

# Zoning Board of Appeals– Town of Spencer



## *Minutes*

### Zoning Board of Appeals

Tuesday, January 13, 2009

McCourt Social Hall

Memorial Town Hall

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The Meeting was called to order at 7:15 p.m.

Zoning Board of Appeals Members Present: Chair Joanne Backus, Clerk Allan Collette, Pamela Crawford and Albert Drexler (Alternate).

Zoning Board Member Absent: Dee Kresco (Alternate)

Staff present: Adam Gaudette, ODIS Director, and Bea Meechan, Senior Clerk, ODIS

#### **New Business:**

**A. Special Permit, James Bouley, 67 Jolicoeur Avenue, Spencer (Assessor's Map U25-59).** Ms. Backus opened the public hearing at 7:15 pm. The Clerk then read the brief. The applicant is requesting a special permit under Section 4.9.2.A.2 of the Spencer Zoning Bylaw to replace and reconstruct of existing single family house which situates on a nonconforming pre-existing lot. The property is located in the Lakefront Residential district.

Ms. Backus asked the applicant for a presentation on the application.

Jason Dubois from Bertin Engineering represented the applicant. He explained that the request proposes to remove the building and reconstruct it closer to the center of the property, and away from the right of way near the front property line. The property is pre-existing nonconforming. The new structure's footprint (house and deck) will have the same square footage as the existing structure. The septic system will be installed on an adjacent lot. The new building's position will improve the setbacks.

At this time Ms. Backus opened the Board for questions and comments:

Mr. Collette asked for clarification on the new structure's footprint and its proposed floor area.

Mr. Dubois said yes and explained that the proposed house will have more of a square shape and the deck will be a little larger as opposed to the existing structure (the house has a rectangular shape and has a smaller deck).

Mr. Collette asked for the reason to move the house to the proposed location.

Mr. Dubois replied that currently the house is approximately within a 2 foot distance from the front property line and the right of way. The applicant would like to increase this distance.

Mr. Collette then asked the reason for the special permit.

Mr. Gaudette explained that the structure is pre-existing nonconforming and any alteration which increases the nonconformity but not to a greater extent, must obtain a special permit from the Board according to the Spencer Zoning Bylaw.

Mr. Drexler asked why the proposed house is not set parallel (to the property lines).

Mr. Dubois replied that due to the complex dimensions of the property and the setback requirements, the proposed house could not be set in a parallel position to the property line without creating a new setback violation.

With no further questions or comments from the Board, Ms. Backus then opened the hearing to the public:

Robert Bouley, owner of 65 Jolicoeur Avenue, asked where is the location of the septic system, is the sewer pipe installed across the public right of way, and if the Town approved it?

Mr. Dubois stated that septic system will be installed in the lot adjacent to the property and the sewer pipe will be installed across the public right of way. He said that the construction of the septic and the sewer pipe will be done in such a manner that it will not be noticeable to the public after it has been completed. Mr. Dubois has not filed with the Board of Health yet, however, he said the sewer pipe will be installed right where the existing sewer line is (across the public right of way).

Ms. Backus indicated that the Zoning Board of Appeals (ZBA) is not Authority for granting an approval of the septic plan. The septic plan must be filed with the Board of Health. Furthermore, in the Certificate of Decision, there is typically a condition specifying that “*construction activities shall not commence until all **required approvals and permits are obtained.***”

Ms. Backus announced the members voting are; Mr. Collette, Mr. Drexler and Ms. Backus. At this time Mr. Drexler made a motion to close the public hearing. Mr. Collette seconded the motion and the vote was 3-0 in favor.

Mr. Collette made a motion to grant the special permit for James Bouley, Jr., to remove and reconstruct a pre-existing, nonconforming single-family structure at 67 Jolicoeur Avenue, Spencer, MA. Mr. Drexler seconded the motion and **the voting was 3-0** in favor. The following were included in the motion:

**Findings:** The Board determined that the findings had met the requirement in M.G.L. Chapter 40 A., Section 9 and Section 7.2 of the Spencer Zoning Bylaws. In addition, the Board made the following finding in accordance with Section 4.9.2.A.2 of the Spencer Zoning Bylaws:

1. That the proposed extension or alteration is not substantially more detrimental to the neighborhood than the existing nonconforming structure.

**Conditions:**

1. The plan that was submitted for the design is herein incorporated as part of this decision. Any change requires re-submittal to the Board.
2. Construction activities shall not commence until all required approvals and permits are obtained.

Mr. Gaudette explained that once the decision has been filed with the Town Clerk, staff from ODIS will mail the copy of the decision along with the instruction to the applicant.

**B. Variance, James Ostromecky, 19 Lake Avenue, Spencer (Assessor's Map U27-29).** Ms. Backus opened the public hearing at 7:30 pm. The Clerk then read the brief. The applicant is requesting a variance under section 4.9.2.A.3 of Spencer Zoning Bylaw to extend an existing deck further into the setback area. The property is located in the Lakefront District.

Chair Backus asked the applicant for a presentation on the application.

