



Planning Board – Town of Spencer

Minutes

Planning Board Meeting
April 18, 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), Charlie Bellemer (in-person), and Vaughn Slack (in-person)
Planning Board Members Absent: None
Staff Present in-person: Lauren Vivier, Town Planner/ Conservation Agent (in-person)
Staff Absent: Monica Santerre-Gervais, ODIS Senior Clerk

1. The Chair opened the meeting at 7:00pm

2. Continued Public Hearing Definitive Subdivision Plan: Applicant/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 plan approval under Article 2.3 (Definitive Subdivision Plans) of the Spencer Subdivision Regulations. The property is located within the Rural Residential zoning district. This is a readvertisement of the public hearing on this application, which originally commenced on November 17, 2020.

Calisto Bertin, Bertin Engineering, and Attorney TJ Recupero were present for the meeting. Ms. Vivier mentioned that the updated information recently submitted by the applicant was not received until last Thursday and the PDF versions were not submitted until close of business on Thursday. Additionally, Monday was a holiday, so the Planning Board and Peer Reviewer did not receive the latest information until this morning. Ms. Vivier mentioned there will be a meeting between the applicants and peer reviewers next Thursday April 27, 2023. Additionally, William Cundiff, Highway Superintendent, had discussed changes to the plan that needed to be made with the applicant.

Mr. Bertin apologized and discussed why the submission for the edited plans was late. Also, Mr. Bertin said the changes were for the Conservation Commission and the changes that were discussed at the previous meeting. Mr. Bertin explained the recent changes in the plan included the detention basin with clay core on the berm to reduce water running downhill with a curtain drain to direct the water down the street. In addition, Mr. Bertin explained for the second basin under the road and added a liner with under drain to the street. Regarding the edits from Mr. Cundiff, the inlets on the site plan had errors and the applicant needs to revise the plans and redirect the pipelines. Mr. Recupero stated that the only item left to address is stormwater and there has not been any notice from any engineers that this project does not comply with the regulations.

Mr. Ceppi asked about markers and pins for road corrections and Mr. Bertin said that was all on the plan. Mr. Ceppi asked about how the applicant will get the road to the elevation required. Mr. Bertin said they will need to do rock removal at the base of the hill and will require blasting work by a licensed contractor that will submit the plan to the town. Mr. Ceppi asked what would happen if foundations or wells crack and Mr. Bertin said the contractor has insurance and will need to fix it. Mr. Ceppi asked how deep they would be blasting, and Mr. Bertin answered 6-8 feet. Mr. Recupero suggested a condition regarding a contact person onsite or available by phone/email twenty-four hours. Ms. Shiver expressed concerns with the abutter's driveway (#225) being so close to the proposed road. There was discussion regarding the possibilities of the neighbor's driveway coming off on the private road for safety reasons. Mr. Cundiff said there may be confusion for emergency vehicles and the homeowner would need to agree to moving the driveway.

The Chair opened the hearing up to the public:

Aaron Hutchins, 225 Charlton Road, discussed how his home and well will be the closest to the blasting that will take place and has concerns, he is unaware how the applicants found the additional three feet they needed for frontage and has issues regarding this project including the sink holes in his back yard. Mr. Ceppi asked when the sink holes started, and Mr. Hutchins said the sink holes after they cleared the land five years ago have been continuously getting worse. Mr. Hutchins mentioned at least two-thirds of his property has been affected by the sink holes and is worried about his children, dogs, pool, deck, and home. Mr. Bertin explained that the detention basin will be in the north, not near his home but can discuss it after the meeting can try to help with issues.

Mr. Cundiff said he spoke to Mr. Bertin earlier and asked if the bend in the road, at station two plus fifty, meets the American Association of State Highway and Transportation Officials (AASHTO) requirements. Mr. Bertin said in the Subdivision Regulations, it says the centerline radius is to be a minimum of 100 feet. Mr. Cundiff mentioned the Planning Board should revisit the Subdivision Regulations and revise that requirement. Secondly, Mr. Cundiff questioned the underground drainage system because there was a conflict between the plan view and profile view. Mr. Bertin said the inlets were drawn wrong on the plan and will be fixed. Mr. Cundiff questioned the galilee and show ledge and Mr. Bertin said it will reduce the runoff. Additionally, Mr. Cundiff stated he shared with Ms. Vivier the recordable drawings and there are some requirements from the registry such as signature block that will need to be added. Mr. Ceppi agreed that the plans need to have an area that included a stamp from a Professional Engineer and Surveyor for all the drawings. Ms. Shiver asked if the applicant ever corrected the Registry of Deeds the incorrect plan and Mr. Recupero said not yet.

