

Bylaw until May 2013. She asks if the Board would like to bring these changes back to Town Meeting for approval.

The Board discusses and decides they would like to have a hearing to get everyone's input on driveways before the spring 2014 Town Meeting.

**B. ANR Plan Requirements-** Since there have been questions and concerns regarding requirements for ANR endorsement. Ms. Buck has a general discussion with the Board regarding ANR requirements and requirements for endorsement.

**C. Medical Marijuana-** The Town passed a one year moratorium so they need to start working on a bylaw. There was a lot of comment at the last Town meeting to have a bylaw ready for the fall. Ms. Buck asks the Board for input. The Board discusses the districts and setbacks.

Commercial and Industrial – Yes

Town Center and Residential Business Overlay - by Special Permit

All other Districts- No

They would like a 500 foot set back from any school, playground, park or any other place where children would be.

Ms. Buck will draft a bylaw and schedule a public hearing.

**D. Miscellaneous Project Updates-** an ANR plan for 97 North Spencer Road came in yesterday (last minute). Ms. Buck asks if the Board would like to review the plan. The Board wants to wait until next meeting.

4. Appointment of Planning Board members to Economic Development Commission and Sugden Block Sale Advisory Committee.

A. Economic Development Commission- Mr. Ceppi nominates James Whalen for the Economic Development Commission. Ms. Stolarczyk seconds. Vote: 6-0 in favor

B. Sugden Block Sale Advisory Committee- Ms. Shiver nominates Mary Stolarczyk for the Sugden Block Sale Advisory Committee. Vote 6-0 in favor

5. **Approval of Minutes** – May 21, 2013  
Shiver/DiChiara Approved 6-0

## 6. Adjournment

**Submitted by:** Brynn Johnson, Jr. Clerk

**Approved by the Planning Board on:** 10/15/2013

## **List of Documents used on June 18, 2013**

### Items sent to Planning Board prior to Meeting:

- Agenda
- Memo from Michelle Buck to Board dated 8/15/2013
- 66 G H Wilson ANR plan and App
- Fire Chief comments for 9 R Jones Road shared drive
- App and plans for 9 R Jones Road shared driveway
- Minutes 5/21/2013
- ANR requirements from the Mass land used law hand book
- Model of Medical Marijuana by-law

### Items submitted at meeting

- 9 R Jones Road ANR from 11/17/2006