Donnie Berthiaume of 140 Charlton Road, the Builder/Contractor, represented the applicant. He explained that the proposed plan is to extend the deck from the left side of the house and continue around the corner to the rear side of the house (facing the lake), which requires going further into the setback area.

Mr. Berthiaume also said that the applicant has filed the Request for a Determination of Applicability to the Conservation Commission (ConCom), which will hold a public hearing on the next day (January 14, 2009).

Ms. Backus then asked how far the distance from the deck to the Lake is.

Mr. Berthiaume said it is approximately 20 feet from the ended corner of the proposed deck to the Lake.

Mr. Gaudette said that due to fact the proposed working area is near the water and has been disturbed previously, the applicant has only filed for a Request for Determination of Applicability with ConCom. In regards to the setback, the requirement for the rear setback is 10 feet; the existing structure is 8.5 feet. The proposed structure is 8 feet wide, thus the alteration will increase the rear setback from 8.5 feet to 0.5 feet, requiring a variance from the Board.

Mr. Collette asked if the deck canti-levered out, is it still required to meet setbacks.

Mr. Gaudette responded that the setbacks are measured from the nearest point of the structure. *Therefore any attachment (steps, awnings and decks) is considered a part of the whole structure.*

The Board, Mr. Gaudette and Mr. Berthiaume checked the overall coverage percentage of the entire structure (house and proposed deck) per total square footage of the property, and determined that it is within the allowable percentage permitted according to the Spencer Zoning Bylaw.

*Note there was no audience present in this hearing and no further comments or questions from the Board at this time.*

Ms. Backus announced the members voting are; Mr. Collette, Ms. Crawford and Ms. Backus. Ms. Crawford then made a motion to close the public hearing. Mr. Collette seconded the motion and the vote was 3-0 in favor.

Mr. Collette made a motion to approve the Variance for James E. and Mary Jane Ostromecky to alter a pre-existing, non-conforming single-family structure at 19 Lake Avenue, Spencer. The proposed alteration increases the rear setback nonconformity from 8.5 feet to 0.5 feet. Ms. Crawford seconded the motion and **the voting was 3-0**. The following were included in the motion:

***Findings:*** The Board determined that the findings had met the requirement in M.G.L, Chapter 40A, Section 11 and Section 7.3 of the Spencer Zoning Bylaws. In addition, the Board made the following finding in accordance with Section 4.9.2.A.3 of the Spencer Zoning Bylaws:

1. That the proposed extension or alteration is not substantially more detrimental to the neighborhood than the existing nonconforming structure.

***Conditions:***

1. The plan that was submitted for the design is herein incorporated as part of this decision. Any change requires re-submittal to the Board.
2. Construction activities shall not commence until all required approvals and permits are obtained.

Mr. Gaudette explained that once the decision has been filed with the Town Clerk, staff from ODIS will mail the copy of the decision along with the instruction to the applicant.

### **Old Business:**

**A. Continuation of Public Hearing, Bell Atlantic Mobile, 35 Gold Nugget Road, Spencer.** Ms. Backus opened the public hearing at 7:50 pm. Mr. Gaudette said that after a joint public hearing with the Planning Board (11-18-2008), the Board made a motion to continue

a public hearing to December 9, 2008. Attorney Daniel Klasnick, on a behalf of the applicant, requested to postpone the hearing to January 13, 2009 to allow additional time for his engineer to make revisions on the plans and respond to the comments from Quinn Engineer (Spencer Peer Review).

Mr. Gaudette then proceeded and presented a brief summary of the current status from the previous hearing (see the attached memo dated 12-5-2008) to the Board, and in addition the responses, memos from the parties involved:

- ✓ Comments from Quinn Engineer to the applicant's Engineer dated 12-2-08.
- ✓ A review report from Quinn Engineering to the Planning Board and Mr. Gaudette dated 1-9-09.
- ✓ Comments from Robert McNeil, Spencer Superintendent of Utility & Facility, dated 1-12-09.
- ✓ Comments from Mr. Klasnick to Quinn Engineering dated 1-12-09 and to Mr. McNeil dated 1-13-09.

At this time Mr. Gaudette asked Mr. Klasnick to give an explanation of his response to Quinn Engineering and Mr. McNeil.

*Jeffrey Benway, the Engineer from Verizon, presented the new revised plan to the Board and Mr. Gaudette in tonight's hearing. He said that the revised plan was modified to reflect the comments made by Mr. McNeil and in addition the comments from Quinn Engineering have been addressed.*

After the Board reviewed the revised plan, Ms. Backus asked who would be responsible for maintaining the drainage system and does the Town have any mechanism in this matter?

Mr. Benway said that it would be Verizon Wireless' responsibility.

Mr. Gaudette said typically the applicant is required to provide information (storm water management and its maintenance) along with the submittal of the Notice of Intent to the ConCom. The Conservation Commission then will review and possibly add more requirements/restrictions to the Order of Condition. The ConCom Agent would then ensure that the Order from ConCom has been implemented and the applicant is within compliance.

