

Zoning Board of Appeals – Town of Spencer

Minutes



Regular Zoning Board Meeting
Tuesday, September 21, 2010 at 7:15 PM
McCourt Social Hall
Memorial Town Hall

The meeting was called to order at 7:20 p.m.

Zoning Board Members Present: Chairwoman Pamela Crawford, Clerk Joanne Backus, Allan Collette, and Delores Kresco, alternate.

Zoning Board Member Absent: None.

Staff present: Bea Meechan, Senior Clerk ODIS.

New Business:

A. Special Permit – Denise and Gary Jacobs, 183 South Spencer Road, Spencer (Assessor’s Map R01/1). Ms. Crawford opened the hearing at 7:25 pm. The Clerk read the brief. The applicants request a special permit in accordance with Section 5.2.6 (Detached Accessory Structures) of the Spencer Zoning Bylaw to construct a farmer’s porch within the front setback. The property is located within the Rural Residential Zoning District.

The following were questions and comments from the Board of the applicants:

There is an existing stone wall situated in the front of the property. The Board asked where the property’s front boundary line is from the public-right-away (South Spencer Road). In addition, what is the distance from the stone wall to the South Spencer Road?

Mr. Jacobs said the front boundary line is right where the stone wall is, and the distance from the stone wall to the South Spencer Road is approximately 4 feet.

Ms. Backus asked how the applicant arrived at the conclusion that the front property line is where the stone wall is located.

Mr. Jacobs addressed that it was indicated on the original plot plan when the property was transferred to him, from the Spencer Building Inspector, and he also had had a survey done by a professional land surveyor.

What is the size measurement of the proposed porch?

Mr. Jacobs replied that the proposed porch will have 6 feet in width, and 40 feet long attached to the front of the existing house. Mr. Jacobs provided photo pictures demonstrating the distance from the house to the stone wall and to the public-right-away.

At this time the Board reviewed the pictures with the applicants. The distance at the end of the house, from the south direction, is 44.7 feet as in indicated on the plan submitted by the applicants. It is about 6 feet from the stone wall to the public-right-away. Therefore, the existing front setback, from the house to the road, is about 50.7 feet. Under the current Bylaws, the front setback for the rural residential zoning is 55 feet minimum.

The Board commented that under the circumstances the application should have been for a variance as opposed to a special permit.

Mr. Jacobs explained that in the beginning of May this year, he first approached Mr. William Klasek, the Building Inspector, about the building permit for the proposed plan. The property has an existing house, and to construct a porch encroachment to the front setback, the applicants will need to obtain an approval - either by a variance or a special permit - from the Zoning Board of Appeals. He then sought advice from the Board in regards to the applicable application, and the relevant section of the bylaw. The Board rendered advice and directed Mr. William Scanlan, the Town Planner at the time, to check with the Building Inspector.

Mr. Jacobs said that according to the letter (6.1.10) from Mr. Scanlan, stating that based on the determination from the Building Inspector, Section 5.2.6 is the appropriate means for the applicants to obtain relief. This Section allows the Zoning Board of Appeals to grant a special permit to extend an accessory structure that creates a nonconformity with regards to setback.

The Board made a comment that this matter should have been dealt with earlier by the Building Inspector, and if it had, the applicants could have had more time to enjoy the porch -during the summer time. Now the fall season has started, the applicants will have only a few months of the nice weather to use the porch.

Note: There were no abutters present for this hearing.

Ms. Crawford announced that the members sitting in the voting were Allan Collette, Joanne Backus, and Delores Kresco.

With no further questions and comments from the Board, Ms. Backus made a motion to close the discussion at 7:35 pm. Mr. Collette seconded the motion and the vote was 3-0 in favor.

Ms. Backus made a motion to grant a special permit for Denise and Gary Jacobs to construct a farmer's porch within the front setback (attached to an existing single-family residential dwelling) at 183 South Spencer Road. Ms. Kresco seconded the motion and the vote was 3-0 in favor. The following was included in the motion:

Findings: The Board determined that the proposed use met the requirements for

a special permit in M.G.L. 40A, Section 9 and Section 7.2 of the Spencer Zoning Bylaw:

1. That the proposed use is in harmony with the general purpose and intent of the Zoning Bylaw.
2. That the proposed use will not create undue traffic congestion nor unduly impair pedestrian safety.
3. 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.

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.

B. Special Permit – James Cole, 25 Lake Avenue, Spencer (Assessor’s Map U27/32).
Ms. Crawford opened the hearing at 7:40 pm. The Clerk read the brief. The applicant is requesting a special permit in accordance with Section 5.2.6 (Detached Accessory Structure) of the Spencer Zoning Bylaw to construct a 10 feet x 16 feet shed (which is 3 feet and 1 inch from the side setback) on the existing residential lot. The property is located within the Lake Residential Zoning District.

