

Town of Farmington
Zoning Board of Adjustment Meeting Minutes
Thursday, December 6, 2018

Board Members Present:

Elmer Barron, Chairman
John Aylard, Vice Chairman
Joe Pitre
Elise Haig, Alternate

Board Members Absent:

Bill Fisher, excused
John Scruton, Alternate, excused
Warren Morgan

Others Present:

Arthur Capello, Town Administrator
Dan DeSantis, Town Planner
Patrick Atwater, Esther Blouch,
Allen Funk, Phillip Hastings, Chris
Nadeau

BUSINESS BEFORE THE BOARD:

Alternate Elise Haig was seated for member Bill Fisher.

Review of Meeting Minutes:

October 4, 2018 –Page 1- Add before Review of Minutes “Mr. Pitre was present in the audience and did not sit as a board member for the meeting. Alternate John Scruton was seated in Mr. Pitre’s place.”

Motion: (Aylard, second Haig) to accept the minutes amended passed 4-0.

October 11, 2018 – No errors or omissions

Motion: (Aylard, second Haig) to accept the minutes as written passed 4-0.

Review of 2019 Meeting Calendar: Chairman Barron asked the board to review the calendar.

Motion: (Pitre, second Aylard) to accept the calendar as presented passed 4-0.

Any Other Business to Come Before the Board: None

NEW CASES:

Application for Special Exception, Article 2, Table of Permitted Uses VI. (A) “Commercial Use Not Specified” to allow a taxi company at an existing motor vehicle service facility. Property located at 456 Ten Rod Road (Map R23, Lot 11; Icon Automotive, Owner); Agricultural Residential District.

The applicant or his representative was not present at the meeting.

Mr. Pitre asked that it be noted for the record that he drives for Uber and Lyft.

Chairman Barron postponed the review of the application until all of the other cases are heard.

Application for Special Exception, Article 2, Table of Permitted Uses V. (A) “Utility Uses Not Specified” to allow a photovoltaic power station to be constructed on the property. Property

located at 37 Cocheco Road (Map R19, Lot 13; Town of Farmington, Owner); Rural Residential District.

Application for Special Exception, Article 2, Table of Permitted Uses V. (A) "Utility Uses Not Specified" to allow a photovoltaic power station to be constructed on the property. Property located at Cocheco Road (Map R19, Lot 12; NH Custodial Trust, Owner); Rural Residential District.

Attorney Philip Hastings of Cleveland, Waters and Bass, P.A. came forward representing applicant Blue Planet Funding. He introduced Allan Funk of Blue Planet Funding, Patrick Atwater of One80 Solar and Chris Nadeau of Nobis Group to the board.

Town Administrator Arthur Capello represented the Town of Farmington.

Mr. Capello said that approx. 3 years ago, NH Solar Garden approached the Selectmen to put in 2 solar arrays on top of the Town's capped landfill. He said that state law requires that no more than 1 megawatt of power be generated per acre so they plan to subdivide the landfill to allow for 2 megawatts of solar power to be generated there. The Town will use all of that power and there are 4 other arrays proposed and that electricity could be sold to the schools, the library and interested taxpayers he said.

Mr. Capello said the Town signed on to a 20 year lease with 2 five year extensions after the voters approved the proposal at Town Meeting. The agreement included a fixed rate of 9.5 cents for power and a fixed rate escalator of up to 5% each year. The Town would also receive lease payments for use of the land and a **Payment In Lieu of Taxes (PILOT)** he said.

He said construction is expected to begin in the spring and the solar company will maintain the property once the arrays are installed. This is a good use of the capped landfill and will allow the Town to receive revenue yearly to help offset the tax rate he said.

Att. Hastings said the Special Exception and Variance applications for both the Town landfill and the former Cardinal landfill properties are virtually the same. He asked Mr. Nadeau to provide a description of the project to the board.

Mr. Nadeau said the Town landfill is approx. 33 acres with the Transfer Station located at the front of the parcel. He said they propose to install 2 megawatt arrays, one on top of the capped portion of the landfill and one southwest of the cap. Typically a 1 megawatt array consists of about 4,000 solar panels so there will be a total of about 8,000 panels at the site he said.

