



Zoning Board of Appeals – Town of Spencer

Minutes

Zoning Board of Appeals Meeting
Tuesday, August 9, 2016 at 7:15 PM
McCourt Social Hall
Memorial Town Hall

Zoning Board Members Present: Allan Collette, Mary Stolarczyk, and Alan Stolarczyk

Zoning Board Member Absent: None

Staff Present: Monica Santerre-Gervais, Clerk & Larry Smith, Town Planner

Staff Absent: None

1. Open Meeting – Mr. Collette opens the meeting at 7:15pm, with an introduction of the new member Alan Stolarczyk.

2. Variance – Applicant/Owner: Deborah Sue Sullum, Trustee of the Lake Whittemore Spencer Realty Trust Location: Rustic Lane, Spencer Assessor’s Map U17-22. The applicant is requesting a variance in order to construct a modular home on a non-conforming lot which lacks the required minimum lot area and frontage, under Spencer Zoning Bylaw Sections 7.3 and 5.1. The property is located within the Suburban Residential zoning district.

Ms. Stolarczyk read aloud the application details.

Damien Berthiaume, 4 Elm St. North Brookfield MA, attorney representing the applicant, Deborah Sue Sullum, was present for the meeting. Mr. Berthiaume explained that he was present to represent Carl Dorman, Ms. Sullum’s brother in order to receive a variance to construct a modular home on a lot that doesn’t meet the Spencer, MA Zoning Bylaw standards for lot area and frontage. Mr. Berthiaume explained that the lot has been held in separate ownership since 1946 and that in the 1960’s or 1970’s the home that was on the lot burnt down. In addition, Mr. Berthiaume raised points about how the property should be considered Lake Residential but doesn’t, that it is a vacant parcel, and homes close by lack the required minimum lot size and frontage requirements. Also, Mr. Berthiaume explained that if the original home did not burn down then it would be considered a grandfathered lot. The lot currently has an approved septic design by Gobi.

Mr. Collette asked how the applicant meets the requirements to satisfy approval for the variance. Mr. Berthiaume explained that according to section 10 he believes his client would meet the shape portions of the requirements because of the large parcel that surrounds the parcel is different and that it presents a hardship as the land would be useless if the applicant couldn’t construct a home on the parcel. Mr. Smith explained that they would need to meet the first statutory criteria of requirements in order to receive a variance before you even need to proceed

to the last two. Mr. Berthiaume felt they met number one by being unique with separate ownerships. Mr. Smith pointed out that simply the lack of frontage or the required lot size does not represent a unique physical characteristic qualifying for a Variance. He pointed out that if that were the case, then every lot in town that was too small or too narrow would qualify for one. He further went on to explain a situation they recently came up where the ZBA gave a variance to an applicant for too small a lot to build a house on, and then they came back to revise the Variance because they wanted to build a larger house, and then they came back for third time for another Variance because, since the house was so large, they couldn't fit a shed on the property so now they wanted to locate it on another lot that was too small and didn't meet the setback requirements, none of which met the statutory requirements for a Variance. Mr. Smith asked the status of the road on Rustic Lane and Mr. Berthiaume answered it's a private way that is maintained by the town. Mr. Berthiaume agreed that size alone and/or lack of frontage does not qualify for a variance, however he argued that having the lot become useless would become a hardship. Mr. Smith pointed out that the hardship was self-created as they did have the ability to replace a prior structure on the parcel that burned down in the 1960's but failed to do so within the required timelines. Mr. Berthiaume conceded that technically the parcel probably doesn't comply with the requirements for a Variance, but he was requesting the Board for relief.

The meeting was opened to the public but there were no comments.

Mr. Collette explained that the lot does not meet frontage because of the lot that surrounds them, however, conditions are put in place for a reason and the arguments presented do not meet the requirements for the variance.

MOTION: Mr. Collette motioned to close the hearing

SECOND: Ms. Stolarczyk

DISCUSSION: Mr. Berthiaume explained the application should be approved with conditions. Mr. Smith talked about court cases and why meeting the requirements are needed.

