

Zoning Board of Appeals – Town of Spencer

Minutes



Regular Zoning Board Meeting
Tuesday, July 19, 2011 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 Joanne Backus, Clerk Allan Collette, Associate Members: Pamela Crawford and Delores Kresco.

Zoning Board Member Absent: None.

Staff present: Bea Meechan, Senior Clerk, ODIS.

Old Business:

A Continued Public Hearing – Richard and Penny Barrell, 26 Laurel Lane. The applicants seek relief from the minimum front set back requirement under Section 5.1 of the Spencer Zoning Bylaw to construct a garage attachment to an existing single family-home and to construct a new home. The property is located within the Lake Residential Zoning District.

The public hearing was originally held on June 14, 2011. The Board members thought it was necessary to do a site visit. Each member would be visiting the site separately. The Board decided to continue the public hearing to July 19, 2011 at 7:15 p.m.

Let the record showed that all Board members (Ms. Crawford, Ms. Kresco, and Ms. Backus) had visited the site prior to the hearing tonight.

Ms. Backus opened the public hearing at 7:20 p.m. She asked if the applicant has any additional documentation or information to present to the Board.

Mr. Barrell said he has none at this time; however he did submit a letter to ODIS addressed to the Board prior to tonight.

The Board acknowledged the letter from Mr. Barrell. The Board also received a letter from the abutter, Ms. Jody Bolafka of 24 Laurel Lane. Mr. Backus asked Clerk Collette to read the letter from Mr. Barrell at this time. [The letters would be entered into the ZBA's file record and being kept at ODIS]. **Letter from Mr. Barrell**, dated 6/3/2011, which read as follows:

“ We want to explain in a litter more detail why we have applied for relief from the front set-back on our property to build a garage. I assume by now each of you has visited the site and can agree that the slope of the lot is of great concern. The shape of the

lot in relation to the existing structure is also a challenge in designing a garage that is both functional and aesthetically pleasing. We have made some small changes to our original plan for this request. These are concessions that we feel are worth making in order obtain approval. The revised plan makes more sense than staying within the required setbacks. They include changing the shape of the garage, and the addition of a drainage system to protect both our property and that of 24 Laurel Lane.

We have included a copy of our survey depicting the plan if the request for variance is declined, and a copy of the plan showing the existing location of the septic system and leach field. If we cannot build our desired size garage in the proposed location, we will have to remove our existing deck and move the septic system closer to the lake so that the garage can be built in the only other location on the property that will suit our needs. This alternative plan is actually the plan we started with because it met our allowable setbacks.

When we approached the town to discuss the plan, we were directed to our conservation rep, Ginny Scarlet, to prepare a notice of intent to move the septic system and build the garage. During our conversation, we agreed that requesting a variance to build on the road side of the house would be more beneficial in protecting the lake. She explained that, though it is perfectly within our rights to build on the lake side and move the septic system closer to the lake, it is not the best plan from a conservation stand point in protecting the lake.

We agreed with her and chose to seek out an alternative plan that would make more sense. That plan is the plan we have submitted for your approval. Approval of this plan will cost us less money and allow us to keep our vehicles on the road-side of our home (as opposed to the lake side). Additional benefits include not having to plow/sand/salt our boat ramp to get to the garage, as we would have to if garage is built on the lake side. The slope of the boat ramp is very steep and will surely present a challenge for us to drive up and down during the winter months. This ramp runs right down to our lake, and we do not want to have the sand/salt from the road, or our driveway, run down the ramp and into it. We prefer to not plow the boat ramp at all in order to prevent sand/salt from reaching the lake.

Another reason we chose to seek relief from our front set back is for the benefit our neighbor at 24 Laurel Lane. If the garage is built on the lake side of our home, it will be directly obstructing a nice view of the lake from their deck. We feel that looking at the back side of a garage from the deck of 24 Laurel Lane is much less desirable for the current owner, and potential future owners, than looking at the side of the garage on the road side.

