



Planning Board – Town of Spencer

Minutes

Planning Board Special Meeting

November 01, 2023, at 7:00 pm

REMOTE & IN-PERSON

McCourt Social Hall, 157 Main Street Spencer, MA 01562

Memorial Town Hall

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

Planning Board Members Absent: None

**Staff Present: Lauren Vivier, Town Planner/ Conservation Agent (in-person)
and Monica Santerre-Gervais, ODIS Senior Clerk (remote)**

Staff Absent: None

1. The Chair opened the meeting at 7:00 pm – the Towns Counsel has requested to discuss items 3 & 4 from the agenda first.

3. Public Hearing: Action- to rescind the constructive approval for Spencer Solar II, LLC c/o Melink Solar Development for Subdivision Approval on Charlton Road, Assessors' Map R08-10, and reinstate the Planning Board denials of the subdivision.

Attorney Jonathan Eichman, Town Counsel representing the Town of Spencer, on remotely to clarify the reasoning for both Charlton and Ash subdivisions public hearings. Attorney Eichman explained this is in response to a construction approval notice submitted by the applicant's attorney with the Town Clerk. It alleges that the Planning Board failed to act within the required time for subdivision applications and did not obtain written extensions. Additionally, Attorney Eichman stated the constructive approval date is September 20, 2023. However, under the Subdivision Control Law the Planning Board retains the ability to rescind approval of a plan if that plan does not comply with the Subdivision Control rules and regulations. Also, because the plan was denied due to failure to comply with the regulations, specifically, the sidewalks on both plans, and on Ash St the drainage requirements, it is open now to the Planning Board to pull that plan back up and rescind the constructive approval and reinstate the original decisions. The Planning Board filed those decisions after the constructive approval and the applicant has appealed those decisions to the Land Court, however, both parties are in agreement that if the Planning Board pulls this plan back, accept the fact it was constructively approved, vote to rescind that approval based on the same reasons on why it was denied, and then file that decision with the Town Clerk. Further appeal can go before the Land Court and dealt with for the terms of the decision and the constructive approval would be gone.

Attorney TJ Recupero attended the meeting remotely, representing Spencer Solar II, LLC and Spencer Solar, LLC, clarified he would not like the Planning Board to rescind the constructive approval, the reasoning is because he feels they would end up at the same place, and if they comply with regulations then the applicant is entitled for approval. Attorney Recupero stated if the Planning Board rescinds the constructive approval, then he will need to appeal rescission and

denial decision. Attorney Recupero discussed multiple reasons for an appeal on this application including bylaw changes, having to reapply twice, and during one of the meetings they received a draft decision that was not discussed and from March to May the meetings were taking a step backwards, and Mr. Recupero filed the constructive approval but sent a letter stating he would be willing to concede the constructive approval if consent to a modification on the applications. Furthermore, Mr. Recupero explained that the applicant could find a way to add the sidewalks, but they were not important to the Planning Board until constructive approval was filed with the Town Clerk. Mr. Recupero would like to avoid court, work with the Planning Board, and find a middle ground. Mr. Recupero asked for a waiver on the sidewalks because they would go to nowhere and Planning Boards have discretion on waivers, can deny waivers, but need good cause for denying the waivers.

Attorney Eichman responded to Attorney Recupero and disagrees with not rescinding approval. Attorney Eichman stated if constructive approval stands the applicant automatically get approval for their plan as of September 20, 2023, with no negotiations. Attorney Recupero agrees with Attorney Eichman but thinks the options are to modify or rescind.

Open to public:

Matt Defosse, 7 Pauls' Drive, commented that Mr. Recupero accused the Planning Board of using the sidewalks against them for filing constructive approval and does not believe that is right. Also, Mr. Defosse believes he mentioned the sidewalks at previous meetings, so the matter was discussed. Mr. Defosse is against waivers and believes the wording that says "shall" should say "mandatory." Attorney Eichman believe sidewalks are a requirement for subdivisions and agrees the Planning Board should have the authority to approve or deny waivers.

MOTION: Ms. Shiver motioned to close the public hearing for Charlton Road.

SECOND: Mr. Slack

DISCUSSION: None

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

MOTION: Ms. Shiver MOVED to rescind the claimed constructive approval of that definitive subdivision plan for land on Charlton Road (Assessors' Map R08-10) dated September 30, 2020 and subsequently revised, submitted for approval to the Planning Board and received in the office of the Town Clerk on October 6, 2020, as alleged in that Notice of Constructive Approval Pursuant to G.L. c.41, §81U, filed with the Town Clerk on June 1, 2023, for the reasons stated in the Planning Board's Certificate of Decision denying approval of that plan and filed with the Town Clerk on July 6, 2023, and direct that a Certificate of Decision to that effect be filed with the Town Clerk and notice given to the applicant in accordance with G.L. c.41, §81U.

