

# Zoning Board of Appeals – Town of Spencer

## *Minutes*



Regular Zoning Board Meeting  
Tuesday, November 9, 2010 7:15 PM  
McCourt Social Hall  
Memorial Town Hall

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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, Hellen Kiago, 56 Valley Road, Spencer (Assessor's Map U08/106/2).** *Ms. Crawford opened the hearing at 7:15 p.m.* The Clerk read the brief. The applicant is requesting a special permit in accordance with Section 4.8.3.D of the Spencer Zoning Bylaw to establish a customary home occupation to run a catering business making and selling breads and doughnuts by order only. The property is located within the Village Residential Zoning District.

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

Ms. Kiago said she will be making a specialty bread called "chapati" and chapati dough which is a staple food in African culture. The process of making chapati breads is time consuming and they are not offered at the local markets. There are a number of African communities in Worcester and some in the surrounding towns, and there is a need for this type of business. She will make breads only when receiving an order.

Mr. Collette asked if there are any employees working for the applicant.

Ms. Kiago said she has no employees, only herself.

Ms. Kresco asked if she provided delivery service, or if customers pick up the products themselves.

Ms. Kiago replied she will provide the delivery service, no pick up orders - since her customers are not residing in town. Thus there shall not be any impact to the neighbors in regards to the traffic and parking.

*Note:* There were no abutters for this hearing.

With no further questions from the Board, Ms. Backus made a motion to close the discussion. Ms. Kresco seconded the motion and the vote was 4-0 in favor.

Ms. Crawford announced members sitting in the voting were Ms. Backus, Mr. Collette, and herself.

*Mr. Collette* made a motion to grant a special permit for Hellen Kiago to establish a customary home occupation to run a catering business making and selling breads and doughnuts by order only. The business is a delivery service and has one employee (herself). *Ms. Backus* 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 Board 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 applicant and to all abutters.

**B. Public Hearing – Special Permit, Boston Gas Company, owner, National Grid c/o Joseph DiCarlo, applicant, 16 Elm Street, Spencer (Assessor’s Map U08/19).** *Ms. Crawford opened the hearing at 7:25 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 remove a nonconforming fence (11’ x 6’) and install a steel sheet metal shed (9’ x 12’) within the side setback. The property is located within the Village Residential Zoning District.

Ms. Crawford asked the applicant for the presentation on the application.

Mr. DiCarlo explained National Grid has been using the site, Lot 19, for a gas pressure regulator station; all natural gas applications require the use of a regulator. (The pressure in gas tanks can fluctuate, thus a regulator must be present to deliver a constant outlet pressure for downstream appliance requirements.) The perimeter fencing of the lot was damaged due to the reconstruction of the nearby bridge by the Town, and a new fence was installed recently. There is also an existing nonconforming fence (11’ x 6’) situated between the perimeter fence and the regulator station. The plan proposes a removal of the existing fence and installation of a steel sheet metal

shed enclosing the regulator station. This will improve the aesthetic view of the site and also offers better protection for both the public and the regulator station.

Ms. Backus asked if the regulator station will be in the shed and inside the fence.

Mr. DiCarlo said the property, Lot 19, borders Elm and Valley Streets. The existing regulator station is located at the corner of the Lot and enclosed with 2 fences; 1) the perimeter fence – outer fencing of lot; and 2) the inner fence which is behind the perimeter fence and in front of the regulator station. The proposed steel sheet metal shed will replace the inner fence and will still be inside the perimeter fencing. *The inner fence is the existing nonconforming structure according to Mr. DiCarlo.*

Ms. Crawford inquired as to the security for the property, is there any possibility for anyone to access the premises?

Mr. DiCarlo replied the proposed shed will be locked at all times and enclosed with a locked gate that is inside the perimeter fencing. Only staff personnel have keys to the gate and to the lock of the regulator station.

Mr. Collette asked how the applicant determined the inner fence being an existing nonconforming structure. Mr. Collette also inquired as to the distance from the regulator station to the street and the side setback.

