



## Planning Board – Town of Spencer

### *Minutes*

#### Planning Board Meeting

**Tuesday, October 16, 2018 at 7:00 PM**

McCourt Social Hall, 157 Main Street Spencer, MA 01562  
Memorial Town Hall

Planning Board Members Present: Chair Jonathan Viner, Vice Chair Jeff Butensky, Robert Ceppi, and Maria Reed

Planning Board Members Absent: Shirley Shiver Staff Present: Paul Dell'Aquila, Town Planner

Staff Absent: Monica Santerre-Gervais, ODIS Senior Clerk

#### **1. Mr. Viner opened the meeting at 7:00pm**

#### **2. ANR: 25 William Casey Road, Gibbons, Create 2 lots**

No one was present to discuss the ANR. Mr. Dell'Aquila explained that they have two lots, one has a home on it and the other is vacant. The applicant wants to adjust the lot line so that both lots comply with current zoning. Mr. Ceppi asked if they were in the Rural Residential zoning district because they would need to have 200 feet of frontage. Mr. Dell'Aquila said there are two different figures and they are just under the wire for the requirements. Mr. Viner stated that the applicant is making his current lot non-conforming and Mr. Ceppi showed that he will still comply.

**MOTION: Mr. Ceppi motioned to endorse the plan as submitted**

**SECOND: Mr. Butensky**

**DISCUSSION: None**

**VOTE: 4-0**

#### **ANR: North Spencer Road, Lavallee, Create 3 lots**

Robert Lavallee was present for the meeting. Mr. Dell'Aquila explained that the applicant wants to create three conforming lots out of the 7.38 acre parcel he owns at 205 North Spencer Rd. There is currently a single family home on the lot and it is his understanding that the owner wants to sell off the lots to be developed. The plan as submitted complies with Spencer's requirements for ANR endorsement and the three resulting lots would be compliant with current zoning. Mr. Viner commented that it's an old stamp from the surveyor. Mr. Ceppi said it's confusing with the old road and new roads. Mr. Butensky asked if one is gravel and they discussed that location. There was discussion in regards to the dotted line and solid line on the plan and added up the frontage totals. Mr. Ceppi asked if there were any wetlands and Mr. Dell'Aquila said no. Mr. Butensky asked about the mid-state trail and if it goes through the property and Mr. Dell'Aquila said he hiked it and he said no.

**MOTION: Mr. Ceppi motioned to endorse the plan as submitted**

**SECOND: Mr. Butensky**

**DISCUSSION: None**

**VOTE: 4-0**

**3. Continued Major Site Plan Review/ Special Permit - Applicant: James Schwartz, Independence Solar, LLC; Owner: Adgalanis Professional Services LLC, Location: 20 McCormick Road; Spencer Assessor's Map R44-10. 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.**

**4. Continued Major Site Plan Review/ Special Permit- Applicant: James Schwartz, Independence Solar, LLC; Owner: Adgalanis Professional Services LLC, Location: 32 McCormick Road; Spencer Assessor's Map R47-18. 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.**

**\*\*\*20 and 32 McCormick Solar Farms were presented together\*\*\***

George Smith Landcraft Corp, Rebecca Baptista, Silva Engineering, and James Schwartz, Independence solar, were present for the meeting. Mr. Dell'Aquila said that most of the revisions were due to the Conservation Commission based on the Planning Board side there aren't any outstanding issues. Mr. Smith said this is there third meeting, the recent plan is the fourth revision and has minor corrections. At the last Conservation Commission meeting there was much discussion in regards to the phasing plan and the order of conditions and continued the meeting until November 24, 2018. Ms. Baptista said they have gone through two reiterations; one for the 10% grading around the perimeter pad and the other for maximum 4% cross pitch. Additionally, they lost panels on 20 McCormick and lost an acre of panels on 32 McCormick to meet the requirements so now the impact is less. Ms. Baptista went through some items that the third party reviewer picked up and how they were addressed. There was a site walk done with the Conservation Commission and addressed more of Margaret Washburn's concerns in regards to berms. Additionally, Ms. Baptista stated that third party had concerns in regards to parking and they have addressed those concerns. The fence will be 7 feet with gap underneath. Also, cleaned up any typos they had on the plans with elevations. In a previous meeting Mr. Viner showed concerns with the stamp for the surveyor and they now have the proper stamps on the plans.

