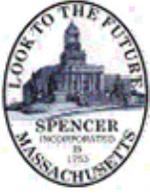


Zoning Board of Appeals– Town of Spencer



Minutes

Zoning Board of Appeals

Tuesday, May 26, 2009

McCourt Social Hall

Memorial Town Hall

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

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

Zoning Board Member Absent: None

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

New Business:

A. Variance – John Turner, 65 Lakeshore Drive, Spencer. Ms. Bacuks opened the hearing at 7:15 p.m. The Clerk then read the brief. The applicant proposes to construct an addition to a single family residence that includes a storage room on the first floor and an additional bedroom on the second floor. The applicant is requesting a variance from Section 5.1 (Table of Area Requirements) of the Spencer Zoning Bylaw from the maximum side setback of 10 feet to go down to 1 foot. The property is in the LR zoning district.

For the record there were no abutters present for this hearing.

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

John Turner, the applicant, stated that he has two children, the house has two bedrooms, and eventually at some point he will need to add another bedroom. He is considering doing the additional bedroom now.

Ms. Backus opened the Board for any comments and questions.

Mr. Collette commented that the plot plan shows three lots; however the house is mostly situated in Lot 41, is the property considered as one lot or three lots?

Mr. Turner said that it is one lot. Mr. Gaudette stated that the deed record indicated that all 3 parcels were purchased at the same time and create the applicant's lot.

Mr. Collette asked for a description/topography of the property.

Mr. Turner provided that the well is in the front, the deck is attached to the north-easterly side of the house, and the road is located on the crest of the hill. The land in the front yard slopes downhill from the road.

Ms. Backus asked why the applicant isn't considering converting the deck into a bedroom and re-locate the deck to the other area. She also asked for a distance from the road to the house.

Mr. Turner responded that the deck was basically built on the rocks; it can't support or hold anything. The proposed plan consists of a two-story addition with a storage room on the first floor and an additional bedroom on the second floor. The existing deck is also located next to the kitchen. The distance from the road to the house is approximately 20-25 feet.

Ms. Crawford asked about the capacity of the septic system.

Mr. Turner said the septic system (1,000 gallons) can accommodate a 3 bedroom house.

Mr. Collette asked Mr. Gaudette if lot 39 is a buildable lot. (*The plot plan illustrated lots being labeled as number 39, 40 and 41*).

Mr. Gaudette explained that lots 39, 40, 41 on the plot plan make up Lot 44 on the plans of the Spencer Town Assessor. Combined, they create a conforming lot with enough frontage. The current lot can't be further subdivided for building without getting variances from the Zoning Board of Appeals (ZBA) first.

In the previous discussion with Mr. Turner, Mr. Gaudette expressed a concern about the neighboring lot, Lot 45; the proposed plan will leave only 1-foot side setback to that side of the property. Mr. Turner indicated that he would inform the owner of Lot 45 about his proposed plan. Mr. Gaudette then asked for a result, and whether or not Lot 45 is still vacant.

Mr. Turner said that he sent a letter with the proposed plan to Mr. Cencak, owner of Lot 45, but didn't get any response back. He also made an offer to purchase that lot, however Mr. Cencak wasn't interested. The lot is still vacant. (*The letter was shown to the Board*).

At this time the Board and Mr. Gaudette tried to determine whether or not Lot 45 is a grandfathered lot and is a buildable lot. Based on the lot size, the conclusion was if there is a proposal to construct a building, then the plan will need a variance from the ZBA.

Referring to the proposed plan, Mr. Drexler then asked the following:

- That the addition seems to be in a close proximity to the property lot line – to Lot 45. Has a survey been done to identify the exact location of the side lot line?
- Also how will maintenance be accomplished for that side of the house without going over/into Lot 45. (If there is a need to paint, to clean window, it will require a use of a ladder and with the limited side setback the base of the ladder would be in Lot 45).

Mr. Turner said a survey was done to identify the property line. He explained the house is slightly angled off from the end corner of the proposed addition, thus the distance of side setback will be more than one foot for most of the addition from that point forward.

Mr. Drexler commented that the former Building Inspector had indicated that based on the State Building Code, any additional room to the house is to be considered as a bedroom. The former Building Inspector would consider this application as to construct two additional bedrooms as opposed to one addition storage room and one additional bedroom.

Mr. Drexler then asked if Mr. Gaudette knows of the opinion of the current Building Inspector on this matter. Also if the ZBA approves the plan and later that storage room is converted into a bedroom, how would anyone know?

Mr. Gaudette replied that when the application for a building permit is submitted to ODIS, the Building Inspector will review, and essentially will do inspection based on what has been stated on the application. The only time the Town would know of any violation is that, when a complaint is made and implicated the applicant is doing something else other than what she/he has a permit for, or approval from the ZBA. The Building Inspector or the Health Agent then can take appropriate action and recourse. Mr. Gaudette also explained that the use of the addition is only relevant in terms of septic system capacity. The ZBA's reviewing the dimension of the addition.

Ms. Crawford asked what is the reason for the hardship. Also what is the life expectancy of the existing septic system; if the system is old it may need to be replaced within a few years. It is possible that the addition could be constructed where the septic system now is, (in the back of the house) and need to install the new septic system in another area.

Mr. Turner indicated that the hardship is the topography of the land and location of the existing house; the septic system is in the back of the house, the front area contains the well, and he couldn't relocate the deck as mentioned earlier. The only suitable area is the north-easterly side of the house as proposed. He said the septic system was installed in the 1970s. It passed Title V when he purchased the property three years ago.