Mr. DiCarlo said that the fences have always been there since the owner, Boston Gas Company, acquired the property. The inner fence (11' x 6') has a 3-foot side setback from Elm Street and in his opinion the fence does not comply with the Zoning Bylaw requirement originally - thus it is an existing nonconforming structure. Under the current Zoning Bylaw Section 5.2.6, it allows any future accessory structure that creates nonconformity with regard to setback by a special permit. The perimeter fence was already installed as stated above. The proposed structure will replace the existing inner fencing and the side setback remains as is: 3-feet from Elm Street. He pointed out the location on the plan to the board.

The gas pressure regulator station is a ground station (at the ground level) and also in close proximity to the road. In addition, the site is in a lower elevation from the main road (Main Street). Mr. Collette commented when vehicles travel down from Main Street they may accidentally plow into the structure – safety concerns.

Mr. DiCarlo described the three (3) current protection barriers as follows: First – there are 2 jersey concrete cement blocks placed in front of the regulator station; Second – the perimeter fence; and Third – a guard-rail (enclosed only on the portion near the regulator station).

At this time the Board reviewed the 2-plans submitted. The measurement of the proposed shed was different - plan A has 9' x 12' and the other has 14' x 14'. The Board asked for a clarification.

Mr. DiCarlo apologized for the discrepancy. He requested an installation of 14 feet by 14 feet steel sheet metal shed at the time of the application submission to ODIS. However when the area was accurately measured it has come to light the 14'x14' shed is not practical –too large, and needs to be scaled down in size. The revision Plan A reflected the new measurement (9' x 12') which was submitted later to ODIS.

For the record the Board stated the applicant is proposing to install a shed 9 feet by 12 feet in measurement and has 3-foot side setback from Elm Street as shown on Plan A.

Mr. DiCarlo concurred.

Note: There were no abutters present in this hearing.

With no further questions and comments from the Board, Ms. Kresco made a motion to close the discussion. Mr. Collette seconded the motion and the vote was 4-0 in favor.

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

Mr. Collette made a motion to grant a special permit to owner, Boston Gas Company for applicant, National Grid c/o Joseph DiCarlo to remove a nonconforming fence (11'x 6') and install a steel sheet metal shed (9'x12') within the side setback at 16 Elm Street. The shed shall have at least 3-feet of side setback (from Elm Street) as shown on the plan submitted (Plan A). The purpose of the shed is to enclose an existing natural gas regulating station. Ms. Kresco seconded the motion and the vote was 3-0 in favor. The following was included in the motion.

***Findings:*** After the public hearing duly noticed and held on November 9, 2010, the Spencer Zoning Board of Appeals made the following findings as required by M.G.L. Chapter 40 A., Sec. 9 and Section 7.2 of the Spencer, MA Zoning By-laws:

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 applicant and to all abutters.

**C. Public Hearing – Special Permit, JMN Realty, owner, FLEXcon Company c/o Michael Engel, applicant, 5 & 11 South Spencer Road, Spencer (Assessor's Map U10, Parcels 3, 4, 4-1, 5, 6, and 7).**

Note: Ms. Kresco recused herself from this public hearing. *Ms. Crawford opened the hearing at 7:40 p.m.* The Clerk read the brief. The applicant is requesting a special permit to remove an existing parking lot and construct a 20,000 square foot two-story Dry Lab building. The project also includes utility and drainage construction, repaving of a portion of the parking area, and the addition of landscape materials. The property is located within the Industrial Zoning District.

Ms. Crawford asked the applicant for the presentation of the application.

Note: Mr. John Birtz, FLEXcon project manager, Ms. Elizabeth Clark, professional engineer from Beals & Thomas, and Mr. Kevin Kozak, design project manager from Cutler Associates were present this evening.

Mr. Birtz said in order to stay competitive in the industry, it is important to develop new technology for enhancing the current products and producing the new products. Ideally, all the lab areas should be combined into one location with the Research and Development (R&D) division. At the present time all the labs are located in different facilities. FLEXcon is proposing to construct a new R&D building (that will house all labs) on an existing parking lot and reduce the total number of parking spaces. FLEXcon currently employs 697 employees (throughout five shifts). The maximum number of employees on the campus at one time is approximately 407. There are 640 parking spaces (this includes 26 spaces off-site parking). The company anticipates adding a maximum of 65 employees over the next 10 years. The proposed building shall have no impact on the existing traffic flow for South Spencer Road to Main Street. Mr. Birtz turned the presentation to Ms. Elizabeth Clark at this point.