SECOND: Mr. Bellemer

DISCUSSION: None

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

4. Public Hearing: Action- to rescind the constructive approval for Spencer Solar, LLC for Subdivision Approval on Ash Street, Assessors' Map R27-1, and reinstate the Planning Board denials of the subdivision.

Mr. Ceppi stated this agenda item and agenda item 3 had the same discussion points.

Open to the public: no comments.

MOTION: Ms. Shiver motioned to close the public hearing for Ash Street.

SECOND: Mr. Slack

DISCUSSION: None

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

MOTION: Ms. Shiver MOVED to rescind the claimed constructive approval of that definitive subdivision plan for land on Ash Street (Assessors' Map R27-1) dated September 30, 2019 and subsequently revised, submitted for approval to the Planning Board and received in the office of the Town Clerk on October 15, 2019, as alleged in that Notice of Constructive Approval Pursuant to G.L. c.41, §81U, filed with the Town Clerk on June 1, 2023, for the reasons stated in the Planning Board's Certificate of Decision denying approval of that plan and filed with the Town Clerk on July 6, 2023, and direct that a Certificate of Decision to that effect be filed with the Town Clerk and notice given to the applicant in accordance with G.L. c.41, §81U.

SECOND: Mr. Bellemer

DISCUSSION: None

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

2. Continued Public Hearing Major Site Plan Review/Special Permit/ Stormwater Permit – Applicant: Peter Rundle-Solar Smart, LLC, Owners: Hillside Baptist Church, Location: 472 East Main Street, Spencer, MA; Assessor's Map R34-8-1. The applicant is requesting a Major Site Plan Review, Special Permit, and Stormwater Permit under sections 7.2, 7.4, and 4.8.9 of The Spencer Zoning Bylaw and Stormwater Regulations to develop a large-scale ground mounted solar PV array (2.917 MW). The property is located within the Rural Residential (RR)/ Commercial (C) with the arrays in RR zoning districts.

Andrew Vardakis, James Martin, and Olivia Crosby were present for the meeting to represent the applicant. Ms. Vivier explained that the applicant has submitted revised plans, we have received peer review comments, and responses from the applicant. Ms. Vivier stated that requirements have been addressed except for the decommissioning amount, however, the draft decision and draft surety is available for review. Mr. Martin felt they have addressed all outstanding issues and are looking for approval.

Dominic Rinaldi, BSC Group, was on remotely and explained the revised plans by the applicant and peer review is complete. Mr. Ceppi said the decommissioning cost needs additional review. Mr. Rinaldi said that he assisted with review for the decommissioning bond and worked with

Ms. Vivier with the salvage amounts the applicant deducted. Mr. Ceppi agreed that scrap values change and to be consistent with other solar decommissioning bonds the Planning Board is not allowing any credits for salvage. Mr. Martin agreed with the Chairs request and would work with the Planning Board with updating the decommissioning bond estimate. There was discussion regarding the decommissioning bonds, hourly payments, equipment, and stormwater.

Open to public:

Matt Defosse, 7 Paul's Drive, agrees that the Planning Board should not accept the applicant to deduct salvage value from the decommissioning bond. Mr. Defosse suggested have applicants be responsible for the panels from start to finish, less than two dozen recycling areas that accept the panels. Mr. Defosse asked the number of solar panels that would be on the parcel, and it is around 4,300 panels, Mr. Ceppi said 4,316 panels according to the paperwork.

Ms. Vivier asked if the Energy Storage System on the site has a set capacity. Mr. Vardakis said yes, and it is a requirement for the SMART Program (Mass State Community Solar Program) and is 500kW. Mr. Ceppi asked if fire protection for the battery storage system was submitted, and Mr. Vardakis said the units have not been selected. Mr. Ceppi would like to have something in the conditions for fire protection under current codes and standards for the batteries for fire protection. Ms. Vivier will add that as a condition for the decision.

Mr. Defosse asked about the SMART Program and if the batteries are a requirement and Mr. Vardakis said it is his understanding that it is a requirement.

Ms. Vivier mentioned there are some waivers requested by the applicant to discuss, first waiver is for section 7.4.4.B- regarding the plan scale 1"=80 and the requirement is 1"=40, the applicant said they could abide by that but felt the plan was better viewable with the 1"=80 scale. Ms. Vivier asked if they abide by the requested scale would it make the plans on two pages instead of one page. Mr. Vardakis answered that it would be more than two pages.

MOTION: Mr. Bellemer motioned to accept the waiver for section 7.4.4.B.

