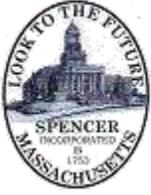


# Zoning Board of Appeals – Town of Spencer

## *Minutes*



Regular Zoning Board Meeting  
Tuesday, November 8, 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, and Albert Drexler, Alternate.

Zoning Board Member Absent: None.

Staff present: Michelle Buck, Town Planner (only present for portion of Spencer Brewery Hearing) and Bea Meechan, Senior Clerk ODIS.

### **New Business:**

**A. Public Hearing – Special Permit, Paula Pierce, 240 Main Street, Assessor’s Map U06/40).** In the absence of Clerk Collette, Ms. Backus appointed Ms. Kresco as acting Clerk. Ms. Backus opened the hearing at 7:20 p.m. The Clerk read the brief. The applicant is requesting a special permit to establish a counseling therapy center offering services to individuals, teenagers, and a family. The property is located within the Village Residential Zoning District.

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

Ms. Pierce explained she is interested in psychology and wanted to be a psychologist. While attending college she opened a program in Spencer, and she then continued education at Assumption College and received a master’s degree in psychology. She has over 10,000 work hours with the youth and people with addictions. She currently works part-time at a small practice in Shrewsbury. Ms. Pierce is a licensed mental health clinician; she could work with children that have behavior problems, anxiety problems, and mental issues. Ms. Pierce said she sees the needs for this particular therapy service in Spencer, and she would like to establish a small practice here in town. She purchased the property at 240 Main Street, the property is fully insured, and she has insurance to cover her business as well.

The property consists of two sections, the main house and a carriage house. Ms. Kresco asked where the practice will be located in, and in addition, Ms. Kresco inquired as to the operation’s hours and days, and number of employees.

Ms. Pierce said the practice will be at the carriage house, not in the main house. She would like counseling for three (3) days per week starting from 9:00 am until 8:00 pm. There will be one licensed therapist employed in the practice with Ms. Pierce.

Mr. Collette asked if the property is across from Doctor Grace's office. Mr. Collette asked if there is enough space available for vehicles to maneuver and turn around out of the property safely – not backing out on Route 9.

Ms. Pierce said the property is across from doctor Grace's office. There are plenty of parking spaces (20 spaces), the vehicles can turn around and pull out from the property safely.

Ms. Backus asked whether the two sections (main house and a carriage house) of the property are owned by Ms. Pierce, in addition - does Ms. Pierce lives there at the location.

Ms. Pierce said she owned both sections; she resides in the main house. She said it isn't a good idea to reside there and have a business practice at the same location. Ms. Pierce is currently renting a home in Leicester, and is looking to purchase a home in Spencer.

Mr. Drexler asked if Ms. Pierce is renting out the main house to people, if that is, would there be adequate parking for everyone including the future clients for the business.

Ms. Pierce explained the main house was a rental property at the time of the purchase, and it is still a rental property which she is sub-rented to people. The property has a good size parking lot, and there are plenty of parking spaces as mentioned above.

Ms. Pierce said that the particular career choice and to establish the practice has been her dream for over 10 years. She received good grades and graduated with distinction from college. She has seen the need for a therapy practice in Spencer, and that is why she specifically had chosen and purchased the location at 240 Main Street.

Ms. Backus opened the hearing for any comments and questions from the public at this time. Note: There were no abutters present for this hearing.

Ms. Backus announced the members sitting in the voting were Mr. Drexler, Ms. Kresco, and herself.

With no further comments and questions Mr. Drexler 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. Backus made it unanimous.

Ms. Kresco made a motion to grant a special permit to Paula Pierce to establish a counseling therapy center offering services to individuals, teenagers, and a family at the "carriage house" on 240 Main Street, Spencer. The property comprises of a main house and a carriage house. There are adequate parking spaces for both the tenants at the main house and the clients at the carriage house, and the vehicles can maneuver, turn around in the parking lot and exit out from the property safely. Ms. Pierce will employ one licensed counseling therapist for the practice. The counseling center opens for the services three (3) days per week. Mr. Drexler seconded the motion and the *vote was 3-0* in favor. Ms. Backus made it unanimous.

Ms. Backus explained 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.

**B. Public Hearing – Special Permit, Bay Path Real Estates, LLC c/o Daniel Lemenager, 19 Woodchuck Lane,** Spencer (Assessor’s Map U16/54). Ms. Backus opened the hearing at 7:35 p.m. The Clerk read the brief. The applicant is requesting a special permit to construct a single family-home. The property is located within the Suburban Residential District.

