



Planning Board – Town of Spencer

Minutes

Planning Board Special Meeting

Tuesday, October 20, 2020 at 7:00 PM

McCourt Social Hall, 157 Main Street Spencer, MA 01562

Memorial Town Hall- **Remote Meeting**

Planning Board Members Present: Chair Shirley Shiver (remote), Vice Chair Jeff Butensky (in-person), Robert Ceppi (in-person), Jonathon Viner (in-person), and Maria Reed (remote)

Planning Board Members Absent: None

Staff Present in-person: Paul Dell'Aquila, Town Planner and Monica Santerre-Gervais, ODIS Senior Clerk

Staff Absent: None

*****The meeting started late because the zoning meeting ran late and there was a 5-minute recess in between the meetings*****

1. Ms. Shiver opened the meeting at 8:08 pm and Ms. Shiver read aloud Covid-19 statement. *“This Meeting of the Planning Board 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.”*

2. Adoption of Minutes: August 18, 2020, August 18, 2020 (2nd half), August 25, 2020, September 15, 2020 and October 01, 2020

Ms. Shiver asked if the Planning Board wanted to approve all the minutes at once or meeting by meeting. Mr. Viner noted that the minutes should say if the members were remote or in-person and the minutes will be revised to state that.

August 18, 2020 meeting minutes- list if members are remote or in-person

August 18, 2020 (2nd half) meeting minutes- Mr. Viner wants clarification on page 2 bottom paragraph that Mr. Viner commented that Graves Engineering RFQ response noted teaming up with EcoTec and that EcoTec was the design consultant for McCormick Road Solar Farm. Also, list if members are remote or in-person.

August 25, 2020 meeting minutes- list if members are remote or in-person.

September 15, 2020 meeting minutes- list if members are remote or in-person

October 01, 2020 Special meeting minutes- list if members are remote or in-person

MOTION: Mr. Viner motioned to approve the minutes August 18, 2020, August 18, 2020 (2nd half), August 25, 2020, September 15, 2020 and October 01, 2020 with the amendments discussed

SECOND: Mr. Butensky

DISCUSSION: None

ROLL CALL VOTE: Butensky-yes, Reed-yes, Ceppi-yes, Viner-yes, Shiver-yes (Vote 5-0 motion carried)

3. ANR's: Lot 5, 7, 7 E. Charlton Road/ Lot A/6R E. Charlton Road- John Kennedy:

Mr. Dell'Aquila stated the applicant wants to reconfigure the existing lots he owns (R14-53-1, R14-53-3, R14-53-5) into three building lots (5R, 6R, 7R), Lot A (which would become buildable only upon receipt of a Special Permit for a Rear Lot Subdivision – application pending for 11/17/20), and an unbuildable Lot B. Proposed lots 5R and 7R are already developed with single family homes and would be conforming for area, frontage and setbacks for the Rural Residential (RR) Zone after the proposed action. Proposed lot 6R would be undeveloped at this time but would also conform to the dimensional requirements of the RR zone. Mr. Ceppi asked if the plans meet the requirements to be a rear lot subdivision and Mr. Dell'Aquila said yes the front lot has 2 times the minimum zoning, the rear has 4 times the amount, however, the applicant would need to submit paperwork for the driveway easement.

Ms. Shiver asked about the parent lot and it would be lot 6R. Mr. Butensky commented on the lot line being removed going through the existing house and Mr. Dell'Aquila stated they are under one ownership. Mr. Ceppi stated the Planning Board is only approving the ANR tonight and to discuss the rear lot subdivision at the next meeting. Mr. Viner said the only potential issue is that the ANR and the special permit should be approved at the same time. Ms. Shiver read aloud section 5.3.10 of the bylaw, article 5.

Jason Dubois, DC Engineering, was on the call remotely to answer questions. Mr. Dubois continued to explain the ANR and said he would like lot 5R in compliance. Ms. Shiver asked what plan would be presented and Mr. Dubois said this plan.

MOTION: Mr. Ceppi motioned to approve the ANR as submitted

SECOND: Mr. Butensky

DISCUSSION: Mr. Viner asked if the applicant was disqualifying themselves with the ANR process and recalls language in the bylaw and Mr. Dell'Aquila responded that there is a stipulation with the new rear lot subdivisions and deed restrictions and the bylaw has no further information. Ms. Shiver read aloud section 5.3.10 item F. no more than two front lot pairs can be created. Mr. Dubois mentioned they were creating 1 pair. Mr. Viner asked about the time sensitivity and the new house being built on 5R and Mr. Dubois said it is under construction now. Mr. Viner would like an offset to the frontage and Mr. Dubois said 153.7 from the front yard and Mr. Ceppi that wouldn't be the right lot. No additional discussion.

