



Planning Board – Town of Spencer

Minutes

Planning Board Meeting

Tuesday, June 21, 2022, at 7:00 PM

McCourt Social Hall, 157 Main Street Spencer, MA 01562

Memorial Town Hall- **Remote and in person Meeting**

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

Planning Board Members Absent: None

Staff Present: Lauren Trifone, Interim Town Planner (in-person) and Monica Santerre-Gervais, ODIS Senior Clerk (remote)

Staff Absent: None

1. Chair, Mr. Ceppi, opened the meeting at 7:03 pm.

2. Approval of Minutes: 6/7/2022

MOTION: Ms. Shiver motioned to approve the minutes for 6/7/2022.

SECOND: Mr. Bellemer

DISCUSSION: None

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

3. ANR's- Candlewood Drive/ JC Kady Realty LLC/ Create Lots

Mr. Ceppi asked if phase one of Candlewood subdivision was completed. Ms. Trifone said it was almost done and she is waiting for final asbuilts, but the road was approved. Ms. Trifone noted she spoke to Town Counsel today with Jeff Bridges, Town Administrator, and he advised reviewing the ANR plan independently and not to include the subdivision. The ANR plan in front of the Planning Board is to shift a lot line. Mr. Ceppi and Ms. Shiver had concerns about frontage because there is no road. Mr. Bridges mentioned that the lot is in existence based on a previously approved ANR, the applicant is moving the lot line, and the road is not a factor per Town Counsel. Mr. Ceppi discussed the requirements to approve an ANR, which is, frontage, size, and road frontage. Ms. Shiver mentioned the notes on the plan say to create lot 13C, so the ANR is confusing.

Damien Berthiaume, Attorney representing JC Kady Realty, was on the call remotely. Mr. Berthiaume reviewed the intention of the ANR plan to reconfigure lot lines and noted the applicant will come back before the Planning Board to seek the subdivision extension. Mr. Berthiaume felt the ANR was adequate for endorsement. Mr. Ceppi asked why the need for the ANR now and not later when the subdivision extension is applied for. Mr. Berthiaume said they could have submitted at the same time but would like to know this gets approved to move forward. Mr. Ceppi explained that the ANR Plan is confusing because there is no road to use for

frontage and would feel more comfortable if the applicant waited until they came back for the extension. Ms. Shiver noted that in Candlewood Phase 2 there was an emergency access. Mr. Berthiaume replied the access is by lot 11, east of lot 12 R. It will be a twenty-four-foot-wide emergency access that runs out to Greenville Street and will be preserved.

Jonathan Viner, 34 Donnelly Cross Road, explained the subdivision aside, this ANR Plan does not meet the frontage requirements and therefore cannot be accessed, the plan must label the parcels non-buildable, and once proper surety is met, they can be buildable. Mr. Bridges stated to the Planning Board that is not the same information provided by Town Counsel. Mr. Ceppi mentioned the plan does not have a stamp from the surveyor. Ms. Shiver noted the purpose of the plan and general plan needs to be clearer on the ANR notes.

The Planning Board members agreed they need more information from Town Counsel and the applicant and would like to continue this ANR discussion. Mr. Berthiaume agreed and said he would sign a continuance form.

MOTION: Ms. Shiver motioned to continue the ANR discussion for Candlewood Drive/ JC Kady Realty LLC to July 19, 2022, contingent upon written continuance from Damien Berthiaume.

SECOND: Mr. Bellemer

DISCUSSION: None

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

4. Site Plan Review & Special Permit– Applicant/Owner: Spooky Realty Trust, Steven Turner, Location: Meadow Road, Spencer Assessor’s Map U11-12, 12-1, 12-2, 12-3, 12-4. The applicant is looking for a Major Site Plan Review under section 7.4.2 (Site Plan Review is required for this use even when there is no new construction or expansion of structures or parking areas) & Special Permit under Section 3.4.1.G (Aquifer Protection Overlay District) and Section 3.4.2.H (Floodplain Overlay District) to. The property is located within the Commercial zoning district.

Ms. Trifone mentioned to the Planning Board that the peer review for the Stormwater was complete, however, they are still waiting for BSC Group to complete the peer review for the Planning Board. Additionally, Ms. Trifone discussed her findings when researching the project history/status on existing permits: Major Site Plan, 11/7/13 (restaurant expansion) the applicants were not supposed to get a Certificate of Occupancy until the Planning Board got an as-built plan, but the Certificate of Occupancy was issued on 10/31/17. Another condition states that they needed to give the town a drainage easement, which, has not been done yet. Also, Site Plan 11/15/16 (2400 sq ft building with parking), amended 10/16/18, the work needed to begin within two years, which it has since the plan included parking, there is a condition that says the project must be completed within two years of getting the building permit but there is no building permit, so the Site Plan is still valid. Ms. Trifone explained this current application is for an addition and drive thru but recommends the applicant filing an ANR and redesign the lot lines so that the storage building is not on two lots and is not sharing a lot with the drive thru.

