



## Planning Board – Town of Spencer

### Minutes

#### Planning Board Meeting

**Tuesday, November 17, 2020 at 7:00 PM**

McCourt Social Hall, 157 Main Street Spencer, MA 01562

Memorial Town Hall- **Remote Meeting**

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

Planning Board Members Absent: Shirley Shiver

Staff Present in-person: Ian McElwee, Interim Town Planner and Monica Santerre-Gervais, ODIS Senior Clerk

Staff Absent: None

**1. Mr. Butensky opened the meeting at 7:03 pm** and 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.”*

Mr. Butensky had a couple of announcements before the start of the meeting:

- Due to Governor Bakers order the meeting needs to end at 9:30 pm
- There will be a special meeting on Thursday 11/19/2020 that begins at 6:00 pm
- The Solar Moratorium passed at the Town Meeting and the town is waiting for approval from the Attorney General’s office, but this will affect current projects. Mr. McElwee explained that the Solar Array projects would need to have a special permit by October 2, 2020 for them to be exempt from the moratorium. Mr. Butensky asked if they would continue to hear the current application and approve the site plan. Mr. Viner felt the appropriate method from the applicants is to withdraw and can apply after the one-year moratorium and there may be changes to the bylaw for solar so they would need to resubmit anyway. Mr. Butensky wanted to leave the decision up to the applicants.
- 22 Norcross solar (agenda item 4) and 14 No. Brookfield Road Solar (agenda item 5) will be discussed at the special meeting on 11/19/2020

#### **2. Discussion: Building Inspector to determine process for Certificate of Compliance / Certificate of Occupancy regarding Solar Arrays**

Duane Amos, Town of Spencer Building Inspector/Zoning Enforcement Officer, was on the phone call to answer questions. Mr. Viner explained to Mr. Amos that the Planning Board is looking for guidance and clarification of the certificate of occupancy (COO) and the certificate

of compliance (COC) process and how to halt solar generation/revenue before receiving them. Mr. Amos said that the COC is done after the final electrical sign off, developers seem to start generating power after the final electrical inspection, and the Planning Board should expect the site to be active, however, the developer can be fined for not complying. Mr. Viner discussed that National Grid hooks up after final wiring inspection and legally the Town of Spencer cannot withhold that inspection and the most functional way is to keep track of when that inspection happens. Mr. Amos said that at that point to assume the site is active and he was unsure if they can force a solar company to be inactive because it is up to National Grid. Mr. Viner suggested doing the COC with the final inspection, but Mr. Amos felt there was too much work that may need to be completed after the electrical final. Mr. Viner and Mr. Amos explained that there is no mechanism or regulations for this at a municipal level.

Mr. Ceppi asked if the Planning Board can deny applications from certain developers who don't comply, and Mr. Viner answered no because every application needs to be treated as its own entity. There was much discussion regarding fine amounts to the developers and it being beneficial to get the Permission to Operate (PTO) that is issued from National Grid.

**3. 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.**

There was no applicant on the call from ForeFront Power, LLC. Ms. Santerre-Gervais mentioned that Ed Switzer left ForeFront.

Mr. Butensky opened the hearing up for public and there were no questions or comments.

**MOTION: Mr. Viner motioned to continue the public hearing until 12/15/2020**

**SECOND: Mr. Ceppi**

**DISCUSSION: None**

**ROLL CALL VOTE: Butensky-yes, Reed-yes, Ceppi-yes, Viner-yes, (Vote 4-0 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 district**

Mr. Butensky opened the hearing and mentioned the Planning Board will discuss this application more on 11/19/2020.

Mr. Butensky opened the hearing up for public and there were no questions or comments.

**MOTION: Mr. Viner motioned to continue the public hearing until 12/15/2020**

**SECOND: Mr. Ceppi**

**DISCUSSION: None**

**ROLL CALL VOTE: Butensky-yes, Reed-yes, Ceppi-yes, Viner-yes, (Vote 4-0 motion carried)**

**5. 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.**

Mr. Butensky opened the hearing and mentioned the Planning Board will discuss this application more on 11/19/2020.

Mr. Butensky opened the hearing up for public and there were no questions or comments.

**MOTION: Mr. Ceppi motioned to continue the public hearing until 12/15/2020**

**SECOND: Mr. Viner**

**DISCUSSION: None**

**ROLL CALL VOTE: Butensky-yes, Reed-yes, Ceppi-yes, Viner-yes, (Vote 4-0 motion carried)**

**6. 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.**

Mr. Butensky opened the hearing and reviewed that the Planning Board has received the peer review from third party, reviewing if the applicant is complying with the subdivision bylaw, and he believed the Conservation Commission denied the applicant their stormwater permit.