In summary, it just makes more sense to us to build this garage on the road side, in the proposed location and size. The approval of this request will meet our needs and protect the lake at the same time. Thank you for your consideration.”

Staff at ODIS received the letter from **Ms. Jody Bolafka on 7/14/2011**. Ms. Backus read the content in the letter as follows:

“I am submitting this document as a memorialization of my opposition to the granting of a variance to the above referenced individuals from the setback requirements under present zoning as they affect the applicant’s proposed construction of a garage on their

above referenced property.

It is relatively well-established under Massachusetts law that the fact something may be desirable but is prohibited does not rise to the dignity of a “hardship” for purpose justifying zoning variances. See *Martin v. Board of Appeals of Yarmouth* (1985) 482 NE 2nd 336, 20 Mass Appeals 972.

Additionally, the fact that a governmental regulation may deprive an owner of the most beneficial use of his property does not create a hardship. See *Kirkwood v. Board of Appeals of Rockport* (1984) 458 NE 2nd 1213, 17 Mass Appeals 423.

In order to grant a variance in this particular case it needs to be determined that the town’s zoning setback requirements give rise to a substantial hardship especially affecting this particular landowners property but not generally affecting the zoning district.

I do not believe the zoning setback requirement creates any hardship on this particular landowner than it does for other parties owning property along roadways. (See *Planning Board of Watertown v. Board of Appeals of Watertown* (1977) 363 NE 2nd 293, 5 Mass Appeals 833.

Pursuant to Mass General Laws, ch. 40A, Sec., 10, a variance from the terms of applicable zoning bylaws can only be made when there is a finding that owing to circumstances relating to the soil, conditions, shape, or topography of such land or structures and especially affecting such land or structures but not generally affecting the zoning district in which it is located, a literal enforcement of the provisions of the bylaws would involve substantial hardship.

There is nothing unique about this particular lot to warrant the issuance of a hardship variance. If the town wants to change the setback requirements that affect the area generally, it can undertake the necessary steps to do so by amendment to the zoning bylaws.

A variance can be granted where substantial hardship to an applicant is involved, but substantial hardship could not have been personal; it must have been one especially affecting such parcel. See *Dowd v. Board of Appeals of Dover* (1977) 360 NE 2nd 640, 5 Mass Appeals 824.

It is not appear to be anything unique with regard to this particular parcel that would necessitate the granting of a variance so that the applicant can build within the required setbacks. The applicant has more than ample room to the left of the house to erect any desired garage. This particular property has nothing unique about it that necessitates the requested variance. The property in question, like all of the properties within this zone, is subject to the setback requirements established by the present zoning.

Based on the status of the law there are no facts to support a unique hardship presently exists. As stated above, based upon the applicants’ plans there appears to be ample room for construction on the other side of the applicants’ property where such construction would not violate the setback requirements. The fact the applicant does not desire the construction on that side of the dwelling is of no import and need not be taken into consideration.

No documentation or other evidence has been introduced to show that construction of the desired garage cannot be undertaken on the other side of the applicants’ house due to topographic or soil conditions. Regardless, the desired construction is a self imposed hardship as there is nothing in the zoning bylaws or the Mass General Laws that allows

the requested deviation from the present zoning requirements.”

Ms. Backus asked Mr. Barrell to make a presentation of the plan that was attached to the above letter (6/30/11) to the Board.

Mr. Barrell said the plan was the same one as presented to the Board on 6/14/2011 (at the public hearing). He explained it is not practical to re-locate the existing septic system from the rear to elsewhere on the property, and in addition it is very costly process. The property has very limited space on the left side and is very steep. The only suitable area is in the front which ConCom had suggested Mr. Barrell to request a variance from the ZBA. Mr. Barrell made a comment that when he came to the Board for an informal discussion, he did provide several plans to the Board, and the Board thought this particular plan in the discussion was the better plan among the rest of plans submitted.