Carl Hultgren, Quinn Engineering, and the applicant, Steven Turner, were present for the meeting. Mr. Hultgren stated that Ms. Trifone's review on the history of the site was correct. Mr. Hultgren discussed the as built submitted for review. Ms. Shiver noted a valid Engineer Stamp is required on the plan and Mr. Hultgren will submit a new copy with Engineer Stamp.

There was much discussion regarding the validity of the amended Site Plan and Mr. Hultgren stated the applicant installed retaining walls, parking lot, and drainage system. Ms. Shiver asked when the new building will be built, and Mr. Turner said this year or next year.

James LaPlante, Spencer Wastewater Treatment Plant Superintendent, stated he has concerns with the new structures. Mr. LaPlante explained there is currently a sewer moratorium for flow and design and would like to see the proposed flow rates and if the landscape berms were being built over the sewer main. Mr. LaPlante noted that if the berms are over the sewer main, they will need to be removed to repair/replace the pipes during the sewer system upgrades. Mr. Hultgren answered most of the space will be green space and dirt on top with only a couple curb cuts. Ms. Shiver stated that Meadow Road is a Municipal Road. Mr. LaPlante stated he has submitted the plans to a consultant agent and waiting to hear from them.

Frank White, 35 R. Jones Road, asked for flow rates and Mr. Turner stated they are looking at 20 seats and the new building will be retail space. Mr. Hultgren said they will get the Sewer Department the calculations and flow rates they requested.

The Chair opened the hearing up to the public:

Jonathan Viner, 34 Donnelly Cross Road, asked if the project is all on one lot. Mr. Hultgren said the lot lines will be reconfigured into three lots. Mr. Ceppi said the applicant needs to do an ANR and with easement.

MOTION: Ms. Shiver motioned to continue the Site Plan Review & Special Permit for Meadow Road until July 19, 2022

SECOND: Mr. Bellemer

DISCUSSION: None

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

5. Special Permit– Applicant: Trinity Solar; Owner: Kim Snyder. Location: 36 Howe Road, Spencer Assessor's Map R19-15. The applicant is looking for a Special Permit under section 4.8.9 (Solar Photovoltaic Generating Installations) to install small scale residential ground mount solar panels. The property is located within the rural residential zoning district.

Ms. Trifone explained that the following three applications involved her discussion with Town Counsel today because the Town of Spencer's current Zoning Bylaw is not clear regarding residential versus commercial ground mount solar. Ms. Trifone explained the state recognizes solar as an accessory use and the panels are tax exempt because residential solar is for the owners use only. Ms. Trifone noted that in section 4.8.9.H of the Spencer Zoning Bylaw the applicants have the right to request waivers from the Planning Board.

Mr. Ceppi asked what the Town of Spencer defines as primary or accessory use and Ms. Trifone states it is currently unclear and it needs to be clarified. Mr. Ceppi asked if Town Counsel provided anything in writing and Ms. Trifone said he did not. Mr. Bridges stated solar is clearly an accessory use. Ms. Shiver noted the Town of Spencer's Zoning Bylaw is the problem and has become a burdensome to the applicants/residents of the town. Mr. Ceppi stated he would like to see something in writing from Town Counsel.

Keith Leslie, Trinity Solar representative for Kim Snyder, discussed his application and waivers he has provided to the Planning Board. The Planning Board went through the letter of requested waivers for sections 4.8.9 F. 7 (Proposed Hours of Operation), 4.8.9 F. 12 (Documentation by an acoustical engineer of the noise levels projected to be generated by the installation), 4.8.9 F. 13 (Operation & Maintenance Plan), 4.8.9 F. 14 (Abandonment & Decommissioning Plan)/ (a)-(e), 4.8.9 F. 16 (i) (Materials, delivery, equipment staging area), 4.8.9 G. 3 (Visual Impact Mitigation), 4.8.9 G. 11 (Drainage), and 4.8.9 G. 15, 4.8.9 B. (b). The Planning Board still wanted to ensure there was screening provided to the neighbors.

