

# Zoning Board of Appeals– Town of Spencer



## *Minutes*

### Zoning Board of Appeals

Tuesday, January 27, 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: Allan Collette, Pamela Crawford and Dee Kresco (Alternate).

Zoning Board Member Absents: Chair Joanne Backus and Albert Drexler

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

In the absent of Chair Joanne Backus, Allan Collette is acting as the Chairman and Pamela Crawford appointed as acting Clerk.

#### **New Business:**

**A. Special Permit, Edward Thibault, 89 North Spencer Road, Spencer, (Assessor's Map R42-30). Mr. Collette opened the public hearing at 7:15 pm.** The Clerk then read the brief. The applicant is requesting a special permit in accordance with Section 4.9.3.C of the Spencer Zoning Bylaw to extend a pre-existing, non-conforming use (Construction Trade) to allow for the screening of loam and fill material. The property is located in the Rural Residential District and Residential Business Overlay District.

Mr. Collette read correspondence to the Board from the following:

Eben Butler, Spencer Highway Foreman.

Mark Robidous, Superintendent of Spencer Sewer Department.

James Sadusky, Sr., of 100 North Spencer Road.

Mr. Collette asked the applicant for a presentation on the application.

Edward Thibault, the applicant, stated that he has been doing this business of screening loam and fill material for 30 years without any problems until the new neighbor (an abutter to his property) moved in and began to make complaints to Town Officials.

Mr. Collette questioned if a special permit is even needed if the screening material is and has been part of the business for numerous years. Also, the surrounding neighbors have been aware of this business and never made any complaints until now.

At this time Mr. Gaudette presented a brief history of the situation to the Board. He stated that in the spring of 2008, the previous Building Inspector at that time was Robert Morra, and he had issued a letter to the applicant in response to the complaints made by an abutter. In the letter Mr. Morra acknowledged the applicant does *have a "grandfathered pre-existing use of Construction Trade business."* However Mr. Morra determined that the screening and processing of material was beyond the pre-existing use permitted. A special permit was recommended by Mr. Morra for *the extension of use* for the screening operation. The applicant has not filed a special permit until now due to the demand in the screening business.

Various Town Officials, the Town Administrator, the Building Inspector and Mr. Gaudette received several complaints from the abutter concerning signs at the applicant's property. In addition to these complaints the abutter indicated there is a noise factor associated with the applicant's operation in terms of equipment, trucks and tractors making loud beeping sounds. Mr. Gaudette has done a site visit at the property and found that the materials are brought from other places and are stockpiled at the site for screening later. The applicant has been conducting his business here for over 30 years and the activities involved in the business are nothing new to the area.

Mr. Gaudette indicated that in the current Spencer Zoning Bylaw *under Other Principal Uses* it states: The stripping of loam, peat, gravel or other material requires a special permit from the Zoning Board of Appeals except for reuse on the same property. In Mr. Thibault's case, the materials were brought from other locations and screened at his site. He then reuses them on his property or at his job site. Thus, the operation is not considered stripping or mining as with gravel pit operations.

Mr. Collette opened the Board for questions and comments.

*Ms. Crawford* asked is there an actual change/addition to the existing business, which requires a special permit?

Mr. Thibault replied there is no change or addition to the business. The property has been in his family for several generations. It has been farmed and his construction business has been there for over 30 years.

*Mr. Collette* asked if the screening process operates at the same location on the property (due to the noise issue raised by the abutter, perhaps it can be moved to the other location).

Mr. Thibault said that the screening process is operated at the same location; however he does not do much of the operation throughout the year, especially in the winter time. The amount of loom being screened is less than or equal to five yards per year.

*At this time Mr. Collette asked the abutter (who complained about the noises) to demonstrate the location of his property on the aerial photo prepared by Mr. Gaudette. The Board would like to have a better idea of the distance from the abutter's property to where the location of the screening operation.*

Mr. Collette then opened the public for questions and comments.

*Ronald and Deborah Sciascia of 95 North Spencer Road* stated that they did not put in the initial complaints to the Town. Mr. Sciascia stated that there are multiple signs and other objects being displayed along the front line of the applicant's property. These signs and objects might not be conforming to the Spencer Zoning Bylaw. In addition there has been unbearable noise created by the applicant's business operation. Mr. Sciascia initially contacted the Police Department with these concerns and was told to contact other Town Officials. He contacted the Building Inspector at that time who was Robert Morra. The letter "reason to cease" was issued to Mr. Thibault by Mr. Morra. As a result, some of the signs were moved back and away from the street, but the objects still remain at the site.

Mr. Sciascia understood that the applicant has been working for the Town for many years and has a good reputation with the Town (referring to the letters from the Sewer and Highway Department that were previously read by Mr. Collette). He commented that he simply wants some consideration from the applicant.

Mrs. Sciascia commented that all these elements (stockpiles, objects and signs) are an eyesore to the neighborhood and may diminish the value of her property and other abutters as well. She then submitted a letter to the Board tonight to explain the history of the situation including comments and suggestions along with the pictures of the site.

*Ronald Sciascia, Jr., of 5 Laflash Lane, Leicester, (the applicant's son)* verified all comments made by Mr. & Mrs. Sciascia. He said the current situation is unpleasant and hostile.

Mrs. Sciascia questioned why their names initially were not on the Assessor's abutter list of notification for the public hearing.

Mr. Gaudette clarified that the Assessor prepared the abutter list for *one parcel* referencing the address listed on the application, which was - 89 North Spencer Road. Since Mr. Thibault owns *multiple parcels* in the area and to ensure everyone is notified, Mr. Gaudette added the other parcels and asked the Assessor Office for a second certified abutter list.