Ms. Clark said the reasons for a special permit are; 1) to expand the existing nonconforming use; and 2) reduction of the parking spaces. The property is approximately 33.4 acres in area and located within two zoning districts. The existing parking lot is located in the Industrial zoning district (at the intersection of South Spencer Road and West Main Street) and the new building is proposed to be constructed at this site. The southern portion of the property is located within the Aquifer Protection District which is not subject to this proposal. Ms. Clark gave an overview summary of the current conditions and the proposed plan as follows:

**Maximum building coverage:** In 1988 a variance was granted, allowed for the building coverage of 39.33%; the zoning bylaw required 35%. The proposed building will have 37.68% maximum building coverage; 39.33% allowed.

**Maximum impervious coverage:** The impervious coverage will remain the same as the existing coverage 71%; 60% permitted.

**Parking:** The existing number of parking spaces is 622 including 26 off-site parking spaces. The maximum number of employees *at a given time is 407*, and the average number of visitors per day is about 8. In order to make room for the proposed building, the parking spaces will be reduced to 580 which still adequate to the needs. (Under the current Zoning Bylaw 591 spaces is required).

**Utilities:** The proposed building will be served by municipal sewer and water. Gas and electric services will receive from the utility that is already located on the campus. The waste will discharge to an existing sewer manhole. Water and fire protection service will be obtained from the existing 10-inch water main (South Spencer Road).

**Drainage and stormwater:** The drain system has been designed to meet the town standard of the 2008 Mass DEP stormwater handling. The design of the proposed drop inlet has been coordinated and approved by the Superintendent of Utilities and Facilities.

Ms. Clark further explained that approximately 1, 200 sq. ft. of the proposed building is in the buffer zone of a wetland across South Spencer Road. FLEXcon filed the Notice of Intent with the Conservation Commission and the hearing was held on October 27<sup>th</sup>, and will continue to December 8, 2010. Ms. Clark turned the presentation to Mr. Kozak at this point.

Mr. Kozak described the architecture of the proposed building and also submitted the design plan to the Board. He explained that two buildings (with different uses) are being consolidated into one Laboratory building. The building has a rectangle shape with the front side facing the northern direction, and the back facing South Spencer Road. Both the front and back side (of the building) will be similar in design. There are 3 entrances; the main entrance in the front and 2 side entrances. There is no back entrance from the South Spencer Road; thus there shall not be any impact on the existing traffic flow on South Spencer Road.

*At this time* Ms. Buck asked for a clarification on the number of parking spaces. Ms. Clark gave a presentation above describing 620 parking spaces including the 26 off-site spaces. However, the written application submitted listed 640 parking spaces (including 26 off-site spaces) in total. Cullinan, the Town peer engineer, submitted comments (dated 10/26/10) stating it appeared to be 620 parking spaces (including the 26 off-site spaces) based on the plan provided.

Ms. Clark responded that when recounting the number of parking spaces again, there are 622 existing parking spaces; 596 on site and 26 spaces off-site. The proposed plan will reduce the number of parking spaces by 42; there will 580 parking spaces in total (554 on site and 26 off-site). Ms. Clark said the plan has been revised (dated 11/5/10) to reflect the corrected parking count numbers (Sheet C2.2) which she did submit at the beginning of the hearing tonight.

The following were questions and comments from the Board to applicant's representative:

What is the construction's time frame, and when will it begin?

Mr. Kozak said the construction will begin in spring of 2011, and is anticipated to be completed in 6-8 months.

The plan proposes combining/consolidating two functions/uses into one building as mentioned above. In referencing the plan demonstrated tonight, there are some open spaces. Is there a plan of utilizing these open spaces?

Mr. Kozak replied with the current situation some offices are congested with personnel staff. Once the proposed building is completed, these open spaces will become office/offices for those staff, but the primary use is Lab for R & D.

Is there a preventive plan in managing the hazardous substances, chemical and by-product waste for the proposed building?

Mr. Britz with Mr. Kosak confirmed that a plan and protocol program handling the hazardous waste has been established and is in place.

Ms. Clark stated the special permit is required due to the pre-existing nonconforming, the Board asked to identify the nonconformity.