Mr. Nadeau said the access to the site will be from the Transfer Station road to the existing gravel road which will be upgraded so the equipment can enter the site to construct the arrays. He said the arrays on the landfill cap will sit on concrete ballast blocks on the surface of the cap. The conduit to the panels will run above ground so there will be no digging into the cap he said. Mr. Nadeau said in the section that is off the cap they will drill posts into the ground for the foundations that will support the arrays and those conduits will be under ground. They propose to install additional fencing around the off cap area to control access to the site and there will be a utility connection located out in front of the Transfer Station area he said.

Mr. Nadeau said they are required to get a state Alteration of Terrain Permit and to modify the existing solid waste permit held by the Town. This is a passive use that is quiet, requires little maintenance and will be physically monitored quarterly and continually monitored remotely to ensure everything is operating properly so once the construction is completed there will be very little traffic the site he said.

Chairman Barron asked Mr. Nadeau to complete his overall presentation for both the Town and the NH Custodial Trust properties as both projects overlap.

Mr. Nadeau said the Cardinal landfill site is a 26 acre parcel which would be divided into 2 lots with a 1 megawatt array on the upper lot and a 1 megawatt array on the lower lot. The foundation ballasts will be above ground with concrete blocks to support the panels and the conduits will be above ground so there won't be any digging into the cap he said.

Mr. Nadeau said there will be no tree clearing as the trees on both sides are already cleared. Both sites have good buffering from the abutters and the arrays will be difficult to see once they are built he said.

Chairman Barron asked about the reflection from the solar panels.

Patrick Atwater said One80 Solar will design and construct the arrays. He said solar panels are designed to absorb sunlight not reflect it so there will be no issues with reflection at the sites.

Mr. Capello said the Town has worked out a PILOT agreement and the payment of back property taxes with the NH Custodial Trust as owners of the Cardinal landfill which is a private trust and not a state agency.

Att. Hastings said the purpose of the Special Exception is to allow this particular use which has been classified as Utility Uses Not Specified which are permitted Rural Residential zone by Special Exception and both properties are in the RR zone. He said that Section 2.00 (E) (1) of the Town Zoning Ordinance requires that in order to grant a Special Exception there are 5 requirements that must be satisfied and that the proposed use meets the criteria as follows:

Criteria 1 – a). Standards as provided elsewhere in the ordinance for this use: The ordinance does not contain any special standards for the proposed use.

b).No hazard shall be created to the public or adjacent property on account of potential fire explosion or release of toxic materials: Att. Hastings said the project will not create a hazard to the public or adjacent property on account of potential fire, explosion or release of toxic chemicals. He said both sites are particularly well cited for this type of use given their history.

c).No detriment to property values shall be created in the vicinity or in the essential characteristics of any area... Att. Hastings said the project will not result in any detriment to property values in the vicinity or change the essential characteristics of any area. He said these are capped landfills that have virtually no utility other than a passive use such as this one.

d). No traffic hazard or substantial increase in the level of traffic congestion shall be created: Att. Hastings said the project will not create traffic hazards or a substantial increase in the level of traffic congestion. He said the proposed uses require a minimal amount of traffic to and from

the sites and there would be periodic routine maintenance but it is not a use that has employees, customers or tenants coming in and out on a regular basis.

e). No excessive demand on municipal services including but not limited to water, sewer, waste disposal, Police and Fire protection and schools: Att. Hastings said the solar arrays will not create any demand on municipal services and would help the Town defray the cost of municipal services.

Mr. Capello said this would also help with the maintenance of the landfill as currently the Town has to pay for its maintenance and it would become the onus of the solar company.

f). No significant increase of storm water runoff onto adjacent property or streets shall be created. Att. Hastings said as described they sit above the ground with the pervious surface left intact so there would be no detriment in terms of erosion or sediment control.

Mr. Hastings said for these reasons they think the requirements for both Special Exception applications have been satisfied and asked the board to approve the requests.

Chairman Barron asked the board to address the Special Exception for Lot 13(Town lot) first. He asked if any of the members had any issues with any of the criteria.

Mr. Aylard asked if they were positive that the concrete blocks sitting on the cap won't pierce the cap due to their weight. He said they stated they plan to dig down to set foundation posts on the other 3 arrays.

