



Zoning Board of Appeals – Town of Spencer

*Minutes*

Zoning Board of Appeals Meeting  
**Tuesday, March 8, 2016 at 7:15 PM**  
McCourt Social Hall  
Memorial Town Hall

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Zoning Board Members Present: Dee Kresco, Allan Collette and Robert Emerson

Zoning Board Member Absent:

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

**Open Meeting** – Mr. Emerson opens the meeting at 7:16 pm

Mr. Emerson rearranged the agenda order to do easier applications first.

**1. Special Variance Extension Request** – Applicant: Richard Cormier Location: Lake Whittemore Drive. The applicant is requesting an extension for a variance from the minimum frontage requirement.

Richard Cormier was present for the meeting and explained that he is in the process of getting all his septic plans done by Richard Gobi and is awaiting his return from Florida. Larry Smith explained the bylaw permits only a six month extension, but doesn't stipulate against approving multiple six month extensions. Mr. Smith asked the applicant if this would be his last extension request and Mr. Cormier said yes. Allan Collette asked what the applicant was doing with the land and Mr. Cormier said build a single family home. Mr. Smith explained that Mr. Cormier has to commence work within the six month extension and Mr. Cormier said he understood. Robert Emerson asked if there was a frontage issue and Mr. Smith clarified that was what the variance was for.

**MOTION:** Mr. Emerson motioned to approve Richard Cormier a six month extension on his variance for Lake Whittemore Drive.

**SECOND:** Mr. Collette

**DISCUSSION:** None

**VOTE:** 3-0

**2. Variance** – Delores Kresco read aloud the application description; **applicant/owner: James Bouley. Location: 67 Jolicoeur Avenue, Spencer Assessor's Map U25/59. The applicant is requesting a Variance from the minimum yard setback requirements for the placement of a shed on his property. The property is located within the Lake Residential zoning district.**

Mr. Smith handed out aerial photos and explained that Mr. Bouley originally received a variance to construct a single family home on a non-conforming lot (highlighted in yellow on the plan). Furthermore, Mr. Smith explained that the applicant now wants to construct an 8' x 16' shed on

a nearby lot (highlighted in red on plan) which requires two Variances from the 10' minimum yard setback requirements as shed will be within 2' of two property lines on the parcel. Mr. Bouley was present for the meeting and explained they need to put the shed on this lot because there wasn't room on the house lot and they are trying to avoid the leach field. Mr. Emerson asked if there was a fence on the property and Mr. Bouley answered yes, and the shed peak is ten feet. Mr. Emerson asked about shielding vegetation and Mr. Bouley answered there is some in front of the shed. Ms. Kresco asked where the septic system was and Mr. Smith said it is marked in red. Mr. Smith asked if there wasn't a leach field could the shed meet any of the setbacks and Mr. Bouley answered it would be a tight fit. Mr. Smith explained in order to grant a variance there are specific requirements that have to be met and continued to read off section 7.3.2 of the Spencer Zoning Bylaws:

*7.3.2 Mandatory Findings. Before the granting of any variance from the terms of this bylaw, the Board of Appeals must specifically find that:*

*A. 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; and*

*B. 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.*

Mr. Emerson opened the meeting to abutters.

Jim Gardner, 72 Jolicoeur Ave, currently overlooks Mr. Bouley's property and would like Mr. Bouley to be 3 ft away from his right of way because he is blocking his water view. Mr. Gardner believes that the single family home that Mr. Bouley built impacted the neighborhood and his home/lot. Ms. Kresco asked if the shed will obstruct Mr. Gardner's view and Mr. Gardner answered yes and that the shed will be 10ft high. Mr. Collette asked Mr. Bouley if there was any way to put the shed on the lot and Mr. Bouley said no. Mr. Collette asked if the shed had to be 10ft high and Mr. Bouley said it's a gable rooftop and it's a smaller shed. Mr. Smith asked if the applicant had pictures of the shed and Mr. Bouley said he didn't but he did have pictures of Mr. Gardner's view and submitted the pictures to the board. Mr. Collette pointed out that in the summertime when the trees are in bloom Mr. Gardner does not have any view. Mr. Bouley said he got the pictures off the internet and Mr. Gardner said that he does have a view and the pictures are false. Jennifer Bouley approached the Zoning Board members to show them a picture of the shed off of her phone. Mr. Smith questioned if the shed was really 10 ft tall and Ms. Bouley said yes only at the peak.

Mr. Collette expressed the need for a site visit. Mr. Smith asked if Mr. Bouley could talk to the building inspector about putting a shed on a parcel that the principle structure wasn't on. Ms. Bouley answered that the shed is under 200 sqft and they do not need a building permit and they did speak to William Klansek and he told them they would need to get the variance because it doesn't meet the setbacks. In addition, Ms. Bouley explained that the shed would not be on Mr. Gardner's right of way. It was discussed that the shed will be near their family member's property, the lot is not flat. Mr. Emerson asked how old the house was. Mr. Bouley answered that he received his certificate of occupancy in 2012. Mr. Smith noted that Mr. Bouley received

two variances, one for the lot size, the second for the shape of the home, and this would be the third variance.