SECOND: Ms. Shiver

DISCUSSION: None

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

The second waiver is for section 4.8.9.G, item 14, land clearing, soil erosion, and habitat impacts. Ms. Vivier explained this is the section in the bylaw that discusses not having slope greater than fifteen percent. Mr. Vardakis said the approximate area is 80,000 square feet but designed the stormwater management to reduce peak flows and volumes leaving the site. Additionally, Mr. Vardakis said the grading is for the access road to satisfy the Fire Chiefs requirements. Mr. Ceppi asked if the exceeding of slope was more for the access road than the panels and the applicants said that was correct.

MOTION: Ms. Shiver motioned to accept the waiver for section 4.8.9.G - land clearing, soil erosion, and habitat impacts.

SECOND: Mr. Bellemer

DISCUSSION: None

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

The third waiver is for section 4.8.9.F for supplemental information, the applicant requests to have the hours of operation, delivery route, interconnection service agreement, documentation of major system components, O&M plan for solar facility, abandonment and decommissioning plan, and sound study, with proof of liability be provided as a condition of approval prior to construction and receipt of building permit. Mr. Vardakis clarified that they are not looking for a waiver for the documentation requirements but to include them in the condition. Mr. Ceppi stated this would not be a waiver but will be added to the conditions.

The Planning Board reviewed the conditions for the Certificate of Decision provided by Ms. Vivier, additional conditions included the battery suppression/protection documentation that meets requirements/codes.

Ms. Vivier mentioned that the project is behind the church, but it is not tax exempt.

MOTION: Ms. Shiver motioned to close the public hearing.

SECOND: Mr. Bellemer

DISCUSSION: None

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

MOTION: Ms. Shiver made a motion to approve the Major Site Plan for Peter Rundle-Solar Smart, LLC, Owners: Hillside Baptist Church located at 472 East Main Street Solar Array with discussed conditions.

SECOND: Mr. Slack

DISCUSSION: None

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

MOTION: Ms. Shiver made a motion to approve Special Permit for Peter Rundle-Solar Smart, LLC, Owners: Hillside Baptist Church located at 472 East Main Street Solar Array with discussed conditions.

SECOND: Mr. Bellemer

DISCUSSION: None

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

MOTION: Ms. Shiver made a motion to approve the Stormwater Permit under sections 7.2, 7.4, and 4.8.9 for Peter Rundle-Solar Smart, LLC, Owners: Hillside Baptist Church located at 472 East Main Street Solar Array with discussed conditions.

SECOND: Mr. Slack

DISCUSSION: None

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

5. Town Planner Report

Ms. Vivier reviewed the following items:

- The Cornerstone Bank Decision taking extra time because it is taking the applicant time to supply the surety amounts and rates for peer review, close to a number and looking at the performance guarantee at a \$120,000 and a stormwater surety of \$134,400. Ms. Vivier stated the applicant is looking for the decision and asking the members to sign the signature page.
- The next Planning Board meeting is on November 21, 2023, and there is no meeting on November 07, 2023.
- The Town Meeting is on November 09, 2023, and the Solar Moratorium and ESS Moratorium is on the warrant.
- The Masterplan Committee had a workshop last Thursday and fifty people that came had a presentation done by CMRPC, the discussion was primarily on Town Center, and ideas to encourage businesses to come to Spencer.
- Ms. Vivier, the Fire Chief, and the Building Inspector are attending Energy Storage Systems/ Battery Storage for fire prevention training on the solar panels in Stowe, MA.

6. Citizen Input

No Comment.

7. Approval of Minutes-10/18/2023

MOTION: Ms. Shiver made a motion to approve the minutes as written for 10/18/2023.

SECOND: Mr. Slack

DISCUSSION: None

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

8. Adjournment

MOTION: Mr. Ceppi made a motion to adjourn the meeting at 8:19pm

DISCUSSION: None

ROLL CALL VOTE: Mr. Ceppi, Ms. Shiver, Mr. Slack all voted aye, (vote 3-0) motion carried.

Submitted by Monica Santerre-Gervais, ODIS Senior Clerk

Approved by the Planning Board on: 11/21/2023

List of Documents used on November 01, 2023

Items sent to Planning Board prior to Meeting by email:

- Agenda for 11/1/2023
- Memo from Town Planner
- Drafted minutes from 10/18/2023
- 472 East Main Street-updated plans, updated stormwater plan, updated geotechnical report, peer review response, and original applications.
- Ash Street Subdivision- recommended motion from Town Counsel.
- Charlton/ Bacon Subdivision- recommended motion from Town Counsel.

Items submitted/ brought to the Meeting:

- None