



Town of Westminister

MASSACHUSETTS 01473
FROM THE OFFICE OF THE
PLANNING BOARD

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Jon Wyman, chairman

Marie N. Auger, vice chairman

Dan Bartkus

Andrew Rice

Linda Wiest

Planning Board Meeting Minutes October 23, 2018

Selectmen's Meeting Room

Members present: Jon Wyman, Marie Auger, Linda Wiest, Dan Bartkus and Town Planner, Stephen Wallace.

Additional Attendees: Demetri Typadis, Rick Bartlernes of Cornerstone, Ross Barber, Jim Delisle, Pam Laurie, Paulette & Scott Alislauscus, Paul Aldrich, Jill Normandin, Robert Geberth, Dean Smith, Weston Standish, Hui Cha Vine, Jon Wyman, Mr. Jacobs.

J. Wyman, Chairman called the meeting to order at 7:00PM and informed those present the meeting was being recorded.

First order of business: review and approval of the meeting minutes from October 9, 2018. The Board voted unanimously (5 - 0) to accept the minutes for October 9, 2018 with corrections.

Continued public hearing:

Next order of business: Oak Square Partners, Site Plan approval for ground-mounted solar on Sargent Road. The Town Planner stated that the three remaining concerns from the last meeting had been addressed:

- The missing AutoCAD nodes have been provided to and reviewed by Tetra-Tech.
- The DPW concern about runoff onto Sargent Road has been addressed to the DPW Director's satisfaction.
- The Applicant has dug test pits for the infiltration basins and the test pit data has been reviewed and approved by the Conservation Agent and Tetra-Tech.

The applicant gave an overview of how the site plan had changed since the last meeting. The applicant stated that the test pit data for the infiltration basins required some minor amendments to the plan to address concerns expressed by Tetra-Tech, the Planning Board's engineering consultant.

The Board, having determined that it had enough information to make an informed decision, voted unanimously (5 - 0) to close the public hearing.

The Board voted unanimously the grant the following waivers to the Site Plan Regulations:

- 2.1.5 Landscaping Plan

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- 2.1.6 Signage
- 2.1.7 Lighting Plan
- 2.1.8 Open Space
- 2.1.13 Evaluation of Impact on Landscape
- 2.1.14 Traffic Study

From there, the Board voted unanimously (5 - 0) to approve the Site Plan with the following conditions:

- Other approvals or permits required by the Zoning Bylaw, other governmental boards, agencies or bodies having jurisdiction, shall not be assumed or implied by this Decision.
- The Site Plan Approval applies only to the site which is the subject of this Application. All construction to be conducted on the site shall be conducted in accordance with the terms of this Approval and shall be limited to the improvements shown on the Plan.
- The Board hereby reserves its powers to modify or amend the terms and conditions of this Approval upon its own motion with consent from the owner or the applicant, or on the Application of the owner or applicant. The Board further reserves its powers to amend this Approval without a new public hearing provided that the Board finds that such amendment is not significant to the public interest and that such amendment is not inconsistent with the purpose and intent of the Zoning Bylaw or with the terms of this Approval.
- This Approval shall lapse on October 23, 2020 if a substantial use thereof has not sooner commenced for good cause. Any request for an extension of the time limitation set forth herein shall be made in writing to the Board at least 30 days prior to October 23, 2020 and the Board reserves its rights and powers to grant or deny such request without a public hearing.
- The Applicant will post a decommissioning bond with the Town in the amount of \$20,000 prior to the Planning Department's sign-off on the Building Permit for this project.
- The Applicant shall provide information on who to contact both during the construction phase and during the active lifetime of the project, should any problems arise. This contact information will be provided to the following entities: Police Department, Fire Department, Planning Department and the Department of Public Works.
- The Applicant shall schedule a pre-construction meeting with all relevant Town departments (Building Department, Fire Department, Planning Department, Board of Health, Conservation Commission and Department of Public Works) prior to breaking ground.
- The Applicant will work with the Town Planner, the Planning Board's engineering consultant (Tetra-Tech), Conservation Agent, and the Director of the Public Works Department to establish an inspection schedule based on construction milestones. Tetra-Tech will perform the inspections on behalf of the Planning Board and the cost will be borne by the Applicant who will provide the Town with a check to cover the cost of this effort. The check will be deposited into an MGL 53G consulting account and any balance that remains after the inspection effort will be returned to the Applicant.
- The Applicant shall not schedule construction deliveries during school drop-off (7:00 AM to 9:00 AM) and pick-up hours (2:00 PM to 4:00 PM).

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- The hours of operation during the construction phase shall be from 7:00 AM to 5:00 PM Monday through Friday.
- The Applicant and Planning Board will walk the western boundary line of the project in the spring of 2019 to identify which trees to take down in order for the solar project to become operational. Both parties shall take care to ensure that this selective tree cutting effort does not compromise any visual buffers between the subject property and abutting property.

The next matter was a continuation of the public hearing for Borrego Solar Systems Inc., major modification of two previously approved Site Plans on Livermore Hill Road. Dean Smith represented Borrego Solar.

