

# Zoning Board of Appeals – Town of Spencer

## *Minutes*



Regular Zoning Board Meeting  
Tuesday, August 9, 2011 7:15 PM  
McCourt Social Hall  
Memorial Town Hall

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The meeting was called to order at 7:25 p.m.

Zoning Board Members Present: Chair Joanne Backus, Clerk Allan Collette, Associate Members Delores Kresco, and Alternate Pamela Crawford.

Zoning Board Member Absent: None.

Staff present: Bea Meechan, Senior Clerk, ODIS.

### **Old Business:**

**A Continued Public Hearing – Bay Path Estate LLC c/o Daniel Lemenager, 19 Woodchuck Lane.** The applicant is requesting a variance in accordance with Section 5.3.11 of the Spencer Zoning Bylaw. The applicant seeks relief from the minimum frontage requirement to demolish an existing single family home and construct a new home. The first hearing was held on July 19, 2011. The Board required the plot plan from the applicant. Mr. Lemenager did not know for certain whether he would withdraw the application or pursue the request. The next ZBA scheduled meeting is August 9<sup>th</sup>, the Board said if he had decided to continue then the plot plan must be presented to the Board at that time. The Board continued the hearing to August 9<sup>th</sup>.

Ms. Backus opened the hearing at 7:25 p.m. Ms Backus asked Mr. Lemenager what is his status on the application.

Mr. Lemenager said he sought an advice from his attorney. The attorney made a reference to the Spencer Zoning Bylaw and also State Law, if the building has been demolished and if the use has not changed, the new home is allowed to be built at the exact same location. Mr. Lemenager said, through the advice from his attorney, he will submit an application for a building permit with an attached letter from his attorney (referencing the Bylaw and the State Law) to the Building Inspector (BI). If the application gets denied, Mr. Lemenager would appeal the BI's decision. Mr. Lemenager asked the Board what is the best approach to the situation, should he withdraw the variance application from the Board at this time.

The Board members discussed the matter; in the event the BI denies the building permit application, and the applicant appeals the decision, then Mr. Lemenager is required to file for the Appeal on the Administrative Decision and pay for another fee. He will be back in front of the Board again. It would be better for the applicant – financially to have this hearing continue

while submitting the application for the building permit to the BI. Mr. Lemenager could request the continuation of the hearing for a length of time as long as he is needed it.

Mr. Lemenager said he would like to continue the hearing and to avoid for paying another fee since the situation is considered the same.

Ms. Backus said if the matter has resolved with the BI (the building permit is approved) then the applicant does not need the variance; Mr. Lemenager shall withdraw the request for the variance from the Board.

Mr. Collette said the Board shall make a motion requiring Mr. Lemenager to notify the Board of his decision in a specific amount of time. This way, the burden is on the applicant, not on the Board.

Ms. Backus thought it would not be a good idea if the applicant were to withdraw his variance request from the Board at this point.

Mr. Collette concurred, and said that unless the applicant comes back to the Board with a new/different application/appeal and pays for another fee.

In the event that the BI denies the building permit application, and Mr. Lemenager files for the Administrative Appeal, Mr. Lemenager commented though it is a different application the issue is basically the same.

Mr. Collette said each application has different purpose and different applicable Zoning Bylaw. If the applicant wants to appeal to the BI's decision, that will require another filing and pay for another fee. What Mr. Lemenager should have done is to present the plot plan to the Board tonight as the Board directed to him at the previous meeting.

Mr. Lemenager said he already has obtained the plot plan since he last met with the Board (on July 19<sup>th</sup>). When he approached the BI on his plan in the beginning of July, he was told the variance is required for the plan. He then submitted the request for the variance to the Board. After the public hearing on the July 19<sup>th</sup>, he sought the advice from the attorney and learned that he may actually not need the variance at all. Mr. Lemenager said he was misguided by the BI.

Mr. Collette explained the following: First, if the building permit application is denied by the BI, the applicant can file for the Administrative Appeal to the Board and will get charged for the fee: Second, if the applicant finds out that he needs a special permit not the variance, he shall file for the special permit's request and pay for the fee. With that being said the Board cannot change the current hearing on the variance's request to a special permit's request, or to the Administrative Appeal. Each request/application must follow the procedural process and the fee must be paid for each individual application. Mr. Collette suggested to have the hearing continue until Mr. Lemenager makes his decision of what he wants to do.

The Board members agreed to have the hearing continue to allow the applicant for necessary time to resolve the issue in regards to the building permit application with the Building

Department. The applicant is required to sign an Agreement to Extend Time for Decision and Appeal with the ODIS.

Mr. Lemenager asked to continue the public hearing on his variance request for additional time of three months.

Ms. Kresco made a motion to continue the hearing for 3 months. Mr. Collette seconded the motion and the vote was 4-0 in favor.

Ms. Backus instructed Mr. Lemenager that if the matter is resolved with the BI (the building permit gets an approval), then notify Ms. Meechan at the ODIS of such result.

Note: The Board received the letter from the Proutys, the abutters who attended the initial public hearing, indicating that they could not be present on the August 9<sup>th</sup> hearing, but their attorney, Michael Meloche will attend the hearing to represent their interest. Attorney Meloche arrived after the Board opened the hearing and had a discussion with Mr. Lemenager. However, Ms. Backus did explain the whole discussion to attorney Meloche.

Ms. Kresco made a motion to adjourn the meeting at 7:55 p.m. Ms. Crawford seconded the motion and the vote was 4-0 in favor.

Submitted By:

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Bea Meechan, Senior Clerk ODIS

### **List of Documents used on August 9, 2011**

- Variance Application from Mr. Lemenager.