There is a well which lies underneath the proposed garage as specified on the plan. The Board members expressed a concern on whether that is in compliance with the Building and Codes.

Mr. Barrell said about 3 years ago, at his previous home, the garage was constructed on the well, and the Spencer Building Inspector (BI) /Zoning Enforcement Officer approved the building permit application. Mr. Barrell also approached the BI about this proposed plan and there were no questions or issues in regards to the location of the well (being under the proposed garage).

Mr. Collette inquired as to the reason(s) for the hardship.

Mr. Barrell explained the reasons for hardship as follows: 1) due to the steep slope being on the left side of the property and with the existing boat ramp, and if, the proposed garage is to be constructed there, Mr. Barrell and the ConCom does have a concern about the salt and sand being removed in the winter from the boat ramp would reach down to the lake, and 2) it is costly to re-locate the septic system from the rear of the property to elsewhere, in addition the ConCom would not like it to be moved near the water. ConCom agreed with the location proposed on the plan.

Mr. Collette said the hardship appears to be monetary.

Mr. Barrell replied the hardship is monetary and the slope of the land. He then explained further that due to the angle of the lot and the positioning of the house it does not leave much room elsewhere except for the front yard area.

Ms. Crawford asked for more clarification of why the left side was not a practical location and also the situation of the boat ramp.

Mr. Barrell explained there is not enough space on the left side, and the elevation of this side, from the right-of-way, is greater than the right side of the property. In addition there is a big drop-off from the peak of the boat ramp down to the lake.

Mr. Collette said in granting an approval for the variance, the Board shall make a decision whether the information presented in the case is sufficient for the hardship. The Board members also reviewed a memo (dated 6/30/2011) from Ginny Scarlet, Wetland/Soil Specialist, Spencer ConCom. The memo addressed to the ZBA. Mr. Collette read the content of the memo as follows:

“The plan submitted with the application does not show the whole lot, nor any of the surrounding conditions. Mr. Barrell is working to fix that providing more information.

To grant a variance application the Zoning Bylaw indicates that ZBA must determine that: 1) There is some condition that exists not generally affecting the zoning district in which it is located; and 2) That desirable relief may be granted without substantial detriment to the public good.

I hope you will identify, and put in writing as part of your decision, the unique characteristics of the lot AND identify the techniques used to prevent detriment to the reservoir. Otherwise the decision could be easily challenged and it seems this proposal is contentious.

The proposed changes add approximately 2,278 square feet of impervious surface to the existing 2,600 square feet of impervious surface. That will increase runoff.

There is potential detriment to the public good i.e. to Sugden Reservoir. Increased runoff takes away water that otherwise feeds groundwater. Groundwater is the stable input to the lake. Runoff, in contrast, goes to the lake during rain, quickly raising the water level, increasing the potential for flooding. But then the water shortly thereafter, goes over the dam and can no longer contribute to keeping the level up. without groundwater to provide a slower, steady input, the lake level goes down more rapidly during dry periods, as happened during last summer. Catch basins discharge rapidly all the water they collect. Their only function is to settle accompanying sand and silt. By themselves, catch basins will not put any runoff back into the ground. additional measures will be necessary to compensate for the new hard surfaces where nothing can soak in.

As more and more additions, decks, patios, and paved parking are constructed on the small lots the runoff increase is multiplied many times over. Such small changes add up, just as floods result from rain coming down one drop at a time.

On the other hand on this particular lot, it is possible to fit everything within the setback IF the septic system moves closer to the water etc. That also would have impacts on the reservoir and in my professional judgment that impact would be greater than what Mr. Barrell proposes IF he manages the runoff effectively to compensate for the impervious surface increase.”

