

MINUTES

Zoning Board of Appeals Public Hearing– January 15, 2019
115 Pleasant Street, Room 103
Gardner, MA 01440

Sitting in on Hearing:
Raymond LaFond
Michael Gerry
Randall Heglin
Melory Cornett

In Attendance:
Sign-In Sheet attached

Meeting Called To Order by Chairman Raymond LaFond at 7:00 p.m. in the City Hall Annex Meeting Room 103, 115 Pleasant St, Gardner, MA. Mr. LaFond then went over the ground rules and the requirements that must be addressed for a variance or special permit. He then noted that the meeting was being video and audio taped, and requested if anyone objected. There were no objections.

Mr. LaFond reviewed the Agenda for this meeting:

<u>Case No.</u>	<u>Case Type</u>	<u>Case Description</u>
2018-11-01	Variance	0 Lovewell St. – ZPT Energy Solutions – Construct a Large Scale Ground Mounted Solar (Cont'd from Nov. 20, 2018)
2019-01-01	Special Permit	Kinzer Drive – Dewitt Jones – Construct Solar Array
2019-01-02	Variance	Whitney St., Outlot F. – McCarty Engineering, Inc. (MEI) – Construct a single family home
2019-01-03	Variance	38 Metcalf St. – Linda O’Connell – Construct 8’x10’ deck on front of house
2019-01-04	Variance	125 Connors St. – Thomas A. Gibbons, Esq./Binnall House – Modification of Variance on Special Permit for parking spaces

Case# 2018-11-01: ZPT Energy Solution's application to construct a Large Scale Ground Mounted Solar Photovoltaic Installation at 0 Lovewell St., Gardner, MA Parcel ID # R07/3/11, located in the Rural residential Two and Residential One zoning district (RR2 & R1) is denied as it does not comply with Chapter 675, Article 580 B. of City Code of Gardner. The zoning code states that the use requested is a “not permitted” use in the “ RR2 or R1” zoning district.

B. Designation of overlay locations. The overlay locations designated by Gardner City Council, in accordance with MGL c. 40A, § 5, where ground-mounted large-scale solar photovoltaic installations may be sited as of right. Said overlay locations are shown on the Zoning Map of Gardner, Massachusetts, pursuant to MGL c. 40A, § 4. This map is hereby made a part of this chapter and is on file in the office of the City Clerk.

The use requested requires a Zoning relief issued by the Zoning Board of Appeals.

Agent, Ernest Mello - started with reviewing the last meeting, 127-acre property owned by Dubzinski and conceptual site plans prior to today, satellite imaging provided today. Board requested site plans, collect actual data, etc. That's what we've done, collected field data. Site walk scheduled for this Saturday, January 19, 2019 at 9:00 a.m. with board. Submitted application with Planning board and ConCom, will comply with all

Randy asked size of field, and Chris Anderson from Hannigan Engineering confirmed 5 megawatts

Ray confirmed site visit plans – anyone can attend if property owner allows it, need permission or you're trespassing.

Ernie Mello – ZPT Energy Solution, LLC – Right of Way 40 feet access road 20 feet wide. Pointed out where the proposed electrical plot will be. (single-pad mount west side of plan)

Chris Anderson – Emergency and maintenance personnel will have access, fire will give approval.

Chris Anderson – 44 acres will be cleared (as typical with this size) proposing to maintain 100' buffer of vegetation. Per city zoning and wet land 30' or more for protection. Along Lovewell 100' buffer between property line and house. Approx. 150'. Proposed 75' buffer up top and 50' through flat bottom side. Right side will be shielded by trees

Ernest Mello – difference between today's plan and the prior – there's now split areas – wet lands are traced out in the middle causing two separate arrays. Filing with ConCom as well. Moved more to the west to protect the middle wetland. Due to topography of east side didn't want to grade the hill or clear land.

Chris Anderson – a lot of land won't be touched. Area within fence line will be cut and stumped, tall grass no more than 18". Remaining area (outside fence line) will be cut, grass, trees, etc. Maintenance will trim "nuisance" saplings, tall grass, etc.

Mike – how many panels will be installed?

Ernest Mello - I can do some math don't have answer (I can calculate that...)

Ernest Mello – Noise generated by array (comes up) – inverter plan will be placed far enough away that it won't affect closest residence. With distant and vegetation, it will knock down noise.

Ray – in terms of decibels?

Ernest Mello – much less than a lawnmower. Per manufacturer, inverter is max is 85 decibels. That's worst case. Ton of documenting – studies consensus 200' the noise made is at or below background noise. This is well beyond 200' from any residence

Randy – is there any 3 phase power on Lovewell?

Ernest Mello – yes and it's close enough to be supported. Existing power on Lovewell.