Ms. Clark explained the current conditions: first, there are multiple uses on a single lot - this isn't allowed under the current Zoning Bylaw; and second 71% of parking surface is being impervious surface coverage – allows maximum of 61%. However, the parking lot and the 71% impervious surface coverage is pre-existing nonconforming. Ms. Clark said the total impervious coverage for the proposed plan will remain as is: 71%.

The word “variance” was mentioned in the presentation. Mr. Collette does not think it is pertaining to this application and is not required by the Spencer Zoning Bylaw.

Ms. Clark explained the 1988 variance allowed for 39.33% maximum building coverage; 35% maximum permitted at the time. The proposed building will have 37.68% in maximum building coverage which is still in compliance; the 1988 variance does not need to be amended.

**Note: There were no abutters present at this hearing.**

With no further questions and comments from the Board, Ms. Backus made a motion to close the hearing at 8:05 p.m. Mr. Collette seconded the motion and the vote was 3-0 in favor. The members sitting in the voting were Ms. Backus, Mr. Collette, and Ms. Crawford.

*Ms. Backus* made a motion to grand a special permit to owner JMN Realty for applicant FLEXcon Company, Inc., c/o Michael Engel to construct a 20,000 square foot two-story Dry Lab building at 5 & 11 South Spencer Road. The existing number of parking spaces is 622, including 26 off-site parking spaces. This will be reduced by 42 spaces, to 580 (554 on-site); 591 spaces are required. With the number of employees at any given time being 407, there will not be any parking issues. The approval also allows an additional primary structure on a property that has multiple pre-existing structures. The impervious coverage will remain the same as the existing amount of 71% (60% is permitted). Mr. Collette seconded the motion and the vote *was 3-0 in favor.*

**Findings:** After the public hearing duly noticed and held on November 9, 2010, the Spencer Zoning Board of Appeals made the following findings as required by M.G.L. Chapter 40 A., Sec. 9 and Section 7.2 of the Spencer, MA Zoning By-laws:

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.

*In addition*, the Zoning Board made the following finding in accordance with Section 4.9.3 of the Spencer Zoning Bylaws (related to the change in nonconforming use):

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

*In addition*, the Zoning Board made the following findings in accordance with Section 7.2.3.F of the Spencer Zoning Bylaws (related to the parking reduction):

1. That the proposed relief is in the best interest of the municipality and will not be detrimental to surrounding uses or the neighborhood, particularly by shifting parking demand to adjacent properties or using a disproportionate number of on-street or public parking spaces; and
2. That the proposed relief will not create a nuisance, hazard, or congestion to vehicular or pedestrian traffic.

Ms. Crawford explained that once the decision has been filed with the Town Clerk, staff from ODIS will mail a copy of the decision along with the instructions to the applicant, and all abutters.

**D. Public Hearing – Special Permit, Goldacre Realty, owner; Dairy Queen c/o Leo and Phillip Gertsios, 291 Main Street, Spencer (Assessor’s Map U15/64).**

Note: Chairwoman Pamela Crawford recused herself from this hearing. In the absent of Chair Crawford, Ms. Backus is acting as the Chair, and Mr. Collette was appointed as acting Clerk.

Ms. Backus opened the hearing at 8:13 p.m. Mr. Philip Stoddard, the applicants’ attorney, explained that Dairy Queen (DQ) Corporation mandated certain changes for its locations from which all franchisees’ must have substantial compliance. The changes involve both the image of the business and the physical layout of the building. There are 8 separate applications submitted requesting for variances and special permits.

Ms. Buck prepared a note summarized the requested variances and special permits as follows:

**Variances** (all related to Sections 5.1 and 4.9.2.B.2 – front setback):

1. Chimney, Addition and Patio
2. Chimney in front setback
3. Addition in front setback
4. Patio in front setback

**Special Permit:**

5. Chimney, Patio, and an Addition in front setback (Sections 4.9.2.B.1 & 5.1)
6. Impervious surface limit (Sections 5.5 and 5.5.4)
7. Parking Spaces (Sections 6.1.1 and 6.1.4)
8. Parking Buffer (Sections 6.1.2.A and 6.1.4)

The Board decided to review all applications for special permits first because the variances might not be applicable and not required by the Zoning Bylaw.

