



Zoning Board of Appeals – Town of Spencer

Minutes

Zoning Board of Appeals Meeting
Tuesday, June 11, 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 7:35pm

1. **Special Permit-** Applicant: Jillian Gartner. Owner: Francis Gaudette. Location: 60 Chestnut Street. The applicant is requesting a Special Permit in accordance with Table 4.9.3.C (non-conforming use) and Section 4.2.A.8 (mixed use) for use of property for a non-profit organization to raise and train assistance dogs for people with disabilities (kennel). The applicant is also seeking permission to have an employee remain on property overnight to supervise dogs. The property is located within the Village Residential Zoning District.

Ms. Kresco reads the application.

Ms. Gartner explains she runs a non-profit service dog training organization out of her house. She is looking to expand this organization into a larger facility. There are many members of the public in attendance tonight. She notes many of the people in attendance are here to support her and this program. She is looking for daytime use of this property for the daytime programs, but the future plan is to have the dogs live here overnight with an employee on site with the dogs.

Mr. Collette asks her if she is looking for approval today for the dogs to stay overnight. She says yes she would like to have the dogs on site overnight.

Mr. Drexler asks her if she has any kind of plan showing changes to the building inside and out. Ms. Gartner says there will be no changes to the outside of the building except putting up a sign where there is already a sign post. She would like to add a tarp awning over the alley so the dogs won't get wet when outside (the plan shows the alley as the bathroom area for dogs). Also along the alley she will add a plastic shielding to the fence so if the dogs urinate it will not leek into the property next door. Inside the building they will not be making many changes. The dogs will not

be in kennels they will have one large chain link enclosed area set up with crates on the sides. There will be a door installed to get to the alley from inside.

Mr. Drexler asks if she has received approval for the tarp awning yet. He notes she may need to talk to the Fire Chief. She does not have approval for the awning but will apply for any needed permits before installing the awning.

Mr. Drexler asks what amenities are available inside the building for someone staying overnight. Ms. Gartner says the office space can be used as a bedroom with just a pullout cot. There is a bathroom and hookups for kitchen appliances. Mr. Drexler asks if she plans on making this her permanent residence. She says no she is only requesting approval to have someone on site overnight to watch the dogs.

Mr. Collette asks how many dogs will be on site. She says ten dogs over the age over six months and they may have a litter of puppies over the summer. The puppies are only on site until they get placed in foster or permanent homes.

Mr. Collette notes there is no green space at this locations, he asks if this is a problem for the dogs. Ms. Gartner says it's actually better not to have green space when you have a large number of dogs because of the bacteria and parasites that can live in the ground. It's good to have a paved area for the dogs to use the bathroom so it can be sanitized after.

Mr. Collette asks if she has spoken to Animal Control. She says she has and they support this program.

Ms. Kresco asks how many dogs will be on site overnight. Ms. Gartner says counting puppies there could be 15.

Ms. Kresco asks if the dogs bark. Ms. Gartner says the dogs are trained not to bark. If for any reason the dogs start to bark a staff member will always be on site to quiet them.

Mr. Collette says one conditions may state if the dogs are outside they must have someone with them. Ms. Gartner agrees with this. She says they dogs are very special and would never be left alone outside.

Mr. Drexler asks Ms. Buck if this is considered a kennel. Ms. Buck says yes under our zoning bylaw this is classified as a kennel. Mr. Drexler says according to our bylaw this use is not allowed in Village Residential. Ms. Buck yes. Ms. Gartner applied under the section of our bylaw that allows a change because of the nonconforming use. She was told when she applied that is somewhat of stretch. Ms. Buck went over this application with William Klansek the Zoning Enforcement Officer. Mr. Klansek said the only way to apply for it is to ask for a change from the previous nonconforming use to another nonconforming use. Ms. Buck included in her memo to the Board the standards they have to meet to make this change (specifically, "the Board of Appeals shall not allow an existing nonconforming use to be changed to a more intense nonconforming use than exists at the time of application, in terms of density or type of use").

Ms. Gartner says this program is not a dog “kennel” a kennel usually houses dogs for a short period of time while the owners are away thus stressing the dogs and making them bark. This program is very different. So far this year she has had 39 people apply for one of her dogs.

Ms. Buck asks for clarification on the overnight issue. Will there be an overnight employee (a 24 hour business) or will this be a residence? Ms. Gartner says that is up to the Board she will do whichever they approve.

