

PLANNING BOARD

DATE: February 23, 2017
TIME: 6:00 P.M.
PLACE: Large Meeting Room
FOR: Regular Meeting/Public Hearing
PRESENT: Brandee Nelson, Chair; Malcolm Fick; Jonathan Hankin; Jack Musgrove;
Jeremy Higa
Chris Rembold, Town Planner

Ms. Nelson called the meeting to order at 6:00 P.M. Mr. Higa had not yet arrived.

FORM A'S:

Joe Aberdale was present with a Form A application to divide an existing lot on North Plain Road to convey to the abutters on either side. The lots are not to be considered separate building lots.

Mr. Musgrove made a motion to approve the plan, Mr. Hankin seconded, all in favor.

MINUTES: FEBRUARY 9, 2017

Mr. Hankin made a motion to approve the minutes of February 9, 2017 as amended, Mr. Higa seconded, all in favor.

BENCHMARK DEVELOPMENT: RECOMMENDATION TO THE SELECTBOARD

Michael Charles was present to discuss the request to waive one loading space for 34-42 Bridge Street.

Mr. Rembold explained that Mr. Charles had submitted a letter to the Planning Board in December. It was missed so we will deal with it now. Two loading spaces are required but only one is proposed so the request is to waive one loading space.

Mr. Charles said one loading space fits behind the Berkshire Co-Op Market. He said the market only needs one space if another space is needed a truck can queue in the parking lot.

Mr. Musgrove asked if the loading for the retail spaces would happen off of Bridge Street.

Mr. Charles said if there is a substantial amount to deliver they will be able to park in the parking lot truck lane.

Mr. Fick made a motion to send a positive recommendation to the Selectboard for the waiver request of one loading space at 34-42 Bridge Street as a single loading space is adequate for the use of the building, a second space is not required, Mr. Hankin seconded, all in favor. Mr. Higa recused himself.

400 STOCKBRIDGE ROAD: KIMCO

Attorney Nick Arienti and Chris Ciminiello were present to discuss the landscaping plan for Kimco Realty. Completion of the landscaping plan will allow the Board to complete their Site Plan Review.

Mr. Ciminiello discussed the revised plans for the landscaped islands. He said the 7 islands will be completely renovated. Ornamental grasses and hostas will be used. All plants will be drought resistant, salt tolerant and native. All species have been included on the plan. We feel the proposed plants will survive the elements.

Mr. Ciminiello said small trees would be planted in the easterly beds. The trees will be smaller than the other trees to allow a view of the storefronts. Finally he asked the Board to allow us to have through 2018 to complete the landscaping.

Ms. Nelson said this plan is a big improvement. She said the effort is appreciated. She said this plan will make your facility look good, it was the last thing holding up your approval.

Mr. Hankin made a motion to approve Site Plan Review, Mr. Fick seconded, all in favor.

There was a brief discussion about the continued public hearing as there may have been some confusion about what time it was scheduled to resume. Some people had been told by the Town Clerk that the meeting was at 7:00. It was decided to skip over the public hearing item on the agenda to return to it later in the meeting.

BIG DREAM PARTNERS: 400 MAIN STREET

Don Torrico was present on behalf of the applicant, Big Dream Partners, to discuss the special permit application and Site Plan Review application for a multi-family use in existing buildings and exterior alterations to a non-conforming structure in the Village Center Overlay District at 400 Main Street.

Mr. Torrico said there are 2 residential structures on the property. The front building has three units the back structure has two. The use was never legitimized with a special permit so it is the owner's intent to bring the property into compliance. The intent is to add two additional units, one in each building.

Mr. Torrico said there is adequate parking for use. The parking is blacktop. There will be minimal changes to the structures. All that is required is to add one door where there is a currently a window on the north side of the front building.

Ms. Nelson asked if there is a walkway to the new door.

Mr. Torrico said no it is all grass. He showed an elevation of the exterior façade.

Mr. Torrico said work will be done on the eastern gable end of the back building. A stair and landing will be built to provide a second egress from the upper apartments. A door will be added on the southern façade to provide another egress for the lower apartment.

Mr. Musgrove said there will be 7 apartments when the project is done.

Ms. Nelson said there are 14 parking spaces.

Mr. Torrico said yes. He said there is room for more parking.

Mr. Musgrove said there is plenty of room for parking.

Mr. Rembold explained there are three actions needed. The Board needs to make a recommendation to the ZBA for alteration to non-conforming structures, a recommendation to the Selectboard for a multi-family use and Site Plan Review for a multi-family use.

