



Zoning Board of Appeals – Town of Spencer

***Minutes of Tuesday, December 10, 2019 at 7:00pm***

Zoning Board of Appeals Meeting  
McCourt Social Hall/Memorial Town Hall  
157 Main Street, Spencer, MA 01562

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Zoning Board Members Present: Allan Collette, Steven Tyler, and Robert Emerson

Zoning Board Member Absent: Alyce Johns

Staff Present: Paul Dell'Aquila, Town Planner and Monica Santerre-Gervais, Clerk

Staff Absent: None

**1. Open Meeting** – Mr. Collette was acting chair and opened the meeting at 7:03pm

**2. Variance – Applicant/Owner: Monica Hawes. Location: 71 Borkum Road, Spencer Assessor's Map R04/14. The applicant is seeking a variance under Section 7.3 (Variances) of the Spencer Zoning Bylaw as the lot does not meet the current zoning standards for square footage to build a new home and/or sell as a buildable lot. The property is located in the Rural Residential zoning district.** (Mr. Emerson was acting clerk and read aloud variance narrative.)

Monica Hawes, 4 Howe Road, was present for the meeting. Mr. Collette asked if the only item she is seeking is a variance for insufficient square footage and Ms. Hawes said yes. Mr. Collette asked the percentage of land and Mr. Dell'Aquila said she is roughly 15,000 sqft short of what is needed rural residential according to the Zoning Bylaws. Mr. Emerson asked if the lot had proper frontage and Mr. Dell'Aquila said yes. Mr. Collette asked if the previous ANR that was approved was before the Zoning Bylaw changes and Mr. Dell'Aquila stated he had done some research and found that the ANR was submitted a couple days before the Zoning change and the Town Planner at the time signed the ANR, however, because there was no action within the 5 year period then the time lapsed and now the current lot is unbuildable as it stands. Additionally, it seems Ms. Hawes husband tried to submit an ANR for the current lot but there were some legal issues and the ANR did not go through.

Ms. Hawes stated that the ANR was signed in November 2006 not December 2006 and Mr. Emerson said there was a time stamp when it needed to be acted on and the time lapsed. Mr. Tyler commented that he felt Ms. Hawes assumed that it was a buildable lot and Ms. Hawes said yes, but when she tried putting it on the market the real estate agent told her to talk to the town and the Building Inspector, William Klansek, told her about the time lapse. Mr. Collette asked about the back lot and it was confirmed it was the residence of Patricia and Marc Prudhomme at 69 Borkum Road. Mr. Tyler asked Ms. Hawes if she can try and acquire the square footage from the neighbor and Ms. Prudhomme said no they do not want to buy the land and they don't want a home built in front of their home. Additionally, Ms. Prudhomme discussed the issue of Steven McKeon, previous owner, had submitted an incorrect purchase and sale before there closing and there attorney made him fix it or they were not going to purchase the land.

Mr. Collette opened the meeting up to the public.

Jonathan Lang, 68 Borkum Road, expressed that he bought his home because of the rural atmosphere and low density. Additionally, he had concerns about the wildlife but Mr. Collette said that was not up to the Zoning Board of Appeals to determine. Mr. Lang stated the lot in question was diagonal from his home.

Lisa Lachance, 12 B Olney Street, Cherry Valley, MA, stated that the land was originally divided for 7-9 house lots, permits were gathered, and felt the rural integrity would not be affected by one home. Mr. Dell'Aquila stated that 69 Borkum is a doubled sized lot compared to the other lots in the area and it would seem Ms. Hawes' husband's intent was disrupted by the time lapse. Mr. Collette stated the husband had 5 years to act on it and didn't.

Phillip Lavalley, 73 Borkum Road, said that he bought a lot that became available and met the zoning regulations, and they followed the zoning rules. Mr. Lavalley said Mr. McKeon chopped up the lots for his home and no one should be able to build on the non-buildable lot now. Mr. Tyler asked if he divided 2 lots and made 2 and now it's not working out. Mr. Dell'Aquila answered that at the time the 45,000 sqft was adequate for a buildable lot and if the previous owner wanted it to be non-buildable he would have done it under the 45,000 sqft requirement. Ms. Hawes said her and her ex-husband bought 71 Borkum and cut out the back section and it was supposed to be a buildable lot and they were going to sell the land. Ms. Hawes stated it was part of the divorce proceedings and now her ex-husband is in contempt and she is just looking to rectify because the land is not buildable and the land is not legally deeded in her name.

Ms. Prudhomme stated that it's been an ongoing sore subject in the neighborhood and a man, most likely Ms. Hawes son, went to the property and cut trees he then proceeded to her home and told her to buy the front lot or they would cut more trees.

