



## Planning Board – Town of Spencer

### *Minutes*

#### Planning Board Meeting

**Tuesday, January 17, 2017 at 7:00 PM**

McCourt Social Hall, 157 Main Street Spencer, MA 01562  
Memorial Town Hall

Planning Board Members Present: Chair Robert Ceppi, Shirley Shiver, Maria Reed and Jonathan Viner

Planning Board Members Absent: None

Staff Present: Paul Dell'Aquila, Town Planner

Staff Absent: Monica Santerre-Gervais, ODIS Clerk

Mr. Ceppi opens the meeting at 7:03pm.

**1. Public Hearing Continuation – Special Permit (Common Driveway)** - Applicants/Owners: George & Jane Ostiguy and Marjorie Frigon, Location: 327 Main Street, Spencer Assessor's Map U16-55-1. The applicant is requesting a Special Permit under Section 6.2 of the Spencer Zoning Bylaw to receive a common driveway permit. The property is located within the Village Residential zoning district.

Mr. Ceppi reopened the hearing and it was put on record that Maria Reed had listened to the last meetings recording and had completed the necessary adjudicatory hearing form dated 1/4/2017 and will be able to vote.

Attorney Damien Berthiaume, 4 Elm Street North Brookfield, MA, was present to represent the applicants George & Jane Ostiguy and Marjorie Frigon. Mr. Berthiaume felt the applicants have revised the waivers to the Planning Boards satisfaction and they await the approval from the board. Mr. Dell'Aquila mentioned that the revised waivers meet satisfaction with Steven Tyler and the Zoning Bylaw.

Mr. Viner asked about a new plan they should depict the width at Route 9. The plan dated December 19, 2016 was discussed in regards to the scale and easement. Ms. Shiver asked about Mr. Tyler's concerns from the November meeting in regards to the driveway. Mr. Ceppi said the plan doesn't show the paved driveway. Ms. Shiver read aloud that the paved access is 20ft. James Lovett, 472 East Main Street East Brookfield, MA, said the engineer went down and measured the curb cut where you can come in and out and its 20 ft. Ms. Shiver asked if the actual right of way was 20 ft as well and Mr. Lovett said yes. Mr. Ceppi asked who the engineer was and Mr. Lovett said it was John Thomasian. Mr. Ceppi asked why the engineer didn't make that note or sign the plan. Ms. Shiver made note that there should have been a scale on the plan. There was much discussion in regards to the paved access. Mr. Lovett said from curb to curb it is 20 ft the paved asphalt is probably about 18 ft and that in the 5 months they have been working they haven't had any issues with trucks passing. Ms. Shiver asked if the plan was sufficient for

recording at the registry of deeds. Mr. Berthiaume said the plan is not but there is a waiver so that the plan does not get recorded because there are other recordings already. Ms. Shiver mentioned that the plan would need to be sufficient for the board.

Mr. Viner said the plan doesn't match the waiver and read aloud:

WAIVERS FROM SECTION 6.2.5(C)-APPLICATION

- i. The Application submitted by the Owners, and the Site Plan included therewith shall not be required to include drainage, typical construction cross sections, or profiles as are required by Section 6.2.5 C. 1 since Woodchuck Lane itself is an existing way and will not be modified. Despite this waiver concerning certain detail on the Site Plan, the Site Plan as presented shall include an updated "wet stamp", and shall depict the existing layout and width of Woodchuck Lane, the width of the apron where Woodchuck Lane meets Route 9, and the distance from the intersection of Route 9 with Woodchuck Lane to the driveway being constructed on Lot 1. The Site Plan as presented by the Owners shall be sufficient for the Planning Board to render its decision despite the lack of drainage calculations, construction cross sections, and profiles as are required by the Town of Spencer Zoning By Law Section 6.2.5 C.1.

