

Zoning Board of Appeals– Town of Spencer



Minutes

Zoning Board of Appeals

Tuesday, June 9, 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, Albert Drexler (Alternate) and Dee Kresco (Alternate).

Zoning Board Member Absent: Clerk Allan Collette and Pamela Crawford

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

New Business:

A. Administrative Appeals – Lester Burlingame, 68 Wire Village Road, Spencer, MA. Ms. Backus opened the public hearing at 7:20 p.m. The application was submitted by Mr. Lester Burlingame of 117 Faith Drive, East Brookfield for property owned by Mr. Frederick Martin. Mr. Gaudette informed the Board of the error made on the advertising for this public hearing. It was advertised as a public hearing for a request of a Special Permit as opposed to an Administrative Appeals (appeal of the decision made by the Building Inspector). Chair Backus made that announcement and asked if the applicant and abutters (who involves in the case) would like the Town to re-advertise for a proper request, and then schedule a public hearing again.

Attorney William Kring, applicant's attorney, said that his client had no objections with the advertisement and would like to have a hearing tonight. Abutters for this hearing had no objections also.

The public hearing was then continued, in the absence of Clerk Allan Collette, Chair Joanne Backus appointed Mr. Drexler as acting Clerk.

The Clerk then read the brief which stated that the applicant was interested in establishing a home business for restoring antique cars at the location. However, Mr. William Klansek, the Building Inspector, thought that the use does not qualify under Section 4.8.3.C of the Spencer Zoning Bylaw. The applicant is appealing Mr. Klansek's decision to the Zoning Board of Appeals (ZBA). The Clerk also read the letter submitted by Mr. Burlingame dated May 8, 2009, and the letter from the Building Inspector to Mr. Burlingame dated August 12, 2008.

Ms. Backus asked the applicant to present any additional information on the application.

Attorney Kring presented pictures of the property to the Board. He then read the content of Section 4.8.3.C of the Spencer Zoning Bylaw to the Board and concluded that the proposed home business use does fall within the provision in Section 4.8.3.C. He said in referencing the letter from Mr. Klansek (dated 8-12-2008), it was clearly stated that the specific use is allowed - providing that the proposed business is conducted according to Section 4.8.3.C.

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

Mr. Drexler commented that there was no documentation demonstrating that the Building Inspector has changed his recommendation regarding the application.

Mr. Gaudette said that any resident who wishes to establish a home business is required to fill out a Business Certificate Form and submit it to ODIS, and it is reviewed by the Building Inspector/Zoning Enforcement Officer. If the Building Inspector determines that the proposed business complies with the Zoning Bylaw, then he will sign the form. He gave a brief summary of the case as follows:

In August of 2008, the applicant had inquired about the possibility of having the same home business on property located at 99 Hastings Road to Mr. Klansek. At the time Mr. Klansek was only in his sixth week as the Building Inspector and wasn't familiar with this provision of the Zoning Bylaw. He issued the letter to the applicant indicating the use is allowed (dated 8-12-2008).

Recently, Mr. Burlingame submitted a Business Certificate to Mr. Klansek under the new property location (68 Wire Village Road). Mr. Klansek asked Mr. Gaudette about the specific intention of the Bylaw regarding a home business in the Rural Residential (RR) Zoning District. In reviewing the Bylaw, Mr. Gaudette concluded that the proposed home business requested does not meet the criteria classified in Sections 4.8.3 and 4.8.3.C. Also, in Section 4.2 – Use Table, it indicates that automobile repair shop/auto-body shop is not allowed in the RR Zoning District.

At this point Mr. Gaudette gave some alternatives available to Mr. Burlingame: He could request a Special Permit to the ZBA; or he could file for a Business Certificate to the Building Inspector. If the Building Inspector denies the application, Mr. Burlingame could then file for an administrative appeal to the ZBA.

Mr. Gaudette said that Mr. Klansek gave his opinion to the applicant at the time the letter was issued. He understands the frustration the applicant has because of the change in the opinion within the Department from last year.

Attorney Kring said that it is not the change of the opinion; it is more the change of the Zoning Bylaw. He explained that the applicant's business is considered as a Customary Home Occupation. There are examples of type of businesses classified as Customary Home

Occupation, but it also says “are not limited to.” By reviewing the Bylaw thoroughly, Attorney Kring believes the applicant meets the various criteria in Section 4.8.3.