Ray – any representation of the city to speak? No one answers. Any abutters to speak in favor

Julie Morris- 102 Lovewell – We (my family) and Dubzinski Family have been connected for more than 100 years. I see this land as returning to original use (farming), it's farming, just modern. In full support of this.

Ray – anyone else in favor? Any in opposition?

Brian Gemborys -778 Whitney St. – just want to know about my property line how close to my property line? I pay \$8000 a year in taxes, don't want trees cut.

Ernest Mello – to address abutters and buffer questions – Mr. Dubzinski questioned the effect of abutters' property and made it clear he didn't want to negatively alter the neighborhood– The goal is to leave a buffer. – We asked engineers to design an array with at least 100' to closest property line.

Louise Russell - 218 Lovewell St. –gravel entrance for trucks for a year! That will cause a lot of noise, dirt, dust. I bought in residential for a reason – road is already torn up. A year of trucks, kids in the neighborhood, elderly people, no sidewalks, trucks blocking up on a narrow road (issues listed).

Chris Anderson – SWPP filed with EPA – required to submit plan to contain dust and road. – There will be noise for the construction, upon completion there will only be a pickup truck once a month for maintenance.

Randy – what do you think the duration with land clearing?

Ernest Mello - I would estimate around 6 months – not hooked up – but 6 months of trucks and construction

Louis – you said something differently the last meeting

Ernest Mello – bulk will take 6 months, that's an estimate, only one useable entrance, wetlands in front, access road has already been there - relatively short construction time. The access road traffic is limited to one per month after completion. Yes, there will be a couple months of trucks during construction.

Ray – you've worked on a number of projects. – What is the normal hours of operation – days/hours/etc.?

Ernest Mello – construction workers like to be in early and deliveries will show up at the beginning of the day. We've done this before, if the city doesn't have a working hours set, we'll put a cap on the hours of operation within the permit. For times during week and weekends.

Ray – to Louise - are there school children

Louise – bus stop at access road?

Ray – would have to work with school dept. to minimize time of operations and delivery times. So would could put conditions on the times?

Ernest – yes

Randy – How's the typical flat beds delivery at a time? Don't want to see 10 flatbeds stacked up on narrow Lovewell St.

Ernest Mello – I am not well versed as to the daily deliveries.

Attorney Kiritsy - we can find out the average schedule for deliveries during construction. Historically have been built within 6 month timeline. Delivery, construction, lay down completed within 6 months. We can find out how many trucks per day. We could do a flagman in the street.

Randy- staged delivery?

Attorney Kiritsy and Chris Anderson – yes we can put these systems into place. We can plan for deliveries.

Ernest Mello – we schedule for that, the work is taking place far removed further from abutters once the deliveries are completed the noise will be inside away from the abutters on Lovewell.

John Digney – 630 Whitney – How does this affect me and my property?

Chris Anderson – approx. 100' line from clearing your property and another 200' to fence line

Ray - Does any other abutters in opposition to speak?

Joan Gould – 104 Princeton St. – MA.gov search to be read: consider impact of other use at site....should be compatible..."DOER strongly discourages significant tree cutting"

John Digney (again) – how will it affect wildlife?

Ernie – A gap is left under the fence so smaller animals can come and go. Eight-seven acres of undeveloped land are still left for deer and other larger wildlife.

Louise- Because of the amount of cut vegetation that will be gone it will affect the runoff into my yard

Ray – ok no one else – Mike do you have questions? Randy? No. Ok site visit on Sat at 9 am. Ray advised interested parties in attendance that to attend the site visit property owner approval is needed

Mr. Dubzinski - 83 Temple St. – everyone is welcome to attend the site visit. If you observe something, we're open to suggestions. Meeting at 158 Lovewell St.

Julie Morris – 102 Lovewell St. – not to traverse my own property – it is private property.

Ray – do you know what the 3 Criteria for variance?

Ernie – counsel more suited to answer

Attorney George Kiritsy - #1 topography- hardship – we have to establish it suffers from hardship (shape, soil conditions, topography) There is large section of frontage, but it's all wetlands, and this property suffers with hardship due to wetlands. That hardship is compounded when you look at the shape. This property is uniquely shaped parcel – only two means of egress – 127 acres of land – and it's not a 'regularly' shaped property. Border by pond, is 127 acres of land you can't get to due to wetlands. This poses property hardship 3 times compounded – we have rather steep topography (to east).. If it were residential you'd have to re-grade by cutting soil, taking hill down. This being a surface project it is not hurt by steep incline, doesn't need re-grading, other use would. Soil review some evidence of boney soils. In order to cut the hill (on east) you'd have to remove ledge – Not the best soils for residential. This is a surface application of the panels, there is no regrading, excavating, digging, gravel drive halfway through don't have to cross wetland. As opposed to residential use. #2 criteria for variance Create or aggravate a safety hazard. The plan addresses the safety of the site; the third criteria on whether it derogates from the intent of the Code is applicable as the use requires a variance. Gardner is unique for use variance, when we wanted to do this, we present to you this to get a variance – we have a use variance which is why we are here. – This project is being located on site in the least offense manner as possible. Vegetation buffer several feet away from property. Still 87 acres of open space. We put our facilities far enough away that there will be no noise, can't see.