ROLL CALL VOTE: Butensky-yes, Reed-yes, Ceppi-yes, Viner-yes, Shiver-yes (Vote 5-0 motion carried)

ANR 71 & 75 E. Charlton Road/ Adam German:

Mr. Dubois was online to discuss the ANR and said the applicant lives at 71 E. Charlton Road and 71 A and has a sale agreement with the owner of 75 E. Charlton Road for the rear access. The ANR plan would reconfigure existing parcel R14-29-3 (owned by Adam German) into two new lots (71 & 71A); convey parcel R14-29-4 (owned by Kurland) into parcel R14-29-2 (owned by Harvey); and to create Lot 75A, which would be combined with and create access to new lot 71A (which would become buildable only upon receipt of a Special Permit for a Rear Lot Subdivision – application pending for 11/17/20). Proposed lots 71 and remaining lot 75 are already developed with single family homes and would be conforming for area, frontage and setbacks for the Rural Residential (RR) Zone after the proposed action.

Ms. Shiver stated that the parent lot and square footage is important, mentioned the regulations for the shared driveway and the possibility of a waiver. Mr. Dubois said there would be a waiver needed due to the Tennessee pipeline.

MOTION: Mr. Ceppi motioned to approve the ANR as submitted

SECOND: Mr. Viner

DISCUSSION: None

ROLL CALL VOTE: Butensky-yes, Reed-yes, Ceppi-yes, Viner-yes, Shiver-yes (Vote 5-0 motion carried)

4. Continued Public Hearing-Major Site Plan Review/Special Permit Applicant: Sunpin Solar Development, LLC; Owner: Peter and Carol Gaucher, Location: 22 Norcross Road; Spencer Assessor's Map R40-07. The applicant is requesting a Major Site Plan Review under Section 7.4 and Special Permit under Section 7.2 of the Spencer Zoning Bylaw Zoning to install a Solar Farm. The property is located within the Rural Residential zoning

The Conservation Commission's peer review on this project is still ongoing, so the Commission has not actually heard this case yet. Since no modifications have been made to the current plans pending peer review and public hearing, the applicant is requesting a continuance until the November meeting in order to incorporate any new information or modifications prompted by Conservation.

MOTION: Mr. Viner motioned to continue the public hearing until 11/17/2020

SECOND: Mr. Ceppi

DISCUSSION: None

ROLL CALL VOTE: Butensky-yes, Reed-yes, Ceppi-yes, Viner-yes, Shiver-yes (Vote 5-0 motion carried)

5. Continued Public Hearing-Major Site Plan Review/ Special Permit/ Subdivision - Applicant: Spencer Solar LLC; Owner: Ash Spencer Realty LLC, Location: Ash Street; Spencer Assessor's Map R27-01. The applicant is requesting a Major Site Plan Review under Section 7.4 and Special Permit under Section 7.2 of the Spencer Zoning Bylaw Zoning to install a Solar Farm. The applicant is also seeking a Subdivision approval as part of this project. The property is located within the Rural Residential zoning district.

Steve Pikhul, Bertin Engineering, was on the call to answer questions.

Ms. Shiver stated that they are still waiting for peer review comments

MOTION: Mr. Butensky motioned to close the public hearing until 11/17/2020

SECOND: Mr. Viner

DISCUSSION: None

ROLL CALL VOTE: Butensky-yes, Reed-yes, Ceppi-yes, Viner-yes, Shiver-yes (Vote 5-0 motion carried)

6. Continued Public Hearing – Special Permit/Major Site Plan Extension; Applicant: ForeFront Power, LLC; Owner: Laura Hopkins, Location: 36 Cranberry Meadow Road; Spencer Assessor's Map R12-4. The applicant is requesting an extension to the Special Permit and Major Site Plan under Sections 4.8.9, 7.2, and 7.4 of the Spencer Zoning Bylaw to install a 2.2 MW solar array. The property is located within the Rural Residential zoning district.

Ed Switzer, ForeFront Power, was on the phone to answer questions.