VOTE: 3-0

MOTION: Mr. Collette motioned to deny the application for Deborah Sue Sullum, under the zoning section 7.3 and 5.1. While the lot was too small and didn't comply with the zoning requirements for that district, it also didn't meet the statutory requirements for a Variance under the town's Zoning Bylaws or M.G.L. Chapter 40A, Section 10. That there were no circumstances relating to either the soil conditions, the shape or the topography of the land especially affecting such land or structures but not affecting generally the zoning district in which it is located. Literal enforcement of the statutory provisions of this by-law would not involve substantial hardship, financial or otherwise to the petitioner or appellant because this was not a legal building lot, and the applicant conceded that any grandfathered protection for a prior structure on the non-conforming parcel (M.G.L. Chapter 40A, Section 6) that burned down in the 1960's had been surrendered by not replacing it in time.

SECOND: Ms. Stolarczyk

DISCUSSION: None

VOTE: 3-0

3. Special Permit Extension: Applicant: Spencer Renewable Energy Owner: John Wentworth & David Parent. Location: 103 N. Spencer Road, Spencer Assessor's Map R49/1/1. The applicant is requesting a four (4) year extension (to 8/17/20) of their special permit to construct a 2-megawatt solar farm, originally approved July 13th, 2010, under Spencer Zoning Bylaw Section 4.3.4 (Major Utility). The property is located within the Rural Residential zoning district.

Mr. Collette read aloud the application details and opened the hearing at 7:45 pm.

Mr. Smith explained the applicant, David Parent, was on vacation and the co-applicant, James Wentworth, passed away. In addition, Mr. Smith explained that the Planning Board approved an extension for two years because they were uncomfortable allowing a four year extension, and that the extension had conditions that the applicant must adhere to the newly adopted driveway and stormwater regulations. Mr. Collette asked if someone moved next to the property in regards to screening, and didn't want to do 4 year extension.

Open hearing to the public.

Mike Dow, 97 North Spencer Road, explained that he abuts the property in the back. Mr. Dow explained that the applicant has had for six years and has done nothing. The property is in an agricultural area and the solar field should not be there. Mr. Dow had many reasons for why he felt the solar field should not be extended such as; the tax relief, the trees planted for screening are too small, the decommissioning after the 20-25 year period, panels will be faced at his property, and the sound and glare from panels will spook his horses/farm animals.

Mr. Collette talked about other abutters coming in down the road and may need to revisit the design. Mr. Smith said the meeting can be continued so that the applicant can be present to address the concerns raised and the Zoning Board Members agreed.

MOTION: Mr. Collette motioned to continue the meeting to the next meeting scheduled for 9/13/16 with requirements that the applicant be present.

SECOND: Ms. Stolarczyk

DISCUSSION: None

VOTE: 3-0

4. Approval of Minutes: Sunset/Holmes Solar Facility – Applicant: ZPT - The applicant is requesting a reconsideration of a condition of their Special Permit specifying the preferred truck route.

Mr. Smith explained that one of the conditions for the preferred route on Dale Street needs to be changed because Dale Street is a private road and that the Highway Superintendent, Steven Tyler, should choose or approve routes.

MOTION: Ms. Stolarczyk motioned that the Planning Board is okay with an alternate route relative to Sunset/Holmes truck route if the preferred route does not work out subject to Steven

Tyler's approval.

SECOND: Mr. Collette

DISCUSSION: None

VOTE: 3-0

5. Approval of Minutes:

- 7/12/16

MOTION: Ms. Stolarczyk motioned to approve the minutes as written

SECOND: Mr. Collette

DISCUSSION: None

VOTE: 2-0

6. Adjournment: with no further discussion the meeting is adjourned

Submitted By: Monica Santerre-Gervais, ODIS Clerk
Approved by the Zoning Board of Appeals on 9/13/2016

List of Documents used on August 9, 2016:

ZBA mailing/email

Items mailed to ZBA members prior to meeting:

- Agenda
- Memo to the ZBA dated 7/26/2016, submitted by Larry Smith
- Minutes from 7/12/2016
- Application and plans for Variance on Rustic Lane
- Letter for request for extension for 103 N. Spencer Road Solar Field

Items submitted to ZBA members at the meeting:

- None