



Zoning Board of Appeals – Town of Spencer

Minutes

Zoning Board of Appeals Meeting
Tuesday, September 11, 2013 at 7:15 PM
McCourt Social Hall
Memorial Town Hall

Zoning Board Members Present: Dee Kresco, Albert Drexler and Allan Collette
Zoning Board Member Absent: None
Staff present: Michelle Buck, Town Planner and Brynn Johnson, ODIS Clerk

Mr. Collette opens the meeting at 7:15pm

1. Special Permit- Owner: 24W Inc. Applicant: Jacob Cutler, Barnstorm US Corp and 24W Inc. Location: 24-28 Wall Street. The applicant is requesting a Special Permit in accordance with section 4.9.3 of the Spencer Zoning Bylaw (Nonconforming Use). Barnstorm Cycles currently has a Special Permit for the sale motorcycles only. They would like to add the sale of motor vehicles. The property is located within the Town Center Zoning District.

Douglas Cutler owner of Barnstorm Cycles explains they would like to sell motor vehicles at their location on Wall Street. He feels although bylaw does not allow the sale of cars in the town center zoning district a special permit should be granted because this use would not cause any harm to the neighborhood. He has letters of support from neighbors that could not make it to the meeting. There are also some neighbors present at tonight's meeting to support this business.

Mr. Collette asks how many cars they plan to have on the lot at one time. Mr. Cutler says they would like to be able to keep up to 20 cars on the lot.

Mr. Drexler asks if the cars will be stored inside or outside. Mr. Cutler says the cars would all be outside within the fenced in lot. All work on the cars would be done inside or at an offsite mechanic.

Mr. Collette asks if there are any resident of the housing development present. There are none.

Ms. Kresco states for the record she is employed by Flexcon Company which is one of the abutters and the company's COO Michael Engel is present at tonight's meeting.

Mr. Collette opens the public hearing.

Robert White of 5 Wall Street states they have no issues with Barnstorm selling cars. They have been very good neighbors and keep the area clean.

Mike Engel of 14 Collier Circle and COO of Flexcon says Barnstorm has taken a rundown underutilized property and turn it into a capital investment. The property is well-maintained and

there is no noise. Their presence has made the neighborhood cleaner and safer. In his opinion they are doing all the right things to be a long-term success in the community. He supports the opportunity for them to expand their business.

Selectman John Stevens, 3 Thompson Pond Road, states he is not here as an abutter or a Selectman but as a friend of Jacob Cutler. Mr. Stevens feels the Town has an opportunity to acknowledge a business for doing the right thing, showing other businesses that Spencer is a place you can come and prosper. He thinks they should take advantage of any flexibility in the zoning. When dealing with nonconforming use it's important to consider character and neighborhood commitment and the Cutlers have showed this in many ways.

Mr. Collette says this use is not allowed in the Town Center. However this area is mostly industrial with only a few nearby homes. He wants to be careful not to set a precedence allowing any car dealer to open in the Town Center. He would like to visit the site before he makes a decision.

Ms. Buck asks how much parking do they have onsite? Mr. Cutler says thirty 9'x18' parking spaces.

Mr. Collette asks Mr. Cutler to provide a parking plan and sign plan. Mr. Cutler does not have this tonight but will have it for the next meeting.

The Board also wants to view the site before they make a decision.

MOTION: Mr. Drexler makes a motion to continue this hearing until October 8, 2013. Ms. Kresco seconds the motion.

VOTE: 3-0 in favor.

2. Variance: Owner/Applicant: Joyce A. Andrews. Location: Lot 18, 100 McCormick Road. The applicant is requesting a Variance from Section 5.1 of the Spencer Zoning Bylaw (lot area requirements) this lot is under the minimum 60,000 sq ft lot size requirement for the Rural Residential Zoning District. Lot is 45,062 sq ft.

Mr. Drexler reads the application.

Attorney Phil Stoddard is here to represent the Andrews. Mr. Stoddard explains they are asking for a variance from the 60,000 sq ft lot size in the Rural Residential zoning district. The Andrews owned two lots: one with a house on it (which they recently sold) and an abutting lot with no house on it (which they would like to build on). The lot that they want to build on is 45,000 sq ft. The lot they just sold with the house on it is 3.95 acres. When they sold the larger house lot they were unaware that the smaller building lot was nonconforming. They have been paying taxes on the land as a buildable lot and when the zoning changed for 45,000 to 60,000 they were unaware. If they had known they would have taken 15,000 sq ft from the other lot before they sold it. Mr. Stoddard says the two lots combined have over 4 acres and they only want to build one house. The two lots will only have two houses no matter how big one lot is

verses the other. He has a letter of support from the people who recently purchased the house from the Andrews.

Mr. Drexler asks when the lot was sub-divided. Mr. Stoddard says he thinks it was 1994. Then it was combined and re-subdivided in 2005. The new zoning bylaw started in 2006.

Mr. Collette asks how the Board can grant this without setting precedence. Mr. Stoddard says every case is different but in this case there is plenty of land to build a house. There would only be two houses on the same area.

Mr. Collette says there was a six year grandfathering period after the new zoning changes were made. Mr. Stoddard says they didn't realize that zoning changes had been made, and the Town kept billing them for taxes as a buildable lot. Why have they been paying for a building lot if its nonconforming. He wishes there was a way for the Town to notify people.

