

PLANNING BOARD

DATE: August 11, 2016
TIME: 7:00 P.M.
FOR: Regular Meeting
PLACE: Large Meeting Room
PRESENT: Brandee Nelson, Chair; Malcolm Fick; Jonathan Hankin; Jack Musgrove;
Jeremy Higa
Pedro Pachano, Associate Member
Chris Rembold, Town Planner

Ms. Nelson called the meeting to order at 7:00 P.M. Mr. Higa had not yet arrived

FORM A's:

There were no Form A's presented.

MINUTES: JULY 28, 2016

Mr. Hankin made a motion to approve the minutes as amended, Mr. Musgrove seconded, all in favor.

SPECIAL PERMIT: 59-61 TACONIC AVENUE

The Board conducted a site visit prior to the meeting. The special permit application is to legalize an existing non-conforming multi-family use at 59-61 Taconic Avenue. The property is owned by the Diamond Family, LLC, Jeffrey Diamond Manager. The application was made under sections 3.1.4, 8.3 and 10.4 of the Zoning Bylaws.

Mr. Hankin noted for the record that although the company he works for has a listing for the property, he has no financial interest.

Attorney Nicholas Arienti was present on behalf of the applicant. He said that 8.3 of the Zoning Bylaws was amended at the Annual Town Meeting and approved by the Attorney General's office. The amendment allows illegal non-conforming existing multi-family units to become legal.

Mr. Arienti said the main house was originally a single family home. It was converted to a multi-family home with 5 units. The barn in the back was converted into a single unit by special permit in 1987. There are a total of 6 units. The applicant wants to legalize the property through 8.3.3 of the zoning bylaws.

Mr. Arienti said the use allows people with lower incomes to live close to town and have an apartment within walking distance of town. He said the special permit should be granted to maintain the status quo. He said there are no changes to what exists.

Mr. Hankin said it should be noted that without the special permit the owner can not get a building permit even in an emergency situation.

Mr. Arienti said technically the Building Inspector is not allowed to issue a permit without proving legality. He said 8.3.3 provides a way to make the property legal. We are requesting some waivers such as allowing 1 parking space per unit instead of the required 2 spaces per unit. If the bylaw were imposed as written it would put an end to this permit as the applicant is not able to provide two spaces per unit due to constraints on the site.

Ms. Nelson said 8.3.3 has nine criteria. The application might need to be amended to request all of the waivers the applicant wants. She asked if the section had been reviewed.

Mr. Arienti said yes. The cover letter lists all of the waivers being requested.

Mr. Fick questioned the amount of square footage for each unit with what the bylaw requires. He said he is not sure all of the waivers should be granted.

Ms. Nelson said we will make a recommendation to the Selectboard. She said we need to take into consideration what exists.

Mr. Hankin said the building exists and has existed for some time.

Mr. Fick said if the building were to be built new what is being requested would not be allowed.

Mr. Hankin said it was a single family at one time. We want to provide a way to make it legal. That is part of the reason the bylaw was amended.

Mr. Musgrove said the bylaw is intended to allow what is there.

Ms. Nelson said we can consider a recommendation.

Mr. Hankin said they are requesting waivers of 1, 2, 3, 7 & 9 of section 8.3.3 of the Zoning Bylaw.

Mr. Musgrove said they are asking for of waiver of about 16,000 square feet of lot area.

Mr. Rembold said they have 13,939 square feet which under the bylaws would allow only 4 units.

Mr. Fick said he is not opposed, he just wants to discuss where to draw the line. What is being requested would not be allowed if it were new construction.

Mr. Musgrove said the bylaw was written for people in these circumstances to be legalized so they can obtain building permits for repairs and renovations.

Mr. Higa said if something happened today they would not be able to get a building permit.

Ms. Nelson said that is correct.

Mr. Arienti said each case should be considered individually. He said it is important to provide housing in close proximity to town. The bylaw amendment was intended to fix the existing conditions not penalize. Mr. Arienti shared a story of similar property that needed an emergency repair for access to a house with 6 apartments. The house was not legal so they were not able to get a building permit for the repair. The property owner had to evict the tenants creating hardship.

Mr. Musgrove read through the waiver requests. The Board agreed that waivers for 1, 2, 3, 4 and & 7 were all reasonable requests and that 9 was not applicable as there is no change proposed.

Mr. Musgrove made a motion to make a favorable recommendation to the Selectboard on the application and the requested waivers, 1,2,3,4,7 & 9, Mr. Hankin seconded, all in favor.

