



Planning Board – Town of Spencer

Minutes

Planning Board Meeting

Tuesday, May 18, 2021, at 7:00 PM

McCourt Social Hall, 157 Main Street Spencer, MA 01562

Memorial Town Hall- **Remote Meeting**

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

Planning Board Members Absent: None

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

Staff Absent: None

1. Mr. Viner opened the meeting at 7:02 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: 4/6/2021, 4/20/2021, and 5/5/2021

- **4/6/2021**

MOTION: Mr. Butensky motioned to approve the minutes as written.

SECOND: Mr. Ceppi

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)

- **4/20/2021**

MOTION: Mr. Ceppi motioned to approve the minutes as written.

SECOND: Mr. Gleason

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)

- 5/5/2021

MOTION: Mr. Butensky motioned to approve the minutes as written

SECOND: Mr. Viner

DISCUSSION: None

ROLL CALL VOTE: Mr. Butensky, Ms. Reed, Mr. Gleason, and Mr. Viner all voted aye, and the motion was carried (4-0 Mr. Ceppi abstained)

3. 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.

Steven Pikul, Bertin Engineering, Elio Qorri, Bertin Engineering, TJ Recupero, Recupero Law, and Jeremy Chapman, Melink Solar Development attended the meeting remotely.

Mr. Miller commented that there has been no recent movement or communication regarding this application. Mr. Recupero recapped at what was discussed at the last meeting and that he submitted a letter dated May 11th, 2021, for the land use attorney to review. Mr. Recupero stated the letter was in respect to the third-party review for comment # 8 regarding it be a potential rear lot subdivision. Mr. Recupero said in the letter he should have stated that the Planning Board has no jurisdiction on the matter of access. Mr. Recupero stated that their plans do not meet the definition of rear lot subdivision because a rear lot subdivision lacks frontage or does not comply with frontage requirements. Also, Mr. Recupero answered Mr. Viner's concerns of section 4.7.7 of the General Bylaws. Additionally, Mr. Recupero mentioned they have one access drive to the solar array and to the residential lot. Mr. Recupero stated that at the meeting in July 2020 the Planning Board asked the applicant to redesign the roadway and now both lots meet the linear frontage and trying to comply with the Planning Board's concerns. Mr. Viner agreed with Mr. Recupero's comments and asked about why the current design was reconfigured in that way. Mr. Recupero stated the bylaw in Spencer allows for three means of access to a lot, direct access/ common access/ industrial & commercial allowed by right and they are willing to reconfigure the plan or keep as is.

Mr. Pikul added that the cul-de-sac was reviewed previously, and the design was insufficient in frontage, since then they added the common driveway, maintenance drive for solar array and the one residential lot, and the roadway accommodates the frontage needs. Mr. Pikul suggested Lenard Engineering (LEI) review the plans again in relations to comment #8. Mr. Viner stated if it is a common driveway and will need to meet the town's design standards. Mr. Pikul answered that it is not a common driveway it is a maintenance driveway to access the solar application. Mr. Ceppi stated it's not off the frontage for the solar project. Mr. Viner said it would need to be handled as a common driveway. Mr. Recupero explained its semantics and the bylaw defines common driveways and the Planning Board did receive the easements that were secured, they are complying, there is a different path because there is limited access because of wetland issues, and there is a purpose the redesign due the Planning Board requiring a staging area. Mr. Pikul had Mr. Qorri pan out the plan presentation of the driveway and stated they are trying to decrease the impact in the buffer zone. Mr. Viner asked about the residential lot. Mr.

Chapman stated the current owner had a buyer, but the sale fell through so there are no plans at this time.

The staging area for the solar farm was discussed and Mr. Ceppi asked after the solar farm is built would the staging area be a buildable lot and Mr. Pikul said it could be a buildable lot, but it is not ideal. Mr. Viner asked if the access road were within the wetland buffer in the west and Mr. Pikul said yes, they would be some grading, but the goal is not to have a bigger cut or fill. Mr. Viner commented that the staging construction area may need to be on the solar property and will need to check the bylaw. Mr. Recupero discussed that they property is under one ownership and under a lease, two adjacent lots in common ownership is considered one lot, it is temporary construction area, discussed the possible house lot, and the Planning Board can address that by condition to limit expansion or new development. Mr. Viner asked about the frontage length on both lots and Mr. Recupero said could extend the roadway because there is enough land, but it would depend on permitting. Mr. Pikul stated there are some physical limitations to the lot such as wetland areas, unbuildable lot, and they have tried to minimize the impact in jurisdictional areas.

Mr. Viner asked about access on the easterly side would be unattainable due to the wetlands and Mr. Pikul answered it would never be approved due to proximity of wetlands. Mr. Recupero commented that in a legal sense, from subdivision control not an issue it would be difficult but not impossible. Illusionary frontage was discussed with different case law scenarios. Mr. Pikul said there is an irregularity factor for shape and size of the lot and would need to make the lot legal. Mr. Viner asked about third-party reviews. Mr. Pikul stated they could not meet the deadline for the meeting but will have updated plans for the next meeting. There was much discussion regarding common driveways and zoning use.

