

Zoning Board of Appeals – Town of Spencer

Minutes



Regular Zoning Board Meeting
Tuesday, May 25, 2010 at 7:15 PM
McCourt Social Hall
Memorial Town Hall

The meeting was called to order at 7:30 p.m.

Zoning Board Members Present: Chairman Allan Collette, Joanne Backus, and Delores Kresco, alternate.

Zoning Board Members Absent: Clerk Pamela Crawford, and Albert Drexler, alternate.

Staff present: William Scanlan, AICP Planning Consultant and Bea Meechan, Senior Clerk ODIS.

In the absent of Clerk Pamela Crawford, Chair Allan Collette appointed Joanne Backus as acting Clerk.

Old Business:

A. Continued Public Hearing - Special Permit, Olde Sibley Farm Realty Partners, LLC, Route 9 and Greenville Street, Spencer (Assessor's Maps R34/8 and R26/1). Mr. Collette opened the hearing at 7:30 p.m. The previous public hearing was held on March 23, 2010. The Board received a notification letter from Spencer Town Treasurer/Collector on that evening which stated that Olde Sibley Farm still owes taxes on properties identified on Assessor's Maps as R26/1 and R33/8, for fiscal 2009, which is in Tax Title. Fiscal 2010, 1st, 2nd, and 3rd quarters are already delinquent. The applicant requested the hearing to be continued to a later date in order to resolve the financial situation with the Spencer Town Treasurer and with its own financing institution. The hearing was scheduled to continue to May 25, 2010.

Note: Only two members attending tonight's hearing were at the previous meeting (3/23/2010). Ms. Backus did not attend that meeting. Thus, Ms. Backus was required to sign the Adjudicatory Hearings Form at the Town Clerk in order to be able to participate in the voting for this continued public hearing.

For the record, Ms. Backus had read the minutes of 3/23/2010 and had signed the Adjudicatory Hearings Form at the Town Clerk's office prior to the public hearing.

A memo from Spencer Town Treasurer/Collector dated 5/25/2010 was submitted to the Board stating that the delinquent taxes for the above parcels (Maps R26/1 and R33/8) have been paid.

Mr. Collette asked if the representative had any additional information to present to the Board.

Mr. Chip Webster, one of the partners of Old Sibley Farm, said that the ownership of Olde Sibley Farm since then has changed. At the present time, Digital Federal Credit Union is the current owner. All partners are still involved and participating in the areas of consulting and developing the project. The project should be progressing in a more appropriate and timely fashion.

Ms. Backus asked whether the plan is still the same as the original plan (2004). In addition, is there any consideration of subdividing the property and selling part of it?

Mr. Webster said there is no plan for any modifications. There could be a minor change to the plan's layout to make it more of a cluster development. Total number of units will remain the same as the original approved plan. Mr. Webster said that he isn't aware of any plan for re-subdividing the property.

If the Board approved the extension of the special permit, Mr. Scanlan asked when the applicant will exercise it.

Mr. Webster responded that the acquisition of the new ownership occurred about a month ago, The project's timeline has yet to be determined.

At this time the Board and Mr. Scanlan discussed whether the special permit should be granted/issued to the current owner, Digital Federal Credit Union or the old owner, Olde Sibley Farm. All members agreed that the name of the current owner should be on the decision. *The Board instructed that any modification to the plan required a submittal of that plan to the Zoning Board of Appeals.*

Mr. Collette opened the hearing for any questions and comments from the public. *Note: There were no abutters present at this hearing.*

Ms. Backus made a motion to close the public hearing at 7:55 p.m. Ms. Kresco seconded the motion and the vote was 3-0 in favor. Mr. Collette announced the members sitting in the voting were Ms. Backus, Ms. Kresco, and himself.