Ms. Shiver asked about the glare from the solar panels and Mr. Leslie explained they use black backed solar panels that reduce glare, and the panels are not facing the road. Mr. Ceppi asked what type of trees were next to the solar panels and if the trees shed. Mr. Leslie was unsure of the species, but the trees do shed leaves. Mr. Ceppi asked about the neighbors and Mr. Leslie said it is a large open field.

Matt Defosse, 7 Paul's Drive, stated there are three applicants on tonight's agenda for residential ground mount solar, the Town needs to amend the solar bylaw, improve specification requirements, avoid unnecessary cost to residents, and small solar allowed by right to homeowners.

Jonathan Viner, 34 Donnelly Cross Road, explained it would be a mistake for the Planning Board to approve any of the applicants on tonight's agenda for residential solar because the Town of Spencer's Zoning Bylaw is clearly defined by size and the bylaw does need to be amended. Mr. Viner is concerned about how this will affect other projects down the road and the Planning Board needs to make decisions based on how the bylaw is written and not how it should be written. Mr. Viner referenced the use table and section 4.2 of the Zoning Bylaw and stated these special permits should not be approved. Mr. Ceppi stated that Mr. Bridges and Ms. Trifone spoke to Town Counsel regarding the issues Mr. Viner discussed. Ms. Trifone referenced section 5.3.8 of the Zoning Bylaw *"Double counting land area. When multiple uses and/or buildings occupy a single lot, no area of the lot may be counted towards the dimensional requirements for more than one use/building."*

Ms. Shiver mentioned the Planning Board has approved a residential ground mount solar in the past. Mr. Viner thinks Town Counsel is wrong and felt the Planning Board was misled to approve the permit. Mr. Bellemer asked if the Planning Board has ever denied a residential ground mount solar and Ms. Shiver said no because waivers can be requested. Mr. Bellemer wanted to hear what the neighbors had to say before deciding.

The Chair opened the hearing up to the public and there were no questions or comments.

Mr. Bridges suggested continuing, review the bylaws, and provide additional conditions. Ms. Trifone mentioned she is currently looking at other bylaws and following court cases and the solar bylaws will continue to be amended year after year. Mr. Viner called a Point of Order that a Special Permit needs four members to vote to pass, currently there are only four members, so all the members would have to agree for it to pass. Ms. Trifone suggested a special meeting on June 29, 2022, and the Planning Board members agreed

MOTION: Ms. Shiver motioned to continue the Special Permit for 36 Howe Road until June 29, 2022

SECOND: Mr. Bellemer

DISCUSSION: Mr. Leslie said he would sign a continuance agreement form if needed.

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

6. Special Permit– Applicant: Freedom Forever, Aaron Wendt; Owner: Craig Lusignan. Location: 83 Northwest Road, Spencer Assessor’s Map R50-3-1. The applicant is looking for a Special Permit under section 4.8.9 (Solar Photovoltaic Generating Installations) to install small scale residential ground mount solar panels. The property is located within the rural residential zoning district.

Ms. Trifone stated this special permit request is similar to the one previously discussed; however, the applicant did not provide any waiver requests although she tried to call and email numerous times.

Eli Kuh, Freedom Forever, Representative for Craig Lusignan, was present at the meeting and stated he would like the opportunity to request the waivers.

The Chair opened the hearing up to the public.

Mr. Bellemer mentioned the plan was lacking too many details. Mr. Kuh said he has the data and could present to the Planning Board, but the side and rear setbacks don’t conform to the Zoning Bylaw. Mr. Ceppi stated that the data should have been included with the application and mentioned they would need the plan submitted before the meeting.

Mr. Viner noted this is the second time the applicant has come before the Planning Board, and he withdrew his application because the Town Planner let them know it is not allowed on a parcel with a residence.

MOTION: Ms. Shiver motioned to continue the Special Permit for 83 Northwest Road until June 29, 2022

SECOND: Mr. Bellemer

DISCUSSION: None

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

7. Special Permit– Applicant: Higgins Energy Alternatives; Owner: Ann & Warren Ramsey. Location: 183 Greenville Street, Spencer Assessor’s Map R25-3. The applicant is looking for a Special Permit under section 4.8.9 (Solar Photovoltaic Generating Installations) to install small scale residential ground mount solar panels. The property is located within the rural residential zoning district.

Ms. Trifone noted this special permit application is like the other two applications, they have received the proof of abutter notification and the waiver requests. The Planning Board reviewed the waivers requested. Mr. Ceppi asked if the Planning Board should make a condition for removal if the panels are not being used. Ms. Trifone mentioned the applicant is missing a waiver request for hours of operation and visual mitigation.

