



Zoning Board of Appeals – Town of Spencer

Minutes of Wednesday, July 21, 2021, at 7:00pm

IN-PERSON & REMOTE MEETING

Zoning Board of Appeals Rescheduled Meeting

McCourt Social Hall/Memorial Town Hall

157 Main Street, Spencer, MA 01562

Zoning Board Members Present in person: Allan Collette, Gina Beford, and Steven Tyler

Zoning Board Member Absent: None

Staff Present in person: Town Planner, Todd Miller, and Monica Santerre-Gervais, Clerk (remote)

Staff Absent: None

1. Open Meeting – Mr. Collette, Chair, opened the meeting at 7:05pm

2. Continued Appeal of Decision – Applicant/ Owner: Spencer Solar Farm, LLC; Location: North Brookfield Road, Spencer Assessor’s Map R39-14. The applicant is requesting an Appeal under section 7.1.2.A (Appeals) of the Spencer Zoning Bylaw Zoning to appeal the denial of the building permit by the Building Inspector. The property is located within rural residential zoning district.

Tad Heuer, Foley Hoag, on behalf of the applicant, summarized his letter that he emailed on 7/20/2021 to answer questions regarding permit vesting and not needing an extension. Mr. Heuer read aloud a quote from the letter “[W]here the special permit does not expressly include an outside time limit for completion of the entire project, the authority to complete the project ‘continues’ [and] is applicable so long as either substantial use or construction has commenced within the lapse period.” Mr. Heuer discussed extension and renewals that was brought up from the last meeting.

Mr. Collette states Town Counsel agreed with the two extensions from the permit extension act, after that time the applicant should have returned and got a building permit and it was more site preparation then substantial use. Mr. Heuer stated the Special Permit and Site Plan Approval did not need building permits to have substantial use. Mr. Heuer asked if Town Counsel is advising that only a building permit determines substantial use and Mr. Collette answered no that the substantial use for this project is in a gray area. Mr. Collette said the applicant needed to come to get a building permit and it was after the 2018 deadline from the permit extension act. Mr. Heuer argued that the time doesn’t come up and Mr. Collette said that is where they disagree. Mr. Heuer re-summarized the language in his letter and felt the Supreme Judicial Court is clear.

Mr. Tyler asked if additional information has been submitted to review. Mr. Collette asked about the use and time limitations. Mr. Heuer stated there is a Special Permit renewal on the agenda on tonight’s meeting and Mr. Collette said Special Permits are two years, and Mr. Collette said it’s a gravel permit and they renew every year. Mr. Collette said the board has received their advice and reviewed the memo from Mr. Heuer. Mr. Tyler said he did not see the advice from Town

Counsel. Mr. Miller said there was a memo from Town Counsel, Attorney Eichman, in an email, nothing has changed from his legal opinion, and provided the Zoning Board of Members copies of the memo.

Ms. Beford said from reading Attorney Eichman's memo, the date vested with National Grid was in passed the October 02, 2018, deadline passed. Mr. Heuer said he did not see Town Counsel's comments. Mr. Collette said a building permit was not taking out and an extension was not requested. Mr. Collette asked what was going on at the site and Mr. Heuer explained in the previous packet submitted on pages 8 and 9 and summarizes the substantial use justification. Mr. Collette said they are following advice from Town Counsel and made comments regarding pole installations. Mr. Heuer said there wasn't any installation of poles and wires and may be thinking of another case. Mr. Collette said they had a memo from Utilities and Facilities that claims the poles were replaced in 2019 and Mr. Heuer said they have never made any assertion and the Chair is raising a point that is not in the record. Mr. Heuer stated construction or substantial use are not synonymous. Mr. Tyler stated he was unsure why Mr. Collette was discussing the poles.

Mr. Collette stated he would not be reopening the hearing to the public because the hearing is a continuation, and the Zoning Board of Appeals members were waiting from Town Counsel.

MOTION: Mr. Tyler motioned to close the public hearing

SECOND: Ms. Beford

DISCUSSION: None

ROLL CALL VOTE: S. Tyler- Aye, G. Beford-Aye, and A. Collette-Aye (Vote 3-0 motion carried)

MOTION: Mr. Tyler motioned to deny the appeal of the decision by the Building Inspector, opinion is based off the applicants Attorneys presentation, the email dated 11/4/2020 from KP Law, and gave an anecdotal example regarding case law and not being qualified. Mr. Tyler read aloud Town Counsel's statement in their opinion, under the facts set forth above, there is a very good argument that the holder of the Special Permit failed to commence construction under the Special Permit prior to October 2, 2020, the disagreement is between two councils based on case law and cannot make an interpretation on case law and the request for appeal be denied.

