

Board of Appeals Meeting Minutes  
Meeting held on Tuesday, April 21, 2015  
Possible Spates Property, Cooper Creek Road

Meeting was attended by Board of Appeals members Steve Baluk (chair), Lynn Bertelli (clerk), Steve Hodgins, Joe Delmolino (board member Donald Puntin was unable to attend)

Also attending: Todd & Gail Briggs, Elisabeth C. Goodman (atty.), Judith and Jay Spates, Mike Shepard (atty.), Ben Naylor – Engineer, Larry Gould – Zoning Enforcement Officer, Rhonna Goodman, Herbert Hochberg

Abutters have presented four new letters of opposition, which were read by the board.

Jay Spates spoke about the proposed plan and the changes that have been implemented since the original plan was presented. There is concern that the plan still has wording stating that it's for a 3 bedroom home when in fact the floor plan shows a proposed two bedroom home. Mr. Spates said he is willing the change it to say that is in fact a 2 bedroom home and he would sign off on that requirement. Total square footage of new plan living space is 855 square feet, which is within the allowance of an increase of 50% of the existing living space.

Atty. Goodman spoke on behalf of her clients stating that the proposed plan is still unacceptable and that it will be a detriment to the neighborhood due to creating a structure that would be available for constant use instead of the seasonal use allowed by the current structure. She also states that the height of the proposed structure will make a visible intrusion on the neighborhood. See attached letters for specific concerns.

Mr. Hochberg and Ms. Goodman (abutter not attorney) each spoke with their views in opposition to the proposed plan. A letter from Mr. Goodman, who was not able to attend, was also read. All letters are also attached.

Since board member Donald Puntin was unable to attend that meeting – it was decided by all that another meeting was required before the board voted.

The next meeting will be held on Wednesday, May 6 at 7 p.m.

Respectfully submitted,

Lynn M. Bertelli  
Clerk for Tyringham Board of Appeals

April 20, 2015

Zoning Board of Appeals  
Town of Tyringham  
116 Main Road  
Tyringham, MA 01264

Re: **Application for Special Permit by James Spates re  
35 Cooper Creek Road**

Dear Board Members:

My wife Rhonna and I own our home at 39 Cooper Creek Road, which is very close to and in plain view of the proposed structure that the Applicant is seeking to construct at 35 Cooper Creek Road. We also own a parcel on the other side of Cooper Creek Road, which also looks onto the 35 Cooper Creek Road site.

We strongly oppose the application. Because of a previously scheduled business engagement, I regretfully cannot attend the April 21<sup>st</sup> hearing, but Rhonna will attend and I am submitting this letter, because this is a very important issue for us.

The legal objections are in the communication to the Board presented by our counsel Elisabeth Goodman (same last name as ours, but no relation). I respectfully request the Board to take into account the facts and circumstances which render the strongly stated objections made by us and our neighbors, the best evidence of whether or not this intrusion will be substantially more detrimental than what is there now. We note that the only expression of "support" for the application comes from a single owner whose parcel is so far removed from and out of sight of 35 Cooper Creek Road, that it is not really pertinent.

We have lived at 39 Cooper Creek Road for about 36 years and spend much time here. It is not our "second" house, but our other home, and as dear to us and our family as our residence in New York City. We have worked with the other Cooper Creek Road residents to create a community, and have provided significant civic service to the Town of Tyringham as well. You will recall that in 1992 the integrity of Goose Pond, an important asset of the Town, was threatened by the decision of the mill that owned the Goose Pond dam, to abandon it. In response, a small group, of which I was a part with Tim Puntin, organized opposition to this threat, resulting in the formation of the Goose Pond Maintenance District. Tim and I, with the then President of the Leisure Lee home owners association, served as the first elected members

of the first Prudential Committee governing the District. We set the course for maintaining Goose Pond as a gem of the Berkshires, and the District provides funds, from those of us on the Pond, for its upkeep without drawing resources from the Town.

I recite these facts only to underscore our long standing commitment and investment as members of the community, and as Tyringham taxpayers. I respectfully suggest that the unanimous opposition to this project by all who have homes in the actual vicinity of 35 Cooper Creek Road, and who will be detrimentally affected by the proposed project, should be of significant weight in the Board's decision on this application. The existing structure may not be pretty and it is most probably illegal to begin with, but it is an unobtrusive part of the landscape. The new, proposed structure, inappropriately jammed onto a small parcel that is in the face of its abutters, will be a constant and unwelcome intrusion to all of us.

