



Zoning Board of Appeals – Town of Spencer

Minutes of Tuesday, September 29, 2020 at 7:00pm

REMOTE MEETING

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

Zoning Board Members Present: Allan Collette, Alyce Johns, and Steven Tyler

Zoning Board Member Absent: None

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 7:06 pm and read aloud Covid-19 statement. *“This Meeting of the Zoning Board of Appeals is being conducted remotely consistent with Governor Baker’s Executive Order of March 12, 2020, pursuant to the current State of Emergency in the Commonwealth due to the outbreak of the COVID-19 Virus. In order to mitigate the transmission of the COVID-19 Virus, we have suspended public gatherings, and as such, the Governor’s Order suspends the requirement of the Open Meeting Law to have all meetings in a publicly accessible physical location. We are meeting remotely and broadcasting live on Spencer Cable Access to ensure public viewing access.”*

There was some technical difficulties and the meeting started at 7:14pm

2. Major Site Plan Review/ Special Permit – Applicant: Arista Development LLC; Owners: The Estate of William D. Ekleberry, Richard Cormier, and S-BNK Spencer LLC, Location: 4 lots bounded by High Street, Main Street, and Pleasant Street; Spencer Assessor’s Map U13-98, 99, 100, & 101. The applicant is requesting Special Permit under section 3.3.2 (zoning boundary dividing a parcel) and a Major Site Plan Review under Section 7.4 and of the Spencer Zoning Bylaw Zoning to develop a 12,850 sf CVS with Drive Thru. The applicant is also requesting a supplemental Special Permit for additional/alternative relief under Section 4.2.E.1 (small scale retail with no outside storage). The properties are located within the Town Center and Village Residential zoning districts.

Mr. Collette stated that this hearing needs to be continued and will not be heard at this time.

MOTION: Mr. Tyler motioned to continue the public hearing until 10/13/2020

SECOND: Ms. Johns

DISCUSSION: None

ROLL CALL VOTE: Mr. Tyler-yes, Ms. Johns-yes, and Mr. Collette-yes (vote 3-0)

3. Variance-Remand: 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.

Monica Hawes, 71 Borkum Road, and her Attorney Henry Lane, 100 Main Street Whitinsville, MA, were present for the meeting. Also, direct abutter, Phillip Lavalley, 73 Borkum Road was present.

Mr. Lane explained that originally Ms. Hawes had come before the Zoning Board of Appeals back in December 2019 for a variance at 71 Borkum Road. The variance was for approval to build on a non-conforming lot because the lot does not meet the zoning requirements of 60,000 square feet but the variance was denied. The decision was appealed, and Ms. Hawes hired Mr. Lane to represent her in the remand. Mr. Lane stated that Ms. Hawes wishes to develop the land, she has the required frontage, the density will remain the same, and will remain a residential dwelling. Ms. Hawes received the land from her divorce settlement. Mr. Lane explained that it was not an intentional mistake to make the lot non-conforming when the lots were split up and the hardship is that Ms. Hawes is left with an unbuildable lot that she is being taxed on.

Ms. Hawes explained that she is not looking to alter the neighborhood and she will accept any conditions if needed. Ms. Hawes stated that 69 Borkum Road was her marital home and her and her ex-husband bought 71 Borkum Road for \$90,000, with the intent to cut the lot for additional space, they maintained the front lot requirement, and had the lot perc tested and a driveway permit was pulled. Also, Ms. Hawes said that she had an MLS listing from 2010 when she was trying to sell the lot in 2010. When Ms. Hawes' ex-husband sold 69 Borkum she received nothing from the sale. Ms. Hawes is currently paying taxes on the land and the land has depreciated.

Mr. Collette explained to Ms. Hawes that they need to adhere to the Zoning Bylaws and section 7.3 and there doesn't seem to be much more that they could do. Ms. Hawes wanted to know why the variance was denied, she questioned the grandfathering and timelines, and stated the land was held up in probate court and she could not do anything with the land and she is being taxed for a buildable lot. Mr. Collette stated that Ms. Hawes had 5 years to act on doing something with the land to maintain its buildable status. Ms. Hawes brought up minutes where Mr. Collette said 5-7 years. Mr. Collette stated the board is to act on the remand and the only thing they can try and do is make a deal with the immediate abutters.