Jonathan Viner (remote), 34 Donnelly Cross Road, asked about the fire cistern and a drainage line that is confliction in that location. Mr. Bertin said the drainage pipe runs next to the fire cistern and will put a curtain drain to connect to the street drainage location. If the location changes, then the Fire Chief will have final say over the location. Mr. Viner said the line for the proposed drainage between the two manholes (BMH4 & BMH3) are proposed through the fire disturbance.

Mr. Ceppi and Ms. Vivier discussed the drafted decision, conditions, and sidewalk waiver. Mr. Recupero stated they will not be signing any extensions of decisions, but they will continue to work with the Planning Board.

Matt Defosse, 7 Paul's Drive, asked to discuss the sidewalk waiver he feels they are a requirement, and the Planning Board should not agree to the waiver. Also, Mr. Defosse stated the peer review delay that the applicant discussed is a business risk. Mr. Bertin stated if they must put in the sidewalk, it will mean more rock removal.

MOTION: Ms. Shiver motioned to continue the public hearing for Definitive Subdivision Plan Charlton Road (Bacon Hill Road) until May 02, 2023

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.

3. Continued Public Hearing Definitive Subdivision Plan - Applicant: Spencer Solar LLC; Owner: Ash Spencer Realty LLC, Location: Ash Street; Spencer Assessor's Map R27-01. The applicant is requesting a definitive subdivision plan approval under Article 2.3 (Definitive Subdivision Plans) of the Spencer Subdivision Regulations. The property is located within the Rural Residential zoning district. This is a readvertisement of the public hearing on this application, which was originally commenced on November 19, 2019.

Calisto Bertin, Bertin Engineering, and Attorney TJ Recupero were present for the meeting.

Ms. Vivier stated she has not received any updated information on this project. Mr. Bertin discussed the plan changes that were submitted over a month ago and mentioned it has more to do with Conservation. Mr. Bertin stated the originally proposed location of the road crosses over more wetlands than the Conservation Commission would like so in the last change they moved the road for less disturbance. Also, Mr. Bertin stated there were concerns from Peer Review regarding the location of a detention basin to the road, access to the property, and soil testing where one pit has not been witnessed. Ms. Shiver had concerns about adverse possession for the property owner's driveway and Mr. Recupero stated they worked out an easement with the property owner and reconfigured his driveway so he can use it. There was discussion between Ms. Shiver and Mr. Recupero regarding how the property owner's driveway ended up on the applicant's property.

Ms. Vivier asked what waivers would be requested for this project and Mr. Recupero said just sidewalks. Mr. Bertin said they are still waiting for a response from Peer Review to continue with this project.

The Chair opened the hearing up to the public:

Steve Drew, Vice President of the Snowbirds, was present at the meeting to discuss the trails they have used the last 50 years for snowmobiling at his location. However, this project will stop the snowmobiling trails unless they are given provisions for access through the site. Mr. Ceppi

asked if they use private roads and Mr. Drew said they use private lots and have permission from all the landowners. Mr. Drew said they can collaborate with the owner so that the Snowbirds can continue the trails. Mr. Ceppi asked if something can be written up to allow the Snowbirds access along the private road and Mr. Recupero said he will need to go back to the landowner and see what he can do.

MOTION: Ms. Shiver motioned to continue the public hearing for Definitive Subdivision Plan for Ash Street until May 02, 2023

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.

4. Public Hearing: Major Site Plan Review/ Special Permit/Stormwater Permit – Applicant/Owners: Paul Haughey/ Spencer-East Brookfield Regional School District. Location: 302 Main Street, Spencer, MA; Assessor’s Map U05-5. The applicant is requesting a Major Site Plan Review, Special Permit, and Stormwater Permit, under sections 4.6, 6.1, 6.1.1, 6.3, 6.5.3, and 7.4 of The Spencer Zoning Bylaw and Stormwater Regulations for redevelopment, renovations, and improvements of David Prouty High School (DPHS). The property is located within the Suburban Residential (SR) zoning districts.