Chairman Barron said where ever the capped landfills are they are not going to do any digging. Mr. Atwater said the panel bases are pre-cast concrete blocks with posts coming out of them and that each block is approx. the same size as the small table in front of him and is about 2 feet thick. They are specifically engineered for use on the cap and there will be no penetration of the cap. The only place they plan to penetrate the ground is off of the cap he said.

Att. Hastings asked Mr. Atwater about his experience with capped landfills.

Mr. Atwater said the landfills are well settled and they did not expect any additional settling. He said they will go through a review for a solid waste permit and part of that process is analyzing the amount of weight that will be put on the cap.

Mr. Aylard asked Mr. Atwater how many arrays he has put on a landfill cap and how long they have been there.

Mr. Atwater said this is a very common practice across the country in the solar industry and that a lot of landfills have them. He said his company put in 2 arrays in Texas about 2 years ago and there have been no issues so far.

Mr. Aylard said everything is a common practice until something goes wrong and it would be interesting to look out there one day and see that the arrays have "disappeared".

Att. Hastings said he has not been involved in the lease negotiations but he assumed there is an indemnity (insurance/repayment against loss or damage) clause included in the agreement that would cover any loss or damage to the underlying property.

Chairman Barron said there is over view by the state on a regular basis because it is a landfill.

Mr. Capello said the Town has to renew the landfill permit every so many years and they also contract with an engineering firm for yearly monitoring and testing of the landfill.

Ms. Haig asked if Mr. Atwater has a lot of experience in colder climates where there could be frost heaves in the ground that could cause damage to the equipment.

Mr. Atwater said that they don't have a lot of experience in colder climates as they are just entering this market but they could give lots of examples where it is a common practice in the northeast especially in the older landfills that have settled.

Mr. Capello said he assumed that the foundation posts would be installed down below the frost level and wouldn't have the frost heaving.

Chairman Barron said the concrete pads won't be below the frost level.

Mr. Capello said the pads will move with the ground because they are floating on top of it.

Chairman Barron said the arrays could be a little less effective if they are out of alignment.

Mr. Aylard asked if the panels are stationary or move with the sun.

Mr. Atwater said the panels are stationary and set at a 30 degree tilt and any slight fluctuation of the panels will not make a difference in production.

Right to a Hearing Before a Full Board - Chairman Barron said he forgot to inform the applicant that they have the right to request a hearing in front of a full 5 member board. He said if they want to put the hearing off until 5 members are available they could stop at this point.

Mr. Capello and Mr. Funk said they did not want to stop the hearing at this point.

Mr. Aylard asked if they could tell him that this use would be 100% non-hazardous.

Mr. Atwater said from their sampling he could say solar equipment is 100% non-hazardous.

Mr. Aylard asked if the materials used are recyclable.

Mr. Atwater said the materials are recyclable although it is a new industry and there haven't been many solar panels that have been retired.

Mr. Capello said the Town negotiated a bond in the PILOT agreement in case 25 years from now things change where the solar company will be responsible for the disposal of any potential hazards that may come from the solar panels.

Mr. Aylard asked if they took into account if the bond amount is big enough to take care of the waste 30 years from now.

Mr. Capello said they did consider future costs but that he couldn't predict the cost 30 years from now.

Mr. Aylard asked how many times the Town has been stuck with the cost of a cleanup.

Mr. Capello said to his knowledge the Town has never been stuck with that cost.

Att. Hastings said that under the current environmental laws none of the materials being used in the solar arrays are hazardous or are classified as hazardous materials.

Chairman Barron asked if the board agreed the 5 criteria have been met for a Special Exception.

Town Planner Dan DeSantis said he went through the criteria and provided the board with a memo stating the criteria had been met and recommended the Special Exception be approved.

Chairman Barron opened the hearing for public comment at 7:40 p.m.

There were no questions/comments from the public.

Motion: (Pitre, second Haig) to grant the Special Exception as written for Map R19, Lot 13 passed 4-0.

Chairman Barron asked the board to consider the request for a Special Exception for Map R19, Lot 12 known as the Cardinal landfill which is located directly beside the Town landfill.

