



Planning Board – Town of Spencer

Minutes

Planning Board Meeting

Tuesday, Sept 15, 2020 at 7:00 PM

McCourt Social Hall, 157 Main Street Spencer, MA 01562

Memorial Town Hall- **Remote Meeting**

Planning Board Members Present: Chair Shirley Shiver (remote), Vice Chair Jeff Butensky (remote), Robert Ceppi (in-person), Jonathan Viner (in-person), and Maria Reed (logged in late and lost connection towards end of meeting (remote))

Planning Board Members Absent: None

Staff Present in-person: Paul Dell'Aquila, Town Planner, Monica Santerre-Gervais, ODIS Senior Clerk

Staff Absent: None

There was a brief recess between the recessed meeting and regular scheduled meeting

1. Ms. Shiver opened the meeting at 7:03 pm and Ms. Shiver 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. Adoption of Minutes: August 18, 2020, August 18, 2020 (2nd half), August 25, 2020

Minutes were tabled until the end of the meeting to wait for Ms. Reed to connect.

3. ANR’s:

- **101 Wilson - Watson;**

Jason Dubois, DC Engineering, was on the call to discuss the ANR plan. The ANR plan creates a new 25,001 sf, non-buildable parcel (“Parcel A”) out of the existing 15-acre parcel (U27-1) as well as delineating an easement (“Easement 1”) connecting Parcel A to Wilson Avenue across from the existing residence at 101 Wilson Ave. The existing parcel U27-1 will still meet the requirements for area (60,000 sf) and frontage (200 sf) in the Rural Residential district after this proposed action. Mr. Dubois mentioned the area was for a septic system with pumping across the street.

MOTION: Mr. Butensky motioned to approve the ANR as submitted

SECOND: Mr. Ceppi

DISCUSSION: None

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

- **Gold Nugget Farm Road – Bruso**

Mr. Dubois submitted this ANR as well and stated the applicant will be creating lot 3 & 4 and both meet the zoning requirements. Mr. Viner mentioned that there should be an approximate square foot of upland noted on the plan per the ANR requirements. Mr. Ceppi asked if the upland needed to be added before approving. Mr. Dell'Aquila stated that the wetlands are delineated when permits are pulled. There was much discussion about ANR requirements, subdivision regulations, and upland. Ms. Shiver asked if the plan was acceptable as is and suggested revising the checklist for applicants to be clearer and the members agreed.

MOTION: Mr. Viner motioned to approve the ANR as submitted

SECOND: Mr. Ceppi

DISCUSSION: None

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

- **Cranberry Meadow Road -William Casey Estates**

Attorney Philip Stoddard was on the remote call to discuss the ANR. Mr. Stoddard said there was 5 acres of land, lot 1 will have 2.9 acres, lot 5 & 6 will be created and meet the zoning requirements. Mr. Viner asked if parcel A & B were to be conveyed to Matt Carr and Mr. Stoddard said yes. Mr. Viner noted that there are wetlands in lot 5 and the upland is not shown on the plan or noted. Mr. Dell'Aquila stated the checklist will be amended so the requirements are clearer.

MOTION: Mr. Ceppi motioned to approve the ANR as submitted

SECOND: Mr. Butensky

DISCUSSION: None

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

- **50 Lambs Grove – Lamothe**

Mr. Viner stated that the ANR is an invalid plan because it does not determine the exact dimensions of the parcel exchange but said the criteria for a boundary line between neighbors is different criteria. Ms. Shiver agreed that the lines need to be clarified. Mr. Viner read note 7 on the plan that states its for a lot line adjustment.

Mr. Butensky motioned to approve the ANR plan and it was seconded by Mr. Ceppi, however, Mr. Butensky withdrew his motion after much discussion of a lot being less conforming and the uncertainty of the well on the property.

MOTION: Mr. Ceppi motioned to continue the ANR to the meeting on October 20th, 2020 and request the applicant to explain the ANR

SECOND: Mr. Butensky

DISCUSSION: None

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

4. Continued Citizen Discussion from 8/25/20

The Planning Board members were emailed comments/questions from Tatyana McCauley before the meeting. Ms. McCauley, 28 McCormick Road, stated she had been trying to get on the agenda since July because she has concerns about the solar farm being constructed at 20 & 32 McCormick Road. Ms. McCauley stated that both solar farms surround her property and she is concerned about the construction noise, the dust, and the well-being of her property.