Mr. Stoddard says 45,000 sq ft could easily sustain a single-family home. Mr. Collette says he understands but doesn't want to set precedence in which every person with a nonconforming substandard lot is asking for a variance.

Mr. Drexler says he isn't that concerned with setting a precedent. Every application should be looked at individually. He knows this lot of land and feels that a single-family home would fit in well there. The house would not be close to abutters houses.

Mr. Collette asks why they can't buy the 15,000 sq ft from the abutter. Mr. Stoddard says that they tried but they were already in a contract with a lender from out of state. It will be very difficult to get that lender to approve the selling of the land.

Mr. Collette wants to see proof that they asked the abutter for the land and were denied. This would prove a hardship.

Mr. Stoddard says he has dealt with national mortgage chains before and it is very hard. It will take him a while to get an answer from them.

For the next meeting Mr. Collette wants Mr. Stoddard present the Board with copies showing they tried to work with the lender.

Mr. Stoddard says he needs at least two months to allow time to deal with the mortgage company. When dealing with national mortgage lenders it can take months to get an answer.

MOTION: Ms Kresco makes a motion to continue to December 10, 2013. Mr. Drexler seconds the motion. **VOTE:** 3-0 in favor.

3. Special Permit- Owner: Steven Turner, Charlie's Diner. Applicant: Christopher Gagne. Location: 5 Meadow Road. The applicant is requesting a Special Permit in accordance with section 3.4.1.G.1 and 3.4.1.G.2 of the Spencer Zoning Bylaw, for the construction of a Function Hall addition to the existing Charlie's Diner Restaurant with additional parking. This property is located within the Commercial Zoning District as well as an Aquifer Protection District.

Mr. Drexler reads the application

Engineer Chris Gagne explains they are applying for a special permit because they are in the Aquifer Protection District and they are exceeding the 15,000 sq ft threshold for impervious area. There is an existing restaurant with a paved parking lot in the front. The parking lot behind the building is impervious paver blocks which allow water to go through. The front lot is drained through a subsurface filtration system that removes sediment before being discharged toward the wetlands. What they are looking to do is construct a 3,100 sq ft addition on the back of the existing building also expand the paved parking area along Meadow Road.

The proposed addition and associated parking will result in 42.1% impervious coverage. The number of required parking spaces is 54; they have provided 53 spaces. The reduction in spaces is needed to reduce impervious surface. The project also requires a special permit to allow a reduction in the required number of parking spaces

Mr. Gagne says in the application the addition is for a function hall. However it's not a function hall it's going to be an expansion of the restaurant seating.

Mr. Gagne says they have met all of the Conservation Commission's concerns and should receive approval from them at their next meeting. Also the Planning Boards had a peer review done by Graves Engineering and all their concerns have been met.

Mr. Collette asks the public if they have any questions or comments. There are none.

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

MOTION: Mr. Drexler makes a motion to approve the Special Permit. Finding that the proposed use is in harmony with the general purpose and intent of the zoning bylaw and any applicable subsections herein. That the proposed use will not create undue traffic congestion nor unduly impair pedestrian safety; 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.

The Board also finds the project to meet the requirements of Section 3.4.1.I.4 (Aquifer Protection District special permit requirements). The applicant has addressed the comments of the peer review Engineer, Graves Engineering.

The Board also finds that with respect to the reduction in the number of parking spaces, the project meets the requirements of Section 6.1.4

Conditions:

1. The Applicant shall meet all requirements of the Planning Board and Conservation Commission prior to commencement of construction.

Ms. Kresco seconds the motion.

VOTE: 3-0 in favor.

4. Reorganization of Board:

Mr. Drexler nominates Ms. Kresco for Chair. Mr. Collette seconds. Vote 3-0 in favor
Mr. Collette nominates Mr. Drexler for Clerk. Ms. Kresco seconds. Vote 3-0 in favor
Mr. Drexler nominates Mr. Collette as Member. Ms. Kresco seconds. Vote 3-0 in favor.

Board is reorganized:

Chair: Dee Kresco

Clerk: Bert Drexler

Member: Allan Collette

Mr. Drexler notes he will be out November 12th so the meeting will have to be canceled.

5. Approval of Minutes: May 13, 2013; May 21, 2013; June 11, 2013 and August 13, 2013.

May 13, 2013- Collette/Kresco: Passed

May 21, 2013- Collette/Drexler: Passed

June 11, 2013 - Collette/Drexler: Passed

August 13, 2013- Collette/Kresco: Passed

6. Adjournment: Ms. Kresco makes a motion to adjourn. Mr. Collette seconds the motion. Vote is 3-0 in favor.
With no further discussion the meeting is adjourned at 8:50pm

Submitted By: Brynn Johnson, ODIS Junior Clerk

Approved by the Zoning Board of Appeals on 12/10/13

List of Documents used on September 11, 2013:

Items mailed to ZBA members prior to meeting:

- Agenda
- Memo from Michelle Buck, Town Planner dated 9/05/2013
- Application and Plan for 100 McCormick Road
- Minutes form 5/13/2013; 5/21/2013; 6/11/2013 & 8/13/2013
- Charlie's Diner Application and Plans
- Barnstorm Cycles Application and Plans

Items submitted to ZBA members at the meeting:

- Letters of support for the Cutlers and Barnstorm Cycles
- Letters of support for the Andrews