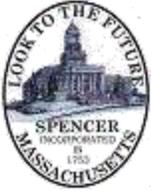


Zoning Board of Appeals– Town of Spencer



Minutes

Zoning Board of Appeals

Tuesday, October 13, 2009

McCourt Social Hall

Memorial Town Hall

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

Zoning Board of Appeals Members Present: Chairman Allan Collette, Clerk Pamela Crawford, and Dee Kresco, alternate.

Zoning Board Members Absent: Joanne Backus and Albert Drexler.

Staff present: Adam Gaudette, ODIS Director.

New Business:

A. Variance – Richard & Marian Cogswell, 6 Jameson Lane and Eastalee Drive (Assessor’s Map U34/2). Pamela Crawford recused herself from this discussion. Thus, there are only two members present in this hearing. And in order to have a quorum, three members are required. In addition, Mr. Gaudette informed the Board that the Cogswells have submitted a letter requesting the hearing be postponed to a later date.

Note: For the record there were no abutters for this hearing tonight.

The applicants have a prospective buyer to purchase this property. Because it is vacant land and also a nonconforming lot, the buyer needs more time to assess other requirements such as zoning setbacks, septic system design, and any wetlands issue.

Mr. and Mrs. Cogswell, who are in attendance tonight, said they do not know whether the buyer would pursue after the results of the assessment. They would like to postpone the hearing.

Mr. Gaudette explained under the Spencer Zoning Bylaw it requires the Zoning Board to hold a public hearing within 65 days after the filing of an application. If postponed, the applicants need to submit a statement stating that they would waive the 65 day requirement. He will prepare a “waiver form” for the applicants to sign. He asked them to contact him the following day.

Mr. Gaudette said he will send letters to notify all abutters in regards to the postponement informing them when the hearing will occur. The Board then decided not to open this public hearing.

B. Special Permit – Ronald Brown, 19 North Spencer Road (Assessor’s Map R32/27). *Members present in this hearing are Mr. Collette, Ms. Crawford, and Ms. Kresco.* Mr. Collette opened the public hearing at 7:25 p.m. The Clerk then read the brief. The application was submitted by Mr. Kim Warren. 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 (auto sales and repair) to allow for manufacturing and sale of concrete products. The property is located in the Rural Residential Zoning District.

Mr. Collette asked the applicant to present any additional information on the application.

Mr. Warren said he wants to start a small manufacturing business for pre-packaged products catering mainly to local businesses; landscapers, construction companies, and also residents. The exterior of the structure will remain the same; there will be some change to the interior.

Mr. Gaudette said he went to check at the site, there are three garages. One garage is empty and the space is allocated for the proposed business and its activities. At one time the business was for auto-body, auto repair, and auto sales.

The Board asked the following questions of Mr. Warren and Mr. Gaudette:

Mr. Collette asked whether the car sales business has been in operation, or it is no longer in business?

Mr. Warren said the car sales business is still in operation. Mr. Gaudette explained that this is considered a pre-existing non-conforming use. The two bay garages are used in the existing business. Only one portion of the use (pre-existing non-conforming) will be changed to a different non-conforming use.

Mr. Collette asked if the applicant has any plans to present tonight besides the aerial photos of the existing conditions. In addition, he asked the applicant to identify the storage’s location for finished products.

Mr. Warren said the finished products will be stored right along the property line. He pointed out the location on aerial photos. He does not have any other plans to present.

Mr. Collette commented that there could be a problem because two businesses are under one address.

There are several business establishments in Town that have multi-uses under one address. Mr. Gaudette added that this application is about extend/alter the non-conforming use to a different use. Under MGL, Ch 40A, Sec. 6 and Section 4.9.3.C of the Spencer Zoning Bylaw states that non-conforming uses may be extended or changed upon issuance of a special permit by the Zoning Board of Appeals.

Ms. Crawford said she is concerned with changing the non-conforming use from Automotive Services Use to Industrial Use.

Mr. Gaudette said that is correct. As mentioned above, under MGL and Spencer Zoning Bylaw it is stated that such extension or change of non-conforming use is allowed provided that it would not be substantially more detrimental to the neighborhood than the existing on-conforming use.

Ms. Crawford inquired as to the definition of detrimental.

Mr. Gaudette said detrimental could be in terms of aesthetics or a nuisance condition that arrives from the business's operation such as traffic, noises, air quality, and etc. The Board needs to make a determination on the subject of detrimental.

Ms. Crawford asked for the type of material use and the volume of material to be stored.

Mr. Warren said materials are stones and bricks. It is a small operation and the products will be produced in low volume.

There was a brief discussion in regards to the traffic. The Board asked: Does the business provide delivery service? What type of products will be produced? What actually is being stored outside? How long are the products held in the storage area?

Mr. Warren said there will be delivery service provided. The products are patio blocks, retaining walls, and wall tiles. The products will be manufactured inside the proposed garage, and each product will be produced in a small batch, and in small volume. The finished products are stored outside in a designated location until they are sold. *He pointed out the storage designation area on the aerial photo.*

The debris would be placed outside within the property, and also finished products would be stored in the storage area. Ms. Crawford asked if these two areas are too close to the property lines.

Mr. Gaudette said if the Board has a concern in regards to the setbacks, screening, and buffers, the Board could do a site visit.

Note: Mr. Ron Brown, the owner of the property, was present tonight.

Mr. Collette asked Mr. Brown what the total number of cars for sale/storage are allowed as permitted in his Auto Dealership license.

Mr. Brown said he has been doing the business for over 40 years and his dealership license specifies 35 parking spaces. The license is issued by the Board of Selectmen (BoS) and is renewed annually.