1. 20 McCormick- the topsoil spreading is not being addressed like it is described on the site plan. Damien Berthiaume, Attorney representing the developer, stated that they felt it was not appropriate to discuss this because his client already went through site plan review and they are constructing the site per the site plan. Ms. McCauley stated she want assurance that she gets what was promised by the developer. Ms. Shiver told Ms. McCauley that the Planning Board cannot make any more decisions on this project because they are not the correct authority, but she appreciated the letter.
2. 20 McCormick- visual mitigation- Ms. McCauley stated she did not want spruces to block the view, she was not aware they were going to be planted and would like to wait until Spring to see if the visual mitigation was needed. Mr. Berthiaume stated that the screening was designed by a professional engineer and was a condition of the site plan approval. Additionally, Mr. Berthiaume stated that the developer has offered to meet Ms. McCauley at her residence to discuss.
3. 32 McCormick- lack of visual mitigation- Ms. McCauley said the drawings do not show visual mitigation for 32 McCormick solar farm because the developer stated that the existing woodland would be sufficient, however, the buffer was reduced and the natural screening has been thinned out and she is requesting visual mitigation.
4. 32 McCormick- noise mitigation not listed. Ms. McCauley said theta James Schwartz promised there would be no noise, but each invertor has five fans, so possibly 200 fans, plus the transformers. Mr. Berthiaume stated that his client provided acoustical analysis and both decisions discuss the noise regulations, and if by chance it changes than additional mitigation would be required. Mr. Viner asked Mr. Berthiaume if he was referring to condition 14 on both projects and Mr. Berthiaume said yes. Ms. McCauley asked where abutters should go with issues and to seek help and Ms. Shiver thanked her for her concerns and said it would need to go through the Building Inspector/ Zoning Enforcement Officer.

5. 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

Ms. Shiver mentioned that the applicant submitted a continuance form. Mr. Dell'Aquila mentioned the applicant still needed to go before the Conservation Commission.

MOTION: Mr. Viner motioned to continue the hearing to October 20th, 2020

SECOND: Mr. Ceppi

DISCUSSION: None

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

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. Dell'Aquila said the office received some new materials but they did not represent the subdivision, nor has it been reviewed by third party.

MOTION: Mr. Butensky motioned to continue the hearing to October 20th, 2020

SECOND: Ms. Reed

DISCUSSION: Mr. Viner noted that the continuance form that was received says request to continue to Oct 1st and Mr. Dell'Aquila said he requested the applicant revise the request for October 20th.

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

7. Continued Public Hearing /Reopening Approved Major Site Plan – Applicant: ZPT Energy Solutions II, LLC; Owner: Demeter Realty Trust C/O Brendan Gove. Location: 103 N. Spencer Road, Spencer Assessor's Map R49/1/1. The property is located within the Rural Residential zoning district. The applicant is applying for an amendment to the existing site plan, originally approved July 13th, 2010, under Spencer Zoning Bylaw Section 4.3.4 (Major Utility).

Ms. Shiver mentioned the applicant submitted a request to withdraw without prejudice and Mr. Dell'Aquila said the Planning Board would only need to accept the request. Ms. Shiver asked to clarify "without prejudice," and Mr. Dell'Aquila said it means it could allow the applicant to come back but if it was denied than it would take 2 years for the applicant to resubmit their application. Mr. Viner asked about an update on the site because it appears the developers are not constructing the site by the plans. Mr. Dell'Aquila said the application was to remove the shed and now they are keeping the shed.