Mr. Backus made a motion to grant a two year extension of the special permit to Digital Federal Credit Union with all conditions of the 2004 Original Approval and the Extension Approval of the April 8, 2008 remain in effect. Ms. Kresco seconded the motion and the vote was 3-0 in favor. The following was included in the motion:

Finding: The Board determined that the proposed use met the requirements for a special permit in M.G.L. Chapter 40A, Section 9 and Sections 8.1 & 11.1 of the 1985 Spencer Zoning Bylaw:

1. That the proposed use is in harmony with the general purpose and intent of the zoning bylaw, because it is for a residential use in a residential district

and the overall density of the development is consistent with the R-45 zoning district; and

2. that the proposed use will not create undue traffic congestion since the increase in vehicular trips will be mitigated through requirements imposed by the Planning Board in the Definitive Subdivision Plan approval; and
3. that the proposed use will not impair the integrity or character of the district or adjoining zones, given that the vast majority of units granted in this decision will not be visible from Greenville Street due to their proximity within the overall development, and furthermore it would not be detrimental to the health, safety, or welfare, given that the proposed project takes into consideration the surrounding land uses and transportation system as well as the environmental constraints on the property itself; and
4. that the site plan shows open/landscaped space along each lot line that will not be used for parking or built on or paved; and
5. that the manner of sewage disposal has been approved by the Board of Health; and
6. that all off-street parking is provided and is internal to the structures (garages for each unit/building); and furthermore
7. that the Zoning Board of Appeals had granted, on December 14, 2004, a special permit for the construction of 304 multi-family units on 62 lots in accordance with the definitive subdivision plan submitted with that application (which has since been approved and endorsed by the Planning Board with only minor construction revisions), and that said special permit was duly recorded at the Worcester District Registry of Deeds on October 20, 2006 upon disposition of an appeal brought by an abutter.

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

New Business:

A. Special Permit – Owner: David DeFosse, Applicant: John Grenier, J.M. Grenier Associates, Inc., for Delmont Realty LLC, for property located at 2 Bixby Road, Spencer (Assessor’s Map U09/19). Mr. Collette opened the hearing at 7:55 p.m. Clerk Backus read the brief. The applicant is requesting a special permit in accordance with Sections 4.2.G.6 and 7.2 of the Spencer Zoning Bylaws to allow manufacturing, assembling, and packaging of goods in an

existing building within the Industrial Zoning District. Ms. Backus also read the letter from Mr. Grenier attached with the application (letter dated 4/20/2010).

Mr. Collette asked the applicant for a presentation on the application.

Mr. Doug Roesch, owner of Delmont Realty, LLC, said that Commonwealth Moving & Storage had occupied the existing property, at 2 Bixby Road (formerly of 64 Main Street), for the past 15 years. That business now is closed. Mr. Roesch is considering a manufacturing business at the existing building. There are more parking spaces (13) available than is required (10 parking spaces) in the current Zoning Bylaw.

The following were questions from the Board to the applicant:

- What type of products will be manufactured?
- Will there be any changes to the physical exterior of the building and the existing site?
- What is the volume of noise associated with the operation?
- How many employees will work for the business?

Mr. Roesch said that the business is manufacturing of small precision metal parts required in hip replacement surgery. It will also produce small medical parts for Johnson & Johnson, and small metal parts (razor blades) for the Gillette Company. There will be an installation of 2 air conditioning cases approximately 4 square feet onto the building. The existing sign will also change. The site will remain the same. All operations will be within the building. Thus, noise from the operation will be minimal to none. At the beginning he will employ 4-5 employees and there could be more pending on the growth of the business.

Mr. Scanlan said the original site plan, dated 2002, was submitted with the application. There is no change to the site. The plan was also checked by Mr. Robert McNeil, Superintendent of the Department of Utilities & Facilities for any existing difficulties with traffic, drainage, lighting, etc.

Correspondence from Mr. McNeil stated that there has been no problem with traffic. However there seems to be some issue with the drainage (water overflow on driveway and parking lot). He then referred the plan to Ms. Ginny Scarlet, Spencer Wetland/Soil Specialist.

A memo from Ms. Scarlet, dated 5/18/10, stated that a request for Determination of Applicability from the applicant was submitted to the Conservation Commission (ConCom) in April, 2010. The Commission issued a Negative Determination based on the site plan dated 2003. *She also noted that the plan submitted to the ZBA is not the same plan submitted to the ConCom.*

Mr. Scanlan asked the applicant for an explanation on the Negative Determination. In addition, he asked whether the applicant is required to submit a revised plan to the ConCom again.