Kevin McGarry, Project Manager for Fuss & O’Neil, was present in-person for the meeting and introduced his team that were present (Dorre Brooks from Jones Whitsett Architects, Adam Dalessio a Project Manager for Collier, Jack Deninger is a Civil Engineer with Fuss & O’Neill, and Rob Day with Fontaine Brothers. Mr. McGarry explained that DPHS is a four-acre site surrounded by some Conservation areas, under 4.6 of the Town of Spencer Zoning Bylaws schools are exempt in accordance with Mass General Law. Mr. McGarry stated they are requesting two special permits for this project 6.1.1 D regarding parking and 6.5.3B for signage in this district. Mr. McGarry discussed the current conditions, topography, and elevations on the site. Additionally, since submitting, Mr. McGarry discussed changes to the plans that have occurred and will be submitting revised plans. Mr. McGarry mentioned they went before the Conservation Commission and they were issued an Order of Conditions, they are working with MassDOT, and they have received Peer Review comments from BSC Group. The project consists around the renovation of the existing school, currently there are three wings to the school, a preschool class will be on site, redoing the driveways and parking lot, 225 parking spaces, reconstructing the athletic program with rubber running track, concession stand will be renovated, four new tennis courts, reconstruct baseball field, playground for preschool, courtyard, lighting, and miscellaneous site improvements. Regarding the special permit for signage, Mr. McGarry explained the school would like to combine their primary and electronic sign into one sign but does not have the dimensions at this time. Furthermore, Mr. McGarry went over the Stormwater Report and plan, discussed test pits and bedrock onsite, and re-configuring all site utilities.

Mr. Ceppi asked how the parking spots were determined and Mr. McGarry answered they calculated the demand per the Zoning Bylaws, three per classroom for preschool, ten per classroom in the high school, along with discussions with the school and the amount available. Michael Ethier, School Building Chair, stated when a student is a Junior, they apply for a parking pass, and it depends on the school and student if they get a space. Mr. Ceppi asked about the new services for gas, sewer, and water and if the ones now are inadequate and Mr. McGarry said with this type of renovation and size the simpler thing is to do new but will maintain parts of the sewer for the concession building. Mr. Ceppi asked if they foresee more waste coming out with the new building versus the existing. Mr. McGarry said the new building will be more energy efficient and does not see an increase in waste. Mr. Ceppi asked if there is a sprinkler system in the school now and Mr. McGarry said no but there will be one in the new building. Mr. Bellemer asked if solar panels on the new construction had been considered and the answer was yes, but it is undetermined at this time if it will be definite.

The Chair opened the hearing up to the public:

Ms. Vivier stated that they are just waiting for peer review results and comments.

Mr. Bellemer asked about how when DPHS was built they got more water on their property will the abutters get more water and Mr. McGarry said it should be less than existing.

MOTION: Ms. Shiver motioned to continue the Public hearing for Major Site Plan Review/ Special Permit/Stormwater Permit for DPHS until May 16, 2023

SECOND: Mr. Slack

DISCUSSION: Mr. McGarry would like to see the drafted conditions before the next meeting

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

5. Public Hearing: Major Site Plan Review/ Stormwater Permit – Applicant/Owners: Jaime Scarff/ Spencer Solar Farm LLC. Location: North Brookfield Road, Spencer, MA; Assessor’s Map R39-14. The applicant is requesting a Major Site Plan Review and Stormwater Permit under sections 7.4, 7.4.5, and 4.8.9 of the Spencer Zoning Bylaw and Stormwater Regulations to develop a large-scale solar PV facility. The property is located within the Rural Residential (RR) zoning district.

Ms. Vivier mentioned the applicant has a valid special permit for this project and now is applying for a site plan review and stormwater permit. Ms. Vivier stated there was supposed to be a site walk this morning, but the peer reviewer fell ill and rescheduled it until next Wednesday.

Chris Nolan, PARE Corporation, was present in-person at the meeting. Mr. Nolan introduced his team that was present at the meeting; Jaime Scarff representing Spencer Solar Farm LLC, Mark McCluskey Senior Engineer from PARE Corporation, and Tad Hewer from Foley Hoag. Mr. Nolan stated the large-scale solar facility will be 2 megawatts, this project was previously approved by the Planning Board in 2018 with a similar layout. Mr. Nolan mentioned in

December 2022 when they tried to submit the application the Town Planner asked them to do more to meet the current bylaws, so they re-designed it and re-submitted. Mr. Nolan explained the changes from the previously approved plan includes substantial screening around the northwest border and along the southern border, moved the array within the new setback requirements in the current Solar Bylaw, a detention basin is in the 300' setback, and changed the grading, new stormwater calculations.