A brief summary: The home on the property was destroyed by a fire. The applicant wanted to build a new home there, and was advised by the Building Inspector (BI) and Zoning Enforcement Officer that a variance from the ZBA is required. Due to the complexity of the matter, the question was raised on what is considered as nonconforming - the proposed home or the existing frontage, and also the interpretation on the term “reconstruction” as accordance in the current bylaw. The BI later determined that Section 4.9.2.A.2 of the Zoning Bylaw is more applicable to this application, and the applicant needs to obtain a special permit from the Board. The Board scheduled a public hearing tonight (11/8/2011) for a special permit on the application.

[Section 4.9.2.A.2 definition: Nonconforming Structure- single-family or two-family residential structures. A nonconforming single-family or nonconforming two-family structure may be extended or altered such that the nonconformity is increased or intensified, but no more than the existing nonconformity, upon issuance of a special permit by the ZBA, provided the ZBA makes a finding that such extension or alteration is not substantially more detrimental to the neighborhood than the existing nonconforming structure, e.g. an addition that encroaches setbacks to the same or a lesser degree that the existing nonconformity].

Note: When Ms. Backus opened the hearing she announced “the Board re-opened the public hearing on the application.” Ms. Backus made a correction that tonight’s hearing is for a new public hearing on the special permit on the application.

Mr. Charles Prouty of 333 Main Street believed the initial decision on the variance made by the BI was the right determination. Mr. Prouty said even the Board thought the variance was applicable to this application. The proposed house is the same dwelling that would be constructed on the property, but at a different location therefore the variance is required. Mr. Prouty said as he understood that under the current bylaw to reconstructing the building is to construct the building on the same footprint as the original building, and it is required a special permit from the Board.

Mr. Prouty said he doesn’t have a problem with constructing the proposed home at a different location. However, he has a problem when the applicant proposed to build a home that is a substantial increase in size, 25 % larger, than the original home was. [The existing use is nonconforming use, and if the Board allowed the request, then it would increase the nonconforming use]. He suggested the Board limit the size of the proposed home to the 2,000 sq ft as the original home was.

Mr. Collette said if the Board does consider what Mr. Prouty has just suggested, the applicant can come in any time to request additions be added on to the home.

Mr. Prouty said the applicant will need a special permit each time the addition has been put on to the home. As he understood the Board has always considered the new home be built on the same footprint – same foundation, as it had been done here in Spencer historically. In addition, the applicant had demolished the home and the foundation was no longer in existence.

Mr. Collette said that is correct, the applicant would need to apply for a special permit every time he plans to put on the addition to the building. The BI arrived to the conclusion that special permit is required in this situation- instead of the variance. He said the Board sees it the other way; it is a matter of practicality. Mr. Collette explained that, in the past, the Board granted special permits, on the applications, for reconstructing the building on the same footprint and with the same footage's amount as the original homes had. Mr. Collette said the Board did a site visit at 19 Woodchuck Lane and found that the property consist a large piece of land (25 acres), and the proposed building will not encroach the setbacks.

Ms. Backus commented she disagreed with the BI's determination on the special permit. The nonconforming issue on this situation was the *amount of the frontage, or the lack thereof*. And as long as the proposed home isn't encroached the setbacks, Ms. Backus doesn't see that the size of the proposed home will increase the nonconformity.

The current Zoning By-Laws took an effect in 2006, the property in the question is now considered as a legal nonconforming. This application is applied under the Section that deals with the nonconforming as defined above. The applicant now proposes reconstructing a home in *a larger size as opposed to the original home*. Mr. Collette commented that this has created an issue, which in this case the nonconforming will be altered to a greater amount.

Mr. Lemenager said the original home had 2,000 sq ft in the footage area. The proposed home is 2,500 sq ft. He argued that the increased amount (500 sq ft) will not make it more of substantial nonconforming than to what it was originally.

Mr. Collette said there is some validity to the argument by Mr. Lemenager. If this hearing gets continued, Mr. Collette thought it is a good idea to have the BI attend the hearing as well. The BI is also Spencer Zoning Enforcement Officer. The Board can directly ask and get an absolute opinion from him on the matter – what/which way it is; variance or special permit.