SITE PLAN REVIEW: 3 NOLAN DRIVE

Mr. Rembold said the Site Plan Review application is for a solar array installation on 5 acres in the gravel pit on VanDeusenville Road. He said it is a complicated site. Mr. Rembold recommended that no action be taken at this meeting and that a site visit be conducted prior to discussing the application.

Mr. Hankin asked if there was currently legal action involving the site.

Mr. Rembold said it is a very complicated site. We need to make sure there is no conflict with any other uses.

Kirt Mayland was present and said the location was chosen to avoid wetland and Natural Heritage issues.

Ms. Nelson thanked him for his comments but said we will wait until the next meeting to discuss the application.

The Board scheduled a site visit for 6:00 P.M. on August 25, 2016. They will meet at the cul-de-sac on Nolan Drive off of VanDeusenville Road.

SOLAR ENERGY:

The Board continued discussion of solar uses as an accessory to agriculture. It is the goal to balance agriculture and solar uses. Bob Coons was present. He owns a farm in a residential zone and is interested in a commercial solar installation.

Mr. Rembold said in the industrial zone solar has been permitted as light manufacturing. In the business zone it has been allowed as an accessory use, in the case of Guido's or the Brewery, or as part of a special permit for a different use, in the case of the Fairgrounds. So far we have been able to permit large and medium scale solar everywhere but the residential zones. There is no clear guidance despite the fact that we said we need guidance in the Master Plan and in Planning Board meetings. We need to increase the economic viability of farms. It is possible we can allow solar on farm land but we have no clear path to allow it in residential areas. Mr. Rembold said he has maps to look at and in his email the Board he provided a suggestion on where to start.

Ms. Nelson we need to explore the areas that could potentially want solar arrays and consider the impact on allowing in all or part. We may want to consider the characteristics of the land when determining where to allow. She said she does not think solar should be allowed on prime farmland soils or on APR land.

Mr. Hankin said state law prohibits unreasonable regulations on solar. We need to keep that in mind as we move forward with our discussions.

Mr. Rembold said towns are allowed to regulate either by allowing by special permit or prohibiting in some zones.

Mr. Musgrove said he considers it to be similar to cell towers. Federal law says they can't be prohibited by zoning but it can be regulated; although an overlay district may not be appropriate.

Mr. Hankin said cell towers are less challenging because we have an overlay district and there is no discussion of taking away from agriculture. We tried to create an overlay district for solar, but we determined it was not practical.

Mr. Rembold said he provided links to the State's model solar regulations for further clarification.

Mr. Musgrove said he understood that regulations cannot be based on KWhours but rather on the amount of acres to be used. As solar technology evolves, it is expected that efficiency will improve, making land area the only reasonable determinant that can be maintained into the future.

Ms. Nelson asked the Board if this is an issue they want to take up. The Board said yes.

Ms. Nelson said there needs to be further discussion over the next couple of months. There is a lot of homework to do to educate ourselves on regulations. She suggested an overview of available land might be helpful. She said chapter 9 of the Master Plan deals with energy generation so that should be considered during the discussions. She said we need to decide how much we want to allow. We can allow to a point to provide adequate resources but do we want enough to power the Town or the county? We need to consider if we want all of our land to be used to generate energy.

Mr. Musgrove said there is no obligation for us to power New England. Let's figure out power for Great Barrington first.

Mr. Fick said he does not think there should be a limit.

Mr. Hankin asked what the goal was when Great Barrington became a green community and where are we in meeting the goal.

Mr. Mayland pointed out that the Rising Paper site provides almost all of the energy for the school district.

Mr. Musgrove said we are discussing a farmer making his own commercial choice. We shouldn't prohibit him from making a business choice. He said it is different for a farmer to make this choice as an accessory to his farm from someone buying farm land for commercial solar.

Mr. Fick said he agrees with that.

Mr. Musgrove said it should be allowed.

Mr. Rembold said it is a good way to consider the use that it is a business decision. Over five acres in a residential zone could allow the use.

Mr. Pachano questioned if it is good to allow in the residential zone.

Mr. Rembold said we are considering the economic viability of existing farms.

Ms. Nelson said it is a good approach to the discussion.

Mr. Higa asked if we can regulate types of solar and how the panels are anchored.

Mr. Rembold said in it is worth talking about how the installation impacts agricultural soils.

Mr. Higa said we can talk about regulating and how removal will impact the land.

