



Town of Walpole
Commonwealth of Massachusetts
Zoning Board of Appeals

Zoning Board of Appeals
John Lee, Chairman
Robert Fitzgerald, Clerk
Mary Jane Coffey, Member
Drew Delaney, Member
David Anderson, Member

MINUTES
WALPOLE ZONING BOARD OF APPEALS
JULY 21, 2021

Present: John Lee (Chair), Susanne Murphy (Vice Chair), Bob Fitzgerald (Clerk), Jane Coffey, Drew Delaney, Dave Anderson (Associate Member), Patrick Deschenes (Community & Economic Development Director), Mike Yanovitch (Building Commissioner), George Pucci (KP Law)

Case No. 20-25, Walsh Brother Building Company, 300 Stone Street, Special Permit request

The Board's consultant, Peter Baril from GZA was present on the phone and outlined the four major points of this latest letter that has been submitted, dated 7/15/21. Mr. Baril stated the following;

- site is fully within the scheme of the flood plain,
- flood storage compensation technique proposed is best with standing water in which the water relating to the project site is moving.
- Culverts are a partial of the outlet structure of Clarks Pond.
- The lot and the proposed dwelling lies in the shadow of the dam, and if the damn was to fail, it would likely impact the dwelling and the surrounding property, and likely increase the hazard classification of the dam.

Mr. Baril stated the overall finding that the proposed site is not well suited for a residential dwelling.

Attorney Brian Almeida (applicants counsel) was present, along with Robert Truax of GLM Engineering. Mr. Almeida stated that the proposed project adheres to the bylaw, and recommended that the project be approved.

Mr. Truax spoke on the issue of the property relating to the 100 yr. flood. Mr. Truax did not agree with GZA's opinion on the location of the 100 year floodplain.

Mr. Lee opened the hearing up to the public for comment, which there wasn't any. Mr. Lee asked what the next steps for the board are, in which he suggested that if there is not any additional substantive information that is needed by the board, the next step would be to close the public hearing.

Ms. Murphy motioned to close the hearing, seconded by Ms. Coffey, the motion carried 5-0-0.

Mr. Lee suggested that a draft decision be drafted, and voted on at the next ZBA meeting, on 7/28/21 at 7:00 P.M. in the Main Meeting Room of Town Hall.

Case No. 21-11, Tesla, 295 Union Street, Special Permit Request

Mr. Lee opened the hearing, present representing the applicant were Fabiola Lozoya, Acyn Zhong & Mike Yantile.

Ms. Zhong explained to the board that Tesla is seeking a special permit for being within the flood plain, and also expanding the activities of the business to wash, paint and do repairs to the automobiles on the site, before they are delivered to the customers.

Mr. Yantile stated that they will be trenching for a new sewer connection and adding two ADA compliant spaces.

Mr. Lee mentioned that comments from the Board of Health, Conservation and Engineering need to be addressed, and recommended that the hearing be continued to a time in September, in which the applicant was in favor of a date in September.

Mr. Lee opened the hearing up to the public, which included the following:

- Seth Longly, Resident stated that Traphole Brook is close by the site, and would like the Brook to remain undisturbed from the new use of the building. Has concerns relating to the actual size of the support structure and activities that are being proposed compared to what may actually be done on the site.

At the request of the applicant, Mrs. Murphy motioned to continue the public hearing to 9/15/21 at 7PM in the Main Meeting Room of Town Hall, seconded by Mrs. Coffey, the motion carried 5-0-0.

Case No. 21-8, Kearsarge Energy, 1377 North Street, Administrative Appeal

Mr. Lee stepped down as the Chair for this hearing, and Susanne Murphy opened the hearing.

Mrs. Murphy stated that since Mr. Lee has stepped down from this case, that the Boards Associate Member, Dave Anderson will be sitting on this case as a fifth voting member.

Present was Bethany Bartlett, general counsel for Kearsarge Energy, Andrew Bernstein from Kearsarge and Dan Bailey of Pierce Atwood (appellants outside counsel).

Attorney Bartlett gave a Power-Point presentation, which went over the determination of the Building Commissioner that the proposed use is not allowed within the Zoning District and why the Building Commissioners Determination should be overturned.

Mr. Bernstein provided an overview of the mission of Kearsarge Energy, as well as past and present projects and a brief history of the partnership between them and the Norfolk Agricultural School. Mr. Bernstein discussed the educational element associated with this project that

Attorney Bailey gave a Power-Point presentation where he argued that the project was protected under the Dover Amendment, that Walpole's local Zoning Bylaw could not restrict the ground-mounted solar project due language within Mass General Laws, Chapter 40A and because of the project's purpose for educational use, and the project was an essential government function being that the project was proposed and resided on property owned by Norfolk County.

Mr. Yanovitch spoke to the issues that were raised by Kearsarge Energy, their Attorneys, and what led to his determination that the Building Permit should be denied. Mr. Yanovitch stated that he did not see education as the primary purpose of the project and did not believe the Dover Amendment applied in this case or was it absolute. Mr. Yanovitch stated that the Town's existing zoning bylaw provides for the installation of ground-mounted solar panels and does so in locations that protect residential neighborhoods, which is the location this proposed project resides in. Mr. Yanovitch also stated that the Town's existing zoning does not negatively prohibit the essential government function of the County.

