



Zoning Board of Appeals – Town of Spencer

Minutes of Tuesday June 29, 2021, at 7:00pm

REMOTE AND IN PERSON MEETING

Zoning Board of Appeals Meeting

McCourt Social Hall/Memorial Town Hall

157 Main Street, Spencer, MA 01562

Zoning Board Members Present in person: Chair Allan Collette (in-person), Alyce Johns (in-person), Gina Beford (in-person), and Steven Tyler (in-person)

Zoning Board Member Absent: None

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

Staff Absent: None

1. Open Meeting – Mr. Collette opened the meeting at 7:05 pm.

2. Appeal of Decision – Applicant/ Owner: Spencer Solar Farm, LLC; Location: North Brookfield Road, Spencer Assessor’s Map R39-14. The applicant is requesting an Appeal under section 7.1.2.A (Appeals) of the Spencer Zoning Bylaw Zoning to appeal the denial of the building permit by the Building Inspector. The property is located within rural residential zoning district.

Tad Heuer, Attorney Representing Spencer Solar LLC, was present for the meeting. Mr. Heuer discussed that the applicant is appealing the denied building permit decision by the Building Inspector, Duane Amos. Mr. Heuer stated that Mr. Amos denied the building permit due to lapse in the Special Permit and Site Plan Certificate based on no construction, but the denial needed to be based on the Town of Spencer’s Bylaw. Mr. Heuer discussed the question of law in regarding the definition of substantial use and vesting this project has been met. Additionally, Mr. Heuer felt the Building Inspector did not address their request to explain what substantial use meant to him. Mr. Heuer discussed Exhibit F- the Land Court case Evergreen Douglas, LLC vs Adelle Reynolds (Building Commissioner for the Town of Douglas) and the decision in favor of Evergreen Douglas, LLC due to meeting substantial use for the Special Permit. Mr. Heuer stated why he felt the substantial use was met by both the Special Permit and Site Plan approval based on the applicant obtaining Planning Board Site Plan approval, the applicant hired National Grid to do an impact study, ownership of the project was sold, the 61B penalty tax was paid, an easement was granted to National Grid, the applicant received a negative determination from the Conservation Commission, and they obtained a Statement of Qualifications from the Department of Energy Resources into the SMART Program. Mr. Heuer felt Mr. Amos denied the building permit in error and asked the Zoning Board of Appeals members to reverse the denied decision.

Mr. Collette asked about the two-year limit definition and Mr. Heuer discussed the permit extension act that took effect from August 15, 2008, and continued through August 15, 2012, with an additional 4-year extension that made the new actionable date May 2, 2018. Mr. Heuer

gave different scenarios and examples regarding the permit extension act, substantial use, and vesting of a special permit. Mr. Collette felt that after the time lapse the applicant should have come back for an extension and Mr. Heuer argued that the special permit was vested due to the substantial use mentioned previously and therefore there was no need to come before the board for an extension.

Ms. Johns asked Mr. Heuer how he defined substantial use and Mr. Heuer answered with the example of the Evergreen case and meeting the similar conditions which gave them the substantial use to vest the special permit and stated they need to go by the land court definition because the Town of Spencer's Bylaw does not have a substantial use definition. Ms. Beford asked when the National Grid Easement deed was done, and Mr. Heuer said the easement was for the Site Plan approval and it was recorded August 30, 2019.

Mr. Tyler discussed the special permit and said he understood the permit extension act. Mr. Tyler said the site plan approval has an expiration date and that the site plan expired. Mr. Heuer said substantial use was done to vest the site plan approval such as the National Grid easement and the negative determination from the Conservation Commission. Mr. Tyler asked how the substantial use extends the site plan approval and Mr. Heuer answered it does not extend the site plan it vests it because it met the Evergreen criteria. Mr. Collette was concerned that the legislature put this into perpetuity and about the applicant not returning to extend the special permit, because no one is checking on permits that are vested for substantial use, and there is no timeline for permits during the permit extension act. There were many examples discussed on the meaning of substantial use to vest a permit and the need not to return to extend the special permits. Ms. Johns mentioned the Evergreen case that Mr. Heuer kept referring to was issued during the extended permit extension act and Mr. Heuer said yes. Mr. Collette asked why the permit extension act had a timeline and Mr. Heuer said it is for those who have not met substantial use. Mr. Tyler said he understood the argument and gave an example of someone in town who sells cars, understands the analogy, however, would like to hear if Town Counsel concurs with Mr. Heuer.

Duane Amos, Building Inspector, explained he spoke to Town Counsel before denying the building permit and said there was no substantial use only site preparation and the special permit and site plan expired and that is why he denied the permit.

The Chair opened the hearing up to the public:

Mr. Collette explained the Zoning Board of Appeals received a letter from Matt Defosse and it discussed his feelings on solar and some policy matters, and Mr. Collette felt it was a letter that was better for the Planning Board.

Matt Defosse, 7 Paul's Drive, explained that this project is complicated, the original project was approved in 2012, and he has opposed the project since then. Mr. Defosse stated this meeting was supposed to be regarding the appeal of denial of the building permit and the attorney has been discussing the special permit use and site plan approval. Mr. Defosse read aloud section 7.22.D of the Zoning Bylaw aloud and discussed points the attorney made but left of certain wording that affects the special permit validity. Additionally, Mr. Defosse said the special permit

was issued to CTC Electric and the project changed ownership five times. Mr. Defosse questioned the validity of the special permit because it was not recorded at the registry of deeds until October 2017 and should not have fallen under the permit extension act. Mr. Defosse read aloud the opening statement in the Spencer Zoning Bylaw, Article 4.8.9, of the Spencer Solar Bylaw. Mr. Defosse said the applicant was reminded of the expiration date and should have filed and extension and they did not and let the permit expire. Mr. Defosse said the examples Mr. Heuer listed are not examples of construction and should not vest the substantial use and the Evergreen case is not comparable and is just mudding the waters. Mr. Defosse said the Site Plan Approval was approved 2/20/2018 and condition 10 mentions that substantial use needs to be met by 2/20/2020, the site plan certificate of decision has forty different conditions and asked if all the conditions were met and by the developer not commencing construction and meeting conditions demonstrates negligent and both permits lapsed.