Thank you.

Sincerely,

  
Ezra N. Goodman

cc: Rhonna Goodman  
Hebert Hochberg  
Elisabeth C. Goodman, Esq.

**Cain Hibbard & Myers** PC  
Counselors at Law

377 Main Street, Williamstown, Massachusetts 01267 Tel: 413-884-0006 Fax: 413-443-7694  
Direct Dial: 413-629-1312 email: egoodman@cainhibbard.com

**Elisabeth C. Goodman**

April 21, 2015

Mr. Stephen Baluk  
Chairman, Zoning Board of Appeals  
Town of Tyringham  
116 Main Road  
Tyringham, MA 01264

***Re: Application for Special Permit filed by James Spates re 35 Cooper Creek Road***

Dear Board Members:

We are writing on behalf of Ezra N. Goodman, Esq. and Rhonna A. Goodman who own the property located at 39 Cooper Creek Road, and Herbert Hochberg who owns the property at 33 Cooper Creek Road, Tyringham, Massachusetts. In addition, the Goodmans own property directly across Cooper Creek Road from 35 Cooper Creek Road. We are writing to clarify several legal issues that have been discussed by the Zoning Board during the hearings and to comment on the revised plans filed by the Applicant.

**1. The Zoning Bylaw Section 6.1.4 (a) Requires that the Change Not Be More Detrimental to the Neighborhood than the Existing Use and Not in Greater Nonconformity.**

Various Board members have at times during the hearing commented that the applicant is allowed to increase the footprint of the existing structure by 50%. That is not the correct standard here because the bylaw requires in such cases that the new construction comply with current setbacks. The proposed structure will not comply with current setbacks. The Board must apply the criteria in Section 6.1.4, which states that the Board must find:

- a) That such change, extension or alteration shall not be substantially more detrimental than the existing non-conforming use to the neighborhood;
- b) That such extended, altered and reconstructed structure or changed use shall not be in greater non-conformity with open space, yard and off street parking requirements of this Bylaw.

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The Applicant's proposed structure does not meet the requirements of either subpart (a) (not substantially more detrimental) or subpart (b) (not in greater non-conformity) and therefore the Board should deny the application.

**2. The Change to a Year-Round, Two Story Structure from the Existing Small Structure and Seasonal Use is Obtrusive, Objectionable and Detrimental to the Neighborhood.**

Currently, there is no well serving the trailer and no year-round use of this parcel. The existing trailer is small and unobtrusive. It is not occupied as a residence but used on an occasional basis. Approving this special permit application will change the seasonal use to a constant use. The height of the proposed building will make a visible intrusion on the neighborhood.

**3. The Neighbors have Filed Numerous Objections Showing the Change Would be Detrimental to the Neighborhood.**

We filed comments on the application in December, 2014 together with letters from four neighbors and abutters who objected to the proposed project.<sup>1</sup> In January, 2015, we filed five new objection letters from other neighbors.<sup>2</sup> More objections are filed with this letter. We confirmed that only one comment letter has been filed in support of this proposal, from someone whose parcel (11 Cooper Creek Road) is far removed from and out of view of 35 Cooper Creek Road, and who, to my understanding, is related to the owner of 35 Cooper Creek Road. We respectfully request that the Board give appropriate weight to these objections from persons directly affected by the proposed structure, and deny the application.

Furthermore, the applicant and the current property owners urge the Board to allow this new structure on the supposition that the applicant just wants to build a new house. However, neither the current owners nor the applicant have said they want to live there. They do not have a vested interest in the neighborhood in the same manner as the current homeowners and thus cannot refute the fact that creation of a larger, four-season structure on this undersized parcel will be detrimental to the neighborhood.

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<sup>1</sup> Margo Schwartz, 29 Cooper Creek Road; Richard Holland, 31 Cooper Creek Road; David Garlock, 43 Cooper Creek Road; and Gail Bleifer, 41 Cooper Creek Road. Mr. Hochberg also filed an objection.

<sup>2</sup> Steven Schaeffer, 16 Cooper Creek Road; George Elvin, 23 Cooper Creek Road; Kenneth Norwick, 18 Cooper Creek Road; Peter Shaffer, 48 Cooper Creek Road; Milton Rubin, 35 Cooper Creek Road.