Mr. Ceppi asked what the slopes were and Ms. Baptista said 10% around the perimeter pad. Mr. Viner said the surveyor should stamp everything that has property lines on it and Ms. Baptista said they can get it done. Mr. Viner said any plan with an offset to property line should be stamped by a surveyor. Mr. Dell'Aquila stated the only outstanding matter is the acoustical analysis and the applicant requested a waiver because the equipment has not been approved by the utility and they are not able to determine the levels. Mr. Ceppi asked if the new equipment was going to be less that what is used today and Mr. Schwartz the newer equipment is less and the high boxes are gone now. The only thing you can here is a fan that is used for cooling and it's a soft noise especially with the distance from property lines. Mr. Ceppi asked if there is a criterion on noise that is used in the industry and Mr. Schwartz said the Town of Spencer has specific guidelines that they would abide by. Mr. Ceppi asked if the current equipment met the town's guidelines and Mr. Schwartz said yes. Mr. Ceppi stated that with that knowledge why not have the acoustic analysis with the new equipment and Mr. Schwartz said they are waiting to confirm the equipment they will be using in order to provide the correct analysis. Mr. Butensky asked about making a condition for the acoustics and Mr. Schwartz

said they did not see a problem with having a condition for before, after, or during the life of the project to do the acoustic analysis. Mr. Viner said it would be appropriate if the acoustic analysis was done before the building permit is issued. Mr. Dell'Aquila asked about battery storage technology and day versus night analysis. Mr. Smith said the batteries don't make the noise it's the fan. Mr. Smith said the question cannot be answered because they won't until they design and the technology is progressing. Mr. Viner said the same noise would be at night and may be a concern. Mr. Ceppi asked if the applicant will use inverters for each row or one and Mr. Schwartz said there are a few inverters. Mr. Ceppi asked if the analysis takes in account with all the inverters and with the new technology are there less inverters and Mr. Schwartz said it's really to be determined. Mr. Ceppi said that will be available before the construction and Mr. Schwartz said yes.

Mr. Ceppi asked Mr. Dell'Aquila that if the Planning Board made a condition for the acoustical analysis if the applicant would need to come before the board again and Mr. Dell'Aquila stated that a complaint in regards to sounds go through the Board of Health and it could be a condition. Mr. Ceppi asked if Graves Engineering would do the review on the acoustic study and Mr. Dell'Aquila responded that they have not yet had review on an acoustic analysis so he was unsure.

Mr. Viner opened the hearing up to the public.

Matt Defosse, 7 Paul's Drive, asked what waivers the applicants are requesting for this project. Mr. Schwartz answered grading, (4) impact studies for traffic, and acoustic- six total. Mr. Defosse said the applicant has made reference to theoretical issues and cautioned the board to review before granting the permits (i.e. battery storage, acoustic at night, hazardous conditions with battery). All items should be listed on the permit so that way when it is granted so that way Stormwater calculation will be correct. Also, Mr. Defosse stated that if the Planning Board allows them to build it and then change the equipment later it may change all the calculations which may be detrimental to the neighborhood. Mr. Viner stated that the Planning Board brought up the batteries and storage not the applicant and it's not something they will be doing with their project. Also, Mr. Viner stated if the applicant does make changes they will need to come back and those issues will be addressed.