Mr. Gardner commented that the shed will be going on the side of the lot. Ms. Bouley clarified that the shed will not be going on their lot but on another lot. Mr. Emerson expressed he does not want to do a site visit. Mr. Collette explained that variances trigger site visits. Mr. Emerson said he believe that the lot is too small and the shed would not fit on the lot. Mr. Smith again went over the reasoning for variances and clarified that a shed is not necessarily something that everyone/every lot is entitled to have. Mr. Smith handed Mr. Emerson a letter from an abutter, Denis Meunier located at 9 First Street, to recommend approval of Mr. Bouley's request. Mr. Collette asked what was going in the shed. Mr. Bouley answered lawn mower, weed whacker, leaf blower, and snow blower. Mr. Emerson asked Mr. Gardner if he would rather see the equipment in the yard versus in a shed. Mr. Gardner said he does not want the shed 3ft from the right of way and added he has been there 28 years and will need to sell his property and will lose money. It was determined that Mr. Gardner has a lot with a septic and the lot is for a home that is to be built.

Mr. Emerson said it was a mistake to give the applicant the variance for the home. Mr. Collette asked about the size of the shed. Mr. Bouley said it would be 8' by 16' and Ms. Bouley said it is less than 200 sq.ft. Mr. Emerson said the shed is not big. Mr. Collette expressed he wasn't crazy about doing the site visit but would like to see him store items. Mr. Smith mentioned that the applicant built his home on a non-conforming lot, the second variance permitted a larger building then was there originally and he should have known he wouldn't be able to put a shed on the lot. Mr. Emerson said a site visit will be done separately and the hearing will be continued to the next meeting.

**MOTION:** Mr. Collette motioned to continue the meeting to April 12<sup>th</sup>, 2016 and the Zoning Board members to go to the site separately to view the site.

**SECOND:** Ms. Kresco

**DISCUSSION:** Mr. Gardner said the board members can enter through the gate on his property to see his view.

**VOTE:** 3-0

### **3. Continued Special Permit, Paul Vandale:**

Mr. Emerson reopened the hearing at 7:53 pm.

Mr. Smith explained that he talked to the building inspector, William Klansek, and Mr. Vandale was told there wasn't a way to decrease the square footage and he has an illegal accessory apartment. Mr. Smith suggested closing the hearing and then denying the special permit.

**MOTION:** Mr. Emerson made a motion to deny the special permit because an accessory apartment needs to be 700 sqft and Mr. Vandale had one for 1200 sqft, which, fails to meet the Spencer Zoning Bylaws.

**SECOND:** Ms. Kresco

**DISCUSSION:** None

**VOTE:** 3-0

**4. Continued Special Permit, Sunset/Holmes Solar Farm:** Mr. Emerson read the application description; Applicant: ZPT Energy Solutions, LLC. Owner: 123 Kids, LLC Location: Sunset Lane/ Holmes Street, Spencer Assessor's Map R28/26-35. The applicant is requesting a Special Permit under section 4.2.B.3 (Utility/Major) applying for a "major utilities" ground solar farm site. The property is located within the Suburban Residential zoning district. Mr. Emerson reopened the hearing at 7:58 pm.

Larry Sabean, Hannigan Engineering, discussed the revised/resubmitted plans and addressed that the revisions met the Planning Boards and Zoning Boards comments. There was much discussion about the new detention basins, screening using evergreens, retaining wall, and easement. Peter Forte, ZBT Energy, mentioned they are working with an abutter for the easement. Mr. Collette asked when they would be starting the project and Mr. Forte answered the beginning of summer and the project should take 6 months to complete. Abutters discussed where they were located on the new plans. There was much discussion about construction vehicles and the routes the vehicles should take. Mr. Collette and Mr. Sabean discussed the elevation of the land helping to screen the panels. Holly St. Jean, new owner of 17 Sunset Lane, talked about the heavy equipment on the road, therefore, there was much discussion in regards to the best route for the construction vehicles. Some recommendations were that Highway Superintendent Steve Tyler was best qualified to determine the best route. Nancy Charbonneau, 15 Sunset Lane, expressed that Sunset Lane was too narrow for construction vehicles to come through. ZPT Energy and Hannigan Engineering representatives expressed they would do whichever route was best for the town. Jim Laney explained he hasn't scheduled the top coat asphalt for the road because he is waiting for the decision on the solar farm approval.

