



Planning Board – Town of Spencer

Minutes

Planning Board Meeting

Tuesday, January 19, 2021 at 6:00 PM

McCourt Social Hall, 157 Main Street Spencer, MA 01562

Memorial Town Hall- **Remote Meeting**

Planning Board Members Present: Chair Jonathan Viner (remote), Vice Chair Jeff Butensky (remote), Robert Ceppi (remote), and Maria Reed (remote) Paul Gleason (remote)

Planning Board Members Absent: None

Staff Present in-person: Todd Miller, Town Planner (in-person) and Monica Santerre-Gervais, ODIS Senior Clerk (remote)

Staff Absent: None

1. Mr. Viner opened the meeting at 6:01 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.”*

2. Approval of Minutes: 10/20/20, 11/17/20, 12/15/20

- **10/20/2020**

MOTION: Mr. Butensky

SECOND: Ms. Reed

DISCUSSION: None

ROLL CALL VOTE: Mr. Butensky, Ms. Reed, Mr. Ceppi, and Mr. Viner all voted aye, and the motion was carried (4-0, Mr. Gleason could not vote on these minutes)

- **11/17/2020**

MOTION: Mr. Ceppi

SECOND: Mr. Butensky

DISCUSSION: Mr. Butensky asked about the minutes from 11/19/2020 and they will be voted on at the next meeting

ROLL CALL VOTE: Mr. Butensky, Ms. Reed, Mr. Ceppi, and Mr. Viner all voted aye, and the motion was carried (4-0, Mr. Gleason could not vote on these minutes)

- 12/15/2020

MOTION: Mr. Ceppi

SECOND: Mr. Butensky

DISCUSSION: None

ROLL CALL VOTE: Mr. Butensky, Ms. Reed, Mr. Ceppi, Mr. Gleason, and Mr. Viner all voted aye, and the motion was carried (5-0)

3. ANR-

1. Continued Lot 7, Paxton Road – Laureldale Family Trust – Plan resubmitted

This ANR was continued from the last meeting and the applicant resubmitted a new plan and during the meeting was emailed to the Planning Board members. Once the members received the plan Mr. Ceppi noted he did not see the changes made and did not see a revision date. Mr. Butensky said the plan shows elimination of lot 2, lot 4 is a buildable lot, the wetland was overlaid, and parcel c is no buildable and labeled correctly.

MOTION: Mr. Ceppi motioned to approve both ANR

SECOND: Mr. Butensky

DISCUSSION:

ROLL CALL VOTE: Mr. Butensky, Ms. Reed, Mr. Ceppi, Mr. Gleason, and Mr. Viner all voted aye, and the motion was carried (5-0)

2. Continued Lot 10, Paxton Road – Laureldale Family Trust – Plan resubmitted

Mr. Viner reviewed the changes to the plan and how it creates lot 1, lot 2, lot 3 and shows wetland delineation.

MOTION: Mr. Butensky motioned to approve ANR

SECOND: Ms. Reed

DISCUSSION: None

ROLL CALL VOTE: Mr. Butensky, Ms. Reed, Mr. Ceppi, Mr. Gleason, and Mr. Viner all voted aye, and the motion was carried (5-0)

3. Lake Ave, Windbrook Drive & Sycamore Ave – John J Bowler, Kathleen B. O’Leary & Peter C. Bowler

The updated ANR was not submitted to the Planning Board before the meeting and MR. Ceppi said he felt uncomfortable approving any ANR’s without seeing the plan.

MOTION: Mr. Ceppi motioned to continue until February 02, 2021

SECOND: Mr. Butensky

DISCUSSION:

ROLL CALL VOTE: Mr. Butensky, Ms. Reed, Mr. Ceppi, Mr. Gleason, and Mr. Viner all voted aye, and the motion was carried (5-0)

4. 50 Donnelly Road – Greg Kimball

The pdf version for the ANR was not received in time and the Planning Board members were uncomfortable approving the ANR without seeing the plan and agreed to continue.

MOTION: Mr. Ceppi motioned to continue until February 02, 2021

SECOND: Ms. Reed

DISCUSSION: None

ROLL CALL VOTE: Mr. Butensky, Ms. Reed, Mr. Ceppi, Mr. Gleason, and Mr. Viner all voted aye, and the motion was carried (5-0)

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 PV Facility. The property is located within the Rural Residential zoning district.

No update from Mr. Miller.

Drew Vardakis, WOOD Engineering, on the call to represent the applicant. Mr. Vardakis explained they received the peer review comments, they answered the comments, working on NOI with the Conservation Commission, and now working with new third-party reviewer and have been in-between Town Planners. Mr. Vardakis stated they are still updating the drawings, been onsite taking samples, and will submit a new package to the town soon. Mr. Viner asked about a continuance period and they will be ready for the next meeting. Mr. Viner wants plans submitted and reviewed before the meeting on February 16th, 2021.

