

Zoning Board of Appeals – Town of Spencer

Minutes



Regular Zoning Board Meeting
Tuesday, December 14, 2010 7:15 PM
McCourt Social Hall
Memorial Town Hall

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

Zoning Board Members Present: Chairwoman Pamela Crawford, Clerk Joanne Backus, Allan Collette, and Delores Kresco, alternate.

Zoning Board Member Absent: None

Staff present: Michelle Buck, Town Planner, Bea Meechan, Senior Clerk, ODIS.

New Business:

A. Public Hearing - Special Permit, David and Michelle Terry, 2 Howe Road, Spencer (Assessor's Map R23/34). *Ms. Crawford opened the hearing at 7:20 p.m.* The Clerk read the brief. The applicant is requesting a special permit in accordance with Section 5.2.6 of the Spencer Zoning Bylaw to construct a porch within the front setback and a deck within the side setback. The property is located within the Rural Residential Zoning District.

Note: The plan submitted shows a 56-foot distance from the house's foot foundation to the front property's lot line, and a 51-foot from the edge of the porch to the front lot line. The porch has a measurement of 5-feet in width.

Mr. Collette inquired as what has created this situation.

Ms. Terry explained the land contains 2 Lots; she bought one lot and a friend bought the other. There are wetlands located on the property. The building permit applications for the 2 houses were approved in 2008. Due to several problems with the wetlands, the construction of the houses got started in late 2009. According to the construction plan submitted to the Building Department, the deck was supposed to be built extending from the back of the house. There is a problem because the house is located relatively close to the wetlands; if the deck were to be built as planned the stairs connecting the deck to the ground will be within haybale boundary. The builder, without the applicant's consent, deliberately constructed the deck onto the side of the house without realizing it created a side setback issue. The abutting neighbor and also a friend agreed to sell a small piece of land which led to resolving the side setback issue.

In addition, Ms. Terry was surprised to learn that the porch does not comply with the front setback either. She spent a good amount of money to have a professional surveyor stake out the property as a means of avoiding these problems. To remove the porch that already was built

attached to the house is impossible. The special permit being requested is to allow for 51-foot front setback (from the porch to the front property's lot line); 55-feet required.

The abutting neighbor sold a small amount of land to the applicants. Mr. Collette asked if this has created any setback issue (not in compliance with the setback requirement) to the neighbor. What is the current status on both houses, has the construction been completed yet?

Ms. Terry said the neighbor's house is in compliance with the setback requirement even without that small area of land. She also provided an ANR (dated 11/23/10) plan showing the setback measurement at this time. The construction has been completed on both houses.

Ms. Buck asked the applicant to identify a small rectangle shape drawing on Lot 4R (ANR plan) which shown a distance of 10-feet from the side setback.

Ms. Terry said the small rectangle symbol represented a septic tank on Lot 4R, not a shed.

The members continued reviewing the plans – Plan A and B. Ms. Crawford asked if both plans contained the same porch's structure.

Ms. Terry replied the structure was the same on both plans.

Ms. Buck said there was a difference between the two plans: Plan A (dated 2/6/09, submitted at the time of the building permit application) demonstrated a deck being on the back of the house, and was lacking the front porch. On the other hand, Plan B (dated 11/4/10) displayed the deck attached onto the side of the house and also indentified the location of the front porch including the distance measurement from the front setback. Ms. Buck inquired as to the width dimension of the porch.

Ms. Terry said the porch is 6-feet wide.

Plan A shows a 58 foot front setback from one corner **of the house**; and a 63 foot (front setback) from the other corner. Plan B has a 56 foot setback from one corner **of the porch**; and a 53.5 foot (front setback) from the other corner. After a closer examination on the measurements provided on Plan B; it was determined that the porch is actually 5-feet wide.

Ms. Terry explained that when she bought the property, the Builder already submitted an application for a building permit and the porch was identified on the plan.

Note: Plan A and B are Plot Plans of Land. Ms. Buck asked if the porch's structure was specified on the Architect/Building Plan.

Ms. Terry yes, the Architect/Building Plan reflected the structure of the porch.

Ms. Backus asked if the applicant has an intention to sell the property.

Ms. Terry said yes, and does have a potential buyer at the present time.

The Board went over the plan again. Due to the unfortunate situations that have caused a great burden to the homeowner (and the revised plan not being accurate) the Board asked who should be accountable, the builder, or the surveyor?

Ms. Terry replied the original and the subsequent staking, to identify the location of wetlands, property's boundary lines and the setback requirements in accordance to the bylaw, for plan A and B were done by the same surveyor. She said everybody involved in the construction at the time placed so much focus on the wetlands and overlooked other things. She believed it was unintentional.

Ms. Crawford commented the deck was built attached to the house as shown on the field card obtained from the Assessor Department. She then asked if the entire construction was final and completed, if not, what has left to be finished?

Ms. Terry said the construction was complete. The next step is to request inspections from Town Official Inspectors (Plumbing, Wiring, and Building). She would like to see everything is in order, with full compliance in accordance with the Zoning Bylaws.

Note: There were no abutters present for this hearing.

With no further discussion, Ms. Backus made a motion to close the hearing at 7:30 p.m. Ms. Kresco seconded the motion and the vote was 4-0 in favor. Ms. Crawford announced the members sitting in the voting were Ms. Backus, Ms. Kresco, and Mr. Collette.

Ms. Backus made a motion to grant a special permit to David and Michelle Terry to construct a porch within the front setback. (The proposed porch is approximately 51 feet from the front lot line). The property is located within the Rural Residential Zoning District, which requires a 55 foot front setback. *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 proposed use met the requirements for a Special permit in M.G.L. Chapter 40A, Sec.9 and Section 7.2 of the Spencer Zoning Bylaws:

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.

Ms. Crawford 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 applicants and to all abutters.

Approval of Minutes: Minutes for November 9, 2010

Ms. Backus made a motion to approve the minutes for November 9, 2010. Ms. Kresco seconded the motion and the vote was 4-0 in favor.

Other Business: Meeting Schedule

Ms. Backus is unable to attend the meeting in the months of February and March of 2011. Ms. Crawford is also unable to attend the meeting in months of January and March of 2011. Ms. Buck suggested moving the March 8th meeting to March 22nd, 2011. All members agreed.

General Board Discussion: Special Permit and Variance Applications

The Board discussed the recent special permit applications - especially when dealing with the setback and encroachment issues. Some of the applications were more pertinent to variances as opposed to special permits. All building permit applications are reviewed by the Building Inspector (BI)/Code Enforcement Officer. If a proposed construction plan has triggered a special permit or variance, the BI makes a determination on the applicable category – whether it is a special permit or a variance. The Board members commented that in the future they would like the applications be closely reviewed and followed the Zoning Bylaw requirements, and directed Ms. Buck to send a memo to the BI in regards to the matter. Ms. Buck said she will do that.

With no further discussion, Ms. Crawford made a motion to adjourn the meeting at 7:50 p.m. Ms. Kresco seconded the motion and the vote was 4-0 in favor.

Submitted By:

Bea Meechan
Senior Clerk, Office of Development and Inspectional Services

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List of Documents used on December 14, 2010

- Special permit application from David & Michelle Terry, 2 Howe Road.
- Plot Plan A, 2 Howe Road, plan dated 2.06.2009.
- Plat Plan B, 2 Howe Road, plan dated 11.04.2010.
- ANR Plan, 2 Howe Road, plan dated 11.23.2010.
- A field card from the Assessor Department.