The Board reviewed the plan at this time. The following were questions, and comments from the Board of the applicant:

Where is the location of the septic system on the property?

Mr. Cole explained that the leachfield is located in the driveway, next to the underground septic system which is in an adjacent position to the other side of property line. He pointed out this location on the plan to the Board. To construct the shed within 10 feet of the setback requirement, on both sides, the shed would be in the middle of the driveway.

Where is the driveway in relation to the house – to the right or left of house? In addition, where is the shed’s location?

Mr. Cole said if facing the road on Lake Avenue, the driveway is on the right hand side off the road. The shed is positioned on the edge of the driveway and has a distance of 3 feet and 1 inch from the property line.

Does the shed exist already? Is the home conforming, or nonconforming?

Yes, the shed has been constructed and is already there on the driveway, said Mr. Cole. He was not aware of the regulation in regards to the side setback. The Building Inspector noticed it and told him that the shed was too close to the property line. Since the shed is a pre-existing

structure, the applicant does require applying for a special permit from the Zoning Board of Appeals. The home is nonconforming.

The Board reviewed Section 5.2.6 of the Zoning Bylaw at this time. There was a discussion as to which side is the official front side of the property of the house. The property is located in the water front area (Stiles Reservoir), facing the water on one side and has the road (Lake Avenue) on the other side. Thus, the means of transportation could be by boat or by motor vehicle. The Board asked which door is used as the front door entrance, and where the house number is, and if this is attached to the home, on which side?

Mr. Cole explained there are two entrances to the house, a slide glass door on the water side, and another door on the driveway side of the house. The house number is attached to the mail box, not on to the house.

Note: There were no abutters present for this hearing.

Ms. Crawford announced the members sitting in the voting were Ms. Backus, Ms. Kresco, and herself.

Ms. Crawford made a motion to close discussion at 8:10 pm. Ms. Kresco seconded the motion and the vote was 3-0 in favor.

Ms. Backus made a motion to grant a special permit for James Cole to construct a 10 feet x 16 feet shed (which is 3 feet and 1 inch from the side property line) on the existing residential lot at 25 Lake Avenue. Ms. Kresco seconded the motion and the vote was 3-0 in favor. The following was included in the motion:

- Findings:*** The Board determined that the proposed use met the requirements for a Special permit in M.G.L. 40A, Section 9 and Section 7.2 of the Spencer Zoning Bylaw:
1. That the proposed use is in harmony with the general purpose and intent of the Zoning Bylaw.
 2. That the proposed use will not create undue traffic congestion nor unduly impair pedestrian safety.
 3. 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.

Ms. Crawford 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.

The Board thought that there shall have been further clarification on Section 5.2.6 of the Zoning Bylaws.

Old Business: None

Approval of Minutes: Minutes for August 31, 2010

The Board reviewed the minutes and discovered that the condition section contained only one condition; it should have been two conditions. After listening to the tape-recording of the August 31st meeting, there were two conditions made in the motion. Mr. Collette made a motion to amend the minutes of August 31, 2010, by adding the second condition which read:

2. All servicing, repairing, and restoring of motorcycles shall be conducted inside of one or both structures on the site.

This amendment shall also be reflected in the Certificate of Decision on Special Permit (under the conditions section) for current owner First Webster Credit Union for applicants Jacob and Douglas Cutler d/b/a Barnstorm Cycles. Ms. Backus seconded the motion and the vote was 3-0 in favor with Ms. Kresco abstaining.

Other Discussion: None

With no further discussion, Ms. Kresco made a motion to adjourn the meeting at 7:55 p.m. Ms. Backus seconded the motion and the vote was 4-0 in favor.

Submitted By:

Bea Meechan, Senior Clerk, ODIS

List of Documents and Media Used

Attached to the Minutes

- The application submitted by Denise and Gary Jacobs dated 8.3.10.
- A letter from William Scanlan, former Town Planner, dated 6.1.10.
- A proposed plan for a farmer's porch at 183 South Spencer Road, dated 7.22.10.
- Photo pictures of the property at 183 South Spencer Road submitted by Denise and Gary Jacobs on 9.21.10.
- Section 5.2.6 of the Spencer Zoning Bylaw.
- The application submitted by James Cole dated 8.31.10
- A proposed plan of the shed at 25 Lake Avenue submitted on 8.31.10.
- A memo from Ginny Scarlet, Spencer Wetland Soil Specialist, dated 9.7.10.