Tatyana McAuley, 28 McCormick Road, stated she wants to go on record to request the applicant needs to determine the property lines for her property. Mr. Dell'Aquila asked Ms. McAuley to clarify. Ms. McAuley said she has stone wall on the Northern and Southern side and in the back she does not know where her property ends and would like to get it surveyed to determine the correct setbacks. Mr. Viner said the applicant should be ok with that and Mr. Smith said that they have agreed to it at previous meetings. Mr. Butensky said all three sides should be surveyed. It was determined that the property will be staked with rebar to show the property lines.

Mr. Dell'Aquila said that typically the Planning Board is the last to approve Solar Projects, however, the applicant has asked for approval before the Conservation Commission and the Planning Board could approve contingent upon their approval. Additionally, Mr. Smith commented on the sensitivity on time with approvals to be in the SMART Program for the Phase three solar program. Mr. Dell'Aquila suggested that the Planning Board hold a Special Meeting after the Conservation Commission meets and mentioned that member; Shirley Shiver will not be able to attend the November meeting. Mr. Viner said the SMART program isn't accepting application until November 26, 2018 according to Mass.gov and there is an initial period where application will be taken equally

for a week, therefore, the time restraint for next meeting isn't there. Mr. Ceppi said that the Planning Board won't be changing anything so it's just one more thing on the agenda that doesn't need to be revisited and if the Planning Board approves with conditions contingent upon Conservation Commission approval its one less thing to review. Mr. Viner disagreed and Mr. Ceppi said he is not interested in coming to a special meeting. Mr. Butensky said it sounds like the applicant has time to submit the application to the SMART Program and would like the applicant to receive final approval from the Conservation Commission before the Planning Board makes their decision and doesn't feel a need for a special meeting. Mr. Dell'Aquila said he has sample conditions if the Planning Board wants to discuss approving tonight.

Ernie Mello, ZPT Energy, suggested rescheduling the meeting before the 20<sup>th</sup>. Mr. Dell'Aquila said Ms. Shiver will not be here on November 20, 2018 because she is traveling for Thanksgiving and asked if the other Planning Board members know if they will have any issues coming to the meeting. Mr. Viner asked about bonding and Mr. Schwartz said it's in agreement with Graves Engineering and the Conservation Commission. Ms. Baptista said it was in the response letter to Graves Engineering. Mr. Dell'Aquila clarified that the bond is for Stormwater and not a construction bond. Mr. Smith made multiple comments that the Stormwater bond will more than cover the project and it the most they have had to have for a bond. Mr. Butensky asked if in all cases of the Solar Project has the Conservation Commission finish before the Planning Board has made their decision and the answer was yes. Mr. Butensky said he would like to continue precedence.

**MOTION: Mr. Butensky motioned to continue the public hearing for 20 McCormick Road Solar array until to November 20, 2018**

**SECOND: Mr. Ceppi**

**DISCUSSION: Ms. Reed asked if the applicant was worried that they won't be able to apply in time and Mr. Schwartz said very worried. The Planning Board members said they could accommodate if they don't think all the members will be present. The applicant would have what they need if it is approved with the 20 day appeal period. Mr. Dell'Aquila went over procedural matters if the members want to do a special meeting. There was much discussion in regards to a possible Special Meeting date.**

**VOTE: 4-0**

**MOTION: Mr. Ceppi motioned to continue the public hearing for 32 McCormick Road Solar array until to November 20, 2018**

**SECOND: Ms. Reed**

**DISCUSSION: Mr. Dell'Aquila will circulate the draft conditions before the next meeting**

**VOTE: 4-0**

**5. Special Permit – Applicant/Owner: James Caruso, Caruso Construction; Location: Intersection of Barclay Road and North Spencer Road, Spencer Assessor's Map R56-41 & R56-4-2. The applicant is requesting a Special Permit under Section 6.2.5 of the Spencer Zoning Bylaw to install a Common Driveway serving the two lots. The property is located within the Rural Residential zoning district.**

Mr. Dell'Aquila discussed that the lots have been under various stages of development for several years and because of the circumstances of the lots the applicant is requesting a common driveway.

