



Planning Board – Town of Spencer

Minutes

Planning Board Special Meeting

Monday, September 26, 2022, at 7:00 PM

Conference Room A, 157 Main Street Spencer, MA 01562

Memorial Town Hall- **Remote and in person Meeting**

Planning Board Members Present: Chair Robert Ceppi (in-person), Shirley Shiver (in-person), Vaughn Slack, (in-person), and Charlie Bellemer (in-person)

Planning Board Members Absent: Joshua Buckley

Staff Present: Lauren Vivier, Town Planner/Conservation Agent (in-person) and (remote)

Staff Absent: Monica Santerre-Gervais, ODIS Senior Clerk

1. Chair, Mr. Ceppi, opened the meeting at 7:10 pm

2. Continued Public Hearing: Zoning Bylaw Amendments:

Mr. Ceppi explained that this special public hearing will be a review of the recommended bylaw changes for the solar bylaw reviewing sections 2.2 Definitions, 4.2 Use Table-Principal Uses, 4.4 Accessory Uses, 4.7 Prohibited Uses, 4.8.9 Solar Photovoltaic Generating Installations, and 5.2 Interpretation notes for area.

Ms. Vivier mentioned at the last meeting the requested changes under section 2.2 was to replace the definition of Accessory Use, adding definition for open field, and add definition for pasture. Mr. Bellemer asked about having an accessory use on an accessory and gave an example of a green house. Ms. Vivier responded it would still be an accessory use and no limit on accessory uses on a property. Mr. Bellemer asked if the homeowner could have two on one property. Mr. Ceppi stated the homeowner could not sell back to the grid. Ms. Vivier explained it would still fall under our definition of accessory. Ms. Vivier read aloud Town Counsel's note for section 2.2 *"Keep in mind that per Section 5.3.8, the Bylaw appears to allow for more than one use on a lot. You may want to consider the following as a definition in place of what you are proposing here: 'use of a lot or structure distinct from and not accessory to any other use of the lot or structure, for which said lot or structure may be used, occupied, or maintained as such under this Bylaw. A lot or structure may have more than one principal use.'"* The Planning Board discussed the difference for primary use and principal use, having more than one principal use on a property, and accessory uses towards principal use.

Ms. Vivier discussed section 4.2 Use table, and the changes remained, and the only difference was the Energy Storage System that it cannot be a primary use in any district (no battery field). Mr. Slack asked the reasoning for that, and Ms. Vivier stated it not allowed but down the road revisit to have a specific section in the solar bylaw and will need additional research efforts.

Ms. Vivier mentioned she noticed for section 4.4 Accessory Uses, the letter J is deleted, and she

will add it back in. Additionally, Ms. Vivier noted the zoning district added into this section. Mr. Ceppi mentioned the wording under J says primary use and should say principal use.

Ms. Vivier reviewed section 4.7 and mentioned that Town Counsel removed wording for Energy Storage System because it is under section 4.8.9.

Ms. Vivier reviewed the changes to section 4.8.9 and that there were definitions moved to section 2.2. Ms. Vivier read aloud the comment on page 7, regarding Roof-Mounted Solar there was language added *“Any such structure shall have a dedicated use independent of providing support for the Photovoltaic Installation.”* Town Counsel comment states *“This is suggested language to ensure that the structure is not simply the supporting structure for the LSSI. You can alter or omit as you see fit.”* Ms. Vivier stated that the Building Department currently regulate Roof-Mounted Solar. Ms. Vivier discussed Site Plan Review Authority and read aloud the new definition *“For purposes of Large-Scale Ground-Mounted Solar Photovoltaic installations and Energy Storage Systems, the Site Plan Review Authority is the Spencer Planning Board.”* Town Counsel comments question states *“What about site plan review for SSSI's that require a SP from the ZBA?”* The Planning Board discussed that the Zoning Board of appeals would be reviewing the permits for accessory use (i.e., Small-Scale Solar) and Large-Scale Solar will be review by the Planning Board. Ms. Vivier discussed a minor change on page 8, updating and changing and existing term in the Bylaw under section E to be more consistent.