Mr. Torrico said the work in the setback will not be any closer to the property line than the existing building.

Ms. Nelson read through the Site Plan criteria as per 10.5. The Board had no issues. Ms. Nelson asked if any lighting would be added.

Mr. Torrico said lighting would be added next to the egress doors.

Mr. Fick suggested that a condition be that the lighting be downward directed with full cut-offs.

Mr. Rembold asked if there will be a dumpster on the property.

Mr. Torrico said there are rolling totes. He said there will be no change to the current trash pick up.

Mr. Musgrove made a motion to approve Site Plan Review with the condition that the lights will be downward directed with full cut-offs, Mr. Fick seconded, all in favor.

The Board discussed the recommendation to the ZBA.

Mr. Hankin said the building is not being expanded the only addition is an open stairway.

Mr. Musgrove said some of the stairway will be in the 20ft. setback.

Mr. Torrico said yes.

Mr. Musgrove made a motion to send a positive recommendation to the ZBA as the proposed change is not in any way substantially detrimental to the neighborhood as the only structure to be in the setback is the mandatory stairway, Mr. Hankin seconded, all in favor.

Mr. Musgrove made a motion to send a positive recommendation to the Selectboard to make the existing multi-family use compliant, Mr. Fick seconded, all in favor.

GREENHOUSE PARTNERS, LLC: 27 HUMPHREY STREET

Mr. Rembold said we do not have a Site Plan Review application yet. Tonight's discussion is to make a recommendation to the Selectboard on the special permit for a zoning line adjustment.

Nick Arienti was present on behalf of the applicant to discuss the special permit request under 2.5. He said the nature of the lot with the existing zoning layout needs to be addressed. The lot is bisected by two zoning districts. 90+% of the lot is in the B-3 zone, the remaining land is in the R-1-B zone. He said the question is which zone applies. Most of the building will take place in the B-3 zone but there will be some in the R-1-B zone. He said 2.5 of the zoning bylaws provides that with a special permit the less restrictive zone can be extended into the more restrictive zone by not more than 50 feet.

There was discussion of the plan that shows the two colors representing the two zones on the property. The area with red hatching is the part of the R-1-B where the zone would be extended to B-3. In the R-1-B zone residential uses are allowed by right. If the special permit is granted, the residential development will occur in that area. The proposal is for a low density residential development with five buildings proposed. Part of one of the buildings would be partly in the R-1-B zone so the residential nature of the use is the same. The project will require SPR so the Board will have some jurisdiction.

The applicant received approval of their Notice of Intent by the Conservation Commission.

Mr. Musgrove said he thought this parcel was already included in the B-3.

Mr. Musgrove said this is a no brainer. He made a motion to send a positive recommendation to the Selectboard to allow the regulations of the B-3 zone to apply. He said the Planning Board thought the property was already part of B-3, the applicant is not asking for anything that wasn't already part of the bylaw.

Mr. Rembold said when the B-3 zone was created the entire parcel was included in the identified lots but the zoning article also made reference to the existing zoning district line shown on the zoning map, hence the confusion. It was not changed on the zoning map. He asked if the Board wanted the approval contingent on the proposed development because dimensional requirements are less in the B-3 than in R-1-B.

Mr. Fick said the zoning amendment was approved at the Annual Town Meeting in 2007, all of this property should be part of B-3.

Mr. Rembold said do not infer that the ATM was thinking the same thing as the Planning Board.

Mr. Hankin said he knows what the Planning Board's intention was. He said we don't need additional restrictions.

Ms. Nelson asked to move Mr. Musgrove's motion to send a positive recommendation to the Selectboard.

Mr. Fick seconded, all in favor.

Mr. Musgrove said the zoning map needs to be amended to reflect the intent of the bylaw.

CONTINUED PUBLIC HEARING FOR ZONING AMENDMENTS:

Ms. Nelson said we need to continue the public hearing for solar systems and Smart Growth zoning. She said Mr. Musgrove, who was not present at our last public hearing, has certified that he has reviewed the materials and is able to participate.

Ms. Nelson said at the last meeting there was a lot of concern about the extent of the solar impacts on rural areas of the community and there was some confusion. She said there needs to be more background information on the previous work done by the Planning Board to create a bylaw.

Mr. Hankin made a motion to reopen the public hearing, Mr. Musgrove seconded, all in favor. The public hearing was reopened at 6:55 P.M.