Ms. Crawford commented that if the septic system and the leach field can be moved, she asked what will constitute the hardship then.

Mr. Gaudette said that if the Board prefers to have the septic system be relocated, then the hardship will be financial; in generally to move the leach field and the whole septic system is costly. The applicant would have to spend more money as opposed to the original plan.

The Board asked if the Board of Health (BOH) will be involved on the septic issue and what about Conservation Commission (ConCom).

Mr. Gaudette said that the property is within 100 feet of the lake, thus, a filing with ConCom is required. He would put a condition in the decision stating that construction activities shall not commence until all required approvals from other Boards and permits are obtained.

The Board asked if the applicant has the house floor plan or elevations to present tonight.

Mr. Turner said that the house plans haven't been done yet. He is waiting to get the answer from the Board first. He expressed that he doesn't want to spend the extra money if the Board won't approve the location.

At this time the Board thought a site visit is necessary. The Board members will do a site visit individually. Mr. Collette made a motion to continue the public hearing to June 9, 2009. Ms. Kresco seconded the motion and the vote was 5-0 in favor. *Ms. Crawford announced that she will not attend the hearing of June 9, 2009.*

B. Variance – Cheryl & Rodney Maxwell, 45 Pint Eastalee Drive, Spencer. Ms. Backus opened the hearing at 7:50 p.m. The Clerk then read the brief. The applicants propose to extend an existing porch which will increase the maximum building coverage from 40% to 41%. The applicants are requesting a variance in accordance with Section 5.5.3 and Section 4.9.3 of the Spencer Zoning Bylaw. The property is located in the LR zoning district.

Mr. Gaudette clarified the purpose of the application. He previously discussed the proposed plan with Ms. Maxwell to determine what permits she would need. Later, she submitted the plan to ODIS and it was reviewed by Mr. Gaudette and Mr. William Klansek (the Building Inspector). The plan has a problem with the lot coverage. The lot is a pre-existing non-conforming lot. The maximum building coverage in the Lake Residential zoning district is 25%. The existing building coverage already has 40% of the lot coverage.

Ms. Backus asked the applicant for an additional presentation of the application.

Cheryl Maxwell, the applicant, presented pictures of the existing conditions to the Board. She explained that the proposed porch will be extended from the mudroom and across to the west side of the house. The roof-line will be extended to cover the proposed porch and this will enhance the house's appearance.

Ms. Backus opened the Board for any comments and questions.

Mr. Collette asked Mr. Gaudette for a clarification of the calculation (regarding to the building coverage) provided on the proposed plan.

Mr. Gaudette explained that the existing lot has 40% building coverage. There is a 25 sq. ft. stairway next to the existing porch. By removing that 25 feet and adding 89 sq. ft. of porch, the net would be an additional of 64 sq. ft. to the existing porch. Therefore the lot coverage is increased from 40 % to 41%. A variance is needed to increase the pre-existing non-conforming lot by 1%.

Mr. Collette asked if the proposed plan were to start from the mudroom, extend across from there to the west direction, thus, nothing would change to the mudroom and the east side of it. What about the wall, would it be removed?

Mr. Gaudette said there won't be any change to the mudroom and its east side. The proposed plan would not alter the side setback from the existing condition (which has already violated the side setback). The wall will remain as it is.

The Board asked Ms. Maxwell to identify locations of the driveway, the public right-of-way and the septic system which are illustrated on the plan.

Ms. Maxwell demonstrated all locations to the Board. She explained that the septic system is underneath the driveway, vehicles will park in front of the proposed porch, the public-right-of-way is going through and into the two abutting lots owned by her neighbor, Peter Seymour.

Ms. Crawford asked about the distance from the leach field to the house; she thought that there is a requirement in terms of minimum distance from the structure to the leach field.

Mr. Gaudette responded that it depends on the location of the structure and leach field. When the application for a building permit is submitted to ODIS, it will be reviewed by the Building Inspector and the BOH Agent (if has private sewer). The Health Agent will conduct a review on the septic system, when it has been repaired, when the last time the Title V was done, and the safest distance from the leach field to the nearest structure.

Ms. Backus opened the hearing to the public for any questions and comments. Peter Seymour of 42 Point Eastalee Drive stated that he has no objection to the proposed plan.

Ms. Backus announced the members in voting are; Allan Collette, Dee Kresco and herself. Ms. Kresco 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 variance to Cheryl and Rodney Maxwell to alter (front porch addition) an existing single-family residential dwelling at 45 Point Eastalee Drive which is currently legally, pre-existing non-conforming in terms of setbacks, frontage, lot area, and building coverage. Ms. Kresco seconded the motion and **the vote was 3-0**. The following was 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:

1. Owing to circumstances relating to the soil conditions, shape or topography of land or structures, and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this by-law would involve substantial hardship, financial or otherwise to the petitioner or appellant.

2. That desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this by-law.

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.

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 also to all abutters.

Old Business: None

Other Business: None

Approval of Minutes: For April 28, 2009.

Mr. Drexler requested a modification on page 2, paragraph seventh, from “it is irreverent” to “it is irrelevant.” Ms. Meechan acknowledged the request and will make the change before filing the minutes with the Town Clerk.

Ms. Kresco made a motion to approve the minutes as amended tonight. Ms. Crawford seconded the motion and the vote was 5-0 in favor. Ms. Crawford made a motion to adjourn the meeting at 8:40 p.m. Ms. Kresco seconded the motion and the vote was 5-0 in favor.

Submitted By:

Bea Meechan, Senior Clerk, ODIS