Regarding section 4.8.9.F.13.d, Ms. Vivier went over needing clarity regarding cash and surety for decommissioning proponents, Town Counsel’s comment *“Requiring cash security is not expressly prohibited under State law, but the validity of such a requirement may be challenged where it can be shown that it is not feasible, financially or otherwise, for the solar operator to provide security in that form.”* *“As with subdivision security, this security may be established to require Planning Board oversight so that it remains in place and is used as required. However, funds held by the Town, if any, will be held by the Town Treasurer, subject to these requirements. Once authorized for use by the Planning Board, Town use of the funds for decommissioning will require compliance with procurement laws and Town finance procedures for expenditure of Town funds.”* Additionally, Town Counsel mentioned *“As for guidance on use of funds, the funds can only be used for the decommission purposes stated in this section, i.e., removal and landscaping. Funds provided should be subject to a written agreement between Town and the provider of the funds specifying how funds are handled and used, similar to an agreement you would use for accepting funds for subdivision security. I would not call this a development agreement, and I would need to know more about what is intended to provide guidance there.”* Mr. Bellemer asked if surety is received but then 15 years down the road newer technology makes current equipment less desirable and the cost of removal is more than the surety. Ms. Shiver stated she believed surety is reviewed yearly. Mr. Ceppi stated if the property owner does not pay the balance to remove the solar panels than the Planning Board could put a lien on the property. Additionally, Mr. Ceppi mentioned language stating if the system is inoperable within a year, it is determined abandoned. Mr. Slack asked what would happen if it were in an estate and the executor submits a request to extend the year and Ms. Vivier said it could be a change or modification and they would need to come back before the Planning Board for permission.

Regarding section 4.8.9.G.17, Ms. Vivier went over adding clarification that Energy Storage Systems (ESS) is an accessory use and not a principal use.

Regarding section 5.2, Ms. Vivier went over maximum height requirements, “the maximum height of the structures shall not exceed 10’ in residential districts or 15’ in non-residential districts.” Mr. Bellemer asked if Big Y used the unused parking lot with solar panels and Ms. Vivier said she did not believe that would be small-scale solar. Mr. Slack mentioned they would need a certain amount of parking spaces for the size of the building and may not be able to use the space. Mr. Ceppi asked about having a canopy in a parking lot with solar on top and Ms. Vivier stated in that situation that would require change in the use of the land, change in parking spaces, and the applicant would need to come before the Planning Board.

Open to the Public:

Tanya McCauley, 28 McCormick Road, felt the definitions are confusing and discussed the accessory use definition. Ms. McCauley asked about how batteries are regulated in the new amendments, and Mr. Bellemer said it is incomplete. Ms. Vivier said there is battery language under section 4.8.9, such as, setbacks. Ms. McCauley felt the setbacks are insufficient for the batteries and discussed the previous battery fire in a conex box. Ms. McCauley discussed the different batteries that are coming out and the large conex box needed to house the batteries. Additionally, Ms. McCauley discussed under the decommissioning section, the wording is missing the underground conduits material. Ms. Vivier stated the only thing that changed in section 4.8.9.F.13.d was how the Planning Board accepts the surety. Mr. Bellemer said the conduit contains copper and will keep its value. Ms. McCauley mentioned the Town of Spencer should only accept cash surety and Ms. Vivier read aloud Town Counsel’s comment regarding cash surety and how it could be challenged in court. Ms. McCauley stated she was happy that section 4.8.9.G.17.1 requires applicants to provide safety data sheets but asked what the Planning Board will do with that information. Mr. Bellemer answered that for State and Federal law it requires that only certain trained workers can be on site with the solar farm. Ms. McCauley mentioned concerns with the soil and water and the Planning Board should require the applicants to test the soil before construction, during, and after construction for comparison. Ms. Vivier stated this could be a condition for future approved solar farms. Ms. McCauley would like the Planning Board to require construction progress reports during the construction of the solar farms.

Matt Defosse, 7 Paul’s Drive, expressed his concern in section 2.2, for the definitions for open field and a pasture and those terms could be challenged in court. Also, in section 4.8.9, Mr. Defosse mentioned the definition construction could be challenged in court. Additionally for section 4.8.9.F.7, Mr. Defosse discussed hours of operation, if they have batteries, it will be operational 24 hours a day and 7 days a week. Mr. Bellemer stated the hours of operation are for the construction of the solar farm. Ms. McCauley interjected and stated in her experience the workers showed up in teams and they started work at 3:00 am. Mr. Ceppi stated the Town of Spencer’s General Bylaw has noise regulations and for the solar farms they require acoustic analysis. Mr. Defosse stated under section 4.8.9.F.14, the applicant should have to come before the Planning Board for ownership changes, however, the way it is written the applicants just needs to submit in writing. Ms. Vivier stated the language stayed the same and has not changed

and the Planning Board cannot stop a sale of property to a new owner. Mr. Defosse read a narrative regarding the fire at the Solar Farm on the Town of Spencer Landfill that occurred on Thursday September 29, 2022. Ms. Vivier explained that a panel did catch fire due to a lightening strike and Town Officials went to the site to inspect.