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

SECOND: Mr. Ceppi

DISCUSSION: Mr. Viner wanted clarity on the Planning Boards request for site plans and Ms. Shiver said they did not have the CAD plans so maybe they couldn't change them, and Mr. Viner said all that was needed was more effort

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

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

Mr. Dell'Aquila stated he had nothing new to report. Ed Switzer, Forefront Power LLC, said at the last meeting the Planning Board wanted to update one of the conditions. Mr. Dell'Aquila mentioned they needed clarity on the documentation needed before the developers operate the solar farms. Mr. Viner asked if the developer receives the permit to operate (PTO) than they can operate. Mr. Dell'Aquila answered that the PTO is closer to the end of the project than the final electrical inspection. Ms. Shiver asked if the timeframe from the PTO and live sign off was 10-14 days and Mr. Switzer said that would depend on the utility company. There was much discussion about needed documents, permits, and sign offs before the developer can operate. Mr. Dell'Aquila asked Mr. Schwartz could provide notification when submitting their paperwork to the utility company because the Planning Board does not want the project to be operational before the Certificate of Compliance and Mr. Schwartz said yes. Mr. Viner stated that the condition needs to be drafted and reviewed by legal counsel so that the language is clear. Mr. Dell'Aquila said he can provide the wording and Mr. Viner said he wanted council to review. Ms. Shiver raised her concerns with applicants being continued without decisions and there was much discussion regarding conditions. Mr. Ceppi mentioned there are issues with the solar farms generating before approval and the verbiage needs to be correct so the hearing should be continued. Ms. Shiver said the Planning Board will be having a meeting to amend the solar bylaws and should have the conditions worked out.

Ms. Shiver opened the hearing up to the public.

Ralph Hicks, 21 Lyford Road, discussed his concerns with the decommissioning fees and those should be revisited. Mr. Hicks said that the projects that have been approved have low bonds and the Board of Selectmen will be putting in an article for a 1-year moratorium on solar farms.

MOTION: Mr. Ceppi motioned to continue the hearing to October 20th, 2020

SECOND: Ms. Reed

DISCUSSION: None

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

9. 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. Dell'Aquila stated that the application before the Planning Board is the same as an extension, the revised conditions would pertain to this application, however, town council is reviewing this project and has discovered that the special permit has lapsed for this project. Mr. Dell'Aquila said it is unclear if the special permit needs to be revisited by the Zoning Board of Appeals or the Planning Board, additionally, material was received on Monday but has not been reviewed. Ms. Shiver stated this application would not be an actionable item.

Chris Nolan, Beta Group, does not agree that the special permit has lapsed and was not aware of this until a recent conversation and his council should have their determination soon. Additionally, Mr. Nolan stated the site plan does not expire until February 2021 and they are looking to move forward on the project. Also, Mr. Nolan noted that a considerable amount of money has been invested, peer reviews have been completed, poles have been installed, and the SWPPP is being finalized. Mr. Viner asked when the applicant was notified about the lapse in the special permit and Mr. Dell'Aquila said yesterday. Mr. Viner found issues with the applicant finding out before the Planning Board. Ms. Shiver stated she knew there were statements were made and Mr. Viner said yes by Mr. Defosse. Mr. Nolan asked if there were written questions submitted and Ms. Shiver said no just comments from an abutter. Mr. Viner said if a new special permit is required than the plans will need to conform to the new solar regulations. There was discussion about the decommissioning bond being renewed and Ms. Shiver said the Planning Board has an obligation to review. Mr. Nolan said that the Planning Board needs to revise the agenda to state what they want to discuss.

Mr. Viner asked about opening the hearing to the public and Mr. Ceppi stated the public should be heard. It was agreed that the Planning Board would table the public hearing until the next meeting because there are too many issues to address. Ms. Shiver asked about plans and Mr. Nolan said the plans were already approved and there was nothing new to provide.

MOTION: Mr. Viner motioned to table the public hearing to October 20th, 2020

SECOND: Mr. Ceppi

DISCUSSION: None

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

10. Town Planner Report

20/32 McCormick- Mr. Viner raised concerns and town council provided a response. Additionally, the Conservation Agent, Building Inspector were onsite and have not found any actionable items. Third party for construction was discussed.

GH Wilson- The Building Inspector did find the presence of the battery storage and the enforcement taken would be the Building Inspector requesting the applicant to come before the Planning Board to update their site plan. Graves Engineering will be doing the as-built review for the project. Mr. Ceppi asked if Graves was reviewing for the Planning Board or Conservation and Mr. Dell'Aquila replied they had no specific construction monitoring.