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**4. The Increase and Size and Height will Increase the Non-Conformity of the Structure.**

The existing structure is one story. The new structure would be much higher and visible from the street and from the abutting properties. The new structure would have a larger footprint so that the amount of building running along the side of the neighbor's property is increased. On one side the proposed building is approximately half a foot *closer* to the side yard than the existing structure. There is not sufficient room on this undersized lot size to provide an adequate buffer. This proposal clearly will increase the nonconformity and the Board should reject the application on this basis.

**5. The Applicant Has Not Provided Any Evidence That The Trailer Was Legal When Placed On The Lot.**

The Board has not been given any documentary evidence regarding the qualification of the existing trailer as a valid, legal pre-existing structure and in the absence of such documentary evidence, the qualification should not be assumed. As noted in our December comment letter, it is the applicant's burden to prove this. Anecdotal evidence about the date of the trailer is not reliable and should be not considered. The Board should require the applicant to produce reliable and credible documentary evidence that the trailer was legally placed on the lot before the Zoning Bylaw provisions that prohibit trailers.

**6. The Plans Have Errors.**

The plans provided to the Board have errors that also merit rejection. The plans have notations regarding a three bedroom structure but the Applicant says that it proposes only a two bedroom structure.

For the reasons noted above and in their comment letters, the neighbors and abutters respectfully request that this Board deny the special permit application.

Very truly yours,



Elisabeth C. Goodman

Enclosures

cc: Ezra N. Goodman, Esq.  
Mrs. Rhonna A. Goodman  
Mr. Herbert Hochberg

Herbert L. Hochberg  
112 Carthage Road  
Scarsdale, NY 10583  
914 723-6566  
[h\\_hochberg@hotmail.com](mailto:h_hochberg@hotmail.com)

April 20, 2015

Zoning Board of Appeals  
Town of Tyringham  
116 Main Road  
Tyringham, MA 01264

Re: Application for Special Permit by  
James Spates re 35 Cooper Creek Road

Dear Board Members:

I am the owner of 33 Cooper Creek Road adjacent to the applicant's property.

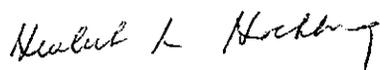
I respectfully request that the Board deny the application because: 1) Tyringham laws do not permit "by right" expansion of number 35 as it is a non conforming use and the applicants proposal will not meet existing lot setback standards and 2) the proposal would make the property more detrimental than the existing structure for the following reasons:

- A. The proposal would convert a structure usable only in the warmer months to a year around home thereby amplifying its presence to the detriment of its neighbors.
- B. The larger, year around house would increase the number of occupants and activity in a non conforming house on a non conforming lot.
- C. The proposed house would still be out of character with the neighborhood which contains homes worth substantially more than the non conforming property, adversely affecting the neighborhood and market prices of the nearby homes.

I believe the ZBA should use its authority to prevent expansion of properties which are now non conforming and would continue to be non conforming after the expansion. Non conforming properties should not be rewarded by permitting them to be enlarged to the detriment of their neighbors.

Moreover, any permit should require the removal of the shed that illegally encroaches on my property.

Respectfully submitted by:



31 Cooper Creek Road  
Tyringham, MA 01264

April 15, 2015

Mr. Stephen Baluk  
Chairman, Zoning Board of Appeals  
Town of Tyringham  
116 Main Road  
Tyringham, MA 01264

**Re: Application for Special Permit filed by James Spates re 35 Cooper Creek Road**

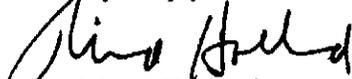
Dear Board Members:

I am writing to request that the Zoning Board of Appeals deny the revised application for a Special Permit filed by James Spates ("Applicant"). I have a house at 31 Cooper Creek Road and I am the President of the Cooper Creek Homeowner's Association, Inc.

Currently there is an older trailer structure on this lot that has no well and is occupied on a seasonal basis. The Applicant seeks to build a house for year round use. He will put in a new well, located immediately adjacent to the neighbor's property line. The project would require use of a shared driveway with the Briggs family. The existing structure has a footprint of 587 square feet of living space. The new proposed structure will have two floors and 1,202 of space (837 square feet of space not including porches). We believe this new structure will have an adverse effect on the neighborhood. The increase in the size of the footprint increases the nonconformity of this structure. There is no opportunity to provide a buffer or screen the new structure from the neighboring houses because of the tiny lot size. This lot should never have been divided but it will increase the problem to permit a larger structure with year-round occupants.

Thank you for your consideration of this comment.

Very truly yours,

  
Richard Holland