**Special Permit Sections 4.9.2.B.1 and 5.1: Chimney, Patio, and Addition in front setback.** The Clerk read the brief from the attached letter submitted with the application.

Mr. Stoddard went over the plan and explained the following:

**Chimney:** The 57 sq. ft. expansion is a signature aspect to the new “DQ” image which will resemble a brick chimney within the 3.7 feet that the building is now set back from the front boundary, but its present location is closer to the front boundary.

**Addition:** The proposed 676 sq. ft. addition is 4.6 feet from the front boundary. It is no closer than the existing building, but, the expansion does lie within the 20-foot setback requiring a special permit.

**Patio:** The proposed outdoor patio and wall around the patio, which shown on the plan, comes within 0.2 feet to the front existing building it is in the area that now has a walkway that currently encroaches over the boundary.

Mr. Collette commented the site is located on Main Street, Route 9; it has heavy traffic throughout the day. David Prouty High-School is located across the street from the site. During rush hour kids are out of school and may walk across the street to the site with a line of cars staging on the drive-thru pathway, and also a line of cars staging on Main Street trying to get into the establishment’s parking lot: A mishap or accident could occur. It is a safety concern. At the last public hearing (2007), the applicants were told by the Board that the drive-thru and the entrance needed to be addressed at some point.

Mr. Stoddard said there could be a solution to the issue. The applicant received an offer to purchase a vacant lot that abuts the site. Since the two properties are in zoning districts that don’t allow most commercial development, this is a challenge. By coordinating and working with the Town Planner, Building Inspector, and Town Administrator, Mr. Stoddard thinks it will lead to a positive result. If the transaction goes forward, the applicants would be required to apply for a special permit from the Board again.

*Sine all applications are related in the content with each other. The Board continued reviewing all applications and would make determination on the decision thereafter.*

**Special Permit Sections 6.1.1 and 6.1.4: Parking spaces.** The Clerk read the brief. “The applicants now have 38 parking spaces, the size of which does not meet requirements. The proposed building with applicable charge requires 36 spaces. The applicants request a special permit allowing for 34 size compliant spaces which in conjunction with the special permit requested for the side buffer zone will enhance public safety and ease of ingress and egress by

increasing the area between opposing parking spaces and the area between the driveway stacking area and the parking spaces.”

The Board has a lengthy discussion in regards to the current circumstances. In theory the Board prefers the parking lot, drive-thru window, and entrance to be more spacious due to the above concerns. Due to the intricate legality related to the ability to use the abutting lot for commercial use, the business transaction (in acquiring the interest abutting lot) may or may not happen. The minor site plan review by the Planning Board is continued to Dec. 8, 2010. DQ Corporation is pressuring the applicants to comply with the changes by January of 2011.

Mr. Stoddard asked if the special permit could be granted for construction of the chimney, patio, and addition first; and, could the rest of the requested applications be continued to a later date?

All of the construction/modification is essential in relation with one another; therefore it is not practical to approve/grant a special permit just for one and continue the hearing later for the rest of the applications. The Board determined it would be best to make a decision based on the site's existing condition at the present time. The Board then continued reviewing the next application.

**Special Permit Sections 6.1.2.A and 6.1.4: Parking buffer.** The applicants propose a 5-foot (front side) buffer which will be landscaped with planting that will shield the abutting lot from the parking area (as shown on the plan submitted); *a 10-foot is required*. Mr. Stoddard explained the allowance of this request will allow the applicants to conform with size requirements for parking spaces, greatly improve ease of ingress and egress to the parking spaces by allowing greater distances between the parking spaces that are adjacent for the drive-thru window and the parking spaces on both sides. In addition, it also reduces the number of spaces to the right of the driveway entrance from six to two thereby further reducing the problem associated with parking and the stacking area.

The Board reviewed the plan at this point. There is a fence bordering the back side of the property, and no fence nor planting along the front side of property. The Board suggested to install a fence (no less than 5-feet in height), along the lot line side. [The applicants may do some planting, along their side of fence, for the aesthetic point of view if they wish].