The chair opened the hearing up to the public:

Matt Defosse, 7 Paul's Drive, asked if the grading would be above the standards and Mr. Qorri said no more than 15%.

MOTION: Mr. Butensky motioned to continue the public hearing for the Subdivision, Special Permit, and Site Plan for 133 Ash Street until June 15, 2021

SECOND: Mr. Ceppi

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 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.

Steven Pikul, Bertin Engineering, Elio Qorri, Bertin Engineering, and TJ Recupero, Recupero Law attended the meeting remotely.

Mr. Miller said they received Conservation Commission peer review, but they are still waiting on the Planning Board peer review. Mr. Pikul stated they continue waiting for Dominic Rinaldi at BSC Group to provide peer review comments. Mr. Recupero said they only received the Conservation Commission peer review. Mr. Viner asked if there was anything substantial to report for the Conservation peer review and Mr. Pikul said some wetland resource questions that they are addressing. Mr. Ceppi said he was concerned that BSC has not provided the peer review, the review is taking too long, and the Planning Board needs to get reviews back in a timely manner.

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

MOTION: Mr. Ceppi motioned to continue the hearing stated on the agenda until June 15, 2021

SECOND: Mr. Gleason

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)

5. Special Permit – Applicant/ Owner: Jesse Kady & George Victor; Location: 4 Eagleton Street; Spencer Assessor’s Map R38-19. The applicant is requesting a Special Permit under 5.3.10 (Rear lot subdivision) of the Spencer Zoning Bylaw to create a rear lot subdivision. The property is located within the Suburban Residential zoning district.

Jesse Kady and Jason Dubois, DC Engineering, called in remotely to discuss the application.

Mr. Miller discussed that the plan is to create lot A from lot B, the plan complies with the guidelines, the zoning is suburban residential and has a minimal lot size, and he sees no major issues.

Mr. Butensky asked if they are approving an ANR and Mr. Miller said the rear lot subdivision is a rear lot. Mr. Viner said approved like an ANR and the special permit will allow an unbuildable lot to be buildable. Mr. Butensky asked for point of clarification and Mr. Viner reviewed the process.

Mr. Kady said they will have a common driveway on left side of the lot and Mr. Viner said they will need a maintenance agreement for the deed and will need to return the next meeting. Mr. Ceppi asked about the slope and Mr. Kady said they chose the location to avoid the slope. There was much discussion regarding rear lot subdivision and the front and rear lot. Mr. Viner stated the common driveway easement will allow lot A to lot B and maintenance use agreement to be included in the deed. Mr. Ceppi was concerned that the PLS did not stamp the plan.

The chair opened the hearing up to the public:

Shirley Vaudreuil, 6 Wire Village Road, said she is one of the primary abutters and she has concerns of water into her property. Also, Ms. Vaudreuil said she had to repair her well in the past and the impact from the groundwater might affect her well and asked what ANR means. Mr. Viner explained what an ANR was, also, Mr. Viner said there is stormwater control with

common driveway bylaw, the grading for the house will fall under the Building Inspector, and the Town Planner can get you the information needed to contact the Building Inspector. Ms. Vaudreuil said they had to do blasting to build, and it altered there well and asked what would happen if her well was impacted and Mr. Viner said the Planning Board does not have jurisdiction but to reach out to the Town Planner to find out who she can contact.

Mr. Dubois joined the call and reviewed the plan and application again.

Peter Trainer, 2 Eagleton Street, said the land has substantial grade change, there could be an issue with the slope and impact to Eagleton Street that has no drainage. Also, Mr. Trainer asked if both lots need to pass percolation tests. Mr. Viner said there would need to be passing percolations for both lots that gets done through the Board of Health. Mr. Trainer said there was a condition with his house and that being his secondary access and asked to review the plan submitted to the abutters. Mr. Dubois said a new plan will be revised and given to the Planning Board. Mr. Ceppi asked if an easement to Mr. Trainer needs to be done and Mr. Viner said it could be something the applicant and the abutter can discuss.

MOTION: Mr. Ceppi motioned to continue the hearing until June 02, 2021

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)

6. Special Permit Hearing - Applicant: Got Sun Go Solar Inc; Owner: Richard Monette, Location: 133 Wilson Street; Spencer Assessor's Map U17-40. 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 (17.42 KW DC/ 15.2 KW AC) solar panel system. The property is located within the Rural Residential zoning district.

Mr. Miller stated he received the request to withdraw without prejudice and the applicant will submit a new application when the new solar bylaw is approved.

