



Zoning Board of Appeals – Town of Spencer

***Minutes of Tuesday, June 11, 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, Alyce Johns, and Robert Emerson  
Zoning Board Member Absent: None  
Staff Present: Paul Dell'Aquila, Town Planner and Monica Santerre-Gervais, Clerk  
Staff Members Absent: None

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

**2. Continued Variance – Applicant: Jalbert Engineering; Owner: Ricci & Bree Hall.**  
**Location: 101 Clark Road, Spencer Assessor's Map U27/16. The applicant is looking for a variance under Sections 4.9.2 A-3 of the Spencer Zoning Bylaw as the lot does not meet the current zoning standards for minimum side setbacks to allow enlargement of a deck, garage addition, third floor addition, and extension to the front entrance. The property is located in the Lake Residential zoning district.**

Mr. Collette introduced the voting parties being himself, Ms. Johns, and Mr. Tyler. Ricci Hall, 101 Clark Road, and Leonard Jalbert, Jalbert Engineering, were present for the meeting.

Mr. Dell'Aquila reviewed that the applicant submitted additional pictures and wrote a letter to state his hardship for the variance. Mr. Hall said that the hardship is due to the way the house sits on the lot and the size of the lot, and that the additional work will not be detrimental to the neighborhood. Mr. Dell'Aquila recapped that this case was continued from the last meeting and the applicant is requesting several variances in order to add a deck and an addition to an existing single-family home under section 7.3 of the Spencer Zoning Bylaw (Variances). The subject property is currently developed with an approx. 2,500 square-foot single family home located on a 6,190 square-foot parcel on the southern shore of Stiles Reservoir. The applicant is proposing to renovate the existing structure by enlarging the existing deck by 6 feet, adding an additional garage stall, reconfiguring the front entrance, and adding a partial third level to the main portion of the house. After discussion at the last meeting, it appeared the ZBA's primary outstanding concern was the length of the driveway after the proposed addition is built. While there is no specific guidance on minimum length of driveways for residences in Zoning, given the narrowness of Clark Road at this location, there was concern that any vehicle larger than a standard compact car may extend into the Clark Road right-of-way, creating a potential safety and property hazard.

Mr. Collette stated that 101 Clark Road was built in 1989 and zoning was in place at the time and the hardship that the applicant described was already created when it was built due to its size and

location. Mr. Hall stated he did not build the house and Mr. Collette replied that they bought the house knowing the layout and the lot seems maxed out. Mr. Hall said the increase in percentage is not that much and Mr. Collette said he want to see a legitimate hardship. Additionally, Mr. Collette stated that by adding the garage it minimizes the parking in the driveway and if a large truck parked in the driveway it would be in the road and no one is pulling all the way to the garage door. Mr. Hall said there are additional parking spaces on the lot and Mr. Collette replied that people who visit won't know about the other spaces. Mr. Collette stated that two variances are being requested and if the applicant gets turned down then they cannot come back for two years to request again. Mr. Collette asked if the footprint will stay the same and Mr. Hall said it will stay the same and just go up and then add to the garage. Mr. Collette said that he doesn't increase the footprint than he should just go up and not do the garage because if the Zoning Board votes no than the applicant cannot do anything. Mr. Dell'Aquila said that if it was simple to increase the height than they would not need a variance.

Mr. Tyler stated the deck and the garage are separate. Mr. Hall said that the financing comes with adding the second bay to the garage because having a two car garage increases his property value. Mr. Collette said that the driveway is a safety issue. Mr. Dell'Aquila said that he has been to the site and other driveways adjacent are similar, 2 houses down there is a driveway under a deck, and the Highway Superintendent said there is no requirement for the driveway length. Additionally, Mr. Dell'Aquila stated that the pictures provided shows there is parking on the lawn and near the mailbox. Mr. Collette stated he only wants to speak about this property and not others parking situations in the neighborhood. Mr. Dell'Aquila felt there was enough parking at the home. Mr. Collette felt that the applicant still did not address his hardship because someone put the home there and he bought the home.

Mr. Jalbert said the applicant is only looking for two variances; 1 is for the deck and it is for a small triangular piece, and that can be removed so than the applicant would only need one variance. The parking in front of the shed and the parking near the boat ramp has been used for launching and docking boats and it are 10 x 50 feet and the applicant can put up a sign for parking. Additionally, there is 16 feet going into the garage with the small piece entering the road would make almost 20 feet and an average vehicle can fit. Mr. Jalbert said the hardship is the land restraints and reminded the Zoning Board of Appeals members that the applicant is not asking for a variance on the setbacks and the variance would only be for the percentage of coverage. Mr. Collette said the applicant is still looking for two variances and Mr. Jalbert said they can work with the board and take one away for the deck. Mr. Collette said it is his personal opinion that when the house was built it was maxed out.