Mr. Drexler asked what is the distance from the road (Wire Village Road) to the existing garage. Mr. Burlingame said that it is approximately 100 feet.

Ms. Backus was sympathetic with the applicant. However under the Use Table, it is clearly stated that automobile repair shop is not allowed in the RR zoning district.

Ms. Burlingame argued that it is not an automobile repair shop, in this case the owners will be residing at the property. The proposed business is a home business which meets the criteria under 4.8.3.A.1 which reads “the business is conducted by a resident of the premises entirely within the residence or an accessory building, and doesn’t involve more than occasional business vehicular.” She stated that there are examples of Home Business in the Bylaw, but it also says “are not limited to.”

Ms. Backus said that to restore cars is the same as to repair cars. It has the same definition – an automobile repair shop.

Mr. Gaudette said that the applicant may think the proposed business is mainly conducted in the garage – inside the house; therefore it meets the criteria as classified in a Home Business. He said that based on the Use Table, the automobile repair shop is not permitted in the RR zoning district. Having the existing home in the RR district doesn’t give anyone the loophole to establish a business that is prohibited in the RR zoning district. Mr. Gaudette stated that if the use is not listed in the Use Table, basically it is excluded and the use is not allowed. He then clarified the content of the Section 4.8.3 – Use of Residence for Business Purposes to the public, which consists of three sections as follows:

1. Home Business. Does not need a special permit. It is the least obtrusive on the outside environment. A home business is those who work off their desks such as a computer software-designer, editor, writer, etc.
2. Customary Home Occupation. This type of business is a little more intense than the first. The business has frequent visits and increased traffic from clients, thus it requires a special permit from the ZBA. Examples of customary home occupation are accountants, lawyers and real estate employers.
3. Home Based Contractor. This category is the most intense type of home business. The business is involved with outside-storage of material, equipment and trucks, thus it is required to have a special permit from the ZBA.

Attorney Kring argued that according to the Section 4.8.3.C which reads “Home businesses are permitted in all zoning districts without need for a special permit...” and the applicant’s proposed business does qualify as a home business. Thus it does not need to follow through the list of requirements (5 requirements) under the Section 4.8.3.C.

Mr. Gaudette and Mr. Drexler indicated that it depends on the definitions; definition of home business; definition of automobile repair shop; and definition of Use Table. Mr. Gaudette said that if the business qualifies under the definition then it must meet the five-requirements listed under the Section (4.8.3.C). Mr. Drexler referred to the definition of the Use Table; automobile repair shop business is not allowed in the RR zoning district. He also commented that basically the applicant and his attorney asked the Board to change the regulations of the Zoning Bylaw. The Board does not have authority to do that.

Ms. Backus opened the hearing to the public for any questions or comments at this time.

Ms. Mary Lalonde of 62 Wire Village Road asked if there will be chemical spray/paint associated with the restoration of cars. She has a health problem related with chemical paint. Ms. Lalonde agreed with the Board and Mr. Gaudette about the definition under the Use Table.

Ms. Lisa Trombly of 64 Grove Street (*she is an abutter for another hearing*) said that the economy is in a bad situation, people are trying to make a living. Her opinion was that if the applicant has changed the name of the proposed business, described the business in a different way, it could be allowed in that RR district. Regarding the chemical paint, she commented that everywhere you live there will always be people in the neighborhood that need to paint things - it is impossible to not have any exposure from chemical paint. Chemical paint would be minimal considering the proposed business is not a commercial or industrial business. It should be an exception to the rule.

Mr. James Bergeron of 41 Highland Street (*he is an abutter for another hearing*), indicated that there is an automobile repair shop on Wilson Ave and it is in the RR zoning district - he then asked why is that allowed?

Mr. Gaudette explained that automobile repair shop is grandfathered, prior to the Zoning change in 2006. At this time there were questions from the public that inquired about the changing process of the Zoning Bylaw and how it has been done. Mr. Gaudette replied that basically when the Town is developing a Master Plan, a public hearing is held to discuss on where certain of uses should be designated in what zoning district of the Town. Next, the Town creates a new Zoning Bylaw or amends the existing Bylaw to restrict the uses or allow the uses in that designated zoning district. Mr. Gaudette indicated in 2006, the Town had voted that the automobile repair shop business is prohibited in the RR zoning district.

Ms. Lalonde expressed that she has a family and children; and certainly she would like to live longer. She has a health problem with the chemical paint and if she can avoid any impact to her health she would, and she is here tonight to voice her concern.