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

Ms. Jody Bolafka of 24 Laurel Lane said that she has been residing at this resident for the past 20 years, and there had not been any issues prior to Mr. Barrell moving to 26 Laurel Lane. She opposed the proposed plan due to the following reasons:

- The dimension of the proposed garage is 1,007 sq ft. The monstrous garage would block the sunlight on the left side of the lot entirely; her house would be in the shade most of the day.
- The land in the front of 26 Laurel Lane is Town owned; it does not belong to 26 Laurel Lane, and it should be left for potential construction of a cul-de-sac that would be beneficial to all abutters – convenient to maneuver and turn around the vehicles.
- The runoff from the catch basins would flood her septic system and the leach field as previously stated at the hearing held on 6/14/2011. If the water problem has occurred, Ms. Balafka asked who would assist her with this problem.
- Ms. Bolafka asked as to whom will be responsible for maintaining the catch basins when Mr. Barrell has moved out from 26 Laurel Lane.

Ms. Bolafka said that the proposed garage will affect “the quality of her life”, she asked the Board to take the above concerns under consideration.

With no further questions and comments, Ms. Kresco made a motion to close the hearing at 8:00 p.m. Ms. Crawford seconded the motion and the vote was 4-0 in favor.

At this time Ms. Backus announced the members sitting in the voting were Ms. Crawford, Ms. Kresco, and herself.

Ms. Crawford made a motion to deny the variance’s application of Richard and Penny Barrell to construct a 1,007 s.f. garage attach to an existing single family-home at 26 Laurel Lane, the hardship presented was insufficient. Ms. Kresco seconded the motion and the vote was 3-0 in favor. Ms. Backus made it unanimous. The following was included in the motion:

Finding:

1. The Board did not find unique circumstances related to soil condition, shape or topography of the lot that do not generally affect the zoning district in which the property is located. Most lots in the Lake Residential zoning district are small; the setbacks requirements in this district (15 ft front setback/10 ft side setback) were chosen accordingly are less than most other zoning districts in Spencer. It is difficult to fit a house and septic system on many lots in the Lake Residential district. Although the property is sloped, the Board found that the slope does not appear to prevent construction in conformance with the required setbacks.
2. The Board did not find that a literal enforcement of the bylaw would involve substantial hardship to the property owner;
3. There is potential detriment to the public good due to increased runoff to Sugden Reservoir as the project is currently proposed.

Ms. Backus 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 also to all abutters.

New Business:

A. Public Hearing – Bay Path Estate LLC c/o Daniel Lemenager, 19 Woodchuck Lane, Spencer (Assessor’s Map U16/54). Ms. Backus opened the hearing at 8:05 p.m. Clerk Collette read the brief. The applicant is requesting a variance in accordance with Section 5.3.11 of the Spencer Zoning Bylaw. The applicant seeks relief from the minimum frontage requirement to demolish an existing single family-home and construct a new home. The property is located within the Suburban Residential zoning district.

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

Mr. Lemenager explained there was a fire and a murder suicide which occurred at the existing house, and he would like to demolish the building and build a new home next to the existing building, not at the same location. Mr. Lemenager discussed the plan with Mr. William Klansek, Spencer Building Inspector, and due to the insufficient frontage of the property he would need to request a variance from the ZBA.

Ms. Backus asked if the house is currently occupied, if not, who will be residing there?

Mr. Lemenager said the house is vacant; no one has lived there since the fire. Mr. Lemenager and his family (wife and two children) will be residing there once the new house has completed.

Mr. Collette asked for a total area of the property.

Mr. Lemenager said the property contains approximately 25 acres of land.

Ms. Backus asked for a plot plan of the proposed house, and the total s.f. area.

Mr. Lemenager said the plan submitted displays the location of the proposed house in relation to the existing structures (home, pool and deck, garage, shed, and barn). The proposed house will be a single family-home and contains approximately 2, 000 s.f. He also explained the building plan and plot plan for the house is tentatively expensive. Also due to the uncertainty of the Board’s decision on the request, Mr. Lemenager thought if the variance were to be approved then he will proceed with the plot plan, but if not, he will build the new house with the same original footprint at the existing location.