Mr. Bellemer said he drove by the site and saw power lines running through the site and Mr. Nolan said the utility company came in and put there poles in, but they are not hooked up to anything on the site. Mr. Ceppi asked if the applicant meets all the requirements of the new Solar Bylaw and Mr. Nolan said no but to the extent that they can. Mr. Nolan said there are two areas that they cannot meet, one is the 50% of the log re-use and the pitch. Mr. Ceppi asked how much wood/field is on the site. Mr. Nolan did not have the information available but will find it. Mr. Ceppi asked what the acreage on this project was, and Mr. Nolan answered 35 acres and clearing approximately 25 acres. Mr. Ceppi asked why the applicant cannot comply with the Solar Bylaws. Mr. Nolan stated they have a special permit to build the solar farm but with the new Solar Bylaws the lot is too small to meet the requirements. Mr. Nolan mentioned that ten acres were already cleared for this site.

Mr. Ceppi asked the Town Planner if they received advice from our legal counsel regarding this issue and Ms. Vivier stated it needed to meet the current bylaws. Regarding the pitch, Mr. Bellemer asked how much they were over the required 15 % and Mr. Nolan stated in areas they are over 30%. Mr. Ceppi asked if the applicant needs to go through Conservation and Mr. Nolan stated they had already received a negative determination and it expires March 2024.

The Chair opened the hearing up to the public:

Matt Defosse, 7 Paul's Drive, addressed that the applicant was incorrect when he said the previously cleared area was 10 acres and from previous meetings it was 5 or 7 acres cleared. Mr. Defosse stated the applicant submitted a revised submittal but should be required to submit a new application due to the number of past owners, the environment at the site, changes in the Solar Bylaws, and changes in the Policies, Rules & Regulations. Additionally, Mr. Defosse reviewed sections from the Solar Bylaw and Zoning Bylaws and said the sound study provides no information for this site and possibly for another site, the owner/operator is not specific, waiver request states none but in the past, there were issues with the driveway, clearing and slope, system installer not named on application narrative, documentation control, narrative states they are the owner but unsure what they are the owner of, equipment details not identified, the stormwater report does not include details on the plan of a subdrainage basin located around the western border and soil types need to be tested and verified, the financial security should be cash, slope site cleared and grubbed over the clearing requirements, poles installed in farmland areas, missing material data sheets, can't screen the amount of cleared acres on a slope, no fire cistern shown, does not maintain the rural character per the Master Plan definition, traffic study assessment unclear, environmental impact assessment statement is misleading and leaves out critical information, fiscal impact assessment \$3,750.00 a month through the PILOT not enough for the Town of Spencer, and presented a poster board of the location of the site.

Matt Blanchard (remote), 5 Paul's Drive, said his primary concern is that the submitted plans do not meet the current Solar Bylaws specifically the land clearing and the large trees of high slopes being cleared. Mr. Blanchard stated when this original project special permit was approved eleven years ago the Town of Spencer did not have a Solar Bylaw and it is unfair to say this project is exempt from the Solar Bylaws because of the vested special permit. Additionally, Mr. Blanchard noted that solar farms need to be done in a responsible way to protect the natural resources, building codes are different from eleven years ago, and the amount of clearing the applicant is proposing for a two-megawatt solar farm seems inefficient. Mr. Blanchard asked the applicant to revise the site plan to meet the requirement of the Spencer Solar Bylaw with 50% less land clearing.

Jonathan Viner (remote), 34 Donnelly Cross Road, asked to hear from the applicant's council for justification as to not adhering to the most current solar bylaws.

Mr. Bellemer asked if monocrystalline material listed on a solar panel was silicone, and Mr. Nolan said it was partly silicone. Mr. Scarf stated they are the same tier one panels that are being built all over the world and can get more details. Ms. Shiver asked about the existing conditions sheet and the access to the lot is not shown. Also, Ms. Shiver reviewed the area labeled "dense trees" in the western part of lot and asked the amount of trees that will remain a natural buffer. Mr. Nolan said at least thirty feet. Ms. Shiver stated it is not labeled and asked the applicant to label the plan. Ms. Shiver said on plan C7-1 a note states the stonewalls will remain where practical and asked who is making that decision and Mr. Nolan said he will be more specific and make revisions. Also, on plan C8-5 a note says, "final array specified by owner" and Ms. Shiver says she is unsure what that means, and Mr. Nolan said they will specify when they know what they are going to use. Lastly, Ms. Shiver stated the road was going to be blended with the town layout and the note says "regrinding sawcut to blend driveway into town road." Mr. Nolan said they will put asphalt at the end and will satisfy DPW requirements.