Mr. Smith went over how the plan had changed since the last meeting. Borrego was working from two previously approved site plans for this property, and had used the wrong version of the site plan for the eastern side of the property to prepare the site plan the Board had reviewed the last time. Mr. Smith noted that they found the correct version of the previously approved site plan and had modified the current site plan accordingly. The plan now shows the solar panels being pulled back from the northeast corner of the property with a larger buffer between the solar array and the abutters in that vicinity.

Public Comments:

A resident asked if the runoff would affect the neighbor's well. Mr. Smith explained the basins were designed so that there would be no more runoff than what exists out there now.

Several abutters asked if there would be any further tree clearing along the northern and northeastern boundary of the property, noting that there has been some tree clearing in this vicinity in the last year. Mr. Smith said there may be some additional tree clearing but was unsure of exactly how much. He noted that additional landscaping would be installed in this vicinity. The abutters asked if Borrego could survey the tree line and mark which trees would be removed. The Board asked if this could be a condition of approval and that abutters be notified in advance of Borrego surveying the tree line and marking the trees to be removed. The Applicant agreed to this request.

Citizen J. Normandin reminded the Board that buffers are important not only for screening the use from abutting neighbors, but also dampening the sound impact of these facilities.

The Board, having determined that it had enough information to make an informed decision, voted unanimously (5 - 0) to close the public hearing. The Board then voted unanimously to approve the plan with the following conditions:

- The applicant shall identify and relocate the private water line within the Livermore Hill right-of-way so that water service is not interrupted during the construction phase and during annual maintenance of the roadway.
- The applicant shall file a Notice of Intent (NOI) and receive an Order of Conditions with the Conservation Commission for work taking place in close proximity to any wetland areas.
- During construction, applicant agrees to grade the existing Livermore Hill Road to allow for the passage of all emergency vehicles to a minimum width of 15' graveled surface in accordance with the Livermore Hill Road Exhibit Plan, dated 10-17-2017 and revised 10-23-2017, prepared by Meisner Brem Corp.

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- Prior to receipt of an Occupancy Permit, applicant shall pave for the first 435 feet of Livermore Hill Road as shown on the attached Exhibit Plan.
- The Applicant shall survey the tree line along the northern boundary line and flag which trees will be removed during construction. The Applicant will notify abutters in advance of the survey effort.
- The Applicant shall plant additional landscaping along the northern boundary and northeastern corner of the property to screen the project from adjacent abutters.
- Other approvals or permits required by the Zoning Bylaw, other governmental boards, agencies or bodies having jurisdiction, shall not be assumed or implied by this Decision.
- The Site Plan Approval applies only to the site which is the subject of this Application. All construction to be conducted on the site shall be conducted in accordance with the terms of this Approval and shall be limited to the improvements shown on the Plan.
- The Board hereby reserves its powers to modify or amend the terms and conditions of this Approval upon its own motion with consent from the owner or the applicant, or on the Application of the owner or applicant. The Board further reserves its powers to amend this Approval without a new public hearing provided that the Board finds that such amendment is not significant to the public interest and that such amendment is not inconsistent with the purpose and intent of the Zoning Bylaw or with the terms of this Approval.
- This Approval shall lapse on October 23, 2020 if a substantial use thereof has not sooner commenced for good cause. Any request for an extension of the time limitation set forth herein shall be made in writing to the Board at least 30 days prior to October 23, 2020 and the Board reserves its rights and powers to grant or deny such request without a public hearing.
- The Applicant will post a surety bond with the Town in the amount of \$138,471 for the purpose of decommissioning the project at the end of its useful life. The surety bond shall be submitted to the Town prior to the Planning Department's sign-off on the Building Permit for this project.
- The hours of operation during the construction phase shall be from 7:00 AM to 5:00 PM Monday through Friday.
- The Applicant shall provide information on whom to contact during the construction phase, should any problems arise.
- Access to the project site from Old County Road will be limited to the Town's emergency vehicles only and not be used during the project's construction phase.
- The Applicant shall agree to schedule a pre-construction meeting with all relevant Town departments prior to breaking ground.

The next order of business was the public hearing for six zoning amendments the Planning Board is proposing for the November Special Town Meeting. The Chairman read aloud the public hearing notice.

First Amendment: Amend Section 205-37 of the Zoning Bylaw (Exemption for Cluster Housing) to allow cluster housing by Right instead of by Special Permit. The Town Planner explained the benefits of clustering housing, which includes: preservation of open space, reduced earth disturbance, reduced

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stormwater runoff, reduced infrastructure costs, and reduced maintenance costs. The Planning Board would like to encourage this style of development, therefore changing it from being allowed by Special Permit to By Right. The Board voted unanimously (5 - 0) to forward this zoning amendment to the Special Town Meeting.

Second Amendment: Amend the Official Zoning Map to rezone three one-acre properties on Overlook Road from Industrial-I to Residential-I. The Town Planner explained that the proposal covers three industrially-zoned parcels with frontage on Overlook Road that are surrounded by residential homes. All three parcels are too small (an acre and a half and under) to be used for industrial purposes, as usable industrial parcels typically consist of at least ten acres. As the surrounding neighborhood consists of residences and not industries, it makes sense to re-zone these properties for residential use. The Board voted unanimously (5 - 0) to forward this zoning amendment to the Special Town Meeting.