Mr. Dell'Aquila had given out some copies to various departments and is still waiting on feedback from some of them.

James Caruso, Caruso Construction, explained he went through the Conservation Commission for Stormwater and it was at their recommendation and the previous Highway Supervisor, Steven Tyler, that he combines lot 1 & 2 for a common driveway due to safety concerns. Mr. Caruso said they meet the 200 feet in both directions, had the lots approved for a couple years, and is currently constructing lot 1 & 2. Mr. Caruso showed the Planning Board members where the driveway will be shared and Conservation wanted more distance to the wetland to the driveway. Mr. Dell'Aquila mentioned that over a year ago discussed a previous common driveway but this one is different and needs to adhere to the common driveway bylaw. Mr. Dell'Aquila explained that Utilities and Facilities, Highway, and Fire Department have not provided comments for this project and felt they wait to motion until the departments provide comments.

Mr. Caruso said he got his driveway permit from Eben Butler at the highway department. Mr. Dell'Aquila explained that even though he may have received permits previously procedurally they wait for departmental sign offs before they close a hearing. Mr. Ceppi wanted to clarify that Mr. Caruso had the driveway permit in hand. Mr. Caruso said he does have the driveway permit and Mr. Ceppi stated that if Mr. Butler had any issues than he would not have given him the driveway permit. Mr. Viner mentioned that a driveway profile should have been submitted with the application to talk about the apron area and a cross sectional detail. Mr. Caruso didn't think that would be an issue to get the Planning Board. Mr. Ceppi asked if there was additional material submitted with the driveway permit application and Mr. Caruso said he submitted the plot and the plans. Mr. Dell'Aquila said he does not know what is needed for a driveway permit but felt the applicant submitted what was needed for this permit. Mr. Viner stated that there bylaw was clear what is needed and Mr. Viner said the plan needs an appropriate stamp. There was much discussion in regards to the needed cross section plan for the common area and easement. Mr. Dell'Aquila commented on the concern that Mr. Tyler had with the aprons and not sure what the highway department ask for when a driveway permit application is submitted.

Mr. Dell'Aquila explained they are waiting for feedback and the cross section plan and the meeting will most likely be continued. Mr. Viner said a civil engineer stamp is needed on the plans and Mr. Dell'Aquila stated that the bylaw states engineer or surveyor. Mr. Ceppi said that as long as an engineer is knowledgeable than the Building Inspector accepts it.

**MOTION: Mr. Ceppi motioned to continue the public hearing until to November 20, 2018**

**SECOND: Mr. Butensky**

**DISCUSSION: None**

**VOTE: 4-0**

**6. Amend Site Plan – Applicant/Owner: Steven Turner, Charlie's Diner; Location: 5 Meadow Road, Spencer Assessor's Map U11-12-1. The applicant is requesting to amend a Site Plan approved under Section 7.4 of the Spencer Zoning Bylaw to add a Vestibule to the front entrance of the establishment. The property is located within the Commercial zoning district.**

Mr. Dell'Aquila felt this was needed to be reviewed by the Planning Board because in the conditions of approval in 2016 it mentions any changes would require an amendment to the Site Plan Review. Mr. Ceppi said it's just extending the front and takes up one parking space and Mr. Dell'Aquila said the applicant has enough parking. Mr. Ceppi said it would be better to not have the parking lot in the front because now you don't have to walk around the cars to get into the building and Mr. Dell'Aquila said it makes the entry more logical. Mr. Dell'Aquila stated that the small addition and entry configuration will not affect the impervious surface and the property is in the aquifer protection zone. Mr. Ceppi commented that it is not a great sketch and the drawing is confusing. Mr. Dell'Aquila pulled up an aerial to review and Mr. Dell'Aquila said the applicant is reconfiguring the space that is currently there. Mr. Ceppi asked if they are adding on and Mr. Dell'Aquila said it is already there. Mr. Ceppi said the plan is unclear on doors and entry. Mr. Dell'Aquila said it is his understanding that the applicant is reconfiguring the interior space and it is unclear from the drawing what the applicant is doing and the Planning Board can ask for additional drawings. Mr. Viner said it did not look like they were extending passed the parking spots and mentioned it may be a handicap ramp. Mr. Ceppi said it looks like they are adding 84 feet. Mr. Butensky said he didn't have any issues. Mr. Ceppi said the applicant still needs to get a building permit and adhere to building code so the detail will be taken care at that point.