Memo was provided to the Planning Board in response to Mr. Viner's concerns as a citizen. Mr. Viner asked about the motion that was made at the last meeting to hire a third party for the Planning Board to review construction and does not feel it would appropriate for Graves Engineering to do it. Ms. Shiver asked if Mr. Viner had a personal issue with Graves Engineering. Mr. Viner said no and there was much discussion about who the third-party reviewer should be and what the scope of work should be reviewed. Ms. Shiver said she has no preference on a reviewer and Mr. Viner said they need proposals. Mr. Dell'Aquila asked if the Planning Board needs to review the proposals and Mr. Ceppi the proposals should be emailed.

MOTION: Mr. Viner motioned to request third part review quotes from BFC Group and Lenard Engineering

SECOND: Mr. Ceppi

DISCUSSION: None

ROLL CALL VOTE: Ms. Shiver, Mr. Ceppi, Ms. Reed (no answer), Mr. Butensky, and Mr. Viner all voted aye, and the motion was carried (vote 4-0)

11. General Board Discussion/ Board Liaison Reports

Mr. Viner asked if other Planning Board members had questions and read a section from Attorney George Kiritsy that the Planning Board was emailed earlier in the day. Ms. Shiver said there was a lot of information to review. Mr. Viner wanted to note that the letter was dated 9/1/2020 and Mr. Dell'Aquila only sent the letter when he requested it and Mr. Kiritsy states that Mr. Dell'Aquila approved the battery installation. Ms. Shiver said the attorney points out other points that they should verify. Mr. Viner wanted to discuss ramifications if the truth is that the Planner approved the battery storage and Ms. Shiver said the board needs to look at all regulations and need to get the solar bylaw figured out. Mr. Viner felt the issues he points out would not be remedied by revision of the bylaw. Mr. Ceppi is concerned with the attorney making false statements. Ms. Shiver said the letter is not fact and Mr. Viner said they should not dismiss the letter and town council should weigh in. Mr. Ceppi felt this was the perfect reason for why there should be third party review during construction.

There were no board liaison reports.

TABLED

Adoption of Minutes: August 18, 2020, August 18, 2020 (2nd half), August 25, 2020

Mr. Dell'Aquila mentioned that the minute for 8/18/2020 (second half) was cut off and cannot be voted on tonight. Mr. Viner mentioned that Ms. Reed was no longer on the call and all the minutes should be tabled.

MOTION: Mr. Viner motioned to table the minutes of 8/18/2020 & 8/25/2020 to October 20th, 2020

SECOND: Mr. Butensky

DISCUSSION: None

ROLL CALL VOTE: Ms. Shiver, Mr. Ceppi, Ms. Reed (no answer), Mr. Butensky, and Mr. Viner all voted aye, and the motion was carried (vote 4-0)

MOTION: Ms. Viner motioned to adjourn the meeting at 9:40 pm

SECONDED: Mr. Ceppi

ROLL CALL VOTE: Ms. Shiver, Mr. Ceppi, Ms. Reed (no answer), Mr. Butensky, and Mr. Viner all voted aye, and the motion was carried (vote 4-0)

Submitted by Monica Santerre-Gervais ODIS Clerk

Approved by the Planning Board on: 10/20/2020

List of Documents used on September 15, 2020

Items sent to Planning Board prior to Meeting by email:

- Agenda
- Town Planner memo
- Draft minutes for August 18, 2020, August 18, 2020 (2nd half), August 25, 2020
- ANR application and plan for 101 Wilson – Watson, Gold Nugget Farm Road – Brusco, Cranberry Meadow Road -William Casey Estates, and 50 Lambs Grove – Lamothe
- Letter from Attorney George Kiritsy, regarding 17 GH Wilson Solar, dated 9/1/2020
- Continuance request for 22 Norcross Road
- Continuance request for 133 Ash Street
- Request to withdraw without prejudice for 103 North Spencer Road
- Certificate of Decision for 36 Cranberry Meadow Road Solar
- Graves Site visit reports for 17 GH Wilson Road, 20/32 McCormick Solar, and 103 No. Spencer Road
- Written Citizen concerns from Tatyana McCauley regarding 20/32 McCormick Solar Farms

Items submitted/ brough to the Meeting:

- None