The hearing was opened to the public and there were no comments and questions.

Mr. Viner asked about the proposed ANR and Mr. Vardakis stated it is in discussion but not finalized yet.

MOTION: Mr. Ceppi motioned to continue the hearing until February 16, 2020

SECOND: Mr. Gleason

DISCUSSION: None

ROLL CALL VOTE: Mr. Butensky, Ms. Reed, Mr. Ceppi, and Mr. Viner all voted aye, and the motion was carried (4-0, Mr. Gleason could not vote)

5. Continued Public Hearing: Major Site Plan Review/ Special Permit/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 a good cause extension to a Major Site Plan Review under Section 7.4 of the Spencer

Zoning Bylaw to install a Solar PV Facility. The property is located within the Rural Residential zoning district.

Mr. Viner discussed about this hearing and Mr. Miller said the applicant wants to bifurcate the two agenda items sections and address the site plan review at this meeting and the special permit at the next meeting. Mr. Miller noted that Attorney Eichmann was on the line. Ralph Hicks asked for a point of order and what was on the agenda and Mr. Viner said both items were on the agenda.

Tad Heuer, Attorney representing the applicant, was on the call to discuss procedural issues. Mr. Heuer stated that they are requesting a good cause extension for the site plan review and the special permit. Mr. Heuer spoke to Mr. Miller and the agenda item was amended but does not include section 7.2 for the good cause reference and Mr. Heuer stated he is requesting to do the site plan review tonight and at next meeting the special permit with the added section 7.2.

Attorney Eichmann said the notice for the site plan but not a request for the special permit and schedule a hearing to extend the special permit at another meeting. Mr. Miller asked about the fee and Mr. Eichmann said he is not familiar with the fee. Mr. Heuer confirmed that the fee was paid in July 2020. Chris Nolan, BETA Group, stated that the fee was paid for the extension in September as instructed by Paul Dell'Aquila at the time.

Mr. Viner stated that at the last meeting there was a need for clarification on the construction of the site. Mr. Heuer said it is not relevant for substantial use because this is for a good cause extension under section 7.4. Mr. Viner said the Zoning Bylaws are contingent upon a special permit and the use needs to be established first and should come back after the special permit is addressed. Mr. Ceppi asked Mr. Eichmann's view and if they get extension would they need to meet the current bylaws. Mr. Heuer said the project had a special permit granted and exempt from the moratorium. Mr. Eichmann referred the Planning Board to section 7.4.10 of the Zoning Bylaw, the board may for good cause may extend the 2-year lapse provision, so the board has the legal authority to review this request, nothing substantial from the courts, and would be up to the Planning Board. Additionally, Mr. Eichmann said it is up to the discretion of the board to wait until the special permit has been addressed, council has mentioned they are similar, and validity question was addressed by the Building Inspector. Mr. Eichmann said the Planning Board has two issues in front of them and the board needs to consider if there was good cause to allow an additional lapse period. Mr. Viner discussed the Planning Boards concerns with changes in bylaws and this project not meeting the new standards. Mr. Heuer did not agree with Mr. Viner's questioning and it is not a proper legal question because it is being reviewed as a good cause extension and is not a new plan. Mr. Ceppi said the applicant received previous extension and does not see good cause as to why the project did not get constructed. Mr. Ceppi mentioned that other solar farms were permitted at the time and have been constructed and feels this extension should be denied because the applicant had sufficient time to construct this project. Mr. Viner agreed with Mr. Ceppi.

Mr. Heuer stated that the only thing in front of the Planning Board tonight is the site plan extension and from 2012-2018 the State Legislative granted extensions to projects due to the recession. Mr. Heuer wants to believe the Planning Board members have read his memo and he pointed certain points in the memo, specifically, read aloud that the applicant asked the previous

Town Planner, Paul Dell'Aquila, if they needed to go before the Planning Board and Mr. Dell'Aquila said they did not. Mr. Viner asked to discuss page 4 of the memo and each reasoning for good cause was discussed. The applicant will provide the Planning Board proof of correspondence with National Grid for a cluster study. There was much discussion regarding unavailability of contractors. Mr. Nolan spoke that no one would clear the lot because of erosion and would not want to leave a site cleared with no trees during the cluster study. Mr. Ceppi had a difficult time understanding why site clearing for this site would be different than other projects, racking is not difficult, and electricians can wire this equipment, and does not agree with the reasoning for delay was due to contractors. Mr. Heuer stated the PILOT negotiation was finalized in 2020 and Mr. Viner said PILOT negotiation is not a good cause argument. Mr. Viner asked about the attempt in tree clearing and Mr. Heuer answered they tried to start but was stopped by the town.

The hearing was opened to the public and there were no comments and questions.

The Planning Board agreed to continue in order to receive additional material from the applicant.