Ms. Shiver felt that item had been met and it's not the applicant's responsibility to provide an apron. Mr. Viner said the plan was too vague. Mr. Berthiaume asked what is vague and spoke to the Planning Board on the extra amount of time and resources the applicant has had to put forth in order for them not to put a curb cut on Main Street and mentioned that Woodchuck Lane has changed on the street list. Mr. Berthiaume asked why another issue is coming forward since they were told the application was going to be approved and the only reason it was continued at the last meeting was because the Planning Board was short a member and were not going to make quorum. Mr. Viner explained that he felt the applicant did not follow proper procedures and that is why they are before the Planning Board. Mr. Berthiaume quickly responded that he disagreed and the applicant has followed the procedures and continued to note that according to the Spencer Zoning Bylaw Woodchuck Lane could be considered frontage. Mr. Berthiaume went on to mention that Woodchuck Lane was a "way" shown on the street list but since this procedure it has changed and he is unaware of any abutters or the town giving notice that it has been changed. Furthermore, the applicant has enough frontage and shouldn't have to be here but has gone through the process at the request of Mr. Tyler and Larry Smith. Mr. Ceppi explained that he believed that Woodchuck was ever a "way" because in the history of the town it was not made a right of way or legal way. Mr. Berthiaume disputed what was required to make a way it's a legal conclusion based on use. There was much more debate in regards to Woodchuck Lane and it being a "way" and when the Zoning Bylaws were adopted.

Ms. Shiver asked the chair, Mr. Ceppi, if the plan is suitable for approval. Mr. Ceppi asked Mr. Dell'Aquila how many votes are needed to approve the application and it was determined that all 4 members needed to vote yes for it to be approved. Mr. Viner said talking about the right of way is not the issue because according to the general bylaw it states that the driveway has to pass

over the frontage of the lot and Mr. Berthiaume does not agree because the private way would be suitable for frontage. Ms. Shiver reiterated that having a driveway apron on route 9 is a safety issue and we asked the applicant to come before the board and get a common driveway permit.

**MOTION: Mr. Shiver motioned to approve the Special Permit for the common driveway with waivers**

**SECOND: Ms. Reed**

**DISCUSSION: None**

**VOTE: 3-1**

Mr. Berthiaume asked to be notified when the decision would be filed so he may appeal the decision of the board. Furthermore, Mr. Berthiaume explained that by denying the permit they have denied access to a house, he felt there was false representation since they were under the impression the special permit was going to be granted, and the treatment of a resident/tax payer for the town is disappointing.

Mr. Dell'Aquila asked if the discussion can continue. Ms. Shiver asked if the plan is wrong, or the waivers, or legal requirements? Mr. Ceppi explained it is up to Mr. Viner. Mr. Viner said his concern all along is the access for the lot, the safety of passing vehicles, and feels the access is not the best solution. Mr. Viner asked why Paxton Drive wasn't used because there is better access, when traffic is going 45-50 miles per hour down route 9 a vehicle turning from Woodchuck Lane would cause traffic to come to a complete stop. Also, Mr. Viner felt that the Planning Board didn't have the right to grant approval for access to a right of way to allow passage since the board doesn't have control over the right of way.

Mr. Lovett explained that he went through the correct process to obtain a building permit and Steve Tyler did not want another curb cut on Route 9 and Mr. Tyler suggested going through Woodchuck Lane and getting a common driveway permit. The previous planner, Larry Smith, pushed that Mr. Lovett go through the Planning Board and receive the Special Permit. Furthermore, he answered that Paxton Drive wasn't an option since Mr. Tyler has the snow plowed there. Currently, been working on the site for 5 months with subs and contractors and they have not had any issues. The house being built is due to complete in 2 weeks, the town pushed this process, and the Planning Board did not help the applicant.

Jane Ostiguy spoke to the board about how her family has lived in this town her whole life, her parents worked for the town, she was assured the permit would be granted and therefore didn't push for a Special Meeting because the last meeting the board did not meet quorum. Ms. Ostiguy explained she tried to do the right thing for safety and for the town and is in disbelief that the permit was not approved. Additionally, Ms. Ostiguy pointed out that at the first meeting she noted there wasn't anything in the bylaw that states that someone needs to have a driveway and asked if the board would reconsider voting.

Ms. Shiver asked to speak and the chair gave her permission. Ms. Shiver stated that Mr. Tyler was at the original meeting and he explained his concerns with the plan and the waivers. The new plan is acceptable by Mr. Tyler. The plan is suitable and there shouldn't be an issue to grant the permit. Mr. Dell'Aquila said there has been revolving questions on if Woodchuck Lane was

a “way,” we had the applicant come before the board, and the applicant has attended several meetings and made the required corrections. Furthermore, Mr. Dell’Aquila said he felt it made his job harder when the applicant has completed what they needed to do and in the last 2 months the Planning Board had not expressed any concerns or issues with the plan once the requested changes were made and it puts cases going forward in a tough position.