Johanna Lavalley, 73 Borkum stated that a similar thing happened to them and Ms. Hawes called around looking for people to combine their land to make it a buildable lot and then threatened if they didn't then they would cut trees and put pods up. Ms. Hawes answered they she did take trees down for herself and there was a complaint filed to the town and after further inspection she was told she was in compliance. Ms. Hawes admitted that she did make phone calls because she was scrambling to try and make the lot buildable and at first the Lavalley's were interested in buying the land but after 8 months they were no longer interested.

**MOTION: Mr. Tyler motioned to close the public hearing**

**SECOND: Mr. Emerson**

**DISCUSSION: Mr. Dell'Aquila stated that all 3 members need to vote yes for the variance to be granted. Mr. Emerson stated he felt that the intent all along was to have the lot be buildable and it was unfortunate that the husband let the time lapse.**

**VOTE: 3-0**

**MOTION: Mr. Tyler motioned to grant the Variance to Monica Hawes for 71 Borkum Rd**

**SECOND: Mr. Emerson**

**DISCUSSION: Mr. Collette stated its unfortunate but he cannot vote in favor of the variance because it is unfair to the abutters and he read aloud 7.3 of the Zoning Bylaw and stated that the time lapsed and the lot is no longer buildable**

**VOTE: 2-1**

### **3. Approval of Minutes**

- October 08, 2019

**MOTION: Mr. Emerson motioned to approve the minutes for 10/08/2019 as submitted.**

**SECOND: Mr. Collette**

**DISCUSSION: Mr. Tyler could not vote because he was absent from the 10/08/19 meeting**

**VOTE: 2-0**

### **4. Town Planner Report**

- **There will be a meeting in January 2020 and it will be in regards to the adult daycare at 407 Main Street.**
- **Rules and Procedures of the ZBA-** the Zoning Board of Appeals members went through the draft document by sections.

Article 1.

Section 1. Mr. Tyler suggested putting the ZBA definition in the first paragraph.

Section 2. No comment

Section 3. A.) Mr. Tyler suggested striking out the elected official comment because he is an elected water official and that would mean he could not remain on the ZBA. "Elected" language will be taken out of the document. B.) no comment. C.) Mr. Collette is not a fan of the term limits because the ZBA lacks experienced members and the only way to gain experience and the amount of time on the ZBA. Mr. Tyler agrees against term limits but said language includes the Town Administrators final decision. Term limits will be taken out of the document. D.) in regards to absences, Mr. Collette was concerned about if a member had to have a hospital stay and Mr. Tyler felt the language could stay and the ZBA members make the decision about the circumstances. E). no comment.

Section 4. A.) Mr. Collette was concerned about the clerk being eliminated and Mr. Dell'Aquila said the language was taken out because the clerk used to have more responsibilities and the only duty now is to read aloud the project narratives. Mr. Dell'Aquila will add an item 9 to the list to include the chair to announce a clerk at each meeting to read aloud narrative. B.) Mr. Collette said the chair should know before the meeting if he cannot be acting chair and they will appoint a chair prior to the meeting and if shouldn't get dumped on someone's lap before at the meeting.

Section 5. no comment.

Article 2.

Section 1. A.) no comment. B.) no comment. C) no comment. D.) make sure appendix a is attached because it's important.

Section 2. A.) no comment. B.) no comment.

Section 3. No comment.

Section 4. Mr. Collette stated the board can discuss with lack of quorum but be careful about what is discussed.

Section 5. No comment.

Section 6. A.) no comment. B.) Mr. Collette said a member can disqualify themselves or can ask the other members their opinions.

Section 7. No comment

Section 8. No comment

Article 3.

Section 1. Mr. Tyler mention there is some formatting issue and Mr. Dell' Aquila said he will fix it.

Section 2. Mr. Emerson takes the word "cross examination" to mean the abutter can't get challenged and Mr. Collette said to leave it just in case things were to get out of hand at a meeting.

Article 4.

Section1. Mr. Tyler asked where they would put third party review if needed and Mr. Dell' Aquila said he can add letter "C" to this section to include information about third party reviewing.

Article 5.

Section 1. No comment.

Section 2. No comment.

Mr. Dell' Aquila will revise the draft and email it out to the members and see if Ms. Johns has any feedback on the revisions.

- West Main Street- Mr. Collette asked Mr. Tyler about the sinking man hole covers on West Main Street and there was some discussion in regards to when the project was completed and when he left his position.

**Mr. Emerson motioned to adjourn the meeting at 8:35pm**

**Mr. Tyler seconded**

**VOTE 3-0**

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

**Approved by the Zoning Board of Appeals: 1/14/2020**

**List of Documents used on December 10, 2019:**

Items emailed/handed out to ZBA members prior to meeting:

- Agenda
- Memo from Town Planner
- Minutes from 10/08/2019
- Variance application for Monica Hawes, 71 Borkum Road.
- Draft Rules and Procedures of the Zoning Board of Appeals

Items submitted to ZBA members at the meeting:

- Draft certificate of decision for the variance for Monica Hawes/71 Borkum Road