Ray – to enter into record memo from City Conservation Agent Jeff Legros 2019 –Portion of Jeff's email:

“Based on our Wetlands Regulations any proposed work would need to respect the 100-foot 'No Disturb' zone of the vernal pool and avoid any negative impacts to that Protected Resource Area. Any work that falls under the jurisdiction of the Wetlands Protection Act or Ordinance would require a Notice of Intent to be filed with the Commission. If the work is believed to be outside of jurisdictional areas or will not in any way negatively impact those areas then a Request for Determination of Applicability may be the appropriate filing.

At this time nothing has been filed with the Con Com so I am uncertain of the location of this Certified Vernal Pool in relation to the proposed project.

However, I would expect that all Wetland Resource Areas, including the Vernal Pool, would be accurately located, delineated, and identified on the plans for reference.”

Ray – to the Applicant - You’ll have to deal with ConCom if this is approved.

Attorney Kiritsy – yes, we plan to do that

A motion was made to close Case# 2018-11-01. It was seconded and unanimously approved. Case# 2018-11-01 is closed.

Attorney Kiritsy – I think we need an extension – 100 days from time stamp – extension was verbally agreed upon.

Randy – Ray to recuse himself, Mel coming on.

Randy – next case 2019-01-01 – reviewed case

The Public Hearing continued with Randall Heglin, Mike Gerry, and Melory Cornett:

Case# 2019-01-01: Kinzer Drive Solar, LLC's application to construct Large Scale Ground Mounted Solar Array at Kinzer Drive Gardner, MA Parcel ID # M17-18-10, located in the Industrial One zoning district (II) is denied as it does not comply with Chapter 675-410 #80 of City Code of Gardner. The “Table of Uses” states that its use requested, requires a “Special Permit” (SP) issued by the Gardner Zoning Board of Appeals.

Mr. Fred Unger, representative for the Kinzer Drive Solar project, presented his case for the Special Permit needed to have a large-ground scale solar at this site. ConComm has concerns for this site; the west and south of the site border ConComm land. Mr. Unger has worked with the ConComm and received unanimous approval from them and the Planning Board.

The site is in an Industrial Zone, south of Route 2. There are no neighbors to the site and it’s already been clear-cut. It was originally a junkyard with noted minor pollution in the soil. There are small amounts of lead and arsenic.

They have a fully developed site plan, noting drainage, etc.

Mr. Mark Darnold, Civil Engineer, explained that the closest house is on the other side of Route 2. Being that the site is in the Industrial Zone, it only requires a Special Permit from the ZBA. The site is gently

sloping, ideal for this use. The access will be from Kinzer Dr, which is fully paved. A six foot gate with a padlock is planned to be installed. They will bring power lines down Kinzer from West Broadway.

Mr. Heglin reiterated to those interested parties in attendance that this is a permissible use in the Industrial Zone, but the code requires a Special Permit from the ZBA which is different from the previous case.

The applicants highlighted the criteria for the granting of a Special Permit, noting that it's permitted in the zone, has adequate access and utilities, etc.

Mr. Mario Balducci, who is a nearby abutter, asked how close the site was to his property. It was confirmed to be 600 feet away and that there are no special requirements in terms of setback. He will still be able to use Kinzer Dr, as it is a public road.

A site visited is requested and will be held at 10:30 on Saturday, 1/19/19.

A motion was made to close Case# 2019-01-01. It was seconded and unanimously approved. Case# 2019-01-01 is closed.

The Public Hearing continued with Raymond LaFond, Michael Gerry, and Randall Heglin:

Case# 2019-01-02: Alan Belanger's application to construct a single family home at Outlot F Whitney St., Gardner, MA Parcel ID # R07-19-14A, located in the Rural Residential Two zoning district (RR2) is denied as it does not comply with Chapter 675, Attachment 2 Table of lot, area, frontage, and height requirements of City Code of Gardner. The zoning code states that the use requested is a "not permitted" use in the "RR2" zoning district.

1. The table requires one hundred and fifty feet of frontage the plot plan shows 138.78 feet.

Mr. Brian Marchetti, representing Mr. Belanger, explained that the site is a 1.9 acre parcel and the required frontage is 150 feet in the RR2 zone. This parcel only has 138 feet. Mr. Belanger also has a Purchase & Sale Agreement for the parcel behind this property, bringing the entire parcel to 21.5 acres. The use of Lot F was kept to access the back parcel for a single-family home.