Mr. Prouty commented that the language in the Bylaw in terms of reconstructing the non-conforming structure is ambiguous; it should be more specific, and this needs to be addressed. Due to the building being proposed to build at the different location, he thought the variance as originally requested was correct, not special permit.

Mr. Collette agreed that the wordings in the bylaw certainly needed a clarification. However, the Board must make a decision on the application with the currently bylaw at this time. Ms. Backus said that the bylaw doesn't indicate and specify that the reconstructing of the nonconforming

building shall be constructed on the same footprint as the original building was (the reconstructing of the building isn't required to be on the same footprint).

Mr. Drexler commented the Board members have to work what had been established in the bylaw. He thought this case should be both variance and special permit, personally. The application was being requested under the special permit Section 4.9.2.A.2, and that gives the Board the power to make the decision that the proposed structure doesn't affect substantial detrimental to the neighborhood.

Mr. Collette said that with the respect to Mr. Prouty, if the Board would make the applicant build the building on the same footprint, the applicant could come in and request a special permit to build an addition to the home, which is allowed under the bylaw.

Mr. Prouty said it has appeared that, in the bylaw, if the lot is a nonconforming lot then the use is also nonconforming as well. The fact the house is on the nonconforming lot, doesn't the house also become nonconforming, and therefore subject to some restrictions, Mr. Prouty asked.

The Board said the lot is a legal nonconforming lot, but not the use.

Mr. Collette asked if the applicant submitted the house plan with the footprint to the Board in previous.

[Note: ODIS staff provided a copy of the house plan with the footprint in which the applicant submitted it along with the building permit application to the BI in previous (the BI denied the permit)].

Mr. Lemenager said that there has been a change to the house plan. The footprint has been reduced from 2,500 sq ft on the footprint to 2,300 sq ft.

Mr. Collette asked, in respect to the downsizing, is the proposed house going on the same footprint as the original was? Ms. Backus asked if it is downsized the size of the foundation.

Mr. Lemenager said yes, the reduced plan is still a work in process; he doesn't have it tonight.

The Board reviewed the house plan and the site plan (that was submitted in July) at this time. The site plan shows the square-shaped drawings of the existing house and the proposed house which located not too far apart from each other, existing pool and deck, existing garage, existing shed, and existing barn. However, there is no specification of the distance between the two houses, and between other existing structures. The existing house had been demolished already; and its original foundation wasn't there at the present time.

Mr. Collette said the Board needs to have an idea as to the location of the proposed house, where it would be. In addition, even the Board wants to make a reference to the existing foundation there is none. Mr. Collette asked as to how the Board would have a reference to where the proposed house is – there are no measurements specified of how far the proposed house is from the existing house.

Mr. Lemenager explained as he recalled from the past few meetings, there was a discussion that he would have a survey done after he gets the approval from the Board on the application. [His concern was that after spending good amount of money on the survey plan, the Board might not grant an approval. That is why he opted not to do the survey until the Board has granted the request then he will forward the survey plan to the Board thereafter].

Mr. Collette commented that if the Board does that, granting you an approval without the knowledge of where the proposed is located, it is equivalent to “giving out the blank check to you so you can write out any amount as you wish.” Ms. Backus commented that this issue had been discussed in the prior meetings, and the Board’s opinion was that the Board cannot grant a permission to move the house to just anywhere on the property without being specific.

Mr. Lemenager said the proposed house will be 20 feet away from the original house was located. He argued that all he needs is for the Board to approve the moving of the house, and he will submit the survey plan later.

Mr. Collette said there is no problem with the setback. He also commented that moving the house away 20 feet isn’t a problem, but have to be more specific of where it is going to be. Ms. Backus said she is positive that the Board made it clear we need not just a blue print house plan; also the exact location of the proposed house.

Mr. Lemenager asked if he can present the survey plan, showing where the proposed house is exactly located, will the Board grant him the approval?

The Board members said they cannot answer how they are going to vote, and there is no guarantee on whether or not the Board will approve the request.

Ms. Kresco said the Board wants to see the plot plan with the distance measurement between the original home and the proposed home, and the distance of other structures that are there (e.g. how many feet from the proposed home to the existing pool, how many feet from the exiting pool to the garage, etc). The plot plan shall be provided at the next meeting - November 22<sup>nd</sup>.

Ms. Kresco made a motion to continue the meeting to November 22, 2011. Mr. Collette seconded the motion and the vote was 4-0 in favor.

