



Planning Board – Town of Spencer

Minutes

Planning Board Special Meeting

Tuesday September 20, 2022, at 6:00 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), Charlie Bellemer (in-person), and Joshua Buckley (in-person)

Planning Board Members Absent: None

Staff Present: Lauren Vivier, Town Planner/Conservation Agent (in-person) and Monica Santerre-Gervais, ODIS Senior Clerk (remote)

Staff Absent: None

1. Chair, Mr. Ceppi, opened the meeting at 6:00pm.

New member Joshua Buckley introduced himself, discussed his background, and reason for joining the Planning Board.

2. Open hearing Zoning Bylaw Amendments:

Ms. Vivier explained that this special public hearing will be a review of the recommended bylaw changes for the solar bylaw. Ms. Vivier discussed the following changes have been reviewed by KP Law.

Use Table, 4.2, Ms. Vivier mentioned the change to H.7 Small Scale ground mounted (Less than 20kW) DC solar Photovoltaic Generating Installation and allowed by special permit by the Zoning Board of Appeals (ZBA). Large Scale ground mounted (20 W or greater) solar Photovoltaic Generating Installation now allowed in multiple zoning districts with special permit from the Planning Board (PB). Mr. Bellemer did research regarding Energy Storage Systems (ESS) and thinks that 20 kWh would be too low and if it were higher than homeowners can eliminate the need for a generator. Ms. Vivier stated there are different standards for building and fire code and a difference for accessory use and principal use.

Ms. Vivier reviewed the changes for section 4.4 Accessory Uses and said Town Counsel recommended adding section I.” *Large Scale Ground-Mounted Solar Photovoltaic Generating Installations are allowed in all zoning districts as accessory uses by Special Permit from the Planning Board.*” Also, add J. “*Small Scale Ground-Mounted Solar Photovoltaic Generating Installations are allowed in all zoning districts as accessory uses by special permit from the Zoning Board of Appeals. There shall be a limit of one small scale ground-mounted solar photovoltaic installation accessory to a primary use.*” Mr. Bellemer asked under item J what would happen if the law changes and the possibility to add on to the solar capacity and Ms. Vivier explained it would be one per primary use with a separate accessory use with separate meter.

Ms. Vivier reviewed section 4.7 Prohibited Uses and discussed the edits in section D, *“Energy Storage System (ESS) not accessory to a permitted Solar Photovoltaic Generating Installation. For the purposes of this section, Energy Storage System (ESS) is defined as a non-generating energy storage system that utilizes batteries and other commercially available technology capable of drawing electric power from existing electrical infrastructure, storing it for a period of time, and thereafter discharging electric power into the existing electrical infrastructure.* Ms. Vivier explained the edit is more specific and will be under section 4.7 and 4.8.9.

Ms. Vivier reviewed the changes to section 4.8.9. B, *“All roof mounted solar photovoltaic generating installations, and small-scale ground mounted solar photovoltaic generating installations accessory to a principal use, shall comply with the requirements of Section A through E of this Section 4.8.9, and the remaining provisions of the Zoning Bylaws, as applicable, but shall not be required to obtain site plan approval.”* Also, added *“Large-scale ground mounted solar photovoltaic generating installations, and small-scale ground mounted solar photovoltaic generating installations not accessory to a principal use, shall obtain site plan approval, and shall obtain a special permit as required pursuant to Sections 4.2 and 4.4 of this Bylaw.”*

Ms. Vivier explained section 4.8.9.C regarding definitions for Accessory Use and if the Planning Board only wants it in this section or the whole Zoning Bylaw, Building Official was removed because it is already defined in the Zoning Bylaw, Energy Storage System (ESS), Large Scale Ground-Mounted Solar Photovoltaic Installation, Principal Use, Rated Nameplate Capacity, and on and off grid definition taken out by Town Counsel for more specific requirements. Mr. Bellemer mentioned on page six under Solar Energy System take out the word medium. Ms. Vivier mentioned in section 4.8.9.E adding *“The owner or operator shall maintain the property’s landscaping. Grass height shall not exceed a height of twenty-four.”* Section 4.8.9.F, Town Counsel stated requiring applicants cash surety may not hold up in court and added (d) *“Description of financial surety for decommissioning - Proponents of Solar Electric Generating Facilities shall provide cash security, either through escrow account, deposit agreement, or other form approved by the Planning Board and allowing for withdrawal of funds only upon Town approval.”* Mr. Ceppi stated if the applicant cannot afford a cash bond or surety then they should not do the project.