Mr. Ralph Ferro of 76 Wire Village Road said that the area is considered a quiet neighborhood. If the proposed business is permitted, there will be some type of machinery operation that will create noise, which he objects to.

Ms. Burlingame responded that the hours of doing business will be limited where it won't be in the prime hours. Attorney Kring said if number of business is to be limited to 2-3 cars per year,

this would have a minimal impact with the above issues (noise and chemical paint). The applicant has been told by the Building Inspector that he could have the proposed business at that location.

Mr. Gaudette said that the applicant thinks this is by-right use. There would only be a restriction on hours of operation and number of cars under a special permit from the ZBA. Mr. Gaudette emphasized that the Building Inspector gave only his opinion to the applicant; he did not give them a permit.

The Board continued the discussion and agreed that the Town, when the Master Plan was established, had voted to designate that there shall not be an automobile repair shop business in the RR zoning district.

No further questions or comments from the Board and public at this time.

Mr. Drexler made a motion to close the public hearing. Ms. Kresco seconded the motion and the vote was 3-0 in favor. *Members conducting the voting are; Ms. Backus, Ms. Kresco, and Mr. Drexler.*

Mr. Drexler made a motion to uphold the Building Inspector's denial of a Business Certificate of the proposed use. The appeal was requested by Mr. Burlingame for property located at 68 Wire Village Road. According to the Section 4.2.F.3 of the Spencer Zoning Bylaw it clearly states that the use of automobile repair shop and an auto-body shop is prohibited in the Rural Residential Zoning District. Ms. Kresco seconded the motion and the vote was 3-0 in favor.

Mr. Gaudette explained that once the decision has been filed with the Town Clerk, staff from ODIS will mail a copy of the decision along with instructions to the applicant, and also to all abutters. The applicant can also appeal the ZBA's decision during the 20-day appeal period to either Housing Court or Land Court.

B. Special Permit – Town of Spencer, off Highland Street, Spencer. Ms. Backus opened the public hearing at 8:00 p.m. The Clerk then read the brief. The application was submitted by Mr. Robert McNeil (Spencer Utilities & Facilities Office Superintendent) for the Town of Spencer; the applicant. The applicant proposes to construct a new water storage tank. A special permit is requested under Section 4.3.4 and Section 7.2 of the Spencer Zoning Bylaw. The property is located in the Village Residential District.

Mr. Gaudette stated that the special permit is for the use "major utility" – public or civil use. Mr. McNeil, Ms. Shira McWaters and Mr. Jeffrey Murawski (Engineers from Tata & Howard) were here tonight to give a presentation of the project.

Ms. McWaters explained that the Town of Spencer is currently under an Administrative Consent Order (ACO) from the Mass Department of Environmental Protection (MassDEP) to address high pressure in the water distribution system. The Town of Spencer, Utilities & Facilities (U&F), is proposing to separate the existing distribution system into two service areas; Eastern Service Area which consists of the Moose Hill Tank and also the proposed Highland Street

booster pump station (BPS); and the Western Service Area which consists of the Town's existing wells and the proposed Highland Street Water Storage Tank. She then gave an overview of the plan as follows:

- Several water mains will be replaced and the dedicated transmission main will be constructed from Main Street then it continues up Pleasant Street, Lincoln Street, Wilson Street and back down to Highland Street.
- A cast-in place concrete tank will be partially buried with approximately 5-feet of reveal in the rear and 2-feet of reveal in the front. She also presented pictures of the tank to the Board.
- The proposed BPS will be constructed in the same location as Highland Street tank is located.

At this point Ms. McWaters turned over the presentation to Mr. Jeffrey Murawski. He explained the following:

- Water tank and BPS will be located in the northwesterly part of the property, close to Highland Street and Delude Avenue.
- There will be a building facility for the booster pump station with dimensions of 25-feet by 30-feet at the proposed site.
- The natural tree-buffer along Highland Street and Delude Avenue will be preserved to the maximum extent feasible.
- Due to the topography (steep hill and rocks) in the location of the proposed water storage tank, rock removal (blasting) may be necessary.

