



Zoning Board of Appeals – Town of Spencer

Minutes

Zoning Board of Appeals Meeting
Tuesday, January 8, 2013 at 7:15 PM
McCourt Social Hall
Memorial Town Hall

The meeting was called to order at 7:15 p.m.

Zoning Board Members Present: Chair Allan Collette, Dee Kresco, Albert Drexler and Alternate Member Steven Rafer.

Zoning Board Member Absent: None

Staff present: Michelle Buck, Town Planner and Brynn Johnson, ODIS Clerk

A. Special Permit- Owner: Bay Path Real Estate. Applicant: Daniel Lemenager. Project Location: 19 Woodchuck Lane. The applicant is requesting a Special Permit to have a one-bedroom accessory apartment in basement of home. The property is located within the Suburban Residential Zoning District.

Mr. Lemenager passes out an updated plan for the In-Law apartment. The previously submitted plan did not show the square footage of the apartment. He explains he would like to build an In-Law apartment for his parents. The apartment would go in the basement of the house he was previously approved to build. The proposed accessory apartment will be 696 square feet (under the 700 square foot limit). This main house has been approved by the ZBA but not yet built. It was approved by Special Permit on 12/15/2011. (Note: the previous house burned down, property was sold to Mr. Lemenager.)

Mr. Drexler asks if this apartment is above ground. Mr. Lemenager explains it would be ground/walk out level.

Mr. Rafer asks if there are two exits. Mr. Lemenager says yes one walk out level in the kitchen area and one through the main house.

Ms. Kresco notes there is no impact or changes to the outside of the house. Mr. Lemenager agrees.

Mr. Collette asks the public if they have any questions.

Mr. Charles Prouty of 333 Main Street states he owns part of the land on which Mr. Lemenager has a right-of-way to get to his lot at 19 Woodchuck Lane. 19 Woodchuck Lane is a non-conforming lot because it has no road frontage. About year ago the ZBA granted the Special Permit to rebuild a new

house on this property based on the plans submitted at that time. At that time Mr. Lemenager stated it would just be him and his family. Now he wants to have more people living in the house. Mr. Prouty wants to know if the Board would have approved the original house had they known all the traffic it would create on the right-of-way that passes over his property. Mr. Prouty says if he had known how much traffic there would be he would have appealed the original decision.

Mr. Prouty also feels Mr. Lemenager is dumping lawn waste from his business on his property. He had asked the Town to investigate this issue.

Mr. Collette asks for clarification on the right-of-way and past decision made for this property. Ms. Buck explains that when the original plan to construct a single family home came in front of the ZBA in December 2012, it was determined by the Zoning Enforcement Officer that with a Special Permit Mr. Lemenager would be allowed to reconstruct a single-family home to replace the legal pre-existing non-conforming home that was destroyed by the fire. The Special Permit was granted by the ZBA 12/15/2011. This current Special Permit application doesn't change what was already approved by the Board. Under the Zoning By-Law a home with an accessory apartment is still considered a single-family home.

Mr. Drexler asks Mr. Lemenager if there is activity going on that shouldn't be as Mr. Prouty had stated. Mr. Lemenager says he has been on the property cleaning it up since he bought it. He does bring leaves to the site but uses them to make loam. Mr. Prouty says he doesn't think it's just leaves. He reported it to the Conservation Commission but was ignored. Ms. Buck tells him that Conservation did look into this but the activity is not in the wetlands buffer.

Ms. Prouty feels there is a conflict on the original decision it says "That the proposed use will not create undue traffic congestion nor unduly impair pedestrian safety." She states there has been an increase in traffic since Mr. Lemenager bought this property. There are SUV's, box trucks and cars coming and going all the time. The right-of-way goes through their property. Therefore, she feels it puts them at danger when crossing the right-of-way. Also the traffic passes their living room window impacting their privacy. She feels Mr. Lemenager misled them and the Board that's why they did not appeal the original decision. If they had known there was going to be this much traffic they would have appealed.

Mr. Drexler asks Ms. Prouty if she disagrees with the ruling of the Board made on 12/15/2011. She says she does not disagree with everything just parts of it. She does not agree with allowing him to change the footprint of the old house that burned down, saying years ago this would have never been allowed. Mr. Drexler asks her if they were aware of the 20 day appeal period. She says yes they were aware, but they did not appeal because based on the information they were given at the time they thought this would be a single-family home only and it would not impact the neighborhood or traffic. Mr. Prouty adds they were never happy with the ruling at that time but accepted it. He wants to know how they can still call this a single-family home if it has an apartment in it.

Mr. Collette explains that even if they add an in-law apartment in the basement this house is still a single-family home, and if Mr. Lemenager meets all the requirements under the Zoning By-law 4.8.1 he or anyone with a single-family home wanting an in-law accessory apartment will be allowed to have one with a special permit. Anyone is able to do this as long as they meet all the

requirements this is part of the by-laws. Mr. Prouty says her issue isn't with the by-law it's with how Mr. Lemenager is using this property. She wants to know who owns the property because under owner it lists a real estate company, how does a real estate company have an in-law. Mr. Lemenager states Bay Path Real Estate, LLC (the listed owner of the property) is his company he owns the property. He adds he didn't include the in-law apartment in the original plans because at that time his parents were in good health but since then his father's health has declined.

Mr. Collette tells Ms. Prouty as for the right-of-way, the Lemenager's have the right to use it same as the previous owners of the property. Ms. Prouty expresses concern that her water-line runs under this right-of-way and could be crushed by one of the big trucks that come and go now that Lemenager owns the property.

Mr. Prouty wants to know legally how Bay Path Real Estate, LLC claim they have parents when it's not one person that owns the property it's a LLC. Mr. Drexler tells him Bay Path Real Estates and Mr. Lemenager are one and the same and if they have questions about the legality of it they need to get a lawyer to give them a legal answer. It is not the Boards responsibility to give legal opinions. Ms. Prouty feels the Board should get the legal opinion for her.

Ms. Prouty asks Mr. Collette if he is going to go make sure and enforce the rule that only family can live in the house. Mr. Collette tells her that would be the Zoning Enforcement Officer's job.

Mr. Collette asks if anyone has any further question. There are none.

MOTION: Mr. Drexler makes a motion to approve the Special Permit for the Accessory Apartment at 19 Woodchuck Lane. It meets all the requirements under section 4.8.1 of Zoning By-Law. There is no impact on the outside dimensions of the house therefore the proposed use is in harmony with the general purpose and intent of the zoning bylaw. The proposed use will not create undue traffic congestion nor unduly impair pedestrian safety. And 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. Kresco seconds the motion.

VOTE: 3-0 in favor

Mr. Drexler informs Mr. and Ms. Prouty this decision has a 20 day appeal period.

Adjournment: Mr. Collette makes a motion to adjourn. Ms. Kresco seconds the motion. Vote is 4-0 in favor. With no further discussion the meeting is adjourned at 8:30pm

Submitted By: Brynn Johnson, ODIS Junior Clerk *Brynn Johnson*
Approved by the Zoning Board of Appeals on 2/12/2013

List of Documents used on January 8, 2013:

Items mailed to ZBA members prior to meeting:

- Agenda
- Memo from Michelle Buck, Town Planner dated 1/03/2013
- Special Permit Application Plans for in Law Apartment 19 woodchuck Lane
- Original Certificate of Decision on Special Permit to constructed a new house at 19 Woodchuck Lane dated 12/15/2011

Items submitted at meeting

- Updated plan for 19 Woodchuck Lane