The Board then had a discussion regarding the abutter's property. When the abutter decides to sell the property and due to this situation (being close to the Cell Tower) the value of the property might be diminished. Unfortunately, there were no abutters present in tonight's hearing to address the concern. Mr. Gaudette added that the applicants have complied with the buffer requirements.

Mr. Drexler referred to the previous hearing (11-18-08) and said that Verizon indicated they are having coverage problems due to the overlapping with the existing service from the Donnelly Road Tower. Therefore the existing site on the Donnelly Road must be relocated further north (Spencer Gold). When asked about the reason why Verizon decided to build the proposed tower

instead of adding more arrays to other existing towers, the Engineer, Michael Creamer, said the reason was financial. Verizon also provided a five year Future Build Locations Plan along with the submittal of the application. Mr. Drexler then made comments and questions as follow:

**First:** Logistically, it would seem to be cost effective to add more arrays to existing towers than building a new one. Could Verizon explore this first?

**Second:** As for the future Build Locations Plan, is Verizon still considering building another tower in the downtown location? If it is, Verizon may experience the same problem – overlapping on coverage (the distance from downtown to the proposed Spencer Gold is not that far apart from each other).

Mr. Klasnick responded as follows:

After Verizon constructed the two towers (on Smithville Road, Spencer, and in Leicester), they have begun to receive complaints from customers on “the drop-call” issues. The proposed site Spencer Gold is the most suitable location, and it will provide more reliable service along Route 9 and Route 31. Verizon has a five year future Build Locations Plan, including the downtown location, however, the specific site in downtown Spencer has yet to be determined. In conclusion, Verizon believed that it needs the three towers to accomplish its goal to provide “better service to the customers” in these areas (Route 9, Route 31 and downtown Spencer).

At this time Paula Ingel of 21 Gold Nugget Road, said that she does not experience any drop-call problem at all, and she resides in the area between the two towers discussed above. She also indicated that she had switched from another carrier because Verizon has better coverage.

Mr. Collette expressed his concerns with the proposed tower as follows:

- If the proposed tower is permitted, it means that Spencer will have three towers within approximately a three mile distance (from downtown Spencer to Spencer North Tower), which is not an ideal situation for the Town.

*Jason Flanagan, the Engineer:* It is not unusual for the cell towers to be in close distance with each other. Verizon has proposed to have a cell tower every two miles throughout Massachusetts.

- Why does Verizon not consider adding more arrays to the Spencer North and the Donnelly Towers also? Verizon has an arrangement with the Congregational Church. Mr. Collette then asked Mr. Klasnick if he could elaborate on the subject.

*Mr. Klasnick explained* that at one time the Donnelly Tower provided adequate coverage to the downtown area. With the increased demand for more coverage within the nearby area from customers, Verizon then had decided to acquire two more towers. Apparently the Donnelly Tower did not interact properly when the other two towers were activated because there was high volume of complaints about the “drop-call”

problem from customers. Verizon has tried to find the best solution and must consider the elevation ranges from the Donnelly Tower to the Spencer North Tower, thus the new site of the cell tower is necessary for more reliable coverage. Mr. Klasnick said that Verizon believes that the proposed site (Spencer Gold) will resolve the problem. Mr. Klasnick could not comment or elaborate on the contract Verizon has with the Congregational Church, as he is not involved with that matter.

- The Board does not want to set precedence, if the proposed tower is granted to Verizon then other carrier/carriers would follow and request the same as the applicant. This will create a problem of cell towers all over town.

*Mr. Klansnick* commented that Verizon is committed to meet the customer's demand and Verizon is trying to work with the Board and be in compliance with the Spencer Zoning Bylaw. He said that in order to enhance Verizon's network it needs the proposed tower.

Ms. Crawford commented that if the problem (drop-call) occurs due to the two towers being too close to each other, is there a way to reduce the strength (frequency) of one tower to weaken itself and then not compete with the other tower's strength.

Mr. Collette asked if Mr. Flanagan was aware of the situation when the other tower was installed.

Mr. Flanagan replied that his task is to locate the location for the new tower or for the existing tower. After the other tower was installed then the problem (drop-call) was discovered.

At this time Ms. Backus asked the Board if more information is required from the applicant.

The Board requested the applicant to provide:

- ✓ The coverage map of the Spencer North Tower.
- ✓ The coverage map of the downtown Spencer Tower (Congregational Church).
- ✓ The coverage map of the Spencer North Tower with the downtown Spencer tower.

Ms. Crawford made a motion to continue the public hearing to January 27, 2009. Mr. Collette seconded the motion and the vote was 4-0 in favor.

### **Approval of Minutes: For October 28, 2008 and November 18 2008.**

Mr. Collette made a motion to accept the minutes for October 28, 2008. Ms. Crawford seconded the motion and the vote was 4-0 in favor.

Mr. Collette made a motion to accept the minutes for November 18, 2008. Mr. Drexler seconded the motion and the vote was 4-0 in favor.

### **Other Business: None**

Mr. Collette made a motion to adjourn the meeting at 9:30 pm. Mr. Drexler seconded the motion and the vote was 4-0 in favor.

Submitted by:

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Bea Meechan, Senior Clerk