Ms. Nelson asked that anyone wishing to speak go to the podium to write down their name prior to speaking.

Mr. Rembold said the Board reviewed the opportunities and constraints for solar as a land use. The information is relevant in terms of the existing law. Chapter 40 A section 3 of M.G.L. says that no town may unreasonably regulate or prohibit solar. There is much debate statewide regarding this solar language in Chapter 40 A section 3, but if Great Barrington's zoning bylaws do not specifically list a use it is expressly prohibited, which would be in direct conflict with state law as to solar. Consequently, one interpretation of state law would mean that solar is then permitted everywhere. Currently solar is not addressed in our zoning bylaws.

Mr. Rembold said therefore the Great Barrington bylaws expressly prohibit solar because it is not listed. In that case the Town is in violation of Chapter 40 A section 3 because solar can not be unreasonably regulated or prohibited. The Town needs to pass a bylaw. The Board had a significant amount of discussion several years ago in an effort to create a bylaw to address solar. It was very difficult to draft so it was not done. When there was an issue with allowing the use on farmland the Board determined it was time to work on a bylaw that would allow the use in a reasonable way and perhaps allow farmers to diversify their income as proposed in the Master Plan.

Mr. Rembold went through the slide presentation from the previous attempt at the bylaw. He said he is not sure all of the information is completely accurate. He said one acre of solar can generate approximately a quarter of a megawatt powering about 250 homes. One megawatt would power about 1,000 homes. He said 140 acres would power all 3,500 homes in Great Barrington. It would take 7 megawatts of solar to power all of the homes in Great Barrington. Currently there is approximately 5 megawatts of commercial solar in Town.

Mr. Rembold discussed where solar arrays should be allowed. He said ideal locations for solar include flat land with southern exposure and few if any trees to maximize economic efficiency. He said the land can not have any development restrictions. The land can be in Chapter 61. Finally the land needs to be close to transmission lines.

Mr. Rembold then went over the maps of Great Barrington with different layers for each restriction. When all of the restrictions were applied there were very few sites suitable for solar development. He said this is the information that was considered when the Board was working on the bylaw.

Mr. Hankin said the map does not show the land that is close to three phase power. Adding the requirement into the discussion further reduces the number of parcels that might be available.

Mr. Musgrove said when trying to develop the bylaw we considered doing an overlay district but it couldn't be done.

Mr. Rembold said this provides the analysis of what was considered by the Board as part of the previous and current process.

Mr. Rembold said the proposed bylaw would allow large scale solar by-right in the industrial zones. They could be considered in business and residential zones, but only with a special permit from the Planning Board and meeting design criteria.

Mr. Musgrove said the Building Inspector has permitted the arrays in the industrial zones as his interpretation is that they can not be prohibited.

Mr. Rembold said the proposed bylaw recognizes where we would want to allow solar by-right. It is possible to allow in other zones with a special permit. That is how the proposed bylaw came to be.

Ms. Nelson opened the meeting for public comment. She asked that anyone who commented at the last meeting give those who have not had an opportunity to comment to speak first.

Ira Kaplan from Monument Valley Road said he is aware of the project at the Coons farm as he had consulted with people at the Steiner School. He said wanted to make it clear that he is commenting as an individual. He said he has represented many solar projects including projects in Great Barrington on roof tops and brown field sites-property that cannot be used for anything else.

Mr. Kaplan gave Ms. Nelson a 1 page handout with proposed language to add to the purpose section of the proposed bylaw that would preserve neighborhoods. He asked that his language be considered. He said his concern is about the impact solar could have on property values.

Mr. Kaplan asked that language be added regarding the preservation of neighborhood character and the impact on property values.

Mr. Kaplan said it should be a goal to protect farmland. The siting model for the zoning of the State of Massachusetts has a section regarding the siting of large scale facilities. He said the model strongly discourages the significant loss of land. Roof tops are preferable to using

agricultural land. The least productive land should be used first. He said it is not appropriate to encourage the use of farmland in the purpose section of the proposed bylaw.

Mr. Kaplan said the audio impact should also be considered. Some of the cheaper transformers make noise. Also to be considered is the visual impact. Both could have an impact on property values.

Mr. Hankin asked how an abutter would prove there is a loss to property value.

Mr. Kaplan said an appraiser would be brought in. A developer could also bring in an appraiser. He said that for some their home is their single biggest investment.

Mr. Hankin said there is a discretionary process by the Planning Board when considering a special permit application.

Ms. Nelson asked if Mr. Kaplan was specifically referencing a large scale project.