MOTION: Mr. Ceppi motioned to continue the hearing until February 16, 2020

SECOND: Mr. Butensky

DISCUSSION: None

ROLL CALL VOTE: Mr. Butensky, Ms. Reed, Mr. Ceppi, and Mr. Viner all voted aye, and the motion was carried (4-0, Mr. Gleason could not vote)

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 PV Facility. The applicant is also seeking a Subdivision approval as part of this project. The property is located within the Rural Residential zoning district.

Mr. Miller said he has no updates but has reviewed the plans.

Steve Pikhul, Bertin Engineering, and TJ Recupero were on the phone to represent the applicant. Mr. Pikhul explained they are still waiting for BSC peer review and they have been onsite working on stormwater management and will need to request a continuance. Mr. Ceppi asked if the continue them will the applicant be ready or should the countenance go out until March. Mr. Pikhul said he spoke to Gillian Davies with BSC, they are currently reviewing, and they are just awaiting comments. Mr. Ceppi asked if the subdivision plans were separate from the solar plans. Mr. Pikhul mentioned there was a question on frontage for the residential lot, so the plan was revised, and they answered comments. Mr. Viner asked about the date of the most recent plan and Mr. Pikhul said it was from a couple months ago around October. Mr. Pikhul to follow up with BSC on when peer review comments will be available and include Mr. Miller.

The hearing was opened to the public and there were no comments and questions.

Mr. Viner asked about stormwater and discussed with Mr. Pikhul. Mr. Pikhul felt they accommodated all concerns.

MOTION: Mr. Ceppi motioned to continue until February 16, 2021

SECOND: Ms. Reed

DISCUSSION: None

ROLL CALL VOTE: Mr. Butensky, Ms. Reed, Mr. Ceppi, Mr. Viner all voted aye, and the motion was carried (4-0 Mr. Gleason was not able to vote on this agenda item)

7. Continued 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.

Mr. Miller had no updates for the Planning Board.

Steve Pikhul, Bertin Engineering, mentioned they have not submitted a solar application but submitted resolutions on the new plan dated 11/12/2020, 12/30/2020, electronic submission to BSC Group and hard copies of plans submitted to Conservation and the Planning Board. Additionally, Mr. Pikhul spoke to Mr. Miller regarding the zoning issue that has been discussed and they will investigate all their options to keep pursuing. Mr. Pikhul stated that the zoning question was not noted on any peer comments from BSC group. Mr. Miller did speak to Mr. Pikhul regarding the three inches needed in for their frontage. Mr. Pikhul said he spoke to Jane Green and sent her the new plan and Mr. Miller will follow up.

The public hearing was opened to the public.

Gary Woodbury, 219 Charlton Road, discussed the frontage issue and a lack of the three inches, stated there is a petition against allowing a non-conforming right of way, and the abutters plan on fighting back.

MOTION: Mr. Butensky motion to continue until February 16, 20201

SECOND: Ms. Reed

DISCUSSION: None

ROLL CALL VOTE: Mr. Butensky, Ms. Reed, Mr. Ceppi, Mr. Viner all voted aye, and the motion was carried (4-0 Mr. Gleason was not able to vote on this agenda item)

8. Continued Special Permit Hearing - Applicant: Daniel Rubin, Freedom Forever Massachusetts, LLC; Owner: Craig Lusignan, Location: 83 Northwest Road; Spencer Assessor's Map R50-3-1. The applicant is seeking a Special Permit under Section 4.8.9 (Solar Photovoltaic Generating Installations) of the Spencer Zoning Bylaw to install a ground mounted 13.050 KW solar panel system. The property is located within the Rural Residential zoning district.

There has not been any new material submitted and the Planning Board members agreed to continue the meeting to a future date.

MOTION: Mr. Ceppi motioned to continue until March 2, 2021

SECOND: Ms. Reed

DISCUSSION: None

ROLL CALL VOTE: Mr. Butensky, Ms. Reed, Mr. Ceppi, Mr. Gleason, Mr. Viner all voted aye, and the motion was carried (5-0)

9. Town Planner Report- Todd Miller

- **Discussion: SPAC recommendation and working with CMRPC**
- **Balance for professional hour**

10. General Board Discussion/ Board Liaison Reports

- Open Space update given by Mr. Butensky.
- Mr. Viner asked about an email from Conservation to use the professional hours, but the Planning Board would like to use the hours for solar and Mr. Miller will verify the hours.

11. New Business/Adjournment

- Matt Defosse welcomed back Ms. Santerre-Gervais

MOTION: Mr. Ceppi motioned to adjourn the meeting at 8:52 pm

SECOND: Mr. Butensky

VOTE: 5-0

Submitted by Monica Santerre-Gervais, ODIS Clerk

Approved by the Planning Board on: 2/16/2021

List of Documents used on January 19, 2021.

Items sent to Planning Board prior to Meeting by email:

- Agenda
- Minutes 10/20/20, 11/17/20, 12/15/20

Items submitted/ brought to the Meeting:

None