The applicant was not on the call to answer questions.

Mr. Viner felt that the Planning Board should wait for more guidance from Town Council regarding this project and the solar moratorium and the applicant needs to reply to the peer review comments.

**MOTION: Ms. Reed motioned to continue the public hearing until 12/15/2020**

**SECOND: Mr. Viner**

**DISCUSSION: None**

**ROLL CALL VOTE: Butensky-yes, Reed-yes, Ceppi-yes, Viner-yes, (Vote 4-0 motion carried)**

**7. Definitive Subdivision Plan - Applicant: Colin Derhammer; Owner: Spencer Solar II LLC c/o Melink Solar Development, Location: Charlton Road (Bacon Hill Road); Spencer Assessor's Map R08-10. The applicant is requesting a definitive subdivision approval under Article 2.3 (Definitive Subdivision Plans) of the Spencer Subdivision Regulations. The property is located within the Rural Residential zoning district.**

The applicant was not on the call to answer questions.

Mr. Viner mentioned that this application needs to have a waiver or variance for the frontage because it does not have enough frontage. Mr. McElwee said they would need a variance from the Zoning Board of Appeals.

Mr. Butensky opened the hearing up for public for questions and comments:

Dave Nussey, 227 Charlton Road, asked if this project is for solar or a subdivision and Mr. Butensky commented that this application is for a subdivision, but the applicant may do solar later. Mr. Viner stated that the plans are for a road to create appropriate frontage with the future of a solar farms. Mr. Nussey asked if houses were going up and Mr. McElwee answered one house on a 60,000 sqft lot and Mr. Viner said the applicant needed to create two lots.

Gary Woodbury, 219 Charlton Road, explained he knew about the plans and survey and there is no land available to make that 50 feet requirement for the road. Also, Mr. Woodbury believes the applicant is looking to install a 5.2-megawatt solar farm and it will be the third biggest solar farm in the Town of Spencer.

John Lange, 58 Borkum Road, expressed that the town should not grant a variance for the frontage and if the subdivision does not meet the requirements than it should not be approved. Mr. Ceppi felt if the applicant doesn't meet the frontage requirement than the Planning Board should deny the application.

Barbara Bourassa, 39 Bacon Hill Road, stated that the Town of Spencer just fixed and repaved the road and asked how this will affect the new road. Mr. Viner answered that the frontage is on Charlton Road and could have conditions if a decision to approve is made.

Mr. Woodbury mentioned that three years ago logging was done at that property and the neighbor was flooded and had water issues and stated this may be an adverse effect for clearing. Mr. Viner asked if the land was in Chapter 61 and Mr. McElwee said he could check.

**MOTION: Mr. Viner motioned to continue the public hearing until 12/15/2020**

**SECOND: Ms. Reed**

**DISCUSSION: None**

**ROLL CALL VOTE: Butensky-yes, Reed-yes, Ceppi-yes, Viner-yes, (Vote 4-0 motion carried)**

**8. Special Permit - Applicant: Catalyze, LLC; Owner: ATV Realty Trust, Location: 51 Borkum Road; Spencer Assessor's Map R05-01. The applicant is a Special Permit under Section 4.3.25 (Construction Trades - outside area used for storage of equipment) of the Spencer Zoning Bylaw to use 2 acres for the storage of shipping containers filled with solar panels. The property is located within the Rural Residential zoning district.**

Gayle Lineman, Catalyze, LLC, was on the call to discuss the application and mentioned the conex boxes onsite have solar panels inside but are not for any specific project. Mr. Butensky asked why they chose this location and Ms. Lineman said they have a pre-existing relationship with the ATV Realty. Mr. Ceppi felt that applying under 4.3.25/Construction Trade is not correct because it is not a construction trade. Ms. Lineman argued that it could be and said they were ordered a cease-and-desist letter from the Building Inspector. Mr. Viner wanted to hear from the Building Inspector, because the site plan is inadequate, the abutting house to the north is not shown on the plan, and the 300-foot setback is not shown on the plan.

Mr. Amos stated he felt this was all about storage and not construction based but he has not seen what was submitted to the Planning Board. Mr. Viner asked for Mr. Amos to review and put in writing his determination.