Mr. Collette feels that at this point the only way he can see this working as an extension of the legal nonconforming use is to require someone to be there all the time. If the apartment is in conjunction with the business he can see this being a nonconforming use.

Mr. Drexler asks if there is an issue with dogs barking how she will handle it? Ms. Gartner says these dogs have all had a large amount of training. When she tells them to stop, they stop. If a dog continues to bark she will crate it or redirect its attention. Service dogs are trained to only bark when their owner needs help.

Ms. Gartner has letter of support signed by most of the neighboring residents. She also has letters of support from many people both local and from around the country.

Mr. Drexler feels one of the conditions should be to review this project after a six month trial period.

Ms. Gartner states that according to the IRS these dogs are not considered dogs they are considered durable medical equipment, and her program is a nonprofit to assist people with disabilities. Therefore it should not be classified as a kennel. Ms. Buck says local zoning is different. According to local zoning this is classified as a kennel.

Mr. Drexler feels they should include a six month review period as a condition. This will allow the Board to change their decision after six months if it’s not working out.

Mr. Collette opens this hearing to the public.

Kenneth Parker Jr. of 1 Temple Street states he lives very close to this property and he has no issues with this program. He and his wife know Ms. Gartner personally and feel she is a very responsible young lady. He and his wife are available to help if there were ever an emergency in which Ms. Gartner needed someone to stay with the dogs.

Ms. Gartner reads a letter of support from the property owner Francis Gaudette. He requested this letter be read out loud at the meeting.

“My name is Francis Gaudette. I am the owner of the property located at 60 Chestnut Street Spencer MA. The day I met Jillian Gartner I realized how special she is. Her purpose is to raise and train standard poodles to be service dogs supporting the handicapped person. She is a non-profit organization and truly deserves to be given the necessary permits to fulfill her ambition and career.

The Chestnut Street area of Spencer needs to be re-vitalized again and I cannot think of a better purpose use for this building, but to serve as a training facility and not a kennel to train these wonderful dogs to assist in the lives of handicapped people, which will bring purpose and fulfillment to all ages.

Her mission and her business plan are to give help to those people who deserve her assistance. I truly believe in my heart that the Town of Spencer should support her in every way, so that she can do what is desperately needed in this world today, by assisting and helping our handicapped. Sincerely Franny Gaudette”

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

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

MOTION: Mr. Drexler makes a motion to approve the application for a non-profit special needs dog training program at 60 Chestnut Street.

Findings: After the public hearing duly noticed and held on June 11, 2013, the Spencer Zoning Board of Appeals made the decision to approve the proposed change to the pre-existing, nonconforming use to allow the dog training facility [but not mixed use] for the reasons below:

1. The use is in harmony with the general purpose and intent of this Bylaw and any applicable subsections herein.
2. The proposed use will not create undue traffic congestion nor unduly impair pedestrian safety.
3. 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.

Conditions:

1. There shall be a person in charge (staff or volunteer) providing twenty-four (24) hour coverage whenever any dogs are present in the facility.
2. There shall be a limit of fifteen (15) dogs (of any age) on the premises at any time.
3. Dogs must be visually monitored at all times while in the dog run area alongside the building.
4. The Board’s approval is for six (6) months only and will be subject to review by the Zoning Board of Appeals at that time. The Board reserves the right to deny the special permit if continued use of the facility has a negative impact on the surrounding area.

Ms. Kresco seconds the motion.

VOTE: is 3-0 in favor

Note: The Board set the date for the six month review. The review is scheduled for the December 10th 2013 ZBA meeting.

2. **Special Permit-** Applicant: Transdevelopment Group. Owner: Holston Land Co., Inc. and Seven Mile River Farm Assoc. Location: 22 Podunk Highway. The applicant is requesting a Special Permit to amend an existing Special Permit to expand the automotive distribution operation at the New England Automotive Gateway facility. Phase I of the proposed expansion includes an additional 9.8 acres of paved parking for vehicles in-transit eight additional rail tracks and an area for railroad equipment. Phase II proposes approximately 7.4 acres of additional paving. The property is located within the Industrial Zoning District.

Owner George Bell, Attorney Ned Bartlett and Dan Feeney of Beals & Thomas are here to represent this project.

Mr. Collette opens the hearing.

