

# Zoning Board of Appeals– Town of Spencer



## *Minutes*

Zoning Board of Appeals  
Tuesday, March 9, 2010  
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: Chairman Allen Collette, Clerk Pamela Crawford, and Delores Kresco, alternate.

Zoning Board Members Absent: Joanne Backus and Albert Drexler.

Staff present: Bea Meechan, Senior Clerk, ODIS

### **New Business:**

**A. Special Permit – David Bulak and Neil Rivers, Tom Casey Road, Lot 1-4R, Spencer (Assessor’s Map R10/26).** Ms. Crawford stated that the applicant, Mr. Bulak, has retained her as his real estate agent for another property. The Board discussed a potential conflict of interest with Ms. Crawford’s relationship to Mr. Bulak. The Board made a determination that there is no conflict of interest and moved forward with the public hearing.

Mr. Collette opened the hearing at 7:30 p.m. The Clerk read the brief. The applicants are requesting a special permit in accordance with Sections 5.3.11 and 7.2 of the Spencer Zoning Bylaws to construct a single-family dwelling on a nonconforming pre-existing parcel. The property is located in the Rural Residential District. The application was submitted by Thomas Fancy of Fancy Land Surveying, Spencer.

*Note: Mr. Fancy was present in this evening, representing the applicants.*

The Board reviewed the application with Sections 5.3.11 and 7.2 at this time. Mr. Collette read the contents of the bylaws, which state as follows:

“Section 5.3.11 Parcels with insufficient frontage. In order to encourage preservation of open space, construction of one single family dwelling may be permitted on a single legal nonconforming parcel which does not meet the minimum frontage requirements set forth in Section 5.1, upon the granting of a special permit pursuant to Section 7.2, provided the following criteria are met: (A) The parcel was in existence as of November 16, 2006; (B) The parcel is a minimum of 7 acres in size and; (C) The parcel has at least 25 feet of frontage.”

“Section 7.2. (3) Findings. The Special Permit Granting Authority may grant special permits for certain uses or structures as specified in the Use Table (Section 4.2) and elsewhere in this Bylaw. Before granting a special permit, the Special Permit Granting Authority, with due regard to the nature and condition of all adjacent structures and uses, shall find all of the following conditions to be fulfilled: (A) The use is in harmony with the general purpose and intent of this Bylaw and any applicable subsections herein; (B) The propose use will not create undue traffic congestion nor unduly impair pedestrian safety; (C) 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.”

Prior to the establishment of Section 5.3.11, construction of a single-family dwelling was not allowed for parcels that have insufficient frontage. Construction of a road on such parcels had to follow the standards for subdivision roads, and there was a further requirement that a minimum of two single-family dwellings had to be built on the parcel. The Zoning Revision Committee (and Mr. Collette as a member) had recommended the bylaw changes, set up the criteria, and limited the use to one single-family home. Section 5.3.11 was established with the intent of encouraging property owners to conserve land.

Mr. Collette asked if the applicants or the representative has any information to add to the application.

Mr. Fancy said that originally the applicants considered a subdivision with 4 single-family homes and a subdivision road on the parcel. Due to the current state of the economy, they decided not to go through with the subdivision plan. Recently, a prospective buyer asked to purchase the property to build a single-family home. One home is allowed on a parcel with insufficient frontage by obtaining a special permit from Zoning Board of Appeals. He also stated that the existing condition of the parcel meets the criteria of Section 5.3.11.

Mr. Collette inquired as to the amount of land and frontage the parcel contains. He also asked the location of the proposed house on the parcel.

Mr. Fancy said the parcel contains  $\pm 10$  acres of land and has approximately 114 feet of frontage (71 feet on left side and 43 feet on right side). The applicants are in the process of selling the parcel. The location of the proposed house has yet to be determined by the buyer.

The Board said that the parcel meets all criteria of the Bylaw. The Board had a discussion about the setbacks. The setback requirements in the current Bylaw are designed for the property that has about an acre of land. The parcel in question contains about 10 acres. The Board felt that an addition to the setback was appropriate. The Board reviewed an aerial photo provided by Mr. Fancy to have a better understanding of the surrounding environment; distance from abutters; area of tree to be removed; and topography (hill, ledges, and slope).