**B. Public Hearing – Special Permits, owner; Cistercian Abbey of Spencer, Inc., applicants; Cistercian Abbey of Spencer and Spencer Brewery, LLC, 167 North Spencer Road, Spencer.** Ms. Backus opened the hearing 8:05 p.m. The Clerk read the brief. The applicants are requesting special permits to construct and operate a brewery on a portion of property (see schedule C for the description of application). The special permits being requested are under Sections 4.9.2.B.1, 4.9.3.C, and 7.2 of the Spencer Zoning Bylaw. [The special permits are for the alteration and/or extension of existing structures and uses on the site]. The property is located within the Rural Residential Zoning District.

Ms. Backus asked the applicant for the presentation on the application at this time.

Note: Mr. Dennis Pojani, the applicant's counsel, Father Isaac Keely, and Brother Thomas Langenfeld from St. Joseph's Abbey were here tonight.

Mr. Pojani said the applicants are asking permission to construct the brewery building on the premises. The brewery, the Spencer Brewery, LLC, is a limited liability company whose sole member is the Cistercian Abbey of Spencer. Other Trappist Monasteries in Europe have been brewing beer and ale under the "Trappist" name for many years. If the Board grants an approval on the application, the monastery in Spencer would be the first monastery in the United State to brew the Trappist beer. Mr. Pojani gave a brief summary as follows:

- Currently, there are 4 businesses operate on the property. The businesses and structures used are pre-existing, non-conforming structures and uses.
- The proposed structure is surrounded by 1,700 acres of fields, farmlands, and trees.
- The closest the property boundary line from the proposed structure is approximately 1,900 feet away and the nearest public way is one mile away. No material noise or odors will emanate from the structures.
- The applicant plans to produce 10,000 barrels per year.
- Due to the limited of the use and the limited amount of traffic to and from the Brewery, no material increase in traffic will occur.
- The added structures and use will not create undue traffic congestion nor unduly impair pedestrian safety; will have no or very minimal impact of the neighborhood.

Mr. Collette asked if the applicant does obtain the licenses from the State; and whether the licenses are transferrable. He commented that from what the monastery has been doing, the monastery is a real asset to the town. Mr. Collette said if the Board approves the request, it would be under the current circumstance which the monastery; aside from being the owner, is also operating and managing the Brewery solely. He then asked the following questions: 1) Could anyone of those 4 businesses be sold off along with the land the business is occupied on; and 2) What would happen if the property is sold to other people, to a business entity or multiple entities – the property becomes an industrial park.

Mr. Pojani said yes, the license can be transferred, but it must be approved by the State first. He can almost certainly say that the applicant has no intention to sell the property, and it's unlikely that will occur. In addition, the applicant cannot expand what the Board has approved; cannot create an industrial park without the Board's approval. It would be difficult to sell the property without selling the rest of the businesses, especially when the special permit is based on the extension of the existing businesses and the nature of the special permit is affixed to the land, not to the individual.

Mr. Collette said the number of monks and employees in the monastery has shrunk/decreased since it was in the existence in the 1950's. With that being said, there is a possibility the property could be sold in the future. Also due to the uniqueness of the situation (the property contains of 4 different type of businesses), Mr. Collette thought the Board should take this matter under consideration.

Mr. Drexler said in terms of the special permit, as he recalled, it goes with the property unless there is a substantial changes in the type of the existing businesses, then it is required to re-apply for another special permit. He asked for clarification on the arrangement which indicates that the monastery will lease the Brewery structure and appurtenant rights to the Brewery, LLC.

Mr. Pojani explained that the Brewery is going to be part of the overall project. From a legal standpoint, the business sets up this way, established the LLC as a separate entity, to separate the legal liability from the monastery – St. Joseph’s Abbey (Abbey). The monastery solely is the owner of the LLC, and the manager of the LLC is the director of the Abbey.

The followings were additional comments and questions from the Board to the applicant and the applicant’s representatives:

Mr. Collette asked as to the service road for the Brewery.

Mr. Pojani: The existing driveway, which is off from Route 31, will be used to access to the Brewery.

Mr. Collette: Is there still a gate, at the end of the existing driveway, on that road.

Father Issac: Yes, there is still a gate before entering into the businesses’ area. He pointed out the route of the service road and the location of the gate on the map to the Board.

Mr. Collette: He meant for the gate *on the other existing road*, the south direction.

Father Issac: There is also a gate on that road as well.