Mr. Musgrove said there is a study in Japan where there is 38% coverage with minimal impact. It was going to be mandatory for viable agriculture.

Mr. Mayland said he agrees that taking down viable trees should not happen. He said he would not recommend using acres and acres of farm land but small areas on a farm is a great idea.

Mr. Mayland said he has a lot of different bylaws. He will send them to Mr. Rembold.

Mr. Coons was asked how many acres he wants to use for the array.

Mr. Coons said about 10 acres out of the one hundred he owns and another 100 acres he farms. He said it is land he doesn't farm. He has more land than he can farm.

Mr. Musgrove suggested another session for the discussion.

Vivian Orłowski, chair of the Agricultural Commission, said her Commission has not met on this subject. She suggested a joint meeting might be helpful. She said it is their job to promote agriculture, but in an economical way. We could lose all of our farms if they are not viable.

Supplementing existing farms while minimizing the impact on the farmland is a good option to consider. She said it is a good idea to balance dual goals.

Ms. Nelson said it might be a good idea to schedule a session with the Ag Commission. She asked Mr. Rembold to find out about a schedule.

Mr. Rembold said the second meeting in September would be the earliest possible time. We could start at 6 PM then go into the regular meeting.

Ms. Orlowski will get back to Mr. Rembold to see if that works.

Mr. Fick asked if the goal will be to have the bylaw ready for the May Annual Town Meeting.

Ms. Nelson said yes.

Mr. Fick asked what the State will provide for net metering credits.

Mr. Mayland said he doesn't have much confidence that there will be credits. He said the process is being amended and he didn't know what the new program will look like.

Mr. Hankin said he didn't think that farm land is threatened to be taken over by solar. He said an array needs to be near a 3 phase connection and many farms are in APR, where a commercial solar installation would not be allowed.

Ms. Nelson thanked everyone for their contribution. She said she hoped Mr. Mayland would be able to attend future meetings.

TOWN PLANNER'S REPORT:

Mr. Rembold said the Attorney General has approved the zoning amendments from the Annual Town Meeting. He said there are many caveats, including having to do with airfield regulation, a recent case in Sheffield that was argued and won at the Supreme Judicial Court level. Towns cannot prohibit airfield use unless the zoning has been approved by the DOT aeronautics.

Mr. Rembold said the recent Site Plan Review granted to Guido's for their solar array neglected to show one row of panels closest to the parking lot. He asked the Board if they wanted to see the applicants again for an amendment. He said it is not a huge change.

Ms. Nelson said she didn't need to see it again.

Mr. Hankin said he felt the Chair could look at it for the Board.

Ms. Nelson asked if they needed an amendment to the SPR. She said in her experience it is generally a field amendment.

Mr. Fick said it might be to their benefit to get approval.

Ms. Nelson said we can vote on it at our next meeting. The applicant does not need to return.

Mr. Rembold said there will be another special permit for a multi-family dwelling at 16 South Street. The building has 8 units. The Board scheduled a site visit for 6:30 P.M. on the August 25.

Mr. Rembold said there will be a SPR application for 15 Cone Avenue in Housatonic. He said there is a large parcel at the end of the street on the left with an existing structure with 2 apartments. The application is for the one-family dwelling on the site to have an ADU.

The Board scheduled a site visit for 5:30 PM on August 25.

Mr. Rembold said a letter was sent to the Selectboard regarding the 40R Smart Growth zoning. A joint meeting needs to be arranged. He asked the Board if they had any flexibility to meet on a night other than a regular Planning Board night in the month of September. There was no consensus for a meeting.

BOARD & COMMITTEE UPDATES:

Mr. Fick said he was resigning from the Clerk position for the Board.

Mr. Fick made a motion for Mr. Hankin to be the Clerk, Mr. Musgrove seconded, all in favor.

CITIZEN'S SPEAK TIME:

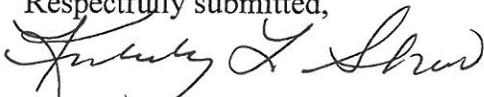
Selectboard member Ed Abrahams asked if there is a better way to stream line the special permit process so that applicants don't have to incur the expense of having professionals attend multiple meetings on their behalf.

Mr. Musgrove said that often an application evolves as it wends its way through the various boards and committees.

The Board was in agreement that it is necessary for applicants to go through the process as it exists.

Having concluded their business, Ms. Nelson adjourned without objection at 8:46 P.M.

Respectfully submitted,



Kimberly L. Shaw
Planning Board Secretary