Mr. Butensky opened the hearing up for public for questions and comments:

Christine Mancini, 51 Borkum Road, expressed to the Planning Board that she felt this agenda item was not for construction, currently, there are 100 conex boxes on the site that were brought in by tractor trailer and a crane to unload. Ms. Mancini stated the new road was now damaged, it is impacting the character of the neighborhood, and the applicant did this without any approvals.

Ralph Hicks, 21 Lyford Road, told the Planning Board that Borkum Road is a scenic road and the town is loaded with enough solar farms, having the 100 conex boxes in rural residential should be breaking the law, and the applicant forced to remove everything and fix the road.

Gary Woodbury, 219 Charlton Road, stated the Town of Spencer has spent 19 million dollars fixing the roads and Borkum is a scenic road and now it is damaged, its not an allowable use, and the Planning Board should deny tonight.

Haley Sutherland, 68 Borkum Road, explained that she helps maintain the Mid-State Trail and this will make an impact, when people go to the trail, they go to see nature not conex boxes, and she felt there was more trash.

Erin Powell, 56 Borkum Road, added that this was not the first time the property owner has started a project without approval, and it sets a bad precedent if the Planning Board allows this.

Thomas Martin, 45 Borkum Road, stated that he wakes up and can see a sea of conex boxes out his bedroom window and he moved to a country setting neighborhood and now its becoming a commercial distribution with the conex boxes.

John Lange, 68 Borkum Road, discussed his dog and the tractor trailers impact when he takes the dog for a walk, Borkum Road is not wide enough for tractor trailer traffic, he heard the Conservation Agent was denied access, and this should not be allowed in a rural residential neighborhood.

Lin Picard, 77 Borkum Road, had concerns with the wetlands be affected, what was inside the conex boxes and who inspects them, and if they could be potentially hazardous to the conservation area.

Jonathan Gabriel, 51 Borkum Road, owner of ATV Realty, clarified that there was only 71 conex boxes on the site and not 100. Mr. Gabriel explained that in the beginning there were some complaints and the Building Inspector and former Town Planner came to the site to inspect and both said it was ok and he could continue. Additionally, after more containers were dropped off more complaints were made and then the Building Inspector issued a cease-and-desist order. The Building Inspector inspected the conex boxes and then the Conservation Agent reached out to Mr. Gabriel and he is cooperating with the town officials. Mr. Gabriel mentioned that the DPW came and inspected the road, the police came after complaints were made about the tractor trailers speeding but there was no evidence of that. In the future, Mr. Gabriel might apply for a solar farm and some of the panels might be used but most of the panels will go to other projects. Mr. Gabriel discussed that when he bought the property it was an old junkyard that he spent a lot of time and money cleaning up the site and he pays taxes to the Town of Spencer.

Mr. Hicks argued that Mr. Gabriel does not live in town, the road is damaged, and he is sick of non-residents doing what they want in the town and cannot believe that the former Town Planner would say what ATV Realty was doing was ok.

Matt Defosse, 7 Paul's Drive, stated that he also cannot believe that the former Town Planner would approve this and disrespect the town.

Mr. Ceppi stated he did not think construction trade is applicable and if denied they should have a police escort. Mr. Viner referenced in Mr. Amos' letter that there is no damage to road and felt Ms. Picard made a valid point as to what was inside the conex boxes. Mr. McElwee mentioned Mr. Amos did inspect and might have pictures.

There was much discussion regarding the next steps.

**MOTION: Mr. Viner motioned to close the public hearing**

**SECOND: Ms. Reed**

**DISCUSSION: None**

**ROLL CALL VOTE: Butensky-yes, Reed-yes, Ceppi-yes, Viner-yes, (Vote 4-0 motion carried)**

**MOTION: Mr. Viner motioned to deny the special permit to ATV Realty due to non-conforming site plans, incorrect bylaw reference, and the nature of the surrounding area**

**SECOND: Mr. Ceppi**

**DISCUSSION: Mr. Viner mentioned that further enforcement may be necessary, possible discussion item at next meeting, and PB members to discuss on 12/15/2020**

**ROLL CALL VOTE: Butensky-yes, Reed-yes, Ceppi-yes, Viner-yes, (Vote 4-0 motion carried)**

**9. Special Permit – Applicant/ Owner: John Kennedy, 50 E. Charlton Road; Location: East Charlton Road; Spencer Assessor's Map R14-53-1, R14-53-3, R14-53-5. The applicant is requesting a Special Permit under 5.3.10 (Rear lot subdivision) of the Spencer Zoning Bylaw in order to create a rear lot subdivision. The property is located within the Rural Residential zoning district.**

Jason Dubois, DC Engineering, was on the call to answer questions and address concerns. Mr. Dubois mentioned he was at the last Planning Board meeting for an ANR regarding this application. Additionally, Mr. Dubois mentioned that lot A will be the rear lot, lot 6R is the front lot, lot 6R meets the 2 times lot area, there is 280 feet of frontage, and the rear lot has 4 times the required area. Also, Mr. Dubois submitted the driveway easement earlier in the day.