Motion: (Pitre, second Haig) to grant the Special Exception for Map R19, Lot 12;

Discussion: Chairman Barron said this proposal is not quite a carbon copy of the proposal for the Town landfill.

Att. Hastings said the proposal is much the same except for the owner (NH Custodial Trust).

Mr. Aylard said this use is slightly different in that the arrays will all have posts in the ground.

Mr. Atwater said none of the arrays will have posts in the ground on the Cardinal site and that every 10 feet there will be a concrete slab that supports a rack that the panels are mounted on.

Vote: The motion passed 4-0.

Application for Variance from Article 2.03 "Rural Residential District" Table 2.03 (B) Space and Bulk Standards. To eliminate street frontage requirement for proposed subdivision of lot. Property located at Cocheco Road(Map R19, Lot 12; NH Custodial Trust, Owner); Rural Residential District.

Application for Variance from Article 2.03 "Rural Residential District" Table 2.03 (B) Space and Bulk Standards. To eliminate street frontage requirement for proposed subdivision of lot. Property located at 37 Cocheco Road. (Map R19, Lot 13; Town of Farmington, Owner); Rural Residential District.

Chairman Barron asked that they consider the Variance for the Town lot first.

Att. Hastings said the applicant has requested a variance but there may be a possibility that no Variance is required. The municipal landfill has 90 feet of frontage on Cocheco Road. The rest of the frontage is the rectangular lot where the Transfer Station access road is located to provide a right-of-way to access to the Transfer Station. If the dump road was treated as a street for zoning purposes both of the proposed lots would have the 150' of frontage required he said.

He said the Town Zoning Ordinance defines "street" as a Class V public street but it also references that a street could be a "Way" shown on an approved subdivision plan. The applicant will be presenting a subdivision plan to the Planning Board showing Dump Road on it. The board could conclude tonight that there is sufficient frontage without a Variance he said.

Att. Hastings said they have asked for a Variance under an abundance of caution and that they think they are entitled to a Variance in this case. If Dump Road is not counted as frontage, one of the lots would have 90' of frontage on Cocheco Road and the other lot would have no frontage he said.

Chairman Barron said it is a little more complicated in that if they want to count the access road

as frontage it's going to have be subdivided out and have its own fee title which would diminish the frontage on the other lot and then there would be 2 substandard lots.

Mr. Hastings disagreed and said one lot is a separate lot already.

Chairman Barron agreed it is a separate lot but the road frontage is subdivided out for the 50 foot right-of-way in order to consider it a Class V road as per the zoning ordinance.

Att. Hastings said he was suggesting that the subdivision plan show the access road as a Way and it will give 150 feet of frontage on either side of the road.

Mr. Aylard asked if they would first have to get the subdivision approved.

Att. Hastings said the ZBA could grant a Variance subject to subdivision approval by the Planning Board.

Chairman Barron said the subdivision could not be granted without the Variance.

Att. Hasting said the zoning requirements on frontage are designed for 2 purposes; one is to make sure there is adequate access to a particular lot and the other purpose to make sure there is no overcrowding of houses/buildings. For this use neither of those purposes is implicated whatsoever he said.

He said there is limited access needed as there are no employees going to and from the site. To have a lot with no or limited frontage creates no public hazard and is not against the public interest. It would be consistent with the zoning ordinance in terms of allowing this property to be put to a productive use beneficial to the Town and the citizens of the town.

He said there would be no harm to the public by granting a Variance in this case so substantial justice would be done. There would be no negative impact to property values which was already found by the board as part of the Special Exception findings.

Att. Hastings said the hardship is the particular use of the property. These are landfills that cannot be put to virtually any other use. It's unlike any other property in town other than any other landfills in town so by granting a Variance you're not making a dangerous precedence where you open yourself up to having more lots with no frontage he said.

Att. Hastings then said for these reasons we think that both for the municipal property and the Cardinal landfill property the Variance criteria has been satisfied for substandard frontage for the lots.