SECOND: Ms. Beford

DISCUSSION: None

ROLL CALL VOTE: S. Tyler- Aye, G. Beford-Aye, and A. Collette-Aye (Vote 3-0 motion carried)

**3. Special Permit (Renewal) – Applicant/ Owner: Royal Crest Farm/ Robert Moschini
Location: 30 Howe Road, Spencer Assessor's Map R23-25. The applicant is looking to renew their Special Permit under Sections 4.2 (H.1) and 4.8.6 (Earth Removal) of the Spencer Zoning Bylaw to continue a gravel removal operation. The property is located in the Rural Residential zoning district.**

A representative from Royal Crest Farm was online but seemed unable to talk due to no audio connection.

Mr. Collette went over the narrative provided by the applicant. Mr. Collette stated he had no issues with Royal Crest, stated they usually get an inspection report from the Conservation Agent but suggests approving the one-year extension. Mr. Miller explained they have been without a Conservation Agent for some quite some time, but he will speak to the new Conservation Agent, Lauren Trifone.

The Chair opened the hearing up to the public and there were no questions or comments.

MOTION: Mr. Tyler motioned to close the hearing

SECOND: Ms. Beford

DISCUSSION: None

ROLL CALL VOTE: S. Tyler- Aye, G. Beford-Aye, and A. Collette-Aye (Vote 3-0 motion carried)

MOTION: Mr. Tyler motioned to approve the renewal of the gravel pit permit for one year with all previous conditions

SECOND: Ms. Beford

DISCUSSION: None

ROLL CALL VOTE: S. Tyler- Aye, G. Beford-Aye, and A. Collette-Aye (Vote 3-0 motion carried)

4. Appeal of Building Fee – Applicant/ Owner: James and Rachel LaLiberte; Location: 195 Charlton Road, Spencer Assessor’s Map R13-16. The applicant is requesting relief from a building permit fee calculated by the Building Inspector for an indoor arena/barn. The property is located within the rural residential zoning district.

James and Rachel LaLiberte, 195 Charlton Road, were present for the meeting.

Mr. Collette read aloud the narrative provided by the applicant that explained they have boarded horses since 2012 and are looking to expand. The applicants are appealing the Building Inspector, Duane Amos’ estimated Building Permit fee of \$6,121.44 because of the size of the Pole Barn. Also, the applicants request to waive the need for a surveyed Plot Plan since they previously surveyed the front part of the lot in 2012.

Mr. LaLiberte explained they submitted quotes and estimates from contractors and they took the range from the quotes for the estimated cost of the pole barn and the estimated cost for the pole barn is \$265,000 and by using that number would bring the fee significantly lower for the Building Permit application fee. Also, Mr. LaLiberte said there hasn’t been an arena in the last 30 years and there assessed value is low, Moschini put up a pole building in 2019, and the big concerns is the fee and getting the property surveyed again.

Mr. Collette asked what the use of the barn would be, and Mr. LaLiberte said it would be to board horses and have horse riding lessons. Mr. Collette explained that the residential and commercial fees are accepted and approved by the Town of Selectmen and would like to review what the cost for other pole barn permits have been. Mr. Miller explained that the Town of Spencer's building cost fee schedules are comparable to surrounding towns. Mr. Collette mentioned he was not sure if the ZBA can change the rates but would like to see the consistency of fees charged. Mr. LaLiberte said that having the accessory fee in the riding area at \$35.00 per square foot and the rest at \$65.00 would help.

Duane Amos, Building Inspector, sees the pole barn as Commercial Use structure, it will need to be an Engineered building, there will be special inspections for the large trusses that will be needed and the estimated construction cost of \$270,000 is too low for the size of the pole barn to configure the cost. Ms. LaLiberte said that the bank is considering residential use. Mr. Collette said they need to set a precedence for other permit fees. Mr. LaLiberte said the pole barn will be for Agricultural use with animals in it. There was much discussion about previous pole barns and the need to review the cost for those.

Ms. LaLiberte asked if they could get the relief from surveying the 38 acres and only survey around the 2 acres to erect the structure. Mr. Amos, they need to have a plot plan where the structure is going, during the first initial meeting they did not have a building permit application or plans showing where the building is going. Mr. Amos said they do not have to survey the whole 38 acres just a large chunk of it but must know where it is going. Mr. Collette said they need to see previous pole barn charges and Mr. Amos said there has been nothing like this erected and is not a standard pole barn but a riding arena. Mr. Miller stated that if the operation generates income that it will fall under commercial use. Mr. Collette said the use will need to be determined to see if it is residential or commercial use. Mr. LaLiberte said land in 61A is considered commercial but the pole barn out of Royal Crest is commercial too.