Ms. Vivier reviewed the changes to section 4.8.9.G for Design Standards, Town Counsel removed 4.8.9.G.1 a regarding lot size and Ms. Vivier said we could leave it blank. Ms. Vivier stated section 4.8.9.G.1 b of the Solar Bylaw was approved last year by the Planning Board and at Town Meeting needs to define farm, field, and pasture better. Additionally, Ms. Vivier mentioned the Open Space survey concluded that many residents feel that Solar Farms are taking away from agricultural land. Mr. Ceppi asked to revisit this section.

Ms. Vivier discussed changes to section 4.8.9.G.16 for Design Standards, Large-Scale Solar Photovoltaic Facilities – *“Large-Scale Solar Photovoltaic Facilities - The total number of Large Solar Energy Facilities concurrently within the Town shall be limited to twenty-five. Included within this number are large facilities that have received a Special Permit, Site Plan Review, and Building Permit to operate from the Spencer Planning Board as of the effective date of this Solar*

Energy bylaw. The total number of Large Solar Energy Facilities shall be quantified by the personal property bill and/or tax agreements, which is determined by the Town of Spencer's Assessor." Ms. Vivier mentioned Town Counsel felt this section could be challenged in court and would need to specify the limit to Large Scale Solar as a primary use. Mr. Ceppi asked what the total the Town of Spencer has now, and Ms. Vivier said twenty-one. There was discussion regarding projects that might come before the Planning Board for Solar Farms in the future.

Also Ms. Vivier added in section 4.8.9.G. 17 J, *"If said report is not submitted, the Town may consider this as evidence that use of the facility has been discontinued or abandoned."* Regarding section 4.8.9.G.17 K, Town Counsel asked how the Planning Board will see that Solar Generation is not happening before the Certificate of Completion is issued. Discussion ensued between the Planning Board members on steps to take with applicants, the Wiring Inspector, and National Grid. Mr. Ceppi commented that the fines are too low, and the Solar companies will pay the fines and stay connected.

Open to the Public:

Mr. Defosse, 7 Paul's Drive, mentioned his involvement with the Solar Bylaw Advisory Committee and stated the recommendations are online on the Town of Spencer's website. Mr. Defosse stated the Planning Board must protect the town and the residents, has issues with commercial solar and developers deforesting properties for profit, and taking advantage of small towns. Mr. Defosse suggested that the Fire Departments could de-energize the solar generation with a lock and seal if the solar farms are generating before they receive Certificate of Completion. Mr. Defosse does not want the Planning Board to grant any waivers and need to penalize/fine solar fines for amending plans without approval, and cash bonds approved by the Attorney General's (AG) office for the Town of West Brookfield. Mr. Ceppi stated that the Planning Board will now have a Peer Reviewer go to the site during construction and if there are changes the applicant come back before the Planning Board.

Jonathan Viner, 34 Donnelly Cross Road, commented on page two of the drafted solar amendments regarding Energy Storage Systems and by banning them the Attorney General's Office could overrule it. Mr. Viner suggested an Energy Storage System Moratorium for further research. Mr. Viner did not agree with the use table to allow Large Scale Solar by Special Permit in Commercially zoned districts and Industrial. Mr. Viner asked why Small-Scale Ground Mounted Solar was part of the principle use table. Ms. Vivier stated that ruling it out could put the town in a difficult situation.