Chairman Barron then began the review of the Variance criteria as follows:

1). The Variance will not be contrary to the public interest:

Applicant's response: Granting the proposed Variance will not be contrary to the public interest because access to the site currently exists from Cocheco Road and no additional access is proposed. The existing access will continue to be utilized through construction and during maintenance activities. The frontage would only be sufficient for one lot which would limit the size of the solar array and ultimately limit the amount of the electricity generated. Unlike a site that would support a commercial business or residences, the site is a capped former landfill and further development other than solar is extremely limited.

Planner's response: To put a capped landfill into service that will not generate additional traffic and provide added benefits to the community. It is unlike any other commercial or residential use and would not be contrary to the public interest.

Discussion: Mr. Pitre asked if the board was going the route to consider granting a Variance (as opposed to designating the access road as a Way in a subdivision).

Chairman Barron said the Variance was the only right way to do it.

Consensus of the board was that the Variance would not be contrary to the public interest.

2). The spirit of the ordinance is observed:

Applicant response: Granting the proposed Variance request would be consistent with the spirit of the ordinance because multiple lots without sufficient frontage is appropriate for the solar array project since it is unlike any other commercial or residential use which requires frontage and access. The project will be beneficial for the Town of Farmington in that it will provide passive, fiscally responsible and renewable energy source for the generation of electricity.

Planner's response: It is believed that the spirit of the ordinance is being observed. No new traffic will be generated by this project, a capped landfill will go back in service and the development of a solar array would not threaten the public health, safety or welfare of the neighborhood.

Discussion: Chairman Barron asked about the frequency of inspections at the sites.

Mr. Atwater said it depends on the site, but once the arrays are constructed the inspections are usually done quarterly unless there is some indication that something that has gone wrong.

Chairman Barron said so access is extremely limited.

Mr. Atwater agreed and added that the arrays are remotely monitored so they can see how they are performing and if there are any issues.

Mr. Aylard asked if Mr. Atwater has ever seen a solar panel catch on fire.

Mr. Atwater said he had never seen one catch on fire.

Mr. Aylard said he asked because if it did happen someone would have to go there to put it out.

Consensus of the board was that the spirit of the ordinance would be observed.

3). Substantial justice is done:

Applicant's response: Granting the proposed Variance request will provide substantial justice because it will allow for beneficial use of the property- generation of electricity using a renewable resource without creating nuisances such as traffic, noise or emissions. Because of the need for limited access, providing the necessary frontage for each lot is unnecessary and constructing a new Town road to provide frontage is wasteful. The Town will benefit from the use of the property as a source of income on an otherwise unusable property.

Planner's response: Substantial justice will be done because it allows for a safe reuse of the project without threatening the integrity of the neighborhood, as well as allowing for a non-emission use. It will also provide an important benefit to the community.

Consensus of the board was that substantial justice is done.

4). The value of surrounding properties are not diminished:

Applicant's response: There is no research/evidence indicating that granting a Variance for frontage will have a negative impact on property values that are located near the arrays. Granting the Variance request will not diminish the values of surrounding properties because there are no residential or commercial uses associated with the proposed subdivision, rather, the solar arrays will be a use that is passive, does not create traffic, does not make noise or emissions, is contained in a secure site and will be designated to mitigate any storm water runoff. No nuisance or unreasonable hazard will result as the site will be restricted by a fence, will be buffered by existing vegetation and will require maintenance activities 2-4 times a year.

Planner's response: It is believed that surrounding property values will not be diminished by the construction of the solar array. Currently, the property in question is a capped landfill with limited access that has at most little or even negative value in its current configuration. The development of the solar array project may indeed stabilize the neighborhood and will not have an adverse impact on the surrounding property values.

Discussion: Mr. Aylard said the Town landfill cap is on a hill and asked how they would buffer it. Mr. Atwater said they would use the existing natural landscaping in the area and the array will sit on top of the cap.

Mr. Aylard said someone made the statement that you would not see the arrays.

Mr. DeSantis said the Planning Board may require the planting of additional trees or shrubbery around the site.

Chairman Barron said they would not be allowed to dig into the landfill cap to plant trees.

Mr. DeSantis said he meant they may be required to plant trees or shrubbery around the edges of the cap.

Mr. Atwater said they are also going to slightly "inset" the array on the top of the cap so it will not be right up on the edges of the lot in some places although they plan to get as close as they can to fill up the space.