Ms. Crawford asked if all three bay garages have been occupied and used prior to the submission of the application for a special permit.

Mr. Brown said the garage, for the proposed business, has been rented out to people previously for uses other than the dealership. He has been using the other two garages for his car sales business.

Mr. Collette asked about the noise level involved in the operation.

Mr. Warren said there is very little to none. The manufacturing will be processed inside a garage with a door closed.

There is a regulation in the Zoning Bylaw in regards to the number of parking spaces per business allowed in the lot; the calculation is based on the square footage of a building and the lot's area. Ms. Crawford thinks the applicant should also provide the number of parking spaces for each business on the lot.

Mr. Gaudette explained Mr. Brown has been doing business for over 40 years and his dealership license contains of 35 parking spaces. Auto Dealership Licenses are issued by the BoS, and when applying applicants are not required to submit a parking plan. No one has ever applied for a special permit to do a business on this location, or extend the pre-existing nonconforming use until now.

Mr. Gaudette said the regulations and requirements in the Zoning Bylaws have changed throughout the time. Mr. Warren has applied for a business certificate on his proposed business. Because there is an existing non-conforming use already in place, under the current Zoning Bylaw, ODIS determines the use could be extended or altered only by obtaining a special permit from the ZBA.

With no further questions or comments from the Board. Mr. Collette then opened the hearing to the public for any questions or comments.

Note: There were no abutters present for this hearing.

At this point the Board went over the aerial photos; there are no specific markers to indicate where everything is on the property. There was a concern on the aesthetics due to the location being located in the Rural Residential Zoning District and the proposed business manufacturing industrial products. The storage area might be clearly visible to the public's view. The Board then requested the applicant to provide a site plan for which the following can be determined:

- Location of the building (that housed the three bay garages) on the lot.
- Location of the storage for finished products in reference to the building.
- Distance from the building to the lot's lines.
- Distance from the storage area to the lot's lines.
- The size measurement of the storage area.

Ms. Kresco made a motion to continue the public hearing to October 27, 2009, at 7:45 p.m. Ms. Crawford seconded the motion and the vote was 3-0 in favor.

C. Special Permit – Robert and Martha Berthiaume, 49 Lincoln Street (Assessor’s Map U19/5). *Members present in this hearing are Mr. Collette, Ms. Crawford, and Ms. Kresco.* Mr. Collette opened the public hearing at 8:00 p.m. The Clerk then read the brief. The applicants propose to construct an addition with a deck to an existing single-family house on a pre-existing nonconforming lot. The applicants are requesting a special permit under Section 4.9.2.A.2 of the Spencer Zoning Bylaw. The property is located in the Village Residential Zoning District.

Mr. Donnie Berthiaume of 140 Charlton Road represented the applicants as he prepared the plans.

The Board reviewed the plan and asked the following questions of Mr. Berthiaume:

- What is the use of the addition room? Is there going to be a bathroom in the addition?
- Total square footage of the existing structure.
- Total square footage of the addition.
- What is the existing setback?
- There is a right of way on the west side of the property (between Lot 4 and Lot 5), is it an actual road connected from Craig Street?

Mr. Berthiaume said the addition is a family living room and deck, no bathroom. The lot has 7,200 square feet, the maximum building coverage in the Village Residential zoning district is 25% which is 1,800 square feet. The existing structure has 1,228 square feet, and with the addition it will be 1,671 square feet and is within the requirement. The existing setback is 5.1 feet, the setback of the addition is 5.4 feet. There is a nursing home in the back of the property and the right of way serves as an access from Craig Street to the nursing home and its parking lot.

Mr. Gaudette said the required setback in the Village Residential zoning district is 10 feet. If the addition creates the setback any closer to 5.1 feet, then a variance is required. But the setback of the addition is greater than or equal to the existing, thus the applicant has requested a special permit from the ZBA.

Note: There were no abutters present for this hearing.

With no further questions and comments from the Board, Ms. Crawford made a motion to close the hearing at 8.15p.m. Ms. Kresco seconded the motion and the vote was 3-0 in favor.

Ms. Crawford made a motion to grant a special permit to Mr. and Mrs. Berthiaume to construct an addition and deck attached to an existing single-family residential home which is currently legally, pre-existing non-conforming in terms of setbacks and lot area. Ms. Kresco seconded the motion and the vote was 3-0 in favor. The following was included in the motion:

Findings: The Board determined that the findings had met the requirement in M.G.L., Chapter 40A., Sec. 9 and Section 7.2 of the Spencer Zoning Bylaws:

1. That the proposed use (single-family residential) is in harmony with the general purpose and intent of the zoning bylaw.
2. That the proposed use will not create undue traffic congestion nor unduly impair pedestrian safety.
3. That the proposed use will not impair the integrity or character of the district or adjoining zones, nor will it be detrimental to the health, safety, or welfare of the neighborhood or the Town.

In addition, the Zoning Board made the following finding in accordance with Section 4.9.2.A.2 of the Spencer Zoning Bylaw:

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

This approval is granted with the following ***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 instructions to the applicant, and to all abutters.

Approval of Minutes: For September 22, 2009.

Ms. Crawford made a motion to approve the minutes for September 22, 2009. Mr. Collette seconded the motion and the vote was 2-0 in favor with Ms. Kresco abstaining.

Old Business: None

Other Business: None

Ms. Crawford made a motion to adjourn the meeting at 8:30 p.m. Ms. Kresco seconded the motion and the vote was 3-0 in favor.

Submitted By:

Bea Meechan, Senior Clerk, ODIS