Mr. Kaplan said yes.

Mr. Musgrove said it would seem that a 2 acre parcel could have a small array in the back yard without an impact.

Mr. Kaplan said he didn't think that would devalue abutting property. He said he is mostly concerned with a large scale development.

Mr. Kaplan said allowing for 20% of a piece of land to be used for solar is not limiting enough. He said the State believes that preserving farm land is important. He said it is not an unreachable goal for the entire Town.

Mr. Hankin said there are farmers in financial trouble trying to keep their farms in one piece. Solar is a 20 year commitment allowing the land to return to its original condition. The other choice is to sell the land off for residential development.

Mr. Kaplan said he understands, but he didn't think this is the way to preserve the land. He said without the tools to prohibit, the Board will not be able to limit amount of solar on farm land.

Mr. Musgrove said there is a large array on the Rising Paper site.

Mr. Kaplan said it makes sense at that location.

Mr. Musgrove said that should not be prohibited.

Mr. Kaplan agreed but said it should be limited.

Mr. Musgrove said he does not want to see arrays on all of the farm land but he does not want to see woods cut down to allow it.

Mr. Kaplan said he would rather see the woods cut down but the better choice is for neither to happen. The Board needs direction to restrict solar on farm land and wooded land.

Ms. Nelson said 10.4 protects natural resources.

Mr. Kaplan said the goal should be to come up with a bylaw that will allow in appropriate locations.

Mr. Musgrove said we do not want to tell people what they can't do.

Mr. Musgrove said we tried to figure out how to allow. The farmland could be permanently taken out of farmland and turned into residential homes. When that happens the farmland is gone forever. Those are by-right uses.

Mr. Kaplan said the problem is the bylaw is being used to protect farmers. That is a mistaken approach to reasonably regulate solar. This is not about saving farm land but allowing a particular farmer to get money out of land. He can still sell the land for residential use. It is a short terms solution.

Mr. Kaplan said lighting is another consideration that needs to be addressed. He said other towns only allow emergency lighting in residential zones. He said where the bylaw addresses the underground utility connections the line that states to the extent feasible should be removed.

Ms. Nelson thanked Mr. Kaplan for his comments. She said the concern regarding underground connections is at the point of interconnection.

Mr. Hankin said the intent is to include anything from the solar field to the point of connection.

Mr. Kaplan said he didn't understand the intention of stating how many inches from the ground the fence will be.

Mr. Hankin said it is to allow turtles to move through.

Mr. Kaplan suggested there be a maximum height listed. He also asked about the seed mixture and vegetated buffer. He said generally an ugly chain link fence is used. He said there is nothing about a security bond or liability insurance. The project owner and property owner should be held liable for deconstructing. He said there should be a maximum on large scale such at 10 acres.

Joe Carini said his concern is with dense zones such at the R-1-B, R-1-A. He asked why arrays should be allowed. He said it is crazy to encourage in those zones. The bylaw should be rewritten. He said the arrays could be allowed in the front yard.

Ms. Nelson said it could be written to not allow in the front yard.

Mr. Carini said no ground installations should be allowed in dense zones unless a hardship is demonstrated.

Ms. Nelson said she thinks it might be a good idea to reconsider the size. It should be clarified the use would be for individual use. We are trying to cover all of the bases without creating encumbrances. A larger system might be appropriate on a large lot with a house and apartment.

Mr. Musgrove agreed that they should not be allowed in the front yard.

Mr. Carini said the aesthetics should be considered.

Mr. Hankin said he has a ground mounted solar array. It is 450 square feet. He said this to give a sense of scale.

Mr. Musgrove said some people have plenty of room, some people do not.

Eric Bruun said he has some experience with an array as he is associated with Project Native whose land abuts the Amerigas solar project. He said when we learned what was going in we supported the renewable energy project. If we had another opportunity we would have asked for some provisions. There is no screening at all for the array. It has completely changed the character of Project Native. The visual impact on abutting properties needs to be considered. Screening is important. Senator Downing visited Project Native and he was struck by the visual impact. He said he applauds the Board for their work as this is a very complicated bylaw.

Mr. Musgrove asked how high the screening should be.

Mr. Bruun said the screening should be to the height of the panels. He said he is not an expert but it would be best not to see the panels.

Mr. Musgrove said would it be reasonable to allow a three year period for the growth of the screening.

Mr. Bruun said he would yield to people who know more about these things. He said to have immediate screening would be ideal but it would seem reasonable to allow a three year growth period.

