



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 Delany, Member
David Anderson, Member

MINUTES
WALPOLE ZONING BOARD OF APPEALS
August 9, 2021

Present: John Lee (Chair), Susanne Murphy (Vice Chair), Bob Fitzgerald (Clerk), Jane Coffey, Drew Delaney, Dave Anderson (Associate Member), Attorney George Pucci (Town Counsel), Michael Yanovith (Building Commissioner)

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

Ms. Murphy opened the continued public hearing.

Representing the applicant was Dan Bailey of Pierce Atwood, Andrew Bernstein of Kearsarge, Bethany Bartlett General Counsel Kearsarge, and Scott Lopez Counsel for Norfolk County.

Attorney Bailey addressed the letter he had submitted to the Board, dated 8/6/21. Attorney Bailey reiterated the three key points of his letter which he stated were the main reasons as to why the ground-mounted solar project at 1377 North Street was exempt local zoning laws:

1. Massachusetts zoning cannot prohibit an educational use
2. Massachusetts zoning cannot prohibit or unreasonably regulate the installation of solar facilities except when necessary to protect public health, safety, and welfare. Attorney Bailey argues that Walpole's Zoning Bylaw limits ground-mounted solar to a limited section in Town and does not require any finding of a detrimental effect on public health, safety, and welfare
3. Performs an essential government function

Attorney Bailey stated that this is not a typical case where the Board must weight detriments of a project, but instead must act as a judge and that their roll for this case is to enforce the Massachusetts Zoning Act.

Attorney Scott Lopez gave the board a brief background on how the process with Kearsarge started and why the essential government function permits them to move forward as well as the County's commitment to fighting climate change.

Attorney Lopez stated that the County was facing both fiscal challenges as well the need to fight climate change. Attorney Lopez stated that the project was to address several essential government functions which included promoting the development of renewable energy, reducing the County's carbon footprint, and managing the County's business affairs.

Attorney Lopez stated that the County had attempted in 2017 to request a zoning map amendment to include the property within the Solar Photovoltaic Overlay District, but did not

receive the Planning Board's support at their Public Hearing leading to the fall Town Meeting that year.

Attorney Lopez stated that residents had submitted propaganda before the meeting and that when the Planning Board did not support the article they withdrew their request to go forward with the article at Town Meeting.

Attorney Lopez stated that there can be no doubt that fighting climate change and reducing our carbon footprint is an essential government function.

Attorney Lopez that the Town of Walpole's Zoning Bylaw for ground-mounted solar panels was prohibitive to the County's essential governmental function.

Attorney Lopez stated that the panels existing at the school will be linked to the panels at North Street and that the North Street panels were the primary component of the project.

Mr. Fitzgerald asked Attorney Lopez if the County owned or operated any other solar power plants within the county. Attorney Lopez stated that they did not.

Mr. Fitzgerald continued to ask Attorney Lopez to clarify how essential governmental function applied in this case. Mr. Fitzgerald stated that the predominate purpose of revenue generation for the County was striking. Mr. Lopez disagreed with revenue generation being the predominate purpose and stated carbon reduction was far more important.

Mr. Fitzgerald asked is the curriculum relating to the ground-mounted solar panels had been submitted to the school yet. Mr. Bernstein stated that elements had been given, but the full curriculum had not been established yet.

Ms. Murphy asked if how much energy would be going to the school. Mr. Bernstein stated that the school would be seeing the credits from the energy production which would equate to energy cost savings.

Mr. Yanovith stated that the existing zoning bylaw is in place in order to protect the residential neighborhoods and that he felt the role of essential government functions was not absolute. Mr. Yanovitch stated that the Building Department issued the permit for solar canopy project at the Aggie School by-right, because it was stated from Attorney Lopez that 100% of the energy produced by the solar canopy would provide discounted energy to the Aggie School. Mr. Yanovitch stated this circumstance was much different than the North Street ground-mounted solar project which is why this decision was made, because the essential government functions were met by the solar canopy and were over-exceeded by the North Street project.

Mr. Delaney asked is any of the solar energy produced at the school ties back into the school or does it just all go back to the grid. Mr. Bernstein stated that the panels on the roof are a different system than the ground-mounted solar and do tie back into the school while the solar canopy panels function similar to how the ground-mounted solar panels function and feed back into the grid but provide energy credits.

Ms. Murphy opened up the Hearing to public comments:

- John Hasenjaeger, precinct 1 asked the applicant how many solar arrays the county operate. Attorney Lopez states that this project was just the first one but there would be more. Mr. Hasenjaeger stated that the Town has already done a lot for renewable energy and the County should look at spreading the responsibility in other towns.
- Rudy Barahas, 1400 North Street addresses the letter the Walpole Preservation Alliance had sent to the Board in support of the Building Commissioner's denial of the building permit to build the ground-mounted solar panels on North Street.

Attorney Pucci requested a copy of the letter from the Walpole Preservation Alliance's attorney.

- Bill Hamilton, 45 Eldor Drive stated his concerns with the Town's water supply.
- Rudy Barahas, 1400 North Street stated that the Board should review the letter from the Walpole Preservation Alliance's attorney before voting.

The Board conducted a ten (10) minute recess to review the letter from the Walpole Preservation Alliance's attorney.

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

Mr. Fitzgerald stated that the Board is in favor of fighting climate change, but must make a decision on whether the Building Commissioner's decision was appropriate. Mr. Fitzgerald stated that the purpose of leasing the land for energy production while raising revenue in this manner did not align with essential government function as it was not something the county has done before. Mr. Fitzgerald stated that the educational component must be the predominant purpose for which the structure and land is used, but that did not appear to be the purpose in this case as much was revenue and fighting climate change was. Mr. Fitzgerald stated that the existing municipal solar zoning bylaw does not prohibit the installation of solar system, only regulates to determine the appropriate location to protect the public welfare.

Motion by Mr. Fitzgerald and seconded by Ms. Coffey to deny the appeal and uphold the decision of the building commissioner. The motion carried 5-0-0. (Murphy-aye, Fitzgerald-aye, Coffey-aye, Delaney-aye, Anderson-aye)

Motion by Ms. Murphy and seconded by Ms. Coffey to have Mr. Fitzgerald sign the decision on behalf of the Board. The motion carried 5-0-0

Adjournment

Motion to adjourn by Mr. Fitzgerald, seconded by Mr. Anderson, the motion carried 5-0-0

Meeting was adjourned at 8:30 P.M.

Respectfully Submitted: Amy Messier, Patrick Deschenes