

Zoning Board of Appeals– Town of Spencer



Minutes

Zoning Board of Appeals

Tuesday, March 24, 2009

McCourt Social Hall

Memorial Town Hall

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

Zoning Board of Appeals Members Present: Chairman Joanne Backus, Allan Collette (Clerk), Albert Drexler (Alternate) and Dee Kresco (Atternate).

Zoning Board Member Absent: Pamela Crawford

Staff present: Adam Gaudette, ODIS Director, and Bea Meechan, Senior Clerk, ODIS

New Business:

A. Variance – Hardcore Development, Inc., 10 Dale Street, Spencer. Ms. Backus opened the public hearing at 7:19 p.m. The Clerk then read the brief. The application was submitted by Kristian Hanson, who proposes to construct a farmer porch encroaching the front setback of a single family residence. The applicant is requesting a variance under Section 4.9.2.A.2 of the Spencer Zoning Bylaw. The property is located in the Village Residential District. Ms. Backus made a request to amend the Section from 4.9.2.A.2 to 4.9.2.A.3.

Ms. Backus asked the applicant for a presentation on the application.

Kristian Hanson of 8 Briarcliff Lane, Paxton, said the house is a pre-existing nonconforming structure and wishes to construct a porch further into front setback area. Mr. Hanson thought that the addition (a farmer porch) will improve the external appearance and the neighborhood aesthetics. He then demonstrated the plan, the location of the proposed porch and its dimensions in relation to the front setback to the Board.

The following were questions and comments from the Board:

Is there a wetland in the back of the property?

Mr. Hanson said it had appeared to be some surface water (in the winter time) on some part of the abutters property, which is adjoined to the back of his property. The abutter since then filled the wet area and now it is a playground, thus the area is currently dry. Mr. Hanson's property is situated on a higher level than the abutter.

When was the house built originally, in what year?

Mr. Hanson replied that the footprint dated to approximately 1956. The next owner bought it in 2003 and started to do a renovation - expanding it to a colonial style, however the renovations have not been completed yet; the Bank foreclosed on the property. Mr. Hanson bought the property from foreclosure.

Does Mr. Hanson know if the building permit was obtained for the renovation process?

Mr. Hanson said that he doesn't know for certain. He noticed that several items weren't done properly in accordance to the Building and Code.

What is the distance from the paved way to the front (of the property) line, and where is the location of the parking area?

Mr. Hanson stated that according to the deed the distance from the front (of the property) line to the paved way is 15 feet. Currently, the distance from the right of way to the nearest-northeasterly-corner of the building is approximately 7.95 feet. Mr. Hanson then presented an-up-to-date picture of the project and also indicated the location of the parking (on the southerly of the property) to the Board.

The Board asked if the square-footage is as the same as original in 1956.

Mr. Hanson said that the foundation is the original as of 1956. There had been an alteration done to the structure prior to his ownership.

Mr. Collette gave a brief history of Dale Street and its area. He explained that the areas on both sides of Dale Street are wetlands and when the right of way was constructed, it was placed on the higher level of the area. All houses in the area were built close to the street, on a higher level, which was logical. The Town had widened the street about 3-4 years ago, and *as a result, part of land along the front line of properties were combined and incorporated into the right of way of Dale Street.* Mr. Collette commented had the applicant constructed a proposed porch prior to the street being widened; the setback wouldn't have been an issue. He also said the topography of the land creates a hardship to the applicant. Mr. Collette would like the Board take this under consideration.

Michael Angers of 11 Hilltop Circle, Woburn, is the applicant's business partner. He concurred that the right of way has taken away part of the land along the front line. The actual pavement is much closer to house than before. The property certainly lost some of its front setback from the street.

At this time the Board had a discussion on the structure and the property. It is a pre-existing nonconforming structure. The Board still had to determine the hardship in order to grant a variance. They agreed that in this case the topography of the land is considered a hardship.

For the record, there were no abutters present for this hearing.

Ms. Backus announced the members in voting are; Allan Collette, Albert Drexler and herself. Mr. Drexler then made a motion to close the public hearing. Mr. Collette seconded the motion and the vote was 3-0 in favor.

Mr. Collette made a motion to approve the Variance for Hardcore Development to alter pre-existing, non-conforming single-family structure at 10 Dale Street. The proposed alteration increases the front setback nonconformity from 7.95 feet to 2.95 feet. Mr. Drexler seconded the motion and **the voting was 3-0**. The following were included in the motion:

Findings: The Board determined that the findings had met the requirement in M.G.L., Chapter 40 A., Section 11 and Section 7.3 of the Spencer Zoning Bylaws:

1. Owing to circumstances relating to the soil conditions, shape or topography of land or structures, and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this by-law would involve substantial hardship, financial or otherwise to the petitioner or appellant.
2. That desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this by-law.

In addition, the Board made the following finding in accordance with Section 4.9.2.A.3 of the Spencer Zoning Bylaws:

1. That the proposed extension or alteration is not substantially more detrimental to the neighborhood than the existing nonconforming structure.

The approval is granted with the following **conditions**:

1. The plan that was submitted for the design is herein incorporated as part of this decision. Any change requires re-submittal to the Board.
2. Construction activities shall not commence until all required Approvals and permits are obtained.

Mr. Gaudette explained that once the decision has been filed with the Town Clerk, staff from ODIS will mail the copy of the decision along with instructions to the applicant, and also to all abutters.

Approval of Minutes: None

Old Business: None

Other Business: None

Ms. Drexler made a motion to adjourn the meeting at 7:45 p.m. Mr. Collette seconded the motion and the vote was 4-0 in favor.

Submitted By:

Bea Meechan, Senior Clerk, ODIS