At this time Mr. McNeil explained that MassDEP has mandated the Town (Water Department) to manage the pressure of water to a lower level, the Town will be subjected to a fine if it does not do so. The Water Department, through Tata & Howard, conducted and evaluated 5 potential sites for the Town. There is a possibility that the Town could receive Federal Stimulus funds to the project, and if so, the Town must submit a design plan to MassDEP by July 31, 2009. If the stimulus fund isn't available, the Town can get a loan with a low interest rate from the State provided that the project meets State requirements. If it takes this route, the Town must submit the plan to the State before July 14, 2009. Considering the time constraints and cost-effective factors, the proposed site (Highland Street) was chosen because it is the most feasible. Also, being Town-owned property it will expedite the process, thus, no need to go through a sale process, etc. The water mains were mostly constructed in the 1930s; if the project is permitted the Town could replace these necessary components as well.

Mr. McNeil indicated that the Planning Board has already approved the Site Plan. The Conservation Commission will hold a public hearing on June 24, 2009.

The presentations from all parties involved were finished at this point. Ms. Backus then opened the Board for any questions and comments.

Mr. Drexler was concerned about the safety of children due to the proposal being near the Lake Street School. He asked how the blasting will be monitored and what type of equipment will be used in the process.

Mr. Murawski said he understood the concern. The blasting might not be necessary, he doesn't know for certain. The nature of the rock-type and the soil testing is needed to be evaluated first in order to determine the proper equipment for blasting. The blasting must meet guidelines and requirements from the State and local Fire Department. If the blasting is necessary, a meeting will be coordinated with the contractor, local residents, home owners, Fire Chief, Police Department, Utilities & Facilities Office, and School Department to discuss the matter. The radius of blasting is 250-feet and there are 3 properties within that radius.

Ms. Backus opened the hearing to the public for any questions and comments.

Mr. James Bergeron of 41 Highland Street said that his property is in that 250-foot radius. He was concerned about his house, it is an old home. The blasting might damage the structure and the foundation. He thought that due to the amount of rocks and ledge outcropping nothing could ever be built on that site. In addition if the buffer of trees has been removed, the water tank will be visible from his property. This will have an impact to the value of his property.

Mr. Murawski said that the survey for blasting and the measurement of vibration will be done prior to blasting process. He explained that the setback from the booster pump station to Highland Street is approximately 84-feet and about 100-feet of setback from the proposed water tank to street.

Mr. McNeil said that there are several large trees along the street and removing of trees will be as little as possible. Mr. Bergeron's property is located across from the driveway of the proposed project and the driveway is 12-feet in width. The fencing (of the booster pump station) and the front portion of the tank (6-feet above grade) might be slightly visible from Mr. Bergeron's property. In his opinion the project will raise the value to property; increasing the water pipe size will help for a better fire-flow into the area and lower the home insurance rates.

Ms. Lisa Trombly of 64 Grove Street was concerned about the wall near her property. The guard rail was placed on the top of the wall for a better stability. This matter was discussed in the previous Town Meeting and the Town Administrator, at that time, decided that there would not be any major construction such as jack hammering, blasting, within the vicinity of the existing wall. She has several questions and concerns:

Concern #1: If the construction of the water tank fails, the water will flood toward her property and cause the wall to collapse on to her property, and also the blasting may create damage to the structure of her house. She believes this will increase the cost of her house insurance. She then asked who is responsible for any liability that is caused by the blasting.

Concern #2: The project is near Lake Street School. Children use the school yard to play during and off school hours. Currently there is concern about vehicle-speed-traveling on that portion of the road (upper Highland Street). The Town also has a plan to replace water mains, there will be many construction vehicles travelling up and down the road, thus more safety concerns to the children.

Comment: The location is classified as the RR zoning district; she could not believe the Town would allow such a large scale project in the area. She indicated that this is the first meeting she has even been formally notified about. She understood that the matter was discussed at the previous Annual Town Meeting. However, she personally felt that the Town should have informed/notified residents of the project long before it had arrived at this stage.

Mr. McNeil replied that residents can file a petition to the Fire Chief, requesting the blasting radius be extended beyond the current limit of 250-feet. The contractor has its insurance covering damage occurring due to blasting. He realized that the proposed project is near school property and certainly there is a concern to the children's well-being. The Town won't utilize that portion of the road on Highland Street. The Town also has full control of traffic and will provide police officers to monitor/direct traffic during construction period. Mr. McNeil stated that the proposed project isn't new to the Town. The Town Officials (Water Department and the SelectBoard) had several open meetings regarding the subject for about a year and a half prior to the article on the warrant at the Annual Town Meeting. He is welcome to any input from the public, and he can be reached at U&F. Mr. Gaudette clarified that for the regular town meeting the Town won't send out any notification because it is not required. For the public hearing, it is required to notify all abutters who reside within 300-feet of the project. Mr. Drexler indicated that Town Meeting information is also available at the Spencer Town website. Ms. Backus encouraged residents to participate in the Town Meetings.