Third Amendment: Add a new Section 205-41.2 that will ban the retail sales of recreational marijuana, and amend the Table of Uses accordingly. The Town Planner explained that the two amendments dealing with recreational marijuana were prepared at the direction of the Board of Selectmen. Planner went through the timeline of this process, starting when the State ballot question on recreational marijuana was approved in November 2016 and all the work the Town has done to figure out how it wants to regulate this new use, culminating in the bylaws being considered tonight. The first bylaw would ban the retail sale of recreational marijuana throughout town. The Board voted unanimously (5 - 0) to forward this zoning amendment to the Special Town Meeting.

Fourth Amendment: Add a new Section 205-41.1 that will regulate recreational marijuana, and amend the Definitions section and Table of Uses accordingly. The Planner explained that the Selectmen instructed him to regulate the industrial side of recreational marijuana (growing, processing and distribution) as follows: permit such uses in a similar fashion to how the Town permits medical marijuana establishments: only in the Industrial zoning districts, only by Special Permit and Site Plan Approval from the Planning Board, only in enclosed spaces, and limit the number of industrial-scale recreational marijuana establishments to no more than the number of medical marijuana establishments that exist in town. The Planner explained that there is only one medical marijuana establishment in town, located on the old Chem Design property in the northeast corner of town on a property that straddles the Fitchburg-Westminster boundary line. This facility owned by Mass Patient Foundation has been rehabbing the buildings on the Fitchburg side for a medical marijuana grow facility and they plan to expand onto the portion of the property that resides in Westminster, and have worked out a Host Community Agreement with Westminster.

Citizen Ned LaFortune, and owner of the Wachusett Brewery made the case that recreational marijuana was an emerging industry that the Town should take advantage of, and the bylaw as written is too restrictive. He proposed an alternative bylaw that would allow the cultivation of recreational marijuana in the R-2, R-3, I-I and I-II districts by Special Permit and allow recreational marijuana manufacturing and transporting in the two industrial districts by Special Permit, increase the limit on such facilities from one to ten, and allow for outdoor cultivation.

The Board and the audience spent considerable time discussing the merits of the zoning amendment as written and the alternative bylaw proposed by Mr. LaFortune. The Town Planner stated that he felt obligated to deliver to Town Meeting the bylaw that the Selectmen instructed him to write and recommended that the Planning Board vote to send the bylaw to Town Meeting as is. If a citizen wanted to offer amendments to the bylaw on the floor of Town Meeting, then it would be up to the Town Meeting attendees to approve the amendment or not. The Board could not reach agreement on the Planner's recommendation. With no clear consensus on how to proceed, the Planner suggested that the bylaw not be forwarded to Town Meeting, but instead the Board forward an amendment that would extend the current moratorium on recreational marijuana through the end of May 2019. This would give the Planning Board

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and the Board of Selectmen to sit down with Town Counsel and all interested parties to see if they could craft a better bylaw. The Planning Board voted unanimously (5 - 0) to take this course of action.

Fifth Amendment: Amend Section 205.30.3 of Article VIII (Parking) and the Table of Uses to allow commercial and industrial lots to be used for parking. The Town Planner explained that the current parking bylaw does not allow businesses and industries to use lots under their ownership that are located across the street for stand-alone parking lots. This particular provision became problematic when the Wachusett Brewery sought to buy a piece of Town-owned land across State Road East for use as overflow parking during weekends and special events, but were told by the Building Commissioner that the current parking bylaw does not allow this. The Town Planner, Town Counsel and Building Commissioner worked together to draft a revision to the parking bylaw that would allow this. The Planner explained that this situation would likely come up again with new development proposed for the Simplex Drive industrial district. A few Planning Board members asked for clarification of the amendment language and the Planner provided the necessary clarification. The Board voted unanimously (5 - 0) to forward this zoning amendment to the Special Town Meeting.

Sixth Amendment: Add a new Section 205-40.1 that will regulate ground-mounted solar facilities. The Town Planner explained the reason for this amendment. The Town's previous Building Commissioner had determined that commercial-scale solar projects are entitled to the broad zoning exemption set forth in MGL Chapter 40A, Section 3. Thus, such projects have been allowed throughout town By Right with Site Plan approval from the Planning Board. This has resulted in the Planning Board being inundated with solar array proposals; some of dubious quality and having the potential to negatively impact the neighborhoods where they are located. However, a recent opinion from Westminster's Town Counsel has determined that the Town can indeed regulate where ground-mounted solar facilities are allowed to locate and that the Town and the circumstances where they are allowed.

The Planning Board made a few clarifications to the bylaw language and corrected the typos. Going against the Town Planner's recommendation to ban solar arrays from the industrial zoning districts so that these districts could be reserved for buildings, jobs and the taxes they generate, the Board decided to allow solar arrays in the two industrial districts by Special Permit. With these revisions made, the Board voted unanimously (5 - 0) to forward this zoning amendment to the Special Town Meeting.

The meeting adjourned: 9:40 pm.

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