**MOTION: Mr. Ceppi motioned to approve the changes for Charlie's Diner to add a vestibule**

**SECOND: Mr. Butensky**

**DISCUSSION: None**

**VOTE: 4-0**

## **7. Adoption of Minutes**

- **August 21, 2018**

Mr. Viner asked if the minutes were revised and Mr. Dell'Aquila stated they were revised with comments from the previous meeting. Ms. Reed said there was one typo with her name and it should say Ms. Reed and not Mr. Reed.

**MOTION: Mr. Butensky motioned to approve the minutes from August 21, 2018 with the change noted by Ms. Reed**

**SECOND: Mr. Ceppi**

**DISCUSSION: None**

**VOTE: 4-0**

- **September 18, 2018**

**MOTION: Mr. Ceppi motioned to approve the minutes from September 18, 2018**

**SECOND: Mr. Butensky**

**DISCUSSION: None**

**VOTE: 4-0**

- **September 18, 2018/ Executive Session**

Mr. Dell'Aquila said that this can only be reviewed not voted on and the minutes can't be released until the legal matters are resolved. Mr. Viner stated that the minutes will be addressed when Shirley Shiver is present.

## **8. Town Planner Report/General Board Discussion**

- Solar Bylaw Review Committee- the Board of Selectmen (BOS) has established the committee and the BOS would like a Conservation Commission member and a Planning Board member to serve on the Committee. Mr. Viner volunteered and Mr. Ceppi was fine with that. Mr. Butensky asked if the other members will know what they're doing. Mr. Dell'Aquila said he is a member and will communicate with the Planning Board.
- 61 A Right of First Refusal-Roger Banks and Mr. Dell'Aquila stated he believed the Board of Selectmen has already taken action.
- CPTC- Training
- ZBA Rules 1990- discovered, Guidebook given to Planning Board members? Mr. Dell'Aquila asked if the Planning Board members needed a guidebook. Mr. Ceppi thought it would be good for new members.
- Next Planning Board Meeting- ZPT cases GH Wilson and Main Street Solar will be reheard and reconsidered as a new application. Mr. Viner said to be reconsidered there needs to be changed in circumstance. Mr. Dell'Aquila said it will be considered a new application and Mr. Viner asked if the applicants submitted a new application and Mr. Dell'Aquila said no. Mr. Ceppi asked about the ceased and desists for the other projects. Mr. Dell'Aquila said he did draft the cease and desist orders to ZPT but the advice from Town Council, Stan Weinberg, it was suggested to not do it and to have a conversation and address at next meeting. Mr. Dell'Aquila said he had a conversation with Guy Winters, ZPT Energy Solutions, and apologized and acknowledged that the solar farms were operational. Mr. Viner said the chairman sets the agenda and that he won't see Mr. Winters until the concerns from the other solar farms are addressed. Mr. Dell'Aquila stated the as built reviews are concluding and the applicants are complying. Mr. Viner stated that Holmes Street needs to complete the subdivision to get the Certificate of Completion and has outstanding concerns with Paxton/ Woodchuck Solar Farm. Mr. Viner stated he was under the impression that there was supposed to be a meeting with Graves Engineering onsite that included him. Mr. Dell'Aquila said he has discretion with the Certificates of Compliance. Mr. Viner stated the Planning Board has discretion on the Town Planners employment and felt the ceased and desists orders were to be taken care of and weren't. Mr. Dell'Aquila stated that he works for the Town Administrator and to take the issues up with him, additionally, he has worked with the Planning Board and resents the statement.
- Public Comment- Ernie Mello, ZPT Energy Solutions, commented on the disapproved solar projects and felt the process went smoothly up until the end. Mr. Mello wanted to make sure the Planning Board knew of the communications they have had with Town Council. Mr. Mello is concerned that all the Planning Board members are not going to be present at the next meeting and request to reschedule the meeting. Mr. Mello said the issues with the previous projects are being dealt with the as built are complete. Mr.