Mr. Butensky opened the hearing up for public for questions and comments:

Glen Snay, 7 Clark Road, asked if there would be one house or multiple houses and Mr. Dubois said there is no plan yet but believes it is for one single family home right now.

**MOTION: Mr. Ceppi motioned to continue the public hearing until 12/15/2020**

**SECOND: Mr. Viner**

**DISCUSSION: Cut short due to time and will be first on the Planning Board Agenda for 12/15/2020**

**ROLL CALL VOTE: Butensky-yes, Reed-yes, Ceppi-yes, Viner-yes (Vote 4-0 motion carried)**

**10. Special Permit – Applicant/ Owner: Adam German; Location: 71 East Charlton Road; Spencer Assessor's Map R14-29-2 and R-14- 29-3. The applicant is requesting a Special Permit under 5.3.10 (Rear lot subdivision) of the Spencer Zoning Bylaw in order to create a rear lot subdivision. The property is located within the Rural Residential zoning district.**

Jason Dubois, DC Engineering, was on the call to answer questions and address concerns. Mr. Dubois mentioned he was at the last Planning Board meeting for an ANR regarding this application and has since revised the issue of the frontage that came up. Mr. Dubois mentioned the Texas pipeline and will need a waiver for the common driveway.

Mr. Ceppi asked if there were Conservation issues and the email from George Russell, Conservation Agent, was discussed. Mr. Dubois believes they can stay 100 feet away from any wetlands.

Mr. Butensky opened the hearing up for public for questions and comments:

Shawn Bergstrom, 8 Clark Road, asked if there will be one house or multiple houses and Mr. Dubois answered there would be one single family home.

Gina Wheeler, 73 East Charlton Road, asked if they were making the driveway near hers a common driveway and Mr. Dubois said no, they are trying to avoid that. Mr. Dubois mentioned that there is some time restraint concerns because of the purchase and sale agreement and Ms. Reed felt they should approve this application. Mr. Dubois asked what other concerns the Planning Board may have, and Mr. Viner listed some items he would like to be provided for the next meeting. Ms. Wheeler wanted clarification of where the driveway would be, and Mr. Dubois answered on the southern side of 75 East Charlton Road.

There was much discussion on when the Planning Board could continue the public hearing to.

Ms. Reed motioned to approve the special permit but there was no second.

**MOTION: Mr. Viner motioned to continue the public hearing until 12/15/2020**

**SECOND: Mr. Ceppi**

**DISCUSSION: Cut short due to time and will be second item on the Planning Board Agenda for 12/15/2020**

**ROLL CALL VOTE: Butensky-yes, Reed-abstained, Ceppi-yes, Viner-yes (Vote 3-0 motion carried)**

**11. Town Planner Report- Tabled to 11/19/2020**

**12. General Board Discussion/ Board Liaison Reports- Tabled to 11/19/2020**

**13. New Business/ Adjournment- Tabled to 11/19/2020**

**MOTION: Mr. Ceppi motioned to adjourn the meeting at 9:52**

**SECOND: Mr. Viner**

**DISCUSSION: None**

**ROLL CALL VOTE: Butensky-yes, Reed-yes, Ceppi-yes, Viner-yes (Vote 4-0)**

**Submitted by Monica Santerre-Gervais ODIS Clerk**

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

**List of Documents used on November 17, 2020**

**Items sent to Planning Board prior to Meeting by email:**

- Agenda
- Updated Site Visits for 17 GH Wilson Road, 20 & 32 McCormick Road, and 103 No. Spencer Road
- BSC Group Peer Review for Charlton/ Bacon Hill
- Updated plans and application for Charlton/Bacon Definitive Subdivision Plan
- Peer review and updated plans for 133 Ash Street



- Special Permit application and plans for applicant Catalyze, LLC; Owner: ATV Realty Trust/Borkum Road
- Special Permit application and plans for applicant John Kennedy, 50 E. Charlton Road
- Special Permit application and plans for applicant Adam German, 71 East Charlton Road
- Continuance request for 22 Norcross Road Solar

**Items submitted at the Meeting:**

- Drafted Common Driveway easement for 50 E. Charlton Road John Kennedy