*Howard Letendre of 85 North Spencer Road* said that he has been residing at his address for 30 years. Mr. Letendre indicated that the applicant has been a tremendous help to him in times of need. He also commented that the applicant has a right to operate the business for a living.

Mr. Sciascia, Jr., said that the above comment was irrelevant to the case.

*Joseph Cote of 5 Henry Allen Ave in North Brookfield, is related to Susan Geldart of 97 North Spencer Road, and spoke on a behalf of Ms. Geldart.* He stated that Ms. Geldart has been residing at the location for 30 years and there was never been water in the basement. However in the past three years since the screening operation has moved to its current location (closer to Ms. Geldart's property), there has been a significant amount of water in the basement. Mr. Cote made a comment that something must have triggered the water level in the area and that could be

the applicant's business operation. In addition there is a concern of what materials are being stockpiled there and what gets mixed in with the water – the water has an odd color and bubbles in it.

Mr. Letendre responded that he used to know the people who lived there (97 North Spencer Road) prior to Ms. Geldart. He knew the previous owners and that water was always present in the basement.

Mrs. Sciascia addressed the unknown materials being stored close to the wetland area. The runoff water from the wetland flows down to her property and has an orange color to it. She has well water and has a concern on the safety of this issue.

At this time Mr. Gaudette said that he would ask the Conservation Agent to check the area in regards to the wetland.

Mr. Sciascia mentioned that Bill Klansek, the current Building Inspector, contacted him in regards to the special permit being requested by the applicant. Mr. Sciascia has the perception that if he is in support of the special permit, then all other issues discussed above would be resolved (signs and objects would be removed).

Mr. Gaudette gave an explanation that multiple Town Officials received several complaints from the applicant and Mr. Sciascia in the past nine months. Due to the nature of the issues that are involved with the Zoning and the regulations, the Town Administrator and other Officials have asked Mr. Gaudette (Town Planner), and the Building Inspector (whom oversees and enforces the zoning regulations) for assistance. There is provision in the **sign bylaws** to regulate the signs on Mr. Thibault's property.

Mr. Gaudette said he directed the Builder Inspector to contact Mr. Sciascia and Mr. Thibault. The purpose was to have both parties (Mr. Thibault and Mr. Sciascia) work out solutions and reach a common ground. After these discussion, Mr. Thibault submitted his special permit application.

Ms. Crawford asked for clarification on the business operation and what the business consists of prior to grandfathering in.

Mr. Thibault replied that the property was farmed by his family since 1890 and it has been passed on through seven generations. Initially it was a chicken farm, a retail shoe store was incorporated in the 1960's, and the sale of Christmas trees and berry bushes was added in 1970. In addition National Grid has an office and operates the repairs out from the building on the site.

Mr. Gaudette said that the question for the Board is, are the current operations at the site considered agricultural, as part of the construction trade, or are they related to the entire business?

The Board then had a discussion on whether the screening process is part of the grandfathered use or is it an extension of the pre-existing nonconforming use. ***The Board decided that a Site Visit is needed in order to make a determination.***

Mr. Gaudette advised the Board that after the Site Visit, the Board could determine:

- That there is a grandfathered farm use element and construction trade use and the screening process is considered as part of that pre-existing nonconforming use, thus there is no reason to grant or deny a special permit application.

Or

- The screening process is an extension to the pre-existing nonconforming use, and the Board has to determine if it is substantially more detrimental to the neighborhood (than the pre-existing nonconforming use). If not, they could grant the special permit with conditions. If it is, they would have to deny the request.

Mrs. Sciascia had additional comments and questions:

There is an enormous amount of the materials stockpiled at the site. She was told that the amount of materials is considered Industrial Processing and an Industrial Permit is required.

*The Board commented that is why they would do a Site Visit to get a better idea of everything.*

The issue on the excess runoff water from the wetland, does Spencer Conservation Commission regulate this? If not, could she notify the DEP?

*Mr. Gaudette* responded in regards to excess runoff, the Town does not have a stormwater bylaw in place just yet. In terms of the wetland issue, the Town can administrate the regulations that are pertinent to the Town Wetland Bylaw and the State's Wetlands Protection Act. Mrs. Sciascia could also notify the DEP if she wishes to do so.

***With no further comments or questions from the Board and the public, Mr. Collette announced a Site Visit will be on Saturday, February 7, 2009 at 8:30 am.***

Ms. Crawford made a motion to continue the public hearing to February 24, 2009 at 7:15 pm. Ms. Kresco seconded the motion and the vote was 3-0 in favor.

### **Old Business:**

**A. Continuation of public hearing, Bell Atlantic d/b/a Verizon Wireless, 35 Gold Nugget Road. Mr. Collette opened the public hearing at 8:20 pm.** Note there was one abutter present for this hearing.

Mr. Gaudette informed the Board that Mr. Klasnick, the applicant's attorney, submitted a withdrawal request to the ODIS and to the Board. Mr. Klasnick thought it was difficult and

challenging to satisfy the “project need” requirement to all 3 voting members of the Board. The applicant may explore other alternatives at this time.

At this time Ms. Crawford made a motion to close the public hearing. Ms. Kresco seconded the motion and the vote was 3-0 in favor.

**Ms. Crawford then made a motion to accept the withdrawal of the application for a special permit from Bell Atlantic, d/b/a Verizon Wireless. Ms. Kresco seconded the motion and the vote was 3-0 in favor.**

**Approval of Minutes: None**

**Other Business: None**

Ms. Crawford made a motion to adjourn the meeting at 8:40 pm. Ms. Kresco seconded the motion and the vote was 3-0 in favor.

Submitted by:

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Bea Meechan, Senior Clerk