Mr. Emerson asked an example of a hardship for a variance. Mr. Collette said shape of lot, septic and well location, and Mr. Dell'Aquila read aloud the variance guidelines found in the Spencer Zoning Bylaws. Mr. Emerson stated that the footprint will increase and other properties on the lake are maxed out so why is this application different. Mr. Collette said that lake land started as small camps and then people bought the land to make large four season homes that are too large for the property size. Mr. Dell'Aquila stated that the property is already non-conforming for site coverage. Mr. Jalbert stated the applicant could get a variance because the lot is already pre-existing non-conforming, all the homes near the lake a larger, and most have less parking spots.

Mr. Tyler stated that he felt the deck was ok because of the geometry but the parking is narrow and unsafe, but on the other hand the applicant has other spots for parking. Mr. Tyler agrees that the site is maxed out and the applicant bought the home maxed out and now wants to continue and make an addition that will make the coverage 40 % over what is allowed for zoning. Mr. Tyler stated that he was having a hard time finding the hardship but he is open to read other language and may need further material to make a final decision. Mr. Collette agreed that they should not make a decision at this meeting and get Town Council opinion and Mr. Dell'Aquila said he can ask for further guidance. Mr. Tyler said that someone maxed out this property at one time and then the applicant bought the property. Mr. Collette wants to see the building permit and house plans and feels the size of the lot cannot be used as a hardship. Mr. Hall said the topography of the lot is weird and limits him. Mr. Dell'Aquila mentioned that possibly the shoreline could be used as a hardship because it is not a straight line and is on an angle and could be causing configuration issues. Mr. Hall said he understands the process for appeals and recognizes that there are zoning limitations but he is doing less than what he originally planned on doing and feels the 9% increase will not affect the drainage and it is a modest increase.

Mr. Collette opened the meeting up to the public and there were no comments or questions.

The Zoning Board of Appeals members discussed continuing the hearing and what they need to review before the next meeting. There was discussion in regards to the deck being accounted for in the calculations for the increase. Mr. Tyler said the deck would be easier to approve because the geography of the lot causes a hardship. Mr. Emerson stated that the applicant should find ways to work with the Zoning Board of Appeals (i.e. remove the shed, etc.) Mr. Hall said he needs the second bay of the garage to get the financing for the loan. Mr. Collette said the shed is illegal. Mr. Jalbert said under 40 A Chapter 7, it confirms that if the structure is up for 10 years it becomes exempt under Mass Law. Also, Mr. Jalbert stated that in the event they get rid of the deck variance then the coverage would go down to a little over 6%. Mr. Hall commented that 3% would decrease the lot coverage. Mr. Tyler asked what is considered lot coverage and Mr. Dell'Aquila said he would get more information for the next meeting.

**MOTION: Mr. Tyler motioned to continue the public hearing for the variance until July 9, 2019**

**SECOND: Ms. Johns**

**DISCUSSION: Items to be distributed before the next meeting include locating the building permit and building plans for the home, breakdown on what the coverage is, and the applicant will review what they can give up to the impervious surface.**

**VOTE: 3-0**

**3. Special Permit Amendment- Applicant/ Owner: Barakah Holding, LLC; Location: 48 Pleasant Street; Spencer Assessor's Map U20-60. The applicant is requesting a Special Permit to amend their special permit that was granted in 1984 under Section 4.2.D-2 (Office or clinic for medical, psychiatric, or other health services for the examination or treatment of persons as outpatients) of the Spencer Zoning Bylaw. The property is located within the Village Residential zoning district.**

Mr. Dell'Aquila explained that the applicant is seeking a continuance until the next meeting and the continuance form was submitted.

**MOTION: Mr. Tyler motioned to continue the public hearing until July 09, 2019**

**SECOND: Ms. Johns**

**DISCUSSION: Items to be distributed before the next meeting is to try and locate the building permit and building plans for the home, breakdown on what the coverage is, and the applicant will review what they can give up to the impervious surface.**

**VOTE: 3-0**

**4. Special Permit– Applicant: Jennifer Davis (Spencer Veterinary); Owner: Reliant Medical Group; Location: 407 Main Street, Spencer Assessor's Map R35-33. The applicant is looking for a Special Permit under Sections 4.3.13 (Veterinary establishments and pet grooming establishments) of the Spencer Zoning Bylaw to use the location for Veterinary Services. The property is located in the Commercial Zoning District.**

Mr. Collette opened the hearing and voting members are Mr. Collette, Ms. Johns, and Mr. Emerson; Ms. Johns read aloud the description.

