

# Zoning Board of Appeals – Town of Spencer

## *Minutes*



Regular Zoning Board Meeting  
Tuesday, September 27, 2011 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: Chair Joanne Backus, Clerk Allan Collette, Associate Member Delores Kresco.

Zoning Board Member Absent: None.

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

**New Business: None.**

**Old Business:**

**A Continued Discussion – Variance Application, Bay Path Real Estate LLC, c/o Daniel Lemenager, 19 Woodchuck Lane.** Ms. Backus opened the meeting at 7:15 p.m. The following were issues discussed at the previous meeting on 9/13/11: 1) Nonconforming, specifically what was the nonconforming nature in this particular case; 2) Whether the proposed construction of a home would increase the nonconforming nature of the structure; and 3) The findings. The Board decided a site visit was necessary, and continued the discussion to tonight, September 27, 2011. All Board members did a visit the site individually prior to tonight's meeting.

Ms. Backus asked Mr. Blaise Berthiaume, the applicant's attorney, if he has addition information to present to the Board at this time.

Mr. Berthiaume said since the last meeting with the Board on September 13<sup>th</sup>, he did speak with the Building Inspector (BI) and Ms. Buck, Town Planner. The BI advised that the application should be under a different section in the Zoning Bylaw that involved an "alteration." However, in this situation it was "reconstruction", and the focus is to rebuild the house that got destroyed by the fire. Whether the application is called for a special permit, variance, finding, or an appeal, the general purpose of the whole transaction is to rebuild the house.

Mr. Berthiaume said if the section relating to the alteration is critical to the BI, then the Board shall make a finding that there is no significant difference in a proposed single family home that the applicant wants to build with the prior use of the property as a single home. Mr. Berthiaume would like to submit a motion to revise the application under the statue which was advised by the BI. This application was originally filed under the variance as advised by the BI initially. The description on the application stated "relocate and build a new house." The Board shall make a

determination that the reconstruction of the house meets the findings, and that the new house is not going to be substantially different than the prior use. Since all parties interested were already noticed of the application for a variance previously, Mr. Berthiaume suggested that a re-application be filed. He thinks the Board has the authority and the power to permit the amendment from a variance to a special permit. Mr. Berthiaume stated that he does not agree with the BI on the special permit, but he accepted that.

Ms. Backus said that what Mr. Berthiaume asked is to simply change the existing current application from the variance to a special permit without having to resubmit a new application.

Mr. Berthiaume concurred.

Mr. Collette said if the Board decides to make a finding on the case, and if anyone wants to make an appeal, he asked to whom he/she will appeal to.

Mr. Berthiaume said anyone can make an appeal to any findings under Chapter 40A, sec 17, to the district Housing Court.

Mr. Collette commented that an individual can file an appeal to the BI's finding to the Board. When the Board makes a finding, the individual must appeal to the next level – to the Court.

Mr. Berthiaume said he had been told by the BI that Mr. Lemenager would need a finding from the Board.

Ms. Buck explained that in the Town of Spencer under the Zoning Bylaw, the BI would make a determination on the application whether it is a special permit (SP), or variance (V) [not the ZBA], and part of that application's (SP or V) review is that the Board will determine the findings in order to make a decision. [The Board also handles the review for an application for administrative appeal and must determine the findings as well]. Ms. Buck does not think there is an issue with amending the application from the variance to a special permit.

The public hearing was held for the variance application, and it was continued to August 9<sup>th</sup>. Ms. Buck said when Mr. Lemenager came in on the August 9<sup>th</sup> hearing he requested to continue the hearing for to 3 months. Mr. Lemenager wanted to meet with the Board to discuss the application after the BI told him that he does not need the variance, he needs the special permit instead. Mr. Lemenager met with the Board on September 13<sup>th</sup> for a discussion on the application, but it was not a continuation of the public hearing on the original variance application. Ms. Buck suggested having a new hearing on an amended special permit application.

Mr. Berthiaume asked what is the meaning of the special permit under the Zoning Bylaw? He said the BI had suggested that the section relating to the alteration is applicable to this situation, and this pertinent section stated that “provided the Board make a finding that such extension or alteration is not substantially more detrimental to the neighborhood than the existing nonconforming structure...” This is the reading of the Zoning Bylaw.

Ms. Buck said yes, that is one of the required findings for a special permit. She also said that for every special permit the Board has ever issued a decision on, the Board has always listed the finding pertinent to that specific section, and also included the general findings that are listed on page 7-2 of the Zoning Bylaw.

Mr. Berthiaume did not agree with that; he said the only finding the Board is required to make is the finding which is specified in that particular section.

Ms. Backus clarified that there shall be a public hearing scheduled for a special permit because the meeting on September 13<sup>th</sup> and tonight's meeting was simply a conversation.

Ms. Buck concurred.

Ms. Backus announced at the previous meeting (September 13<sup>th</sup>) that she would not be available for the ZBA meeting in the month of October. The Board will not have enough members for a quorum in order to hold a public hearing in October. Therefore it has to be scheduled in the month of November.

Mr. Lemenager expressed frustration that there is only one person who objected to his proposal and put a hold on the process. The location of a new home is further into the lot – and not visible to anyone at all.

Mr. Collette understood his frustration, but the application must be under the rightful and applicable section as according in the Zoning Bylaw. All this time what was discussed was just a conversation. The Board has to schedule a public hearing for a special permit.

Ms. Backus said that ODIS will do a publication in the newspaper, and the new notices will be sent out to all abutters because this is a new application – amending the application. [The Board members do not wish to hold up the hearing; they considered contacting the former member, on a temporary term as an alternate member, to return and sit on this case while Ms. Backus is away.] The fee for the special permit will be waived, but the applicant will be responsible for hearing notification.

Mr. Lemenager said that it seems that he will not be able to build anything until next spring due to the winter approaching in the next few months. He can wait to have a public hearing in November.

Mr. Berthiaume suggested that since Ms. Backus is familiar with the case the best course is to wait and schedule the hearing in November when Ms. Backus has returned.

The Board said a public hearing will be scheduled for November 8, 2011 for an application on a special permit.

Ms. Backus made a motion to close the discussion at 8:40 p.m. Ms. Kresco seconded the motion and the vote was 3-0 in favor.

**Approval of Minutes: None.**

Submitted By:

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Bea Meechan, Senior Clerk, ODIS

**List of Documents used on September 27, 2011**

- A petitioner's motion to amend petition prepared by Mr. Blaise Berthiaume dated 9.27.11.