Mr. Roesch stated that he is interested in purchasing the property. Mr. DeFosse, the owner, did repair work to the detention pond and submitted a request for Determination of Applicability to ConCom. Mr. Roesch said he has no intention of changing anything on the existing site.

At this time, Mr. Nelson Ezen, applicant's attorney, said that he checked the record and didn't find the Order of Conditions. Mr. Roesch as a potential buyer doesn't know what is involved and doesn't want to participate in doing anything pertaining to the Order of Condition issued by the ConCom to Mr. DeFosse.

Ms. Scarlet's memo stated that there is a Child Care facility located opposite the existing property; thus, there is a safety concern due to the renovation of the catch basin which created steeper side walls and greater depth to the detention pond. The ZBA thought this is what the ConCom wanted Mr. DeFosse to address at its hearing (Determination of Applicability). The members expressed that they would like clarification from Ms. Scarlet.

The Board opened the hearing to the public for any comments or questions at this time.

Mr. Clifford Dyer of 3 Bixby Road said that his property is located across from 2 Bixby Road. There are many things that haven't been fully completed since Mr. DeFosse took ownership of the property - the landscaping, the parking lot, the drainage, and the detention pond. He couldn't open up the windows due to the dust from the unpaved parking lot. His family operates a Child Care facility on the premises and has lost some clients due to the dust. He said that the parking lot should be paved.

Mr. Roesch explained that there are some areas paved with asphalt. He then pointed out all asphalt areas on the plan.

Mr. William Gaudette, Mr. Dyer's son-in-law, said that the detention pond is at least 20' by 30' and about 10 feet deep, and there is no fence around it. There is a safety concern that anyone could fall and get hurt especially with little children from the Child Care facility. From the detention pond there is a trench that goes behind the property to the Spencer Rescue. There is also drainage that goes under the road. Mr. Gaudette said that he simply wants all the above issues resolved prior to the new ownership.

Mr. Scanlan noted that on the plan it indicated an open swale line to convey the overflow water from the detention pond to a larger swale that is located on Spencer Rescue's driveway.

Mr. Roesch responded that once he becomes the owner of the property, he will put a fence around the detention pond for safety purposes.

At this point, all members agreed that they should conduct a site visit in order to get a better understanding of everything. The Board announced that members will do site visits individually. The hearing will be continued to June 8, 2010.

Ms. Backus made a motion to continue the hearing to June 8, 2010 at 7:15 p.m. Ms. Kresco seconded the motion and the vote was 3-0 in favor.

Informal Discussion:

A. Gary and Denise Jacobs – 183 South Spencer Road. Mr. Scanlan explained that the Jacobs have plans to construct a farmer's porch on the front of their home at 183 South Spencer Road. They contacted the Building Inspector, William Klansek, for any potential problems since it is a non-conforming property. Mr. Klansek and Mr. Scanlan reviewed the dimension of the existing home and discovered that the home encroaches into the front setback. Under Section 4.9.2.A.3 of the Spencer Zoning Bylaw, a non-conforming single family home may be extended or altered to increase or intensify the existing nonconformity only upon issuance of a variance by the ZBA.

Mr. Jacobs said that he would like the Board's opinion before he submits the building application to ODIS.

The members reviewed two other sections of the Bylaws, subsection J in Section 5.1, and Section 5.2.5. They then directed Mr. Scanlan to ask Mr. Klansek's opinion and report back to them at a later date.

Mr. Scanlan said he will send a memo to Mr. Klansek. He will also let the Jacobs know of the outcome.

Approval of Minutes:

Ms. Backus made a motion to approve the minutes for April 13, 2010. Mr. Collette seconded the motion and the vote was 2-0 in favor with Ms. Kresco abstaining.

Other Discussion: None

Ms. Kresco made a motion to adjourn the meeting at 8:45 p.m. Ms. Backus seconded the motion and the vote was 3-0 in favor.

Submitted By:

Bea Meechan, Senior Clerk, ODIS