Sharon Gregory from Hollenbeck Avenue said the character of the community should be considered more than the property value. She said she is happy to hear that the Town already has 5 of our 7 megawatts of solar.

Mr. Rembold said he wanted to clarify that that is theoretical based on what is currently built.

Ms. Gregory asked if we want to be the solar generator for the southern Berkshires or an economic business and residential center. She said we should be happy to be self sustaining but do we want it to override what we have that being the center including the beauty of the area. We do not want to lose that. She said perhaps next year or the year after there will be 7

megawatts. She said she doesn't think we need to legislate how to make it so farmers can support themselves. Some do well some do not. The Town should not be responsible for any business. She thanked the Board for the refinement they made to the bylaw.

Kari Harendorf of 24 Benton Avenue said she agreed with everything Mr. Kaplan said. She said that only one farm has been bought by a developer in the last 10 years. It was her opinion that there is not an issue with farmland being bought up for development. She said that solar is not growing something it is capturing something.

She asked what the Planning Board's mission is. She thought it would be to serve all of the residents of the Town. Legislation should not be written to serve one person and that is what appears to be happening here. In addition the solar companies should be taxed so the Town can get money from them as they make so much money off of our land.

Mr. Musgrove said they are taxed.

Mr. Rembold said they will pay a personal property tax which is a little different than a real estate tax.

Mr. Hankin said Mr. Coons pays approximately \$69 per year in taxes for a 20 acre parcel. Over the next 20 years the solar company will pay the Town \$400,000 in taxes.

Ms. Nelson asked if there were additional comments from the audience. There were none. Ms. Nelson said the Board has a complete set of comments from the last two meetings.

Mr. Rembold suggested that the Board deliberate but hold public comment and keep the public hearing open. He suggested at the next meeting discuss the comments and final amendments. The hearing can be kept open for further discussion at the next meeting.

Ms. Nelson agreed that would be a good idea.

Mr. Fick suggested discussing the red lined draft then discuss it again at the last meeting.

Mr. Rembold said the proposal will be available on line and at the Town Clerk's office.

The Board took a five minute break before deliberating.

The Board deliberated discussing the following items:

- A preference for siting on roof tops, brown field sites and industrial lands.
- Removal of the statement to support economic viability of agriculture.
- A provision to regulate the placement of ground mounted arrays in front yards particularly in the dense residential zones.
- Changes to the design and performance standards to address screening methods, auditory impacts and land clearing.
- Rethinking of the Table of Use Regulations that results in only three major categories to include roof mounted, accessory use and commercial scale. Roof mounted would be allowed

anywhere, accessory uses would be regulated by site plan review and special permit depending on size and location. Commercial scale will be regulated in all zones by special permit and allowed by-right in the industrial zone.

--Changes will be made to the definitions section to reflect the different categories and scales of solar systems.

Mr. Rembold will bring a draft of the revisions to the next meeting.

SMART GROWTH 40R:

There was no one present for public comment of the Smart Growth 40R zoning.

Mr. Hankin said he agrees with the comments made by Town Counsel as written.

Mr. Fick said he wanted to get the bylaw done as we are already two weeks behind in the process.

Mr. Rembold agreed that the process is behind where it should be. If the comments are not back prior to the Annual Town Meeting it will have to be passed over.

The Board members had each had an opportunity to review Town Counsel's comments prior to the meeting. There were no comments or changes.

Mr. Musgrove made a motion to send the bylaw to the DACD and a positive recommendation to the Annual Town Meeting, Mr. Higa seconded, all in favor.

Mr. Hankin made a motion to continue the public hearing to March 9, 2017 at 7:00 P.M. in the Large Meeting room at Town Hall, Mr. Higa seconded, all in favor.

TOWN PLANNER'S REPORT:

Mr. Rembold said the Town of Sheffield is proposing to have a moratorium on new aviation landing facilities until a bylaw can be proposed. As an abutting town the Board received notification of this.

Mr. Rembold said for the next meeting the Board will discuss, 49 Railroad Street for Site Plan Review, the Dolby site for Site Plan Review, the airport Site Plan Review and Benchmark Development on Bridge Street for Site Plan Review.

BOARD AND COMMITTEE UPDATES:

There were none.

CITIZEN'S SPEAK TIME:

No one spoke.

Having concluded their business, Ms. Nelson adjourned without objection at 9:40 P.M.

Respectfully submitted,



Kimberly L. Shaw
Planning Board Secretary