Phillip Stoddard, 184 Main Street, was present to represent Jennifer Davis. Mr. Stoddard explained that Ms. Davis currently runs a veterinary clinic next door and would like to purchase 407 Main Street and use that for her new office and this use will not cause detriment to the neighborhood. Mr. Collette asked if there would be any construction and Ms. Davis said no. Mr. Collette asked if there was going to be any parking changes and Ms. Davis said no. Mr. Stoddard explained that the owner was different than what was stated and Ms. Davis would like the special permit to reflect that and that she will be using a trust. Mr. Collette asked if there were any issues with the purchaser's paperwork and Mr. Stoddard said no. Mr. Collette asked what the address is to her current location and Ms. Davis replied 401 Main Street and that she has been there for 12 years. Mr. Tyler asked if this was just a transfer of the use and Mr. Stoddard replied the intent is to purchase 407 Main Street and have the use at the new location and according to the table of use it needs a special permit.

Ms. Johns asked if they will be the only people in the building or if she will be renting space and Ms. Davis said only half will be rented. Mr. Collette did not understand why the applicant needed to file and Mr. Dell'Aquila stated that under the use table in the Zoning Bylaw the applicant needed to come before the Zoning Board for a special permit. Ms. Davis said she intend to sell 401 Main Street after she is established at the new location. Mr. Dell'Aquila handed out and read aloud draft conditions. Mr. Collette asked if they have emergency hours and Ms. Davis said no. Mr. Tyler asked about the lot for parking between the buildings and Ms. Davis said she will be purchasing the lot. Mr. Collette asked where the septic was and Ms. Davis said between the buildings.

Mr. Tyler asked if Ms. Davis knew about the waterline that runs through the property and she said yes. Mr. Tyler mentioned having a process to locate the waterline and suggested an easement to the Town of Spencer Water Department as a condition and signage. Mr. Stoddard

said they would need to check with the bank about the easement but doesn't think it should be a problem.

Mr. Collette opened the meeting to the public:

Lisa Stewart, 8 Bond Street, asked about the limitations of businesses that can purchase/rent in the vacant spots. Ms. Stewart has concerns about who the tenants might be. Mr. Collette asked if this was a multi-use special permit and Mr. Dell'Aquila said no and it's in the commercial zone and explained the uses that could rent there by right. Ms. Stewart asked why the Veterinary hospital have to attend this meeting and Mr. Dell'Aquila explained it has to with the Use Table in the Spencer Zoning Bylaws and the applicant needed to come to get a special permit. Ms. Stewart asked Ms. Davis who would be renting the space in the building and Ms. Davis said there was no one in mind she is just buying the building to expand her business right now.

**MOTION: Mr. Emerson made a motion to close the public hearing**

**SECOND: Ms. Johns**

**DISCUSSION: None**

**VOTE: 3-0**

**MOTION: Mr. Tyler made a motion to grant the special permit with the following conditions: 1. all animals are to be treated and housed indoors. 2. Free standing signage on the property will be limited to the existing monument sign situated at the corner on Main Street and Bond Street. 3. Parking is limited to the existing paved areas. No additional parking may be created for the Veterinary Clinic or potential future additional tenants in this building without permission from the ZBA. 4. The applicant shall establish an easement for the existing water line running through the property, deeded to the Spencer Water Department, and add a sign or other marker on the site indicating the location of the existing water line in conjunction with the Spencer Water Department, contingent upon lender approval of financing for the project.**

**SECOND: Mr. Emerson**

**DISCUSSION: None**

**VOTE: 3-0**

## **5. Approval of Minutes**

- May 14, 2019

**MOTION: Ms. Johns motioned to approve the minutes for as submitted.**

**SECOND: Mr. Tyler**

**DISCUSSION: Voting members are Mr. Collette, Ms. Johns, and Mr. Tyler**

**VOTE: 3-0**

## **6) New Business: None**

## **7) Town Planner Report:**

- **Rules and Procedures-**Mr. Dell'Aquila handed out the draft rules and procedures recently drafted for the Planning Board. The Zoning Board of Appeals members agreed

that the old procedures need to go and update the new rules in the same format that was used for the Planning Board.

**Mr. Tyler motioned to adjourn the meeting at 8:32pm**

**Ms. Johns seconded**

**VOTE 3-0**

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

**Approved by the Zoning Board of Appeals: 7/09/2019**

**List of Documents used on June 11, 2019:**

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

- Agenda
- Memo from Town Planner
- Minutes from 5/21/2019
- Special Permit application, Spencer Veterinary Hospital
- Variance hardship and pictures for 101 Clark Road

**Items submitted to ZBA members at the meeting:**

- Draft conditions for Spencer Vet Special Permit