Mr. Pojani: There was a change made to the plan. He did send in a supplement drawing showing that the Brewery’s structure has downsized from 43,000 to approximately 36,000 sq ft, and the structure has shifted back 120 feet on the same area of the property.

Father Issac: The Brewery will use the green energy generated by the steam plant as well. The designated area, he pointed out the location on the plan, is doable for hop plants’ cultivating.

Mr. Drexler: Are there are any regulations pertinent to the brewery’s waste products?

Father Issac: The grains, after being used in the brewery’s process, will be picked up by the two local farmers in the area; they use that for feeding the farm animals. The waste from the grains also can be used for mulch production, which will use for landscaping in the summer season through-out the property. Also the waste water from the brewery will be collected, treated, and pre-treated.

Mr. Drexler: Is there any wetland on the property?

Father Issac: The wetland area is located to the south of the Brewery. The flagging process for wetland boundary is currently happening at this time. [He pointed out the wetland area on the map to the Board].

In referencing to the question from Mr. Collette, Father Issac gave the following explanation: The Trappist Monasteries in Europe have been brewing high quality beer and ale under the “Trappist” name for many years. The Cistercian Order maintains abbeys throughout the world. The trademark brand name “Trappist” is owned by the Order; the monastery here in Spencer cannot ever sell any of the businesses under the brand name, nor transfer it to another Trappist Monastery either. This aspect is also applied to the Trappist Brewery as well. *Basically, the monastery cannot sell the Brewery to any brewery companies.*

Father Issac gave an over view on the monastery in Spencer at this time. Currently, there are 60 monks in the monastery, and the two primary finance resources are the Trappist Preserves and the Holy Rood Guild. The market and revenues from the Holy Rood Guild business has been reduced with the decline in the number of the monks. The preserves (jelly and jam) business sales are steady; they are not seen as expanding. The Abbey needs to explore other avenues of revenue to support itself. The financial advisors, after looked at variety of options, and with the Trappist Brewery is being the traditional Trappist’s occupation and also being a particular type of beer in the market, think that the Brewery at the Abbey in Spencer is feasible. In summary, Father Issac said the Abbey is approaching this from the view point of “survival.” The Brewery has the potential to provide a basic financial support for the monastery at the present time and in the future.

Mr. Collette commented that what the monastery has been doing is great and beneficial to the Town. He does have some caution, and would like to seek out an opinion from Town Counsel.

Mr. Drexler asked if the Brewery requires a Common Victualler License.

Mr. Pojani said no, not this Brewery in Spencer. If the Abbey were to add the Pub/Tavern on site, then the on-premises-consumption - Common Victualler license would be needed, but, the Abbey doesn’t have a plan to do that.

With no further questions and comments from the Board, Ms. Backus opened the hearing for comments and questions from the public at this time:

Mr. Edwin Coghlin, Jr., and Mr. Warren Bock of Treasury Valley Reservation said that they are in favor of the proposed Brewery. The Abbey has done great things for the Town.

Ms. Karen Hubak-Kiley, owner of Bond and Sand Gravel, said she and her family are in favor of the proposed plan. The Abbey is wonderful abutting neighbor, and has excellent reputation.

Mr. Collette stated that he would like to discuss some specific questions with the Town Counsel. Ms. Buck said that is possible, the Board could do that.

Mr. Pojani said if the result (answer to Mr. Collette's questions) becomes available, he then asked if he could obtain that information also.

Mr. Collette made a motion to continue the hearing to November 22, 2011. Ms. Kresco seconded the motion and the vote was 4-0 in favor.

**Approval of Minutes: Minutes for September 13 and September 27, 2011.**

Mr. Collette made a motion to approve the minutes for September 13, 2011. Ms. Kresco seconded the motion and the vote was 3-0 in favor.

Ms. Kresco made a motion to approve the minutes for September 27, 2011. Mr. Collette seconded the motion and the vote was 3-0 in favor.

With no further discussion, Ms. Kresco made a motion to adjourn the meeting at 8:45 p.m. Mr. Drexler 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 8, 2011**

- Special permit application from Paula Pierce, for property at 240 Main Street
- Special permit application from Daniel Lemenager, for property at 19 Woodchuck Lane.
- Special permit application from St. Joseph's Abbey, for property at 167 North Spencer Road.
- A site plan for 19 Woodchuck Lane, prepared by HS&T Group, Inc., plan dated 11.21.11.
- A site plan for St. Joseph's Abbey, prepared by Doyle Engineering, Inc., plan dated 10.13.11