Mello said that Town Council said it was okay to have them on the next Planning Board meeting and requests a special meeting so that all members are present. Mr. Butensky asked why they can't be heard at the December meeting and Mr. Mello stated the SMART Program deadline on November 26. Mr. Viner stated that the issues from his perspective are from the existing projects that are negatively impacting the abutters and the outcome won't change until the applicant can prove the issues can be addressed. Additionally, Mr. Viner stated it is up to the Planning Board to make sure projects protect the people in Spencer. Mr. Mello said he had nothing to do with the existing projects and that the applications on GH Wilson and Main Street are not associated with those other projects and those can be dealt with through cease and desists and enforcement orders. Mr. Mello stated his case that all the projects should be addressed at separately and that the project on Holmes Street was built per the approved plans. Mr. Viner stated that the completion of the road and Subdivision for Holmes Street need to be completed before the Solar Farm receives its Certificate of Completion. Mr. Mello would like to see the lawsuit disappear and would like to work with the town. Mr. Dell'Aquila said the Planning Board doesn't want to take the peer review at face value and needs guidance on how to proceed. Mr. Mello would like to meet Mr. Viner onsite to discuss the site and address what he sees fit. Mr. Viner said that Holmes Street has minor grading issue and the subdivision needs to be completed. Mr. Dell'Aquila said Jim Laney, 123 Kids, LLC, owned the subdivision and then became a solar project and there are some conditions that need to be dealt with by Mr. Laney. There was much discussion in regards to the responsibility to the subdivision and the items not done and the relationship to ZPT Energy. Mr. Mello does not want previous projects associated with the new projects and is willing to work with the town and Mr. Ceppi thinks the previous projects should be shut down. Mr. Mello said do what needs to be done with the other projects and do the cease and desists orders. Mr. Dell'Aquila made a punch list that the applicant needs acoustical studies, Mr. Viner meet onsite Mr. Mello and Graves Engineering to review the sites, and be on the November 20, 2018 meeting. Mr. Viner wants additional remarks from higher up in regards to the Sunset/Holmes subdivision.

- Matt Defosse, 7 Paul's Drive, if the sites are turned on and generating money he wants to make sure the Town of Spencer is getting the money.

**MOTION: Mr. Viner motioned to adjourn the meeting**

**SECOND: Mr. Butensky**

**DISCUSSION: None**

**VOTE: 4-0**

**Submitted by: Monica Santerre-Gervais ODIS Clerk**

**Approved by the Planning Board on: 11/20/2018**

**List of Documents used on October 16, 2018**

**Items sent to Planning Board prior to Meeting by email/ print outs:**

- Agenda
- Memo emailed from Paul Dell'Aquila to Planning Board Dated 10/10/2018
- ANR, William Casey Road, Gibbons
- ANR, N. Spencer Road, Lavallee



- SP/ Major Site Plan: updated narrative, comments, and plans 20 McCormick Road
- SP/ Major Site Plan: updated narrative, comments, and plans 32 McCormick Road
- Application and site plan for Caruso Construction, N. Spencer Road, Common Driveway
- Application and site plan for Charlie's Diner, 5 Meadow Road, Vestibule/ 2016 Certificate of Decision
- Minutes: 8/21/2018, 9/18/2018, 9/18/2018- Executive Session

**Items submitted at the Meeting:**

- 61 A Right of First Refusal- Roger Banks letter dated August 28, 2018