Mr. John Kates of 28 Highland Street asked what is the projected timeframe of the project. He then asked when the blasting will take place.

Ms. McWaters said that site clearance will happen first and it would take place in the Fall (October or November). Essentially construction plans with a timeline will be prepared and for the actual blasting it has yet to be determined at this time. Ms. McWaters explained that the BPS will be similar to the existing station on Meadow Road. She then presented pictures of BPS on Meadow Road to the public and the Board.

Ms. Trombly asked about the lighting at BPS and noise impact from the generator. Ms. McWaters replied that it will be a motion light detector or a light switch. Ms. Trombly commented that if it is a motion detector and it is a wooded area, the light will be constantly on-off due to animals passing by. Ms. McWaters responded that BPS will be completely fenced in – preventing animals from getting inside BPS. The light will be below the tree level, it will not shine directly to any of the abutters' house. Regarding the noise from the generator, there will be sound attenuation provided.

Mr. Bergeron said that the water tank contains 500,000 gallons of water, if it leaks or has a construction failure, it will release all the water, and there will be major flooding. Water will flow to his house and he would like this concern to be addressed.

Ms. McWaters said that the life expectancy of the water tank is a very long time, and the likelihood of a failure is very minimal. The contractor who constructs the water tank must meet the State's requirements and must be highly-skilled and exceptionally qualified to perform such construction. She stated that current staff from the Water Department checks the existing water tank periodically to prevent this type of situation.

Mr. McNeil explained that in the event the proposed water tank has a malfunction, the water will make its way down the proposed driveway and continuing on to Highland Street. Mr. Bergeron's property is situated at a higher elevation than the proposed site entrance, thus, the possibility of being flooded is not likely.

Ms. Trombly said that the water user rates have risen up 100-percent. She asked if the cost of proposed project was added to the water bill and caused the increase.

Mr. McNeil stated that when the water rates were established in the spring, the Water Commissioners set up the rate based on the lower interest loan program which the State has provided. If the Town receives Federal Stimulus Funds (FSF), the cost of proposed project will even be lower. As mentioned above, the Town is under an ACO from MassDEP to address the high pressures in the water distribution system. If the Town isn't in compliance with MassDEP, the Town will be fined. Furthermore, if the Town misses the submission timeline of the design project (July 14, 2009 for State, July 31, 2009 for MassDEP), essentially it will cost more to construct the proposed project and this cost will be imposed on the water bill, meaning even higher water rates.

Mr. Bergeron inquired about the other four potential sites and if they were Town-owned property, he then asked if there were any reasons for them not being chosen?

Ms. McWaters pointed out each potential site displayed on the map and provided reasons as to why they didn't get chosen (such as due to elevation, further into RR area, high pressure of gas pipe line in the area). At this point Mr. McNeil said that if the private site is more favorable than the chosen proposed site, it doesn't guarantee that the property owner would be willing to sell it to the Town. It could involve more time due to negotiations; which the Town doesn't have due to the time constraints.

Mr. Bergeron asked whether the project could be located further back away from Highland Street as opposed to where it is currently proposed.

Ms. McWaters stated that the proposed project is situated at the proper elevation to have the pressure levels between 110-120 PSI as desired by MassDEP. If the project is moved further beyond 1,000-foot elevation, the pressures would increase and be above the desired limit.

Mr. Kate asked about the exact date to submit the project design to MassDEP. Mr. McNeil said that the deadline was at the beginning of March 2009. MassDEP has already extended the time to July 31, 2009.

Mr. Bergeron stated that regardless of the explanation and demonstration given tonight, he still doesn't like the proposed project being at the chosen site. He has a family with children and being across from the site, he has to see it every day, and it will always be there. He commented that when the site survey was done on Highland Street, he had contacted the Town Hall and didn't get any information on the survey. He thought that being such a big project, people who work in Town Hall should know about it. He asked if tonight was the final meeting, and could residents participate in the voting?