**Special Permit Sections 5.5.4 and 5.4: Impervious surface coverage.** The Clerk read the brief. “The applicants are requesting a special permit in order to allow them to increase the impervious surface coverage from 88.6% to 96.8%. The property is located in a village residential district and allows for 50% impervious surface coverage. The increased area is primarily a result of widening of parking spaces to conform to existing requirements and a widening of the area between opposing parking spaces and the drive-thru queuing area. The area of the building has also been increased at the direction of DQ Corporate. The proposed increase of impervious surface is 1,898.46 sq. ft. and is a minor variation of the existing situation and is not more detrimental to surrounding properties as is in harmony with the purpose and intent of the zoning bylaws, which allow for variations from requirements at new construction on a case by case basis due to each property's “specific needs and attributes.”

Mr. Stoddard explained that currently the water runoff from the parking lot goes directly to the Town's existing drainage system; the existing system can accommodate the runoff water create from the new impervious surface coverage.

Mr. Collette commented there has been a drainage issue with the property across the street. As he recalled, the Planning Board required some type of a drainage system prior to the site plan approval. There appears to be a stream under some areas, and it runs down to Lake Whittemore. He asked the applicants if there is any manhole in the parking lot.

Mr. Gertsios replied yes there is a manhole right where the dumpster is located. Water travels from the parking lot to the manhole and onto the Town's drainage system.

Ms. Buck commented the drainage system is her major concern. Under the Zoning Bylaw, an increase in the impervious surface coverage requires an in-ground filtration system.

Mr. Stoddard said what the applicants thought was the existing drainage system can accommodate the runoff from the new impervious surface coverage. Repaving the surface parking area could be a solution as opposed to the in-ground filtration.

Mr. Collette said the Planning Board will review the drainage system as part of a minor site plan review. Ms. Backus thinks the Conservation Commission might be involved in the subject matter (runoff water and the drainage).

Mr. Stoddard replied that he will contact the Conservation Commission on the issue.

**Note: There were abutters present in this hearing.**

Ms. Kresco made a motion to close the discussion. Mr. Collette seconded the motion and the vote was 3-0 in favor. The members sitting in the voting were Mr. Collette, Ms. Backus, and Ms. Kresco.

Summary Description of Application: The applicants seek approval to 1) construct an addition, chimney, and outdoor patio within the front setback; 2) decrease the number of parking spaces required; 3) reduce the width of the required perimeter buffer; and 4) to expand the paved area and thereby exceed the maximum impervious coverage permitted. The property is located within the Village Residential Zoning District. The applicants request a special permit under Sections 4.9.2.B.1, 5.1, 5.4, 5.5.4, 6.1.1, 6.1.2.A, and 6.1.4 of the Spencer Zoning Bylaw.

**Finding:** After the public hearing duly noticed and held on November 9, 2010, the Spencer Zoning Board of Appeals made the following findings as required by M.G.L. Chapter 40A., Sect 9 and Section 7.2 of the Spencer, MA Zoning By-laws:

1. That the proposed use is in harmony with the general purpose and intend 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.

The Zoning Board also made the following finding in accordance with Section 4.9.2.B.1 of the Spencer Zoning Bylaw (related to structures in setback):

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

In addition, the Zoning Board made the following finding in according with Section 7.2.3.F to allow relief from the provision of Sections 6.1.1, 6.1.2.A, and 6.1.4 of the Spencer Zoning Bylaw (related to reduction in parking spaces and required perimeter buffer):

1. That the proposed relief is in the best interest of the municipality and will not be detrimental to surrounding uses or the neighborhood, particularly by shifting parking demand to adjacent properties or using a disproportionate number of on-street or public parking spaces.
2. That the proposed relief will not create a nuisance, hazard, or congestion to vehicular or pedestrian traffic.

**Based on these findings, Mr. Collette** made a motion to grant a special permit to owner Goldacre Realty for applicants Leo Gertsios and Philip Gertsios to construct an addition and outdoor patio with related parking area modification at 291 Main Street as shown on the plan submitted. *Ms. Kresco* seconded the motion and the vote **was 3-0** in favor. The Board granted the special permit for the following requested Sections:

**1) Sections 4.9.2.B.1 and 5.1: Structures in Setback**

Allowing for an addition, chimney, and patio in the front setback (as shown on the plan 1) submitted). In this case the extensions and or alterations are no closer to the front setback than the existing structures, and in one area an encroachment will be removed (existing walkway).