Susan Foley, previous owner of the land, said she knew about CTC Electric selling the property to Sunpin Solar and did not have five owners. Mr. Defosse answered CTC Electric, Sunpin Solar, Spencer Solar Farm LLC, Next Era Energy, and now DG Northeast 2020 Holdings, LLC. Ms. Foley said she was unaware of the other owners and find it difficult to believe because there was nothing in the papers about it.

Mr. Heuer said the special permit extension date was May of 2018, and because the substantial use occurred during the permit extension act it fell under the permit extension act and disagrees with the Building Inspectors reason for denial.

Jim Lambert recently purchased 18 No. Brookfield Road, front window faces the property, bought the land for rural area and farm. Mr. Lambert is concerned about the 35 acres of woods and animals and asked where the animals will locate, urges the board to vote no and let it go to land court, and let the attorneys argue it out.

Gary Woodbury, 219 Charlton Road, expressed the Building Inspector got the legal advice before he denied the building permit and said let the attorneys go through land court with their arguments.

Mr. Collette stated he would like to continue until they can get legal opinion from Town Counsel. Mr. Tyler agrees and would like Town Counsel to review the appeal application from the applicant and has questions about if the Special Permit and Site Plan Approval are vested in perpetuity, and if the full language Mr. Defosse pointed out has any relevance to the permits.

MOTION: Mr. Tyler motioned to continue the hearing until July 13, 2021, and present to Town Counsel the applicants supporting documents for review, Town Counsel to review vested in time for substantial use for the Special Permit use and Site Plan Approval, and Town Counsel to review Zoning Bylaw 7.2.2 D regarding this appeal.

SECOND: Ms. Johns

Roll Call Vote: 4-0

3. Special Permit – Applicant/ Owner: Daniel Watson; Location: 4 Chickering Road, Spencer Assessor’s Map R15-1. The applicant is requesting a Special Permit under section 4.9.2.A.2 (Nonconforming Structures) of the Spencer Zoning Bylaw to build an addition on

the rear and side of an existing home. The property is located within rural residential zoning district.

Jason Dubois, DC Engineering, was online to represent the applicant. Mr. Dubois said the reason for the special permit is to build an addition to a pre-existing home. Mr. Dubois said they will add to the easterly side and rear, will wrap around to the front yard setback the existing dwelling is 35 feet, the special permit will not be detrimental to the neighborhood. Mr. Dubois reviewed the plan with the Zoning Board of Appeal members and showed an aerial overview of the property that showed no neighbors would see the addition.

Mr. Collette asked if the new addition would not encroach more than the existing structure and Mr. Dubois said that was correct. Mr. Collette asked what the addition would be used for, and Mr. Dubois said to extend the master bedroom closet. Mr. Miller said he thought the addition would be for an office and Mr. Dubois answered it would be a small office but mostly closet space.

Debbie McDonald, 6 Wilson Ave, is an abutter and has no objection with the addition Mr. Watson wants to do.

MOTION: Mr. Tyler motioned to close the hearing

SECOND: Ms. Johns

Roll Call Vote: 4-0

MOTION: Mr. Tyler motioned to approve the Special Permit for 4 Chickering Road

SECOND: Ms. Johns

Roll Call Vote: 4-0

4. Approval of Minutes 4/21/2021

MOTION: Mr. Tyler motioned to accept the minutes of 4/21/2021

SECOND: Ms. Johns

DISCUSSION: None

ROLL CALL VOTE: 3-0 (Ms. Beford was not eligible to vote)

5. Town Planner Report- Todd Miller

- Mr. Miller discussed working Land Planning and Economic Development
- Mr. Miller discussed Solar Bylaw Amendments, Mr. Collette would like to know what amendments were being done and Mr. Miller said he would share the memo from CMRPC with the members.
- Mr. Miller mentioned his Deer Run visit to verify repair of catch basins.
- Discussed the modifications to the WWTP that will be coming before the board most likely in September.
- New Business in Town and Meadow Road.

- New Conservation Agent to be hired and start in July.
- Mr. Miller mentioned the CMRPC Infrastructure Mapping Program he is assisting with.

6. New Member Introduction- Gina Beford

7. New Business/ Adjournment

Mr. Tyler motioned to adjourn the meeting at 9:00 pm

Ms. Johns seconded

ROLL CALL VOTE: 4-0

Submitted By: Monica Santerre-Gervais, ODIS Clerk

Approved by the Zoning Board of Appeals: 8/10/2021

List of Documents used on June 29, 2021:

Supporting documents were uploaded on the Town of Spencer website for public viewing.

Items emailed/handed out to ZBA members prior to meeting:

- Agenda
- Minutes from 4/21/2021
- Application, narrative, and supporting documents (exhibits A-O) regarding North Brookfield Solar Building Permit appeal
- ZBA Members received abutter letter from Matt Defosse regarding North Brookfield Solar Appeal
- Application and plans for Special Permit 4 Chickering Road

Items submitted to ZBA members at the meeting:

- None