



Zoning Board of Appeals – Town of Spencer

Minutes

Zoning Board of Appeals Meeting
Tuesday, March 12, 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

Zoning Board Member Absent: Steven Rafer.

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

Mr. Collette opens the meeting at 7:25pm

1. Special Permit- Owner/Applicants: Peter & Lynn Ann Zukas. Project Location: 89 Smithville Road. The applicant is requesting Special Permits to excavate within the Town's Aquifer Protection District and for Earth Removal. The applicants are seeking special permits under section 3.4.1 (Aquifer Protection District and 4.8.6 (Earth Removal). Jason Dubois, P.E. Burton Engineering Assoc. Inc is present representing the applicant.

Ms. Kresco reads the application for the record.

Mr. Collette notes Zukas was sent a Request for Enforcement Letter from the towns Inspectional Services Office dated 11/28/2012. Ms. Buck gives an update on the enforcement issue. They have worked out a remediation plan. Steven Tyler, Superintendent of U & F, signed off on that and they also got approval from the Conservation Commission. This ZBA application is needed because there is an expansion of the work in this area but the plans do show the remediation work. The Earth Removal permit is needed because they are excavating approximately 1,860 cubic yards of material in excess of what's needed for the remediation. Therefore, they would like the ability to sell this excess material if they choose.

Mr. Drexler says as he understands it a hole was dug to close to groundwater and none of the material has been removed from the property and that remediation is to restore groundcover over the groundwater. He asks if this will be done by moving material from one area to fill another. Ms. Buck says yes, and the Conservation Commission has approved this with an Order of Conditions.

Mr. Collette asks if the entire farm is in the aquifer protection district. Mr. Peter Zukas says no just along the river and extending inward about 3 or 4 hundred feet.

Mr. Dubois says it's his understanding they need a Special Permit because they are working within 4ft of the aquifer and the earth removal is also a separate permit. The plans show the hole near the river that they have been using at the farm for many years. They did test pits around this area and they found the depth of groundwater varied throughout from 5 to 11 feet. In order to fill in the hole without buying material is to take material from the bank that they have been excavating over time and use it to restore the groundcover in and around the hole. This area is flat so they were using it as a staging area, however because this is a flood zone they were told they can no longer use this area for staging. Taking material from the hill will create a new flat area for staging that is out of the flood zone. There will be some extra material when they are done. They want to sell the excess material and know they will have to get permission from the Selectmen to do so.

Jeff and Peter Zukas express frustration with the Town. They have photos of this hole in the 80's. It was there before the water department or the well and now the Town is ordering it to be filled.

Ms. Buck notes that Steven Tyler, Director of Utilities and Facilities, felt it was import to protect this water supply. Mr. Collette asks if there is an official document from Mr. Tyler that says he has agreed to their remediation plan. Ms. Buck says Mr. Tyler was one of the people to review the plans for the Conservation Commission.

Mr. Dubois tells the Board this project has already been approved by the Conservation Commission and they have an Order of Conditions recorded at the registry of deeds. Mr. Buck prints the Order of Conditions for the Board to review.

There is a discussion on the Towns bylaws for gravel pits and earth removal. The Board feels the bond requirement for gravel pits does not apply to this project. Therefore the Board feels they should waive the requirement for a performance bond.

Mr. Collette asks if there are any further questions there are none.

Ms. Kresco makes a motion to close the discussion. Mr. Drexler seconds the motion. Vote 3-0 in favor.

MOTION: Mr. Drexler makes a motion to approve the Special Permit for the remediation work in the Aquifer Protection Area (with related conditions) of the Conservation Commission Order of Conditions MADEP#293-0788 (Recorded at Book 50552, Page 109)\

Findings:

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 found that in accordance with the review and approval (with related conditions) of the Conservation Commission Order of Conditions MADEP#293-0788 (Recorded at Book 50552, Page 109), the applicant has met the following requirements of 3.4.I.4 of the Spencer Zoning Bylaws:

- a) The proposed use must in no way, during construction or thereafter, adversely affect the existing or potential quality of quantity of water that is available in the Aquifer Protection District.
- b) The proposed use must be designed to avoid substantial disturbance of the soils, topography, drainage, vegetation, and other water-related natural characteristics of the site to be developed.
- c) All fill material to be used on the site must be clean and free from hazardous materials, construction debris and any leachable material which is a potential hazard to the ground or surface waters.
- d) Appropriate measures have been taken to ensure that any increase in stormwater runoff is artificially recharged into the aquifer by means of dry wells, infiltration trenches, retention basins and others.

The Board also found that remediation work will have no impact on abutters.

Ms. Kresco seconds the motion.

VOTE: is 3-0 in favor

MOTION: Mr. Drexler makes a motion to approve the application for Special Permit for Earth Removal as shown on plans submitted by Burton Engineering Assoc. Inc.

Findings:

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.

Waiver: The Board waived the requirement for a performance bond (Section 4.8.6.F.1) after finding that such waiver is in the public interest and not inconsistent with the Earth Removal Zoning Bylaw (4.8.6.J).

In addition, the Zoning Board found that in accordance with the review and approval (with related conditions) of the Conservation Commission Order of Conditions MADEP#293-0788 (Recorded at Book 50552, Page 109), the applicant has addressed 1) The health, safety and general welfare of the inhabitants of the Town; 2)

Derogation or detriment to the neighborhood; and 3) Effect on natural resources, including but not limited to the recharge of the water table or condition of the surface water, consistent with Section 4.8.6.E.

Conditions:

1. This special permit is valid for three (3) years, in accordance with Section 4.8.6.H.

Ms. Kresco seconds the motion.

VOTE: 3-0 in Favor

2. Approval of Minutes – February 12, 2013

MOTION: Mr. Drexler makes a motion to approve the minutes for February 12, 2013 Ms. Kresco seconds the motion.

Vote: 3-0 in favor

3. Adjournment: Mr. Collette makes a motion to adjourn. Ms. Kresco seconds the motion. Vote is 3-0 in favor. With no further discussion the meeting is adjourned at 8:00pm

Submitted By: Brynn Johnson, ODIS Junior Clerk_____

Approved by the Zoning Board of Appeals on May 21, 2013

List of Documents used on March 12, 2013:

Items mailed to ZBA members prior to meeting:

- Agenda
- Memo from Michelle Buck, Town Planner dated 3/06/2013
- Enforcement letter sent to Peter Zukas from the Town on 12/21/12
- Certificate of Decision on Special Permit for 89 Cranberry Meadow Road
- 89 Smithville Road Special Permit Application and Letter received 2/12/2013
- Email From Margaret Washburn to Steven Tyler & Michelle Buck dated 1/28/2013

Items submitted to ZBA members at the meeting

- Spencer Conservation Commission Order of Conditions for 89 Smithville Road dated 2/28/2013