Going over the 3 Variance Criteria, there is a hardship as the back 19 acres can only be accessed via Lot F. The public good won't be affected, with the construction of a single-family home is minimally impactful to the neighborhood.

Mr. LaFond inquired if Lot D, E, and F were all one parcel at one time. Yes, the owner subdivided the lot, so the hardship is self-inflicted. Mr. Belanger clarified that Lot D & E were sold to a different buyer.

Mr. LaFond asked that if the Board doesn't grant the Variance, what is their plan? Mr. Belanger said that there have been talks with the City Engineer to find alternative access to the back lot. There is a possibility of building a road, but that is costly.

Ms. Gina Mara of 93 Princeton Rd, representing Sandra Hamel who currently owns the back parcel, explained that Lot F was kept specifically to access the back acres. She can't explain why the proper frontage wasn't kept.

It was determined that no site visit was required.

A motion was made to close Case# 2019-01-02. It was seconded and unanimously approved. Case# 2019-01-02 is closed.

Case# 2019-01-03: Linda O'Connell's application to construct a 8' x 10' deck at 38 Metcalf St., Gardner, MA Parcel ID # R12-15-9, located in the Single Family Residential One zoning district (SFR1) is denied as it does not comply with Chapter 675, Attachment two Table of Lot, Area, Frontage, Yard and Height Requirements of City Code of Gardner. The zoning code states that this use requires a thirty foot front setback. O'Connell's plan reflects a sixteen foot front setback.

Ms. Linda O'Connell presented her case to build an 8x10 foot deck in the front of her property, left of the front steps.

Mr. LaFond inquired why she couldn't build the deck on the side or the back of the property. Ms. O'Connell said that the deck would cost more to build in the rear, noting that the backyard slopes. She doesn't know the grade of the slope.

Addressing the Criteria for the granting of a Variance, Ms. O'Connell stated that the deck would only cover a small portion of land on the front lawn, and its flat land. There is no safety hazard, as it's clear of the sidewalk.

A site visit is requested and planned for noon on Saturday, 1/19/19. The Board asked for markers to be placed so that the dimensions of the deck would be clear. Ms. O'Connell then admitted that she had already begun building the deck (not knowing a building permit was required). When she applied for the permit, she was told a Variance would be required. So, there are footings already present on the front lawn.

A motion was made to close Case# 2019-01-03. It was seconded and unanimously approved. Case# 2019-01-03 is closed.

Case# 2019-01-04: Attorney Thomas Gibbons, on behalf of Binnall House RHF Partners, L.P., is seeking to amend variance #5 of said Special Permit, as Modified by the January 30, 2018 Modification, which calls for "no more than fifty-nine (59) parking spaces will be required", by changing it to "no more than fifty-eight (58) parking spaces as shown on the attached "Proposed Parking Lot Striping Plan", Prepared by the Architectural Team, Inc., dated October 17, 2017, shall be required".

Attorney Thomas Gibbons, on behalf of the Binnall House, explained that they were back before the Board because they wished to reduce the required parking spaces granted to them in 2017 from 59 to 58 because Parking Space #8 is required for ground equipment associated with the cell tower.

Atty Gibbons said that there are 134 units in the Binnall House, but many residents do not have vehicles or drive. There have been no complaints of insufficient parking. The cell phone tower will improve cell use downtown.

The representative from the Binnall House stated that they are not concerned with having only 58 parking spots. There is no assigned parking, and at times there is a waiting list for parking spots, but not currently; they are just at capacity. If there is a need for more parking, the spill over could park in the Municipal parking across the street.

Mr. Roland Jean, the Building Commissioner, commented that cell service in the downtown is terrible, so he welcomes this new cell phone tower.

Atty Gibbons reiterated that there is minimal impact to parking if Park Space #8 is eliminated.

A motion was made to close Case# 2019-01-04. It was seconded and unanimously approved. Case# 2019-01-04 is closed.

The Board moved to go immediately to a Decision. A motion was made to grant the modification, it was seconded and unanimously approved. The modification to Case# 2019-01-04 is granted.

CORRESPONDENCE & PREVIOUS MEETING MINUTES

The Board voted to accept the December 18, 2018 Meeting Minutes "as printed."

No further business coming before the Board, a motion was made, seconded, and voted to adjourn.

ADJOURNMENT OF THE MEETING @ 9:25 pm



Raymond LaFond, Chair



Randall Heglin, Clerk



Michael Gerry, Member



Melory Cornett, Member

All detailed conversations, questions, comments and concerns are documented on CD identified as January 15, 2019.