

Great Barrington Zoning Board of Appeals

Minutes of August 5, 2014, meeting.

Attending were Chairman Ron Majdalany, Vice Chairman Carolyn Ivory, Kathy Kotleski, Madonna Meagher, Michael Wise and alternate Don Hagberg. The meeting opened at 7:30 p.m. at Great Barrington Town Hall. Town Planner Chris Rembold, Town Manager Jennifer Tabakin and Selectman Ed Abrahams were in the audience.

The chairman opened the public hearing on **Big Y's** application for a special permit (Case 833-14). The secretary read the notice for the hearing and said it had been properly posted and advertised and mailed to abutting property owners of record. Guy Hesketh, engineer for the applicant, along with property manager Dwight Merriman and architect Ed Peppin, appeared on behalf of the applicant. Mr. Hesketh said Big Y wants to lease the former Rite-Aid pharmacy space to Petco. Requested is permission to install a new concrete pad at the rear, existing loading dock, also a scissor lift and canopy, new overhead door and a new side door. A new front parapet and signage would go on the front of the building. Construction would be done this autumn and occupancy expected in February 2015. The secretary read letters from the Board of Selectmen, Planning Board, Board of Health and Conservation Commission, the first three recommending approval, the last indicating it had no jurisdiction. The Planning Board said in its site plan review it requested no outward-shining lights. In answer to a question from Ms. Ivory, Mr. Hesketh said the only new lights would be installed beneath the canopy and would shine down. In answer to a question from Mr. Wise, the engineer said the canopy is to protect the mechanical device and to afford protection in times of bad weather. Ms. Ivory suggested, and the board agreed, that as the applicant holds an earlier SP for the property, there is no need to investigate the legality of the pre-existing nonconformity. The hearing closed at 7:40 p.m.

Mr. Wise said the proposed changes would have zero or neutral impact. Board members agreed, under Section 5.5, there was no increased detrimental impact from the project. Under section 10.4.2, board members said (1) the changes would serve community needs in creating a more efficient operation; (2) made no changes to parking, as there is no parking in the location now, and a loading dock already exists; (3) made no appreciable change to demand on public utilities or public services; (4) made no change to neighborhood character, as it is out of general sight, and a loading dock is already there; (5) makes no impact on the natural environment; and (6) brings a positive fiscal impact, as it allows the property owner to lease to a new tenant. Ms. Ivory moved to approve the special permit application for concrete pad and covered scissor lift at the back of the store, signage, etc., as proposed, with the condition lights be shielded so as not to shine off the grounds. Ms. Meagher seconded. All members voted in favor.

The board at 7:45 p.m. reopened the public hearing (continued from June 10) on **Housatonic Solar I** (830-14), for a solar array on property on VanDeusenville Middle Road. The secretary read an email from Kirt Mayland, principal of Housatonic Solar I, stating, "I am withdrawing both my special permit application along with my conservation commission request for determination of applicability for the proposed solar pv project at 49 VanDeusenville Road in Housatonic, Great Barrington, MA." In answer to a question from Ms. Ivory, the secretary said he had sent a followup email to Mr. Mayland asking if he wanted the withdrawal to be "without prejudice" and received no response. On a motion by Mr. Wise, seconded by Ms. Ivory, the board unanimously voted to allow Mr. Mayland to withdraw the permit application.

Mr. Wise asked that the minutes of the June 10, 2014, be given an additional paragraph on Page 4 to reflect a statement made by Jonathan Hankin of the Planning Board regarding an earlier experience of cutting without permission on the Pfeiffer Arboretum property on Long

Pond Road. This cutting was done by an owner before Lynn Hutchinson/Brian Schwab (826-14B), but they knew about it as acknowledged in a letter. Ms. Ivory moved to accept the minutes with the addition, Mr. Wise seconded and all members voted in the positive. Ms. Ivory commended the depth of the minutes, and praised Mr. Wise's crafting of the Hutchinson/Schwab decision.

The secretary reported that Peter Brewer, representing **Berkshire Aviation Enterprises**, had requested to be on the agenda to ask the board to withdraw his client's 2013 special permit to construct a deck on the rear of the airport office building. That permit is subject of a court appeal by abutters. Mr. Brewer subsequently withdrew his request, after discussing the matter with Town Counsel David Doneski.

Mr. Wise moved the board go into executive session to discuss litigation strategy in the Hutchinson/Schwab matter, including in the discussion Town Manager Tabakin and Associate member Hagberg. The board would not return to open session. Ms Ivory seconded. In a roll call vote, Ms. Meagher, Mr. Wise, Dr. Majdalany, Ms. Ivory and Ms. Kotleski all voted yes. The secretary also attended the meeting to take minutes.

The meeting adjourned to executive session at 8 p.m.

Respectfully submitted

Bernard A. Drew, Secretary

A handwritten signature in cursive script that reads "Bernard A. Drew".