Mr. Ceppi asked why the applicant is not meeting the requirements for meeting the Solar Bylaws. Mr. Hower explained in the narrative the applicant provided, on page three, this project is unique due to the special permit from 2012 and the land court has said it is a vested special permit. The special permit gives them the use of the site, under state law and the Planning Board does not have the discretion to deny but is limited to imposing reasonable terms and conditions. Mr. Hower said the site plan review is only about imposing conditions and the Solar Bylaw references is from 2012 because that is when the use was approved. Mr. Hower reviewed the decision by the Supreme Court, explained Tracer Lane, and the Dover Amendment Clause. Jeffrey Bridges, Town Administrator, recommends the Planning Board review the Town of Spencer's Council opinion, discussed the lawsuit determination and the interpretation from our Council is that the applicant must comply with the Town of Spencer's new Zoning Bylaw when it comes to site plan provisions. Mr. Ceppi read aloud points from the Town of Spencer's Council in a memo from the Town Planner that do not correspond with the applicant's council regarding which bylaws need to be followed. Mr. Ceppi also read aloud from the letter that no substantial use or construction began until October 10, 2017, therefore, the applicant had passed the time for the use that had to be initiated, and that site plan review must comply with the current Zoning Bylaws. Mr. Ceppi asked the applicant to supply there Attorneys comments to the Town Planner so Town Council can review.

Mr. Defosse talked about the opening on the northeast corner of the site and how the Tracer Lane example says the applicant is exempt from zoning and does not understand how a town cannot control its own zoning. Mr. Hewer corrected Mr. Defosse and said it is the Dover Amendment Clause. Mr. Bridges asked if the applicant met the clearing requirements how many megawatts would the solar farm be, and Mr. Nolan said he will get an answer once he reviews the plans. Mr. Viner disagrees with the statement that a site plan cannot be denied and believes there are legitimate grounds to deny a site plan unless conditions are met.

MOTION: Ms. Shiver motioned to continue the public hearing for Major Site Plan Review/ Stormwater Permit for North Brookfield Road until May 16, 2023

SECOND: Ms. Slack

DISCUSSION: None

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

6. Town Planner Report

Ms. Vivier discussed the following:

- Master Plan survey is still open and looking to close that out after Town Meeting.
- Housing Production draft on May 02, 2023, meeting.
- FEMA Floodplain open house
- Town cleanup day on Saturday April 29, 2023, implemented by the Conservation Commission.

7. General Board Discussion & Board Liaison Reports

Nothing new discussed.

8. Citizen Input

Mr. Defosse thanked the Town Planner and Planning Board members for listening and taking the time to review applications.

9. Approval of Minutes 4/04/2023

Mr. Slack noted under item 10 it should say “Mr. Slack” not “Mr. Vaughn.”
Mr. Bellemer said page two under discussion should say “needs to go.”

MOTION: Mr. Bellemer motioned to approve the minutes from 4/4/2023 with discussed revisions

SECOND: MS. Shiver

DISCUSSION: None

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

10. New Business/Adjournment

MOTION: Ms. Shiver motioned to adjourn

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.

Submitted by Monica Santerre-Gervais, ODIS Senior Clerk

Approved by the Planning Board on: 5/02/2023

List of Documents used on April 18, 2023

Items sent to Planning Board prior to Meeting by email:

- Final Agenda
- Memo from Town Planner
- Ash Street Subdivion- updated drainage report, letter regarding resubmission, and updated plans recieved 3/20/2023.
- Charlton Bacon Subdivision-updated drainage report, letter regarding right-of-way, and updated plans recieved 3/08/2023.
- Drafted minutes from 4/04/2023
- DPHS-Special Permit and Site Plan Application, narrative, and plans
- No. Brookfield Solar- Major Site Plan Review and Stormwater Permit application, narrative, and plans
- Legal Alert the Dover Amendment

Items submitted/ brought to the Meeting:

- Packet from Matt Defosse regarding No. Brookfield Solar