Mr. Ceppi asked Mr. Viner if he would reconsider changing his vote to yes. Mr. Viner asked if the Planning Board could add a waiver to include the portion of the bylaw that stipulates that they have to have the driveway over the frontage and that it’s acceptable to access Woodchuck Lane without common driveway permit. Mr. Viner explains his concern in regards to the liability to the board and the town. Mr. Ceppi asked if the applicant has rights to the right of way and Ms. Ostiguy said she has deeded rights. Mr. Berthiaume explained that according to the title submitted and it says that the Ostiguy family has the rights to the right of way with a recorded easement. Mr. Viner asked why the applicant needs to come before the board if they have the rights to use the easement or why doesn’t the driveway permit stipulate they use Woodchuck Lane. There was much more discussion in regards to the easement, right of way, and driveway permits. In addition, they discussed the driveway and common driveway bylaws, as well as, suggested motions/waivers.

Mr. Berthiaume suggested making the landing 18ft wide, 15 feet in from Route 9, and then two vehicles could safely allow one car to sit and another car to pass. Mr. Viner said that his concern and increasing burden on the road without changing the capacity and would like to know it is wide enough to accommodate two cars in width. It was agreed that by the suggestion by Mr. Berthiaume would not meet the Town of Spencer’s Zoning Bylaw for design standards of the driveway and did not make this a condition.

Mr. Viner said he could agree to amend his vote and approve, however, he would like to make note that he has issues and concerns with the liability of traffic entering and exiting Woodchuck Lane, as well as, the legal and/or title issues that come along with the maintenance and up keep of the portion of the common driveway that isn’t the property of the applicant.

There was a motion to amend the motion, however, it was agreed that the vote needed to be rescinded.

**MOTION: Mr. Shiver motioned to rescinding the previous vote for the Special Permit with waivers**

**SECOND: Mr. Viner**

**DISCUSSION: None**

**VOTE: 4-0**

**MOTION: Mr. Shiver motioned to close the meeting at 8:16pm**

**SECOND: Mr. Viner**

**DISCUSSION: None**

**VOTE: 4-0**

**MOTION: Mr. Shiver motioned to approve the waivers for the common driveway for applicants George & Jane Ostiguy and Marjorie Frigon with waivers submitted.**

**SECOND: Ms. Reed**

**DISCUSSION: None**

**VOTE: 4-0**

**MOTION: Mr. Shiver motioned to approve the Special Permit for the common driveway for applicants George & Jane Ostiguy and Marjorie Frigon.**

**SECOND: Ms. Reed**

**DISCUSSION: None**

**VOTE: 4-0**

**2. Public Hearing – Special Permit (Rear Lot Subdivision) - Applicant: Doug Cutler, Owners: Edward & April Bellefeuille c/o Douglas Cutler 12S LLC Location: 12 Sherman Grove, Spencer Assessor's Map U32/64.** The applicant is requesting a Special Permit under Section 5.3.10 Of the Spencer Zoning Bylaw for a rear lot subdivision. The property is located within the Rural Residential zoning district.

Mr. Ceppi explained a letter was submitted by Jason Dubois to continue the meeting until February 21, 2017 the letter was dated January 12, 2017.

Mr. Dell'Aquila explained that the applicant is away until February and would like to present for the next meeting.

**MOTION: Mr. Viner motioned to continue the hearing until 2/21/17**

**SECOND: Ms. Shiver**

**DISCUSSION:**

**VOTE: 4-0**

### **3. Adoption of Minutes:**

#### **December 20, 2016**

**MOTION: Ms. Shiver motioned to approve the minutes for 12/20/2016 as submitted**

**SECOND: Ms. Reed**

**DISCUSSION: None**

**VOTE: 4-0**

### **4. Town Planner Report/ General Board Discussion**

CMRPC regional training questionnaire was handed out and discussed

**MOTION: Mr. Ceppi motioned to close the meeting at 8:25**

**SECOND: Ms. Shiver**

**DISCUSSION: None**

**VOTE: 4-0**

**Submitted by: Monica Santerre-Gervais ODIS Clerk**

**Approved by the Planning Board on: 2/21/2017**

**List of Documents used on December 20, 2016**

Items sent to Planning Board prior to Meeting by email:

- Agenda
- Memo emailed from Paul Dell'Aquila to Planning Board Dated 1/10/17
- Minutes for December 20, 2016

Items submitted at the Meeting:

1. Letter submitted by Jason Dubois, in regards to continue the meeting for Sherman Grove, until February 21, 2017 the letter was dated January 12, 2017
2. CMRPC regional training questionnaire