The Board opened the hearing to the public for any comments or questions at this time:

Mr. Steven Cole of 15 Tom Casey Road stated he does not oppose the proposed plan. When he purchased the land from the applicants he knew that there was a possibility that a subdivision would be created behind his property. Mr. Cole's property is located downhill from the parcel. He has some concerns which are as follows:

- Water runoff. Mr. Cole had already spent about \$10,000 to install a drainage system to manage water-runoff from the hill. The construction of the driveway and a house would require a good amount of tree cutting/removing, which will cause more water to runoff onto his property. In order to accommodate the excess runoff he might end up spending money to update his drainage system.
- Concern of privacy. Mr. Cole has a concern on two counts of privacy: (1) The front of his house is facing the right side of the proposed access, and currently it is a dirt road with vegetation. If a large quantity of vegetation has to be removed in order to construct the new access, there might not be enough trees left to serve as a buffer for the front section of the house: (2) The distance from Mr. Cole's rear lot line to the front of Parcel 1-4R is about 100 ft. With the clearance of trees for a construction of the proposed house and its driveway, there might not be enough trees left to serve as a buffer for the rear section of the house.
- An access entrance. From Tom Casey Road Mr. Cole has a plan to create an entrance from the side of the proposed road into the lot where the front of the house is located. If the road has become a private, there is no possibility to do that.

In regards to the new access, Mr. Collette suggested to Mr. Cole to work things out with the potential buyer. Mr. Collette asked if the other two abutters have water-runoff problems.

Mr. Cole said that the neighbor next to his house has been experiencing water-runoff. (He has seen the runoff on the driveway). Mr. Cole said the individual also expressed this concern with him.

Mr. Fancy stated that Mr. Bulak has made an offer to sell 50 feet of land (50 feet from the rear lot line) to all abutters. They (abutters) would have more land as a buffer. A plan of constructing the proposed road will need approvals from other Departments and other Boards. It is prudent that Mr. Cole attend all meetings to express his concerns (drainage and removal of vegetation) and provide his input to Town Officials.

At this point the Board discussed the dept to be added to the current setback requirements. They thought for a front setback the applicant should provide an additional 55 feet, extending from the 50 feet of land that Mr. Bulak has offered to sell; secondly, the Board felt the applicant should provide an additional 25 feet to the current rear and side setbacks. (*Thus, the new dimension of the front setback is 105 feet, and for the rear and side setbacks, it is 75 feet*). The Board also wanted to limit the removal of natural vegetation and trees to a minimal amount.

With no further questions or comments from the Board or the public, Mr. Collette made a motion to close the discussion at 8:30 p.m. Ms. Crawford seconded the motion and the vote was 3-0 in favor.

Mr. Collette announced the members sitting in the voting were Ms. Crawford, Ms. Kresco and himself.

Ms. Kresco made a motion to grant a special permit to Mr. Bulak and Mr. Rivers to construct a single-family dwelling on a nonconforming pre-existing Lot 1-4R on Tom Casey Road, which met all required criteria of Section 5.3.11 of the Spencer Zoning Bylaw. Ms. Crawford 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 dwelling) 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 driveway to serve the dwelling shall be centered within the access strip from Tom Casey Road to the point where Lot 1-4R widens. The driveway shall have a maximum width of eighteen feet (18') and have a buffer of at least sixteen feet (16') from abutting lot lines. The applicant shall control runoff from entering adjacent property through the use of drainage control measures approved by the Superintendent of the Department of Utilities and Facilities Management.
2. The applicant shall provide a buffer of one hundred five feet (105') from the rear property lines of the lots fronting on Tom Casey Road existing at the time of plan submission. Except for the driveway, and necessary utilities, this area shall remain in its current natural state.
3. The dwelling shall be site within the interior of the lot and shall have a minimum distance of seventy-five feet (75') from the rear and side lot lines.
4. Construction activities shall not commence until all required approvals and permits are obtained.

Mr. Collette 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.

**Old Business: None**

**Approval of Minutes:**

Minutes for October 13, 2009. Ms. Crawford made a motion to accept the minutes for October 13, 2009. Ms. Kresco seconded the motion and the vote was 3-0 in favor.

Minutes for November 10, 2009. Ms. Crawford made a motion to accept the minutes for November 10, 2009. Mr. Collette seconded the motion and the vote was 2-0 with Ms. Kresco abstaining.

**Other Discussion: None**

Ms. Kresco made a motion to adjourn the meeting at 9:00 p.m. Ms. Crawford seconded the motion and the vote was 3-0 in favor.

Submitted By:

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Bea Meechan, Senior Clerk, ODIS