Ms. Shiver reviewed the discussion from the last meeting and the Planning Board still looking for proper language for applicant to receive certificate of compliance. Mr. Dell'Aquila said he drafted some conditions and submitted them to Town Council, but he has not heard anything back from them. Mr. Butensky asked if the address was 34 or 36 and Mr. Dell'Aquila said there is not an actual address. Ms. Shiver mentioned the extension would be for the special permit and site plan and the applicant is covered due to the Covid-19 State of Emergency. Mr. Viner asked if the Governor's language cover site plans and Mr. Dell'Aquila said yes. Mr. Viner asked if there were any changes to the equipment that would need amendments to the site plan. Mr. Switzer stated that there is a difference in the module size, but it would not affect the site plan. Ms. Shiver asked if they knew ahead of time what the testing dates would be, and Mr. Switzer said he did not know but could provide the dates when they find out. Ms. Shiver stated that the Planning Board is trying to keep solar farms from generating power until they receive their certificate of compliance. Mr. Switzer said that everything gets done after the PTO and will submit asbuilt as soon as possible. There was much discussion about the certificate of occupancy issued by the Building inspector, the Certificate of Compliance, and language in the conditions. The Planning Board members agreed to invite the Building Inspector at the next meeting to get clarification on process. Mr. Viner stated that he would like to see and updated decommissioning bond and if there is salvage value then it should be removed from the estimate. Mr. Dell'Aquila stated that this project has one of the highest decommissioning bonds in town per megawatt.

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

MOTION: Mr. Viner motioned to continue the public hearing until 11/17/2020

SECOND: Mr. Ceppi

DISCUSSION: None

**ROLL CALL VOTE: Butensky-yes, Reed-no response, Ceppi-yes, Viner-yes, Shiver-yes
(Vote 4-0 motion carried)**

Mr. Butensky mentioned that Ms. Reed has dropped off for three meetings and it should be mentioned to her, however, Ms. Reed answered later on in the evening

7. Continued Public Hearing: Major Site Plan Review/ Stormwater Permit Renewal – Applicant: Chris Nolan, BETA Group, Inc.; Owner: DG Northeast 2020 Holdings, LLC Location: North Brookfield Road; Spencer Assessor’s Map R39/14. The applicant is requesting an extension to a Major Site Plan Review under Section 7.4 of the Spencer Zoning Bylaw to install a solar array. The property is located within the Rural Residential zoning district.

Chris Nolan, BETA Group, was on the call to answer questions. Mr. Viner stated that this hearing was tabled from the last meeting.

Mr. Nolan stated that he believed everything was still valid and only heard about the special permit questioning at the last meeting. Mr. Nolan believes everything is still valid and they are preparing to submit their application to the building department to receive a building permit, however, they need to know if the Planning Board/Town Planner will sign off on the building permit cover sheet and Mr. Nolan does not want the conditions reopened.

Ms. Shiver stated that the Planning Board has received memos from Town Council.

The chair opened the hearing up for public comment.

Mr. Viner asked for a point of order because the applicant feels they have current permits and does not believe they need to listen to the applicant if they believe they have everything in order, additionally, Mr. Viner suggested the applicant withdraw without prejudice.

Tad Heuer, Attorney representing BETA Group, stated the extension is for the site plan and it was a caution from the developer due to current deadline and Covid-19. The Site Plan Permit falls under the municipality act, therefore, there is no need for further extension. However, if the Special use has lapsed the developer needs to know.

Mr. Dell’Aquila stated that the matter is about site plan extension, there is question about updating the decommissioning bond, the special permit is being reviewed by Town Council to see if substantial use of the special permit has taken place, however, there has not been a definitive answer from Town Council. Ms. Shiver asked if they determined or leave up to the Building Inspector and Mr. Ceppi felt they should not wait for the Building Inspector and they should discuss. Mr. Dell’Aquila read aloud some language from Town council.