The Chair opened to public but there were no comments or questions.

Mr. Tyler said its not clear because there is no plan and Mr. LaLiberte submitted plans. Mr. Tyler said it is not up to the Zoning Board of Appeals members to come up with the middle ground it is up to the applicant to present the middle ground for the board to consider. Mr. Tyler said if the applicant can work with the Building Inspector regarding the survey, then it can be kept out of further discussions, so the board knows what they are making decisions on. Additionally, Mr. Tyler stated that he concurs that the board should not adjust fees but can look into the residential versus commercial rate.

MOTION: Mr. Tyler motioned to continue the hearing until August 10, 2021

SECOND: Ms. Beford

DISCUSSION: None

ROLL CALL VOTE: S. Tyler- Aye, G. Beford-Aye, and A. Collette-Aye (Vote 3-0 motion carried)

5. Variance – Applicant/ Owner: Kristopher Lauzon; Location: 13 Jolicoeur Road, Spencer Assessor’s Map R10-07. The applicant is looking for a variance under Section 7.3 (Variances) of the Spencer Zoning Bylaw to erect an above ground pool. The property is in the Rural Residential zoning district.

Kris Lauzon, 13 Jolicoeur Road, was on the call remotely to discuss his petition. Mr. Lauzon stated that there was a pool prior to them buying the property but was unsure if the previous owner had a permit or not.

Mr. Collette asked if the footage between the pool and the side set back is 4 ½ feet and Mr. Lauzon said yes.

Mr. Amos, Building Inspector, stated that for that area the front setback needs to be 55’ from the street, and the numbers were questionable when reviewing plan but said it was around 35’ from the street, and 10’ from the side is required. Additionally, Mr. Amos said that it appears there is a new plan then what was submitted to him. Mr. Collette stated the applicant is not meeting the front and side setback and asked if he can move the pool. Mr. Lauzon said that if he went further in the back then he would need to build up the property with a retaining wall. Mr. Collette asked what was on the other side of the back deck and Mr. Lauzon said there is a drop off. Mr. Collette said they would need look at where and if the pool could be moved and would need photos of the back property. Mr. Collette asked what was on the side boundary line and Mr. Lauzon said there is another house, but the detached garage is what is close to the lot line. Mr. Collette asked who the neighbor was, and Mr. Lauzon said he was unsure.

The Chair opened to public but there were no comments or questions.

Mr. Collette asked the applicant to bring back grade information and pictures. Mr. Tyler stated photos within the setback area to confirm slope.

MOTION: Mr. Tyler motioned to continue the hearing until August 10, 2021.

SECOND: Ms. Beford

DISCUSSION: None

ROLL CALL VOTE: S. Tyler- Aye, G. Beford-Aye, and A. Collette-Aye (Vote 3-0 motion carried)

6. Town Planner Report

Mr. Miller said more pool applications will be coming before the board, he is still working on the solar amendments with the Planning Board, the recovery plan, and additional items that was discussed since the last meeting.

7. New Business/ Adjournment

Mr. Defosse, 7 Paul's Drive, asked about the board's submittal process for applicants, stated it is difficult for abutter to be prepared with the new information a day before instead of 7 days before, and it is a disadvantage if not submitted 7 days prior. Mr. Tyler said that when abutters bring information to a meeting than the applicant is not prepared either. Also, Mr. Tyler said that a letter versus plans is different.

John Howard, Board of Selectmen Representative, was present at the meeting.

Ms. Beford motioned to adjourn the meeting at 8:24 pm

Mr. Tyler seconded

ROLL CALL VOTE: S. Tyler- Aye, G. Beford-Aye, and A. Collette-Aye (Vote 3-0 motion carried)

Submitted By: Monica Santerre-Gervais, ODIS Clerk

Approved by the Zoning Board of Appeals: 8/10/2021

List of Documents used on July 21, 2021:

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

- Agenda
- Emailed letter, dated 7/20/2021, regarding North Brookfield Road Solar Appeal, from Foley Hoag
- Special Permit Application, narrative, and aerial map for Royal Crest Farm regarding the gravel pit renewal
- ZBA Hearing application, narrative, and aerial maps regarding the appeal of a Building Permit fee for 195 Charlton Road
- Variance Application, site plan, abutters list regarding pool at 13 Jolicoeur Road

Items submitted to ZBA members at the meeting:

- 13 Jolicoeur Road new plan