Mr. Smith and Mr. Forte discussed changes foreseen from the Conservation Commission and anticipated changes to the plans. There was discussion in regards to continuing the meeting until the Conservation Commission has made their changes, what the Zoning Board of Appeals is concerned with when making a motion to approve a solar farms, and possible conditions that can be issued if a special permit was issued. Mr. Collette was concerned with the shrubbery and the distance between plantings and would like a condition made to address that. Mr. Smith felt that a professional arborist should make the determination on how far apart the shrubbery should be planted. Shrubby around the berm will be left natural and then maintained when necessary.

Ms. St. Jean explained she moved to the neighborhood a year ago and asked about the arborvitaes that will be planted last. Mr. Sabean said they would be like arborvitaes and it would be planted on top of berm. Ms. St. Jean is concerned about additional water at their home. Mr. Sabean said no, and discussed fixing a pre-existing berm to help and issues happening currently. There was much conversation in regards to screening, plantings, and which boards were responsible for screening.

**MOTION:** Ms. Kresco made the motion to close the hearing

**SECOND:** Mr. Collette

**DISCUSSION:** None

**VOTE:** 3-0

**MOTION:** Mr. Emerson made the motion to grant ZPT Energy solar a special permit for purposes to install a “major utility” ground solar farm on Sunset Lane/ Holmes Street. The board has determined that the applicant has met the following findings and conditions:

Findings:

After the public hearing, the Spencer Zoning Board of Appeals made the following findings as required by M.G.L. Chapter 40A, Sec. 9 and Section 7.2 of the Spencer, MA, Zoning By-Laws:

- 1. That the proposed use is in harmony with the general purpose and intent of the zoning bylaw.**

It is permissible by Special Permit in the Suburban Residential property in the zoning Bylaw for a solar installation of this type

- 2. That the proposed use will not create undue traffic congestion nor unduly impair pedestrian safety.**

The use will not create undue traffic congestion or duly impair pedestrian safety; the site is sufficiently remote and sufficiently little traffic causing concern obstructing traffic or pedestrian rights-of-way

- 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 neighborhood or the Town**

The project demonstrates sufficient care and concern for the shielding and protection of the surrounding neighborhood that the line of site has been noted and strategies developed for the purposes of limiting the visual access to this plot.

**Conditions:**

1. Shall be in accordance with the Plan dated 3-2-16 by Hannigan Engineering
2. The preferred truck route would be from Rt. 9, Spring St., to Erving St. to Dale St.
3. Installation of Vegetation barriers as such that any type of vegetation barriers that has been proposed shall be installed and designed by a certified arborist
4. The project is subject to approval of the Conservation Commission (wetlands) and Planning Board (Site Plan Review).

**SECOND:** Mr. Collette

**DISCUSSION:** None

**VOTE:** 3-0

**5. Special Permit – Charlie’s Diner - Applicant: Christopher Gagne. Owner: Steven Turner. Location: 5 Meadow Road, Spencer Assessor’s Map U11/12-1. The applicant is requesting a Special Permit under section 3.4.1.G.1 (Permitted Uses/ Agricultural), 3.4.1.G.2 (Permitted Uses/Forestry), 5.4 (Bulk Requirements), and 6.1.1.D (Parking/ Maximum number of spaces) in order to build an addition onto restaurant. The property is located within the Commercial zoning district.**

The applicant and owner were not present for the meeting and it was decided that the hearing be continued to the next meeting on April 12<sup>th</sup>, 2016.

**MOTION:** Mr. Emerson made the motion to continue the public hearing to April 12, 2016.

**SECOND:** Ms. Kresco

**DISCUSSION:** None

**VOTE:** 3-0

**6. Approval of Minutes:**

- February 9, 2016

**MOTION:** Ms. Kresco made a motion to accept the minutes as written

**SECOND:** Mr. Collette

**DISCUSSION:** None

**VOTE:** 3-0

**7. Adjournment:** with no further discussion the meeting is adjourned

**MOTION:**

**SECOND:**

**Submitted By: Monica Santerre-Gervais, ODIS Clerk**

**Approved by the Zoning Board of Appeals on 4/12/2016**

**List of Documents used on March 08, 2016:**

3-1-2016 ZBA mailing

Items mailed to ZBA members prior to meeting:

- Agenda
- Memo to the ZBA dated 3/1/2016, submitted by Larry Smith
- Extension request letter from Richard Cormier for his variance to build a single family home on Lake Whittemore
- Application and plans for a Variance for James Bouley to out a shed on a nonconforming lot on 67 Jolicoeur Ave
- Information regarding Sunset/Holmes Solar Farm
- Application and plans for the special permit in regards to the addition to 5 Meadow Road (Charlie’s Diner)
- Minutes from February 9, 2016

Items submitted to ZBA members at the meeting:

- Mr. Smith passed out aerial photos of 67 Jolicoeur Ave
- Mr. Smith had available the new plans for Sunset/Holmes dated 3/2/2016
  - Mr. Smith handed abutter note mailed into the ODIS Office from Denise