Mr. Collette addressed the abutters at 70 Borkum, 69 Borkum, and 73 Borkum Road, and said the Zoning Board of Appeals can pencil in where the house could go, make certain conditions, have a fence requirement, change setbacks, and add deed restrictions. However, the direct abutters, applicant, and lawyer would all need to agree. Mr. Collette stated that the board cannot act on what happened in the past and if this goes back to land court than Ms. Hawes will need to state her case but may be allowed to build the house.

Mr. Lavalley, 73 Borkum Road, stated that in 2006 the zoning changed, the property was grandfathered for five years and no action was taken. Additionally, in 2019 there was a hearing and the Zoning Board of Appeals denied the variance and Mr. Lavalley feels it's a scenic road and Ms. Hawes should have to adhere to the requirements and not be able to build on that lot.

Patricia Prudhomme, 69 Borkum Road, was confused as to why the case is being heard again and needed more information. Mr. Collette explained that the original decision was appealed by Ms. Hawes and the land court sent it back to them for a remand and possibly try to work it out. Mr. Collette said that unfortunately a decision needs to be made at tonight's meeting according to the court documentation.

John Lange, 68 Borkum Road, asked about their input if it goes to land court and expressed that they do not want that land built on.

William Paige, 70 Borkum Road, stated it is unacceptable and he is against Ms. Hawes building on the property.

Some abutters talked about there wishes of Ms. Hawes not building there but did not state their names and addresses.

Mr. Tyler, explained that the truth is in the middle regarding this application and although the loss of use occurred the frontage is still in uniform, building on this lot would maintain the density, and felt that no one intentionally created the unbuildable lot. Mr. Tyler said he would vote to grant the variance because the applicant is paying taxes on the non-buildable lot and losing money.

Ms. Johns said she did a lot of research by following the deed trails, and on 12/29/2011 there was 15,000 square feet of land cut out of 69 Borkum Road to add to 71 Borkum, and then it had to be corrected. The ANR plan says non-buildable for the rear lot and if the Zoning Board of appeals granted the variance more applicants would come, and they need to set a precedent regarding the regulations of section 7.3. Additionally, Ms. Hawes stated that human error cannot be used as a hardship.

There was much discussion regarding the timelines and Ms. Hawes history with the property.

Mr. Collette opened the hearing up to the public:

Lisa Lachance, from Cherry Valley, MA, stated that her father was one of the original buyers in that neighborhood and that Mr. Lavallee has taken down stone wall on his property without permission and violates the scenic road regulations. Mr. Collette said the hearing was regarding Ms. Hawes and needed to stick to the hearing at hand.

Mr. Lange said that if this application were to get approved tonight, he would appeal the decision.

MOTION: Mr. Tyler motioned to close the public hearing

SECOND: Ms. Johns

DISCUSSION: None

ROLL CALL VOTE: Mr. Tyler-yes, Ms. Johns-yes, and Mr. Collette-yes (vote 3-0)

Mr. Tyler added that that he felt the hardship was financial. Ms. Johns agrees it is a hardship but there are rules and regulations to follow and she feels the hardship occurred from human error. Ms. Hawes argues additional points, but the discussion portion was closed.

MOTION: Mr. Collette made a motion to deny the variance based on the findings under section 7.3 of the Zoning Bylaws

SECOND: Ms. Johns

DISCUSSION: Mr. Collette noted that the board made a diligent attempt to resolve the issues between Ms. Hawes and the immediate abutters to the subject property via a deed restriction or other formal mechanism in an attempt to resolve abutters concerns, however, the parties could not agree.

ROLL CALL VOTE: Mr. Tyler-nay, Ms. Johns-yes, and Mr. Collette-yes (vote 2-1)

4. Town Planner Report

Mr. Dell'Aquila said there is a full meeting next month but nothing new to discuss

5. Adjournment:

Mr. Tyler motioned to adjourn the meeting at 8:34 pm

Ms. Johns seconded

ROLL CALL VOTE: Mr. Tyler-yes, Ms. Johns-yes, and Mr. Collette-yes (vote 3-0)

Submitted By: Monica Santerre-Gervais, ODIS Clerk

Approved by the Zoning Board of Appeals: 10/13/2020

List of Documents used on September 29, 2020:

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

- Agenda
- Memo from Town Planner
- Variance Permit application, Monica Hawes; 71 Borkum Road
- KP Law letter and email, regarding 71 Borkum Road
- ZBA Minutes from 12/10/2019
- Email from abutter William Paige at 70 Borkum Road
- Email from Phillip Lavallee at 73 Borkum Road
- Certificate of Decision regarding 71 Borkum Road

Items submitted to ZBA members at the meeting:

- None