Mr. Fitzgerald asked questions of the applicant regarding ownership of the land and solar panels and also the educational components of the solar panel project.

Mr. Fitzgerald questioned the essential government function component of the applicant's argument, as the County's function is not for producing energy. Attorney Bailey stated that anything related to infrastructure is essential and that power in this case would be essential.

Mr. Yanovitch stated that the bylaw is in place to protect the Town and its residents. The location of this proposed use is in the Rural District which is a residential district.

Attorney Baily stated that zoning doesn't apply to solar energy system projects unless the bylaw states the impact on public health, safety, and welfare. Attorney Bailey stated that the Town's current bylaw doesn't do that.

Mr. Delaney asked Mr. Yanovitch about the existing solar panels that were allowed at the Norfolk County Agricultural School campus. Mr. Yanovitch stated that his department issued a Building Permit for the canopy solar panels under the Dover Amendment. The purpose was because solar on rooftops is allowed everywhere in Town, the canopy was located on the Campus, and existing curriculum was provided.

Mr. Anderson asked if this project would provide different educational opportunities that the existing solar panels on the campus don't provide.

Mr. Bernstein stated that this would provide different educational and maintenance opportunities that the current solar panels on the campus wouldn't provide.

Ms. Murphy opened the Public Hearing for public comments:

- Sue Shocket, 1340 North Street: voiced support of the Building Commissioners denial and her disapproval of the ground-mounted solar project.
- Cliff Snuffer, 15 Hummingbird Lane: voiced support of the Building Commissioners denial and using ARPA funds to purchase the property for the Town.
- Nathan M, Bellingham MA: Stated that students were not made aware of the project and that he did not support it.
- Gerry Dunden, 11 Sexton Farm Road: stated that he is in favor of solar energy and renewable energy, but he was not in favor of this project as it did not appear to have education as the priority focus.
- Kerri Snyder, Neponset River Watershed: voiced support of the project and the need to promote renewable energy projects.
- Bill Hamilton, 45 Eldor Drive: Stated that he was not in support of this project because he felt it would have to negative impacts to the Town's water supply.
- Fred Swartz, 15 Lakeview Drive: Stated that he felt that profit for the County was the motivating feature of this project and that it did not meet the standard of falling under the Dover Amendment
- Virginia Ryan, 26 Rosecourt Way: Stated that she in support of the project, expressed the urgency of renewable energy
- Chris Keoto, 7 Bramel Circle: Asked the applicant about the removed trees and the taxes to the Town. Mr. Keoto stated that he was in favor of renewable energy but he was not in favor of the project.
- Mark Sullivan, RTM Precinct 3: Stated that he believed Walpole should buy the land, use the solar array to pay for the purchase of the land, decommission the solar array and turn it back to how it is currently.
- Brandon Bale, 7 Covey Road: Stated that he objection to project and felt that the Dover Act did not properly apply to this project.
- Rick Cena, 20 Homeward Lane: Stated that he was opposed to the project.
- Rudy Barahous, 1400 North Street: Stated that he was opposed to the project and that it would take away from the experience of the abutting forest and trails.

Motion by Ms. Coffey and seconded by Mr. Fitzgerald to continue the Public Hearing to Monday August 9, 2021 at 7:00 P.M., the motion carried 5-0-0.

Case No. 21-10, Kerri Keurulain, 35 Irving Drive, Special Permit Request

Eric Keurulain represented the project proposal and stated that case for needing an in-law suite for his mother to move in with him and his family.

Mr. Lee stated that he would want “In-law Suite” stated within the plan and that the 36’ wide encased opening was agreeable with what the Board has allowed for similar special permit requests.

Mr. Delaney asked the applicant about Fire Department Review. Mr. Keurulain stated that he had gone to the Fire Department for comment but they stated that they would conduct their review during the building permit stage.

Mr. Crowley, Building Inspector stated that the proposal complies with all dimensional regulations and that the Building Department does not see any issue with the project

Mr. Fitzgerald stated that Engineering Department comments for rain water recharge should be included within the application for the building permit. Mr. Keurulain agreed with these comments

On final plans it shall say “in-law suite”
Engineer comment re: roof runoff

Motion to close the public hearing by Ms. Murphy, and seconded by Ms. Coffey, the motion carried 5-0-0.

Motion to grant a special permit (Section 5-B.2) for Case No. 21-10 for 35 Irving Drive based on plans shown, dated June 1, 2020, with discussed conditions by Ms. Murphy, seconded by Ms. Coffey, the motion carried 5-0-0.

Minutes Review

Motion to approve minutes from July 14, 2021, by Mr. Fitzgerald, seconded by Ms. Murphy, the motion carried 4-0-1 with Ms. Coffey abstaining.

Motion to approve minutes from the executive session on July 14, 2021 by Ms. Murphy, seconded by Mr. Fitzgerald, the motion carried 4-0-1 with Ms. Coffey abstaining.

Adjournment

Motion to adjourn by Coffey, seconded by Ms. Murphy, the motion carried 5-0-0

Meeting was adjourned at 10:15 P.M.

Respectfully Submitted: Amy Messier, Patrick Deschenes