Jared Grigg, 48 Bacon Hill Road, discussed battery storage in the middle of the solar farms and the concern of access and water supply. Ms. McCauley said no water on a battery fire and Mr. Ceppi said they could. Mr. Grigg asked if residential battery storage is restricted, and the Planning Board said no. Ms. Vivier said she spoke with the Fire Chief, Robert Parsons, regarding the battery storage location. Mr. Bellemer said the applicant should provide a water supply and Mr. Ceppi discussed his suggestion of keeping a water supply underground in a contained system.

Mr. Defosse mentioned that numerous solar farms will be decommissioned at the same time and the Town of Spencer does not have a good recycling plan for the panels. Mr. Bellemer said the Environmental Protection Agency (EPA) in California is addressing it right now.

Jonathan Viner (remote), 34 Donnelly Cross Road, asked for clarification regarding principal use, if two principal uses are allowed on one parcel what is the deciding factor on which principal uses can and cannot be used on one lot. Mr. Viner gave an example of building two houses on one lot and what would be the deciding factor. Ms. Vivier stated there are Building Codes and Zoning Bylaw requirements that need to be satisfied. Mr. Viner asked if he could install a large-scale solar array, a car wash, and a single-family home on one lot and Ms. Vivier responded that he would need to meet Zoning Requirements and restrictions to comply. Mr. Ceppi stated in the past the Planning Board only allowed one primary/principal use on a lot and Ms. Vivier mentioned in section 5.3.8 in the Zoning Bylaw it allows having multiple primary uses on a lot and read aloud. Mr. Viner stated it mentions multiple uses not multiple principal uses and if interpreted that way it should be removed. Ms. Vivier read aloud section 5.3, *“Specific provisions for area requirements: All Special Permits required under this section shall be issued by the Zoning Board of Appeals except that the Planning Board shall issue them in cases where Site Plan Review and/or a Planning Board Special Permit in Section 4.2 Use Table, Principal Uses is required.”* Mr. Viner reiterated that the sections be removed or clarified if that is how it is interpreted because multiple principal uses have not been allowed. Mr. Viner defined principal use as one main use on a property and allowing large-scale solar as an accessory and primary will be problematic. There was discussion regarding how the existing Zoning Bylaw will need amendments because there are too many discrepancies between primary and principal uses and allowing a secondary primary use on one parcel.

Mr. Viner asked what process is used to allow two primary uses on a parcel and gave the example of a single-family home and large-scale solar farm. Mr. Ceppi said large-scale needs to have its own primary use. Ms. Vivier stated it would be at the discretion of the Planning Board. Jeffrey Bridges, Town Administrator, stated that if the Planning Board requires that the large-scale solar being the only primary use on a parcel it needs to be stated in the Solar Bylaw. Ms. Vivier said the language could be inserted on the top of section 4.8.9. Mr. Viner discussed the primary use and accessory use issues they could have without editing the current language of the Zoning Bylaw.

Mr. Viner commented on allowing large-scale solar in commercial and industrial zoning districts and Ms. Vivier said it was the request of the Planning Board in August to add them to the use table but would have to meet zoning requirements. Also, Mr. Viner would like to see a battery storage moratorium in the future.

MOTION: Ms. Shiver motioned to close the public hearing for Solar Zoning Bylaw Amendments

SECOND: Mr. Bellemer

DISCUSSION: None

ROLL CALL VOTE: Mr. Ceppi, Ms. Shiver, Mr. Slack, and Mr. Bellemer all voted aye, (vote 4-0) motion carried.

The Planning Board and Ms. Vivier reviewed the minor changes and Ms. Vivier will email the finalized copy to the Planning Board when it is complete.

MOTION: Ms. Shiver motioned to approve the Solar Zoning Bylaw Amendments with edits

SECOND: Mr. Slack

DISCUSSION: None

ROLL CALL VOTE: Mr. Ceppi, Ms. Shiver, Mr. Slack, and Mr. Bellemer all voted aye, (vote 4-0) motion carried.

3. New Business/Adjournment

MOTION: Ms. Shiver motioned to adjourn at 9:04 pm

SECOND: Mr. Slack

DISCUSSION: None

ROLL CALL VOTE: Mr. Ceppi, Ms. Shiver, Mr. Slack, and Mr. Bellemer all voted aye, (vote 4-0) motion carried.

Submitted by Monica Santerre-Gervais, ODIS Clerk

Approved by the Planning Board on: 10/18/2022

List of Documents used on September 26, 2022.

Items sent by email to the Planning Board and printed out for use at the meeting:

- Agenda
- Drafted Solar Bylaw Amendments with Town Counsel comments
- Email from Jonathan Viner dated 9/25/2022- regarding commentary on Solar Zoning Amendments

Items submitted/ brought to the Meeting:

- None