***** Audio interrupted remotely; Ms. Vivier needed to dial back into the Public Hearing*****

Mr. Viner discussed the Solar Bylaw does not have a height restriction and currently a resident could have a twenty-five-foot pole mounted array in their backyard and the racks do not list a height requirement either. Mr. Bellemer said the Planning Board can still implement conditions with decisions. Mr. Viner stated on page five, the accessory use and principle use definition should be applicable to the whole bylaw. Mr. Viner stated on page nine, the cash surety requirement could be challenged, and alternatives need to be listed. Ms. Vivier stated this item was discussed already and bonds were suggested. Mr. Viner said the "Town" wording should be

defined as the Planning Board or Town Administrator. Additionally, Mr. Viner said the wording for decommissioning bonds has issues and Ms. Vivier said the Planning Board discussed requiring cash. Mr. Viner discussed section 4.8.9.G.1 b of the Solar Bylaw and said it was an attempt of visual mitigation and require more of a buffer. Mr. Viner said on page fifteen and sixteen, regarding Electric Storage, be clearer on kWh, MW, and MWh. Mr. Viner said for section 4.8.9.G.17 K, the Building Inspector has issued Certificate of Occupancy in the past before the Planning Board issues Certificate of Completion. Also, Mr. Viner suggested going directly to the Department of Public Utility instead of National Grid. Mr. Viner mentioned that "primary use" and "secondary use" could be left open to interpretation. There was discussion between Mr. Viner and the Planning Board regarding large scale solar as an accessory to a house. Mr. Ceppi asked Mr. Viner to put all recommendations/questions in writing so they can review.

Jeffrey Bridges, Town Administrator, read aloud Massachusetts General Law Chapter 40a, section 3, *"No zoning ordinance or by-law shall prohibit or unreasonably regulate the installation of solar energy systems or the building of structures that facilitate the collection of solar energy, except where necessary to protect the public health, safety or welfare."*

Mr. Buckley read aloud an emailed letter to Ms. Vivier from Matt Blanchard, 5 Paul's Drive.

Mr. Blanchard suggestions:

Section F.16, Pg10. a requirement added that the Site Plan includes locations of existing stone walls that need to be removed. Section G.1(b), Pg11. Setbacks: Mr. Blanchard feels it should be increased to two hundred feet on all property lines, especially when the proposed solar farm abuts a parcel with a residential home. Section G.3, Pg 12: Visual impact mitigation the buffer of thirty feet is insufficient. Section G.12(a), Pg14 language could be stronger "Minimize" is too vague and allows for interpretation. Section G.12(a), Pg14, trees larger than 10 inches caliper, add clarification on the height of measurement: 10" caliper at breast height, or 4.5 feet above the ground. Section G.14, Pg14. Land Clearing: "needs further clarification to remove the potential for any ambiguity and would be in favor of adopting language similar to Charlton. Section G.16, Pg15, in favor of this addition to cap the number at twenty-five be improved by making clear what type of permit we are referencing, Special Use, Permit to Construct, Permit to Operate, Certificate of Occupancy, Certificate of Completion, etc. Section G.12, Pg14, would like to see stronger language to protect wetlands. Special Permit for Large Scale Solar- I suggest language in the bylaw or conditions thereto that a "Special Permit and Site Plan shall expire two years after granting if construction has not commenced or extension granted."

The Planning Board members decided another special meeting needed and decided to continue the public hearing, and all agreed on Monday September 26, 2022, at 7:00pm.

MOTION: Ms. Shiver motioned to continue the public hearing for Solar Bylaw Amendments until 9/26/2022 at 7:00pm.

SECOND: Mr. Bellemer

DISCUSSION: None

ROLL CALL VOTE: Mr. Ceppi, Ms. Shiver, Mr. Slack, Mr. Bellemer and Mr. Buckley all voted aye, (vote 5-0) motion carried.

3. New Business/Adjournment

MOTION: Ms. Shiver motioned to adjourn at 8:30 pm

SECOND: Mr. Slack

DISCUSSION: None

ROLL CALL VOTE: Mr. Ceppi, Ms. Shiver, Mr. Slack, Mr. Bellemer and Mr. Buckley all voted aye, (vote 5-0) motion carried.

Submitted by Monica Santerre-Gervais, ODIS Clerk

Approved by the Planning Board on: 10/18/2022

List of Documents used on September 20, 2022.

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

- Agenda
- Drafted Solar Bylaw Amendments
- Email from Matt Blanchard, 5 Paul's Drive, Spencer, MA.

Items submitted/ brought to the Meeting:

- None