**2) Sections 6.1.1 and 6.1.4: Reduction in Parking Spaces**

Allowing for 34 size-compliant spaces which in conjunction with the special permit requested for the side buffer zone (perimeter buffer - see below) will enhance public safety and ease of ingress and egress by increasing the area between opposing parking spaces and the area between the driveway stacking area and parking spaces. The use is considered an existing non-conforming use. (The applicant currently has 38 parking spaces, the size of which does not meet requirements. The proposed building, as modified, would require 36 spaces).

**3) Sections 6.1.2.A and 6.1.4: Reduction in Perimeter Buffer**

Allowing for a reduction in the perimeter buffer (from 10 feet to 5 feet), with a required fence (see conditions below). This reduction is to allow conformance with the size requirements for parking spaces, and to greatly improve ease of ingress and egress to the parking spaces by allowing greater distances between the parking spaces. The structure is an existing non-conforming structure. The proposed special permit application is in harmony with the general purpose of the Bylaw but more importantly it will ease traffic congestion and will allow for enhanced public safety by increasing the area in which parking and the drive-up now operate.

**4) Sections 5.5.4 and 5.4.** Allowing for the increasing the impervious surface coverage from 88.6% to 96.8% (50% maximum allowed), an increase of 1,898 square feet. This increase in impervious surface allows for a widening of parking spaces to conform to existing requirements and a widening of the area between opposing parking spaces and the drive-up area. The use is an existing non-conforming use.

**Conditions:**

1. A fence no less than 5 feet in height is required as a buffer between the parking area and the abutting property on the east side. The fence shall be installed along the eastern property line from Main Street to the back corner of the property.
2. Construction activities shall not commence until all required approvals and permits are obtained.

Ms. Backus explained that once the decision has been filed with the Town Clerk, staff from ODIS will mail a copy of the decision along with the instructions to the applicant, and all abutters.

Ms. Buck said that Mr. Stoddard should submit a withdrawal letter on the variances requested to the Board. Ms. Meechan, ODIS staff, will contact Mr. Stoddard in regards to this matter.

*The hearing on Goldacre, Dairy Queen was over; Ms. Crawford returned and resumed the Chair seat at this time.*

**Approval of Minutes: For October 12, 2010**

Ms. Backus made a motion to approve the minutes for October 12, 2010. Ms. Kresco seconded the motion and the vote was 4-0 in favor.

**Other Discussion:**

**1. Zoning Amendment Section 4.8.3.** The Board of Selectmen (BoS) requested the Planning Board and the Zoning Board of Appeal consider amending Section 4.8.3 of the Zoning Bylaw, specifically as it relates to home-based contractors and the requirement that these business be situated on a parcel of at least 2 acres in size (Section 4.8.3.E.2), and must be located in the RR or SR districts (Section 4.8.3.E.2).

The Board reviewed the Section in the bylaw at this time. Ms. Buck said basically the BoS would like to receive comments or input from both Boards. Members indicated that they would defer to the Planning Board regarding zoning amendments, but expressed some concern regarding diesel construction vehicles on small lots because of noise. Ms. Buck informed Board members that the subject matter also will be presented at the November 16th Planning Board meeting.

With no further discussion, Ms. Backus made a motion to adjourn the meeting at 9:30 p.m. Ms. Kresco seconded the motion and the vote was 4-0 in favor.

Submitted by:

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Bea Meechan, Senior Clerk, ODIS

### **List of Documents used on November 9, 2010**

- A special permit application from Hellen Kiago, 56 Valley Street.
- A special permit application from National Grid, 16 Elm Street.
- A special permit application from FLEXcon, 5&11 South Spencer Road.
- Special permit applications (8) from Goldcare, Dairy Queen, 291 Main Street.
- A note from Ms. Buck on Dairy Queen's application (Variances & Special Permits).
- Comments from Town Peer Engineer, Cullinan Engineering, dated 10/26/2010.
- A response to comments from Beals & Thomas dated 11/8/2010, submitted to the Board on 11/9/2010.
- A revision plan prepared by Beals & Thomas dated 11/5/2010, submitted to the Board on 11/9/2010.
- A plan prepared by Graves Engineering for Dairy Queen dated 10/1/2010.
- A letter from Spencer Board of Selectmen on the Zoning Amendment Section 4.8.3.