Chris Jensen, Higgins Energy, and Ann Ramsey, 183 Greenville Street, were present for the meeting. Ms. Trifone noted the applicants came to a previous meeting and explained their intention to apply and why they could not do roof mounted solar panels.

The Chair opened the hearing up to the public and there were no questions or comments.

MOTION: Ms. Shiver motioned to continue the Special Permit 183 Greenville Street until June 29, 2022

SECOND: Mr. Bellemer

DISCUSSION: None.

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

8. Special Permit– Applicant/Owner: Theodore LaBonte. Location: 15 Roy’s Drive, Spencer Assessor’s Map U15-53. The applicant is looking for a Special Permit under section 4.3.1 (Two-Family Dwellings) to construct a two-family home. The property is located within the suburban residential zoning district.

Ms. Trifone explained the applicant is requesting to develop a two-family home and was issued an Order of Conditions and Stormwater Permit on March 9, 2022, from the Conservation Commission.

Theodore LaBonte was present for the meeting and stated he has received the driveway permit and the trench permit from the Highway Department. Ms. Trifone said the plans meet the setbacks and dimension requirements. There was much discussion regarding the plans, plot plans, and impervious surface. Mr. Ceppi asked if the two-family will be connected to Town Water and Sewer and Mr. LaBonte said yes and was approved by the Town Sewer and Water Department.

The Chair opened the hearing up to the public:

Lucinda Puchalski, 16 Roy's Drive, had concerns about the applicant cutting into the road because it was a private road and since 2007. Ms. Puchalski claims that her neighborhood has had to pay for an abatement to become a public street but has never become one. Ms. Puchalski noted she reached out to numerous Board of Selectmen members about the issue, and they never get back to her. Mr. Ceppi stated that Mr. LaBonte pays taxes and has a right to build the two-family and make a driveway but will make sure the road returns to the current state it is in. Additionally, Mr. Ceppi stated they will research why Roy Drive is not a public road. Ms. Shiver asked if they should make a condition for the applicant to make sure the road is repaired after the curb cuts are made. Mr. Ceppi explained that the Highway Department and Building Inspector will make sure that's done before they issue a Certificate of Occupancy.

MOTION: Mr. Bellemer motioned to close the public hearing for 15 Roy's Drive

SECOND: Ms. Shiver

DISCUSSION: None

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

MOTION: Ms. Shiver motioned to approve the Special Permit for 15 Roy's Drive

SECOND: Mr. Bellemer

DISCUSSION: None

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

9. Town Planner Report, Interim Planner, Lauren Trifone

- Currently, working on Solar amendments for the Fall Town Meeting including a small- and large-scale solar designations, cap on large scale solar farms, and battery storage regulations.
- Awaiting approval for One Stop Grant for \$130,000 to use towards the Master Plan Revisions
- June 23, 2022, Town Meeting
- Meeting for Candlewood Subdivision to discuss next steps.
- The applicants for Charlton/ Bacon Subdivision and Ash Street Subdivision have not signed Peer Review contract to have peer review done.

10. Discussion: General Board Discussion/ Board Liaison Reports

Mr. Ceppi mentioned he will be coming back from vacation on July 19th and is hopeful to be back in time for the Planning Board meeting.

11. Citizen Input

Matt Defosse, 7 Paul's Drive, found a Planning Board member to be offensive during the meeting and that everyone should be heard. Ms. Shiver stated she knows the Planning Board authority and the bylaws and there was no bad intention on her part.

12. New Business/Adjournment

MOTION: Ms. Shiver motioned to adjourn at 10:18 pm

SECOND: Mr. Bellemer

DISCUSSION: None

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

Submitted by Monica Santerre-Gervais, ODIS Clerk

Approved by the Planning Board on: 7/19/2022

List of Documents used on June 21, 2022.

Items sent by email to the Planning Board and printed out for use at the meeting:

- Agenda
- Memo from Interim Town Planner for meeting
- Drafted minutes from 6/7/2022
- ANR plan and application Candlewood Drive/ JC Kady Realty LLC
- Meadow Road/Charlies Diner-SPR & SP application and updated plans, narrative, stormwater report, peer review of stormwater report, existing conditions plan, and asbuilt plan.
- Special Permit application, plans, and waiver requests for 36 Howe Road
- Special Permit application and plans for 83 Northwest Road
- Special Permit application plans, and waiver requests 183 Greenville Street
- Special Permit application and plans for 15 Roy's Drive

Items submitted/ brought to the Meeting:

- None