The Board said in order to grant an approval; a plot plan is required. The Board just cannot and shall not approve any plan without knowing *what it is on the plan*, furthermore, *it is not guaranteed that the Board would grant an approval even if a plot plan has been provided.*

Mr. Lemenager commented it does not make sense to spend money on the plot plan and the Board might not even approve the variance.

Mr. Collette explained the lot is pre-existing legal-nonconforming, with that Mr. Lemenager has the right (the property is under grandfathered status) and is allowed under the Zoning Bylaw to construct a new home with the same footage at the same exact location. However, in this case the lot is nonconforming and with the situation of the right-of-way, Mr. Collette has a concern that the new location of the proposed house may alter the length of the right-of-way. Thus the plot plan is essential.

At this time the Board and Mr. Lemenager had a discussion on the probability of continue the public hearing so that Mr. Lemenager can produce the plot plan and submit to the Board. Since the abutters were presented tonight, Ms. Buck then opened the hearing to the public for any comments or questions at this time.

Charles and Cynthia Prouty of 333 Main Street said they owned property to which Mr. Lemenager has the access (in which it is the right-of-way) from Route 9, and up to the house at 19 Woodchuck Lane. Mr. Lemenager had a full acknowledge of the tragedy occurred at the property. At a matter of fact, Mr. Lemenager bought the property well before it was scheduled for an auction. He had acquired the property under the name of his business, Bay Path Real Estate LLC, not as an individual owner. Ms. Prouty said there has always been traffic up and down the right-of-way at all times.

Ms. Backus said the Board could not address that subject matter.

Mr. Collette referenced to Section 5.3.11 of the Spencer Zoning Bylaw in which Mr. Lemenager requested for a variance; Mr. Lemenager shall demonstrate the “hardship.” Mr. Collette commented that Mr. Lemenager knew of the situation when he did purchase the property – Mr. Lemenager has created his own hardship.

Mr. Lemenager explained that he does not wish to experience the same “karma” of what had happened before at the existing location, and that is the only hardship he has. He does not anticipate that there would be any objection in requesting a variance for the new house to be constructed about 2 feet from the existing house.

Ms. Backus said she understood the situation he is in; however the Board bases the decision on hardship other than the “karma.”

The Board advised Mr. Lemenager to consult people who professionally deal with the variances and the hardship matter. The Board said the hearing shall be continued and this will give Mr. Lemenager time to consult with someone (e.g. attorney). After consultation Mr. Lemenager can do the following: 1) to continue the hearing and shall provide the plot plan with the demonstration of the hardship to the Board, or 2) withdraw the application request.

Mr. Lemenager agreed to have the hearing continue.

Mr. Collette made a motion to continue the hearing to August 9, 2011 at 7:15 p.m. Ms. Kresco seconded the motion and the vote was 4-0 in favor.

Other Business: Member's Resignation

Ms. Crawford announced her resignation as the member of the ZBA tentatively after the next ZBA meeting on August 9, 2011.

With no further discussion, Ms. Kresco made a motion to adjourn the meeting at 8:20 p.m. Ms. Crawford seconded the motion and the vote was 4-0 in favor.

Submitted By:

Bea Meechan, Senior Clerk, ODIS

List of Documents used on July 19, 2011

- Variance application from Richard and Penny Barrell, for the property at 26 Laurel Lane.
- Letter from Mr. Barrell dated 6.30.2011.
- Letter from Ms. Bolafka dated 7.14.2011.
- Memo from Ms. Scarlet dated 6.30.2011.
- Variance application from Daniel Lemenager, for the property at 19 Woodchuck Lane.
- A Site Plan of 19 Woodchuck Lane, prepared by HS&T Group, Inc. plan dated 6.6.2011 for Mr. Lemenager.