Dan Feeney explains they would like amend the previously approved special permit for the use of this site to expand the auto distribution operation. The NEAG facility is a facility for the transfer of new automobiles from rail to truck for delivery to automobile dealerships throughout New England. The entire site is approximately 164 acres in both Spencer and East Brookfield of which approximately 80 acres are in Spencer, with access from Route 49. The proposed expansion would be in two phases. Phase 1 will include the addition of eight new rail tracks and a net of 797 new vehicle transfer bays/parking spaces (construction of 1,050 spaces in new area and removal of 253 spaces where rail tracks are proposed to be added), as well as installation of a stormwater management system. Phase II will include construction of 940 new vehicle transfer bays/parking spaces. The full project site (including land in both Spencer and East Brookfield) currently has 4,468 parking spaces; the total number of spaces on site after construction of both Phase I and II will be 6,205.

This project will be in front of the Planning Board next week and the Conservation Commission the week after that. They had a traffic study done by Vanasse & Associates they found the exciting site creates approximately 750 vehicle trips a day. The expansion would add fewer than 200 trips per day. Most of these vehicles take a right onto route 49 and continue toward Sturbridge Route 20 and the Mass Pike. Therefore the traffic impact is minimal in Spencer. There are some minor road improvements to be made such as marking re-painting, signs and stop bars. There are 5 new light poles proposed for the lot. They did a light study and no light will be cast onto abutting properties.

Mr. Collette would like to see the original plans for the parking area with the number of approved parking bays. Mr. Bartlett says they don't have a plan with an approved number a parking spaces it was approved as an area to be paved not individual spaces. Mr. Bell agrees. There is discussion on how they got to the number of vehicle parking bays they have currently.

Mr. Collette asks if the plan they are showing tonight has the exact number of new vehicle parking bays. He would like to avoid any confusion in the future. Mr. Feeney says yes.

Mr. Collette asks if the added light poles could be lowered. The proposed light poles are 100 ft high. Mr. Collette states he has heard complaints about the high light poles all ready in place on this site. Mr. Feeney says they can change to 60 ft high light poles, but there would have to be more of them.

Ms. Buck adds they had a Tech Review Committee meeting with other Town offices last week. There were no major concerns raised at that meeting.

Mr. Collette asks if there are any other comments.

Ms. Deb Silliman of 285 Howe Street East Brookfield asks why this project doesn't have to get approvals in East Brookfield. Mr. Feeney says most all of the new development will be on the Spencer side. Only a small section of track work (less than one acre) will be done in East Brookfield. East Brookfield Zoning does not require them to go back in front of the Board.

Ms. Silliman also expresses concerns that the lights will be to bright. As it is now she doesn't even need a night light on in the house. Mr. Collette says the lights will be 60 ft. She is unhappy with the 60 ft high lights she feels they will still cast light on her property. There is a discussion about the light. NEAG says she may be able to see the light fixture but it's not casting light onto her land. She disagrees.

Mr. Collette asks if there are any other questions. There are none.

Motion: Ms. Kresco makes a motion to close the public hearing. Mr. Drexler seconds the motion.
Vote: 3-0 in favor

MOTION: Ms. Kresco makes a motion to approve the amendment to the special permit for Transdevelopment Group to expand the automotive distribution operation at the New England Automotive Gateway facility.

Findings:

1. The use is in harmony with the general purpose and intent of this Bylaw and any applicable subsections herein.
2. The proposed use will not create undue traffic congestion nor unduly impair pedestrian safety.
3. 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.

Conditions:

1. All light poles in Phase I and Phase II shall be sixty feet (60') in height. [It is understood that the total number of light poles will be increased because of the reduction in light pole height from 100 feet to sixty feet, and that the total number of new parking spaces will be slightly reduced.] The applicant shall submit a revised plan showing this change.

VOTE: 3-0 to approve the Special Permit

3. Adjournment: Mr. Drexler 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 9:45pm

Submitted By: Brynn Johnson, ODIS Junior Clerk

Approved by the Zoning Board of Appeals on 9/11/2013

List of Documents used on June 11, 2013:

Items mailed to ZBA members prior to meeting:

- Agenda
- Memo from Michelle Buck, Town Planner dated 6/05/2013
- Application and plans for New England Auto Gateway
- Letter from Beals and Thomas to Board dated 6/5/2013
- Application, letter, map and plans for American Poodles at Work

Items submitted to ZBA members at the meeting

- Letters of support for Jillian Gartner and A.P.A.W. Packet of letters from various people around the Country.
- Letter of support for A.P.A.W signed by some abutters of 60 Chestnut Street
- A.P.A.W. Non-profit tax status info