Mr. Heuer, substantial use is different from the use permit and construction special permit. Case law, construction, started with conceptual plan, then submitted site plan documents. Mr. Heuer thought it was useful to give land court Evergreen case as an example and discussed the different developers the project had been sold, huge fess has been paid to peer review and land was taken out of 61 B with the penalty tax, also, the site plan was granted because the special permit was valid. Mr. Viner felt the point was well made with the Evergreen case; however, the Evergreen condition is a land case and could be appealed and Mr. Heuer said it was not appealed. Mr. Viner brought up the zoning enforcement bylaw 7.5.2 and Mr. Heuer said a building permit has not been issued for this project and discussed his substantial use definition. Mr. Viner said that site plan approval was February 20, 2018 and the condition states the permit lapses without any action taken after two years, therefore, the site plan will lapse and Mr. Heuer said both fell under the Evergreen Case Law, because there was a Conservation Approval, under the SMART Program need to make statement that you have all the permits when you apply. Mr. Viner stated that a special permit is mass general law and site plan review is a creation of municipal bylaw would the Evergreen Case Law be applicable, and Mr. Heuer said yes unless the Town of Spencer has a definition of substantial use. Mr. Viner did not agree with the status of the site plan view and issues that aren't being addressed at this meeting and would like to see a revised decommissioning amount. Mr. Dell'Aquila said decommissioning and clarification on close out conditions are outstanding. Mr. Heuer mentioned that the decommissioning bond will not be revisited until the developer knows the special permit and site plan permits haven't lapsed, and the developer wants to submit their building permit application and requested the Planning Board communicates with the Building Inspector.

Open to public:

Matt Defosse, 7 Paul's Drive, stated that he has questioned this project and submitted six points to the Planning Board. Mr. Defosse questioned the special permit being valid with deed comment, notes on site plan review and approval after three years of approval on condition number 10, after two years if substantial use hasn't commenced and urges the Planning Board members to reread there conditions and what he submitted. Additionally, Mr. Defosse requested Town Council comments and responses and stated the name of the developer was wrong on the advertisement of the public hearing.

Mr. Viner asked if the developer notified the Planning Board of ownership and Mr. Dell'Aquila stated he did receive a letter to change the ownership. Mr. Viner asked about the advertisement not being done correctly and Mr. Dell'Aquila said it is not necessary and the intent of the hearing is correct, the Planning Board can mention the typo, but it does not invalidate the notice.

MOTION: Mr. Viner motioned to continue the hearing until 11/17/2020

SECOND: Mr. Butensky

DISCUSSION: None

ROLL CALL VOTE: Butensky-yes, Reed-yes, Ceppi-yes, Viner-yes, Shiver-yes (Vote 5-0 motion carried)

8. Town Planner Report

- Mr. Dell'Aquila mentioned upcoming hearings.
- Town Planner, Paul Dell'Aquila, last meeting, there will be an interim planner from CMRPC, and advertisement has gone out.
- Peer estimates for 20 and 32 McCormick – the Planning Board discussed what needs to be inspected and which applicant would best suit the Town of Spencer. Mr. Viner expressed that the Planning Board already knows the solar array is not being built to the approved site plans. Mr. Ceppi expressed that if the approved building plan is different from the approved site plans it could be fraudulent. Mr. Viner reviewed the Building Permit plans that were submitted and all pages say revised 4/7/2020 and differ from the ones the Planning Board approved. Mr. Ceppi asked what the next steps would be, and Ms. Shiver said a peer review needs to be done. Mr. Viner expressed that is the Town Planners responsibility and Ms. Shiver suggested hiring a peer reviewer to do the sign offs.
- 17 GH Wilson and 17 South Spencer Road Asbuilts- Mr. Viner mentioned the asbuilts will need to be reviewed to the building permit plans because the approved site plans won't match.

9. General Board Discussion/ Board Liaison Reports- None

10. New Business/ Adjournment

MOTION: Mr. Viner motioned to adjourn the meeting at 10:57

SECOND: Mr. Ceppi

DISCUSSION: Earlier meeting time on 11/17/2020 to discuss solar

ROLL CALL VOTE: Butensky-yes, Shiver-yes, Reed-yes, Ceppi-yes, Viner-yes (Vote 5-0)

Submitted by Monica Santerre-Gervais ODIS Clerk

Approved by the Planning Board on: 1/19/2021

List of Documents used on October 20, 2020.

Items sent to Planning Board prior to Meeting by email:

- Agenda
- Memo from Town Planner
- Updated Site Visits for 17 GH Wilson Road, 20 & 32 McCormick Road, and 103 No. Spencer Road
- Drafted minutes for 8/18/2020, 8/18/2020 (2nd half), 8/25/2020, 9/15/2020, and 10/01/2020
- Updated material and continuance request for Ash Street Solar
- BSC Group and Graves Engineering Estimate for 20 & 32 McCormick Solar Farm
- Continuance request for 22 Norcross Road Solar
- ANR's for Lot 5, 7, 7 E. Charlton Road/ Lot A/6R E. Charlton Road- John Kennedy and 71 & 75 E. Charlton Road/ Adam German

Items submitted at the Meeting:

- None