Att. Hastings said from a legal standpoint they are asking for a Variance from the frontage requirement not to create the lot. The question is does having no frontage diminish the value of surrounding properties and not the use itself he said.

Chairman Barron said this proposal will have to go to Planning Board Site Review and this issue is out of the purview of the ZBA.

Consensus of the board was that the value of surrounding properties would not be diminished.

5). Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship:

Applicant's response: Denial of the Variance would result in an unnecessary hardship to the owner/developers because of the following special conditions of the property that distinguish it from properties in the area: The proposed solar array is located on a former municipal (capped)

landfill which has limited reuse potential. In order to provide an economically viable project, the arrays must be sized to generate at least 2 megawatts under the Net Metering Program which requires two separate “premises” or parcels. In order to subdivide the property, relief must be granted for the frontage requirement. Denying the frontage relief would render the project infeasible leaving the closed landfill site as an unusable piece of Town property.

Planner’s response: Special conditions of the property i.e. a capped landfill, reduces substantially the ability to use the property in strict conformance with the current zoning ordinance. Therefore “literal” enforcement of the provisions of the ordinance would result in an unnecessary hardship.

Consensus of the board was to agree that literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

There were no further comments/questions from the board or the public.

Motion: (Pitre, second Aylard) to grant the Variance for Map R19, Lot 13 as requested passed 4-0.

Lot 12:

Att. Hastings said the legal arguments for Lot 12 are all the same as for Lot 13 and pointed out the different frontage features on the Site Plan as follows:

The Cardinal landfill lot has about 44 feet of frontage on Cocheco Road that provides the access way into the site so the subdivision line to create 2 lots would maintain one lot in front and a back lot with a second set of solar arrays that would have no road frontage. The argument for this Variance is exactly the same as they are similarly situated he said.

Chairman Barron asked if there is any piece of this parcel that is not affected by the landfill and could be subdivided off in the future.

Mr. Nadeau said he was pretty sure the entire parcel is contained within the underground management zone and would not allow subdivision for housing or commercial uses.

Chairman Barron said he wanted to be sure there wasn’t a portion at the front of the parcel that could be subdivided off and give an issue with access in the future to the back lot since there has been no discussion of right-of-ways.

Att. Hastings said the board could apply a condition that the use continues as a solar array so that no other use could be made without coming back to the board.

Chairman Barron said he thought it would be prudent to do so for this property.

Mr. Aylard asked if the Variance would allow the parcel to be subdivided into more than 2 lots.

Chairman Barron said they could not subdivide the property into more than 2 lots without coming back before the board.

Att. Hastings said the sole reason they are subdividing the property is to comply with the Net Metering Program.

Mr. Atwater said there is enough space to support a 2 megawatt plant but the state will not allow more than 1 megawatt per lot so by subdividing it gives them the chance to have more

arrays that are connected under Net Metering.

Chairman Barron suggested the easiest thing to do would be to tie the Variance to the use and that any other use would require further review by the board.

Mr. Atwater said they would not be opposed to the condition.

Motion: (Barron, second Pitre) to grant the Variance with the stipulation that if this use ceases they will have to come back to the board for further consideration;

Discussion: Chairman Barron said the board skipped going through the 5 criteria for this application and asked the board if anyone had any issues with any of the criteria or if they were all in agreement that they have been met.

Consensus of the board was that the criteria for a Variance for this property have been met.

Vote: The motion passed 4-0.

Chairman Barron then returned to the application for a Special Exception for a commercial use in the AR District for a taxi company that was postponed from earlier in the meeting.

The applicant or an agent for the applicant was not present at the meeting.

Chairman Barron suggested the board could deny the application since the applicant did not have the courtesy to attend the meeting or to request that it be rescheduled.

Mr. DeSantis recommended the board continue the hearing on this matter to the next meeting.

Motion: (Pitre, second Aylard) to continue the application to Jan. 3, 2019 passed 4-0.

Adjournment:

Motion: (Pitre, second Haig) to adjourn the meeting passed 4-0 at 8:15 p.m.

Respectively submitted

Kathleen Magoon

Recording Secretary

A handwritten signature in black ink, appearing to read 'Elmer Barron', with a horizontal line underneath.

Elmer Barron, Chairman