Mr. Gaudette and the Board stated that it isn't realistic for everyone in every Department within the Town to be aware of survey activity. He stated that there was no intention/effort to mislead or hold information. Mr. Gaudette said that anything that has to do with roads and also water and sewer, should involve contacting U&F or the Highway Department. Mr. Gaudette said that only Board members can conduct the voting tonight. At the Annual Town Meeting, residents/citizens were there, and as a whole the Town voted to approve the project. There will be ConCom meeting on June 24, 2009. It is a public hearing and residents are welcome to attend that meeting

At this time the Board announced that town meetings are open to the public. The meeting schedules for all departments are available on the Town website and are always posted with the Town Clerk. The Board encourages residents to attend town meetings and be involved with the Town.

With no further questions or comments from the public, Ms. Kresco then made a motion to close the public hearing. Mr. Drexler seconded the motion and the vote was 3-0 in favor. *Members conducting the voting are; Mr. Drexler, Ms. Kresco, and Ms. Backus.*

Mr. Drexler made a motion to grant the special permit under Section 4.3.4 of the Spencer Zoning Bylaw to the Town of Spencer to construct a new water tank, booster pump station and utilities to be sited on Town-owned off Highland Street. 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 40 A., Section 9 and Section 7.2 of the Spencer Zoning Bylaw:

1. That the proposed use 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.

This approval is granted with the following *conditions*:

1. The plan 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.
3. That any required pre-blast surveys under 527 CMR 13 shall be extended from 250 feet to 500 feet.
4. That the principal of the Lake Street School will be notified at least 24 hours in Advance of any blasting activity.

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.

C. Special Permit and Variance for Fire Station, Town of Spencer, 11 West Main Street, Spencer. Ms. Backus opened the public hearing at 9:10 p.m. Mr. Gaudette informed the Board that due the Architect's conflict schedule, the public hearing should to be continued to a later date, June 23, 2009.

Mr. Drexler made a motion not to read the brief at this time. Ms. Kresco seconded the motion and the vote was 3-0 in favor.

Mr. Drexler then made a motion to continue the public hearing to June 23, 2009. Ms. Kresco seconded the motion and the vote was 3-0 in favor.

Old Business:

A. Continued Public Hearing – John Turner, 65 Lakeshore Drive, Spencer, MA. Ms. Backus opened the public hearing at 9:15 p.m. At the previous hearing (5/26/2009) ZBA members had decided to do a site visit. Ms. Backus, Mr. Drexler and Ms. Kresco indicated that they had visited the site in the previous week. Mr. Gaudette said that during the previous public hearing, Ms. Crawford asked about the possibility of constructing the proposed addition where the existing septic system is located and then re-locate the septic to another area. He did research and found that at the time when Mr. Turner purchased the property, a Title V inspection was required and the property failed due to the well (located under the house) being too close to the septic system. In order to pass Title V, the well was moved to the back of the house. Mr. Gaudette said that at the present time the property is compliance. To move the leach field and the entire septic system would relatively create financial hardship on the applicant.

There were no abutters present tonight for this hearing.

Mr. Drexler explained that if the Board grants this variance to the applicant and in the future if the abutter of Lot 45 requests a variance to construct a building close to Mr. Turner's property line. The building of Lot 45 would be in a very close proximity to Mr. Turner's addition. Mr. Turner acknowledged that could happen.

Mr. Drexler made a motion to close the public hearing. Ms. Kresco seconded the motion and the vote was 3-0 in favor. *Members conducting the voting are; Ms. Backus, Mr. Drexler, and Ms. Kresco.*

Ms. Kresco made a motion to grant the variance to Mr. John Turner to construct an addition as proposed (bedroom and storage) to an existing single-family residential dwelling at 65 Lakeshore Drive which is currently a conforming structure on a conforming lot. Mr. Drexler 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., 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.

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.

Other Business: None

Approval of Minutes: For May 26, 2009.

Ms. Kresco requested a modification on page 1, first paragraph, from “Lakeside Drive” to “Lakeshore Drive.” Ms. Meechan acknowledged the request and will make the change before filing the minutes with the Town Clerk.

Mr. Drexler made a motion to approve the minutes as amended tonight. Ms. Kresco seconded the motion and the vote was 3-0 in favor.

Ms. Kresco made a motion to adjourn the meeting at 9:40 p.m. Mr. Drexler seconded the motion and the vote was 3-0 in favor.

Submitted By:

Bea Meechan, Senior Clerk, ODIS