MOTION: Mr. Butensky motioned to accept the agreement to withdraw without prejudice

SECOND: Mr. Gleason

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)

7. Minor Site Plan Review- Applicant: Michael Mullaney/ McKenzie Engineering Co; Owner: Massachusetts Electric Co; Location: 9 Meadow Road; Spencer Assessor's Map U11-10. The applicant is requesting a Minor Site Plan Review under 7.4 (of the Spencer Zoning Bylaw to build a new office for transmission line service and storage of parts. The property is located within the Commercial and Rural Residential Zoning Districts.

Mr. Miller said the Building Inspector reviewed the plans and stated the additional office was routine.

Michael Mullaney, McKenzie Engineering, stated they are looking to put an L shape addition to a pre-existing office for National Grid. The office will be 520 square feet, there will be no increase in impervious surface, there will be no topography change and no impact to the wetlands, there will be no traffic impact, and no new employees. Mr. Viner asked if they would be using the existing parking and suggested a sign stating to back in only. Mr. Ceppi asked why it was in front of the Planning Board and Mr. Viner said it is a Minor site Plan Review and a requirement. There was some discussion regarding the difference between a minor and major site plan review.

MOTION: Mr. Ceppi motioned to approve the minor site plan review for 9 Meadow Road with the condition that signage be posted for back in parking only.

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)

8. Deer Run Subdivision Discussion/Recommendations to Board of Selectmen for private road repair (drains, etc.)

Mr. Miller stated that the subdivision was found in default ten years ago but the previous Planner, Michelle Buck, received surety. Mr. Miller discussed that there have been some ongoing issues with the road such as catch basins and road damage and to use the surety the Planning Board needs to authorize the Board of Selectmen to use the surety towards the road repairs. There was discussion regarding the land that was taken in tax taking but that will be discussed at a later meeting. Mr. Butensky said he drove through the subdivision and only saw one damaged catch basin with a cone over it and Mr. Miller said there is another basin going into fault and just using the surety for the safety concerns. Mr. Ceppi noted that the Planning Board conditioned the approval of phase 2 only if phase 1 was complete or repaired. Mr. Viner noted there are bigger issues to address at a future meeting.

Melissa Kubasiak, 1 Bell Flower, said she is on the phase 2 portion and her dog fell through the drain and asked if the surety was going toward phase 1 or 2. Mr. Miller answered the surety will address the safety concerns.

MOTION: Mr. Viner stated the motion should be to authorize the use of the Deer Run Phase 1 and 2 sureties as appropriate to make immediate repairs to address the public safety hazards present within the Deer Run Subdivision pending a favorable vote from the Board of Selectmen.

SECOND: Mr. Ceppi

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)

Mr. Viner stated a second part would be needed to authorize the Town Administrator/ Interim Town Administrator to act on behalf of the Planning Board. Mr. Viner explained that in the

bylaw the Town Administrator is the Chief Procurement Officer. Mr. Miller stated the Town Administrator works directly with the Board of Selectmen and they have an easier line of communication.

MOTION: Mr. Butensky motioned to authorize the Town Administrator/Interim Town Administrator to act the agent on behalf of the Planning Board in the implementation of Deer Run subdivision safety repairs.

SECOND: Mr. Gleason

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)

9. Town Planner Report-

- **LRRP**
- **Solar Bylaw**
- **Housing Production Process**
- **Grant writing and research**

Mr. Butensky inquired about the N. Brookfield Solar appeal that is being heard at the next Zoning Board of Appeals meeting. Mr. Miller stated the applicant is contesting the decision of the Building Inspector. Mr. Butensky asked if they were contesting the Planning Board decision and Mr. Miller stated the applicant is challenging the Building Inspectors decision but may appeal the Planning Board decision in the future.

10. General Board Discussion/ Board Liaison Reports

Mr. Viner mentioned cutting back to one meeting in the summer and all the Planning Board members agreed to cancel the Planning board meeting on July 6, 2021.

11. New Business/Adjournment

MOTION: Mr. Butensky motioned to adjourn the meeting at 9:40 pm

SECOND: Mr. Ceppi

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

Submitted by Monica Santerre-Gervais, ODIS Clerk

Approved by the Planning Board on: 8/3/2021

List of Documents used on May 18, 2021.

Items sent by email Planning Board or uploaded online prior to Meeting:

- Agenda
- Draft Minutes: 4/6/2021, 4/20/2021, and 5/5/2021

- Charlton/ Bacon Solar/ Subdivision-Definitive site plan, existing conditions, drainage report, peer review by BSC, and decommissioning plan
- Ash Street Solar Subdivision- Plans, drainage report, two peer review reports by LEI, subdivision plan, existing conditions plan. Grading/wetlands crossing, slope analysis, infiltration testing, and waiver request.
- Special Permit Application and plans for 4 Eagleton Street.
- Agreement to withdrawal without prejudice for 133 Wilson Street
- Minor Site plan application and plans for 9 Meadow Road.
- Supporting documents regarding Deer Run Subdivision

Items submitted/ brought to the Meeting:

None.