



Town of Barnstable Planning Board



www.town.barnstable.ma.us/PlanningBoard

Board Members
 Stephen Robichaud – Chair Robert Twiss – Vice Chair Tim O’Neill - Clerk Mary Barry Michael Mecnas Raymond Sexton
 Mathew Levesque – Town Council Liaison
Planning & Development Dept. Staff Support
 Elizabeth Jenkins, AICP, Director
 Kaitlyn Maldonado, Assistant Director
 James Kupfer, AICP, Senior Planner
 Karen Herrand – Principal Assistant - karen.herrand@town.barnstable.ma.us

Town of Barnstable PLANNING BOARD Minutes April 24, 2023

Stephen Robichaud – Chairman	Present
Robert Twiss, Vice Chairman	Present
Tim O’Neill – Clerk	Present
Mary Barry	Absent
Michael Mecnas	Present
Raymond Sexton	Present

Also in attendance were Planning & Development Staff; James Kupfer and Karen Herrand, Principal Assistant.

Call to Order Introduction of Board Members and Staff Members

Notice of Recording This meeting is being recorded and broadcast on Channel 18 and in accordance with MGL Chapter 30A §20. The Chair must inquire whether anyone else is taping this meeting and to please make their presence known.

Public Comment

Chair Stephen Robichaud asks for any general public comment. None.

Special Permits

TJA Clean Energy has submitted an application for a Special Permit pursuant to the Town of Barnstable Zoning Ordinance §240-44.2 Ground-Mounted Solar Photovoltaic Overlay District for construction of large scale ground mounted solar photovoltaic installation at 810 Wakeby Road, Marstons Mills, MA 02648.

Chair Stephen Robichaud entertains a motion to open the public hearing, moved by Ray Sexton, seconded by Bob Twiss,

Roll Call Vote:

Ray Sexton - aye

Bob Twiss - aye

Tim O’Neill - aye

Michael Mecnas - aye

Stephen Robichaud - aye

Attorney Michael Ford in attendance, representing the Applicant.
Brendon Reali, Environmental Scientist, Atlantic Design Engineers, Inc.

Attorney Ford gives a history of the proposed project.

Process – Zoning ordinance. Amendment of the map to allow location to be included and then overlay district re write. Residential, RF underlying district. The overlay district allows only by special permit. Site has the benefit of a variance issued many years ago, for salvage yard. Applies to front portion of the site, 5 or 6 acres. This is still an active use. Ordinance adopted by Town Council (TC). New site plans now. Came to Zoning Board of Appeals (ZBA) for a modification permit for setback requirements for the solar array. Chapter 40A section 3, dealing with exempt uses. Towns are prohibited from prohibiting large scale arrays like this project. ZBA granted requested modification, one on westerly side line, where 100 ft. is required, it was granted a minimum of 16 ft. for the array. On easterly side, 150 ft. required on developed property, there is an access road here. Centerville Osterville Marston Mills Fire Dept. (COMM) did review – did on site with Atlantic Engineer. Walked the access road. Suggest to expand the road to 20 ft., this makes the road in the set back. This road will provide access to the site, construction etc. ZBA granted within the 150 ft. buffer. Proposed berms or plantings, screenings needed permission to be in the buffer zone, waiver includes this as well.

Also went to Site Plan Review. Applicants have made a request from Cape Cod Commission (CCC) staff approval has been obtained from CCC. Did on site and made a determination that not a change of use that triggers the CCC review.

Brendan Reali – Presentation – TJA. Exhibit A. Existing Conditions. No wetlands on site or habitat of endangered species. Zone 2. 19.3 acres. Mass DEP 2019 approval. Barnstable Conservation Commission. FAA. Site Plan Review and ZBA. Proposed Development array. 10.66 – security fence and security gate. Minimum tree clearing. Two concrete equipment pads. All equipment will remain outside the setback. Erosion control. Vegetated screening in the southern area. Existing houses in area. Some existing vegetative screening and using a berm. Special Permit Provisions. Barnstable zoning bylaw 240.44.3. Three different ways of screening. Additional tree plantings, around 680, will be evergreen, will have species approved by the Town. Arborvitaes, several species, proposing average tree height, 9 ft. Berm will be 20 ft. tall in addition to the trees. No hazardous materials that will be housed on site – no permanent. No battery storage. Two transformers on the concrete pads. Fluid to be used. Materials safety sheet submitted. Part 3, hazardous material information. Safe by US Food and Drug association. Regulatory information. FR3 fluid – have been verified approved for indoor and outdoor. Unlikely ever reach ground water. FR3 fluid no pfas chemicals. Inverters are air cooled. Will not use modules. Little if any risk of chemical into the air. Temporary hazardous on site as part of the construction. Expanded operation maintenance plan.

Section 1 – indicates procedure according to mass

Section 2 – designed with Mass comprehensive safety code

Section 3 – equipment/maintenance and vegetation

Emergency operation plan –

Section 5 – procedure for safe shut down.

Section - Emergency response, coordinating on site training.

Project has built in alarm to notify fire dept. 24/7 can be monitored remotely as well.

Attorney Ford. Final performance standard, no. 9, criteria - necessary included but not limited to. Prior uses to site. ZBA modification permit would be discontinuance of the salvage yard use. Planning Board has authority to do that. ZBA made this a requirement of their modification approval. Hazardous material, fall back provision in the ordinance to require containment. Recommendation for Board of Health (BOH), there is a process for this as well, in terms of approval.

Chair Stephen Robichaud – ZBA approved – had jurisdiction as it relates to Chapter 40A, Sec. 3. The Planning Board determined that 150 ft. setback would be required along the property lines that abut residential areas. ZBA reduced the setbacks. They focused on bulk regulation. Did not focus on all other. Planning Board needs to review and see that it abides by all. A lot of material for this. This will be a multiple meeting application.

Town Attorney Charles McLaughlin in attendance. This was intended to allow as of right in designated overlay areas. Not a lot of attention to performance standards. Review of previous case in Waltham. Roadway part of solar system. Public health, safety and welfare. State mandated requirements. Waltham case that had only 2%, not meeting requirements for what needs to be. Need fundamental public policy for achieving zero emissions. There are variety of cooling fluids for this type of high energy system. Solar industry moving towards much safer fluid. Refers to FR3 sheet, Exhibit B, EPA, pg. 3, under paragraph 12.

Chair Stephen Robichaud, health safety and wellness is of utmost importance. We have heard from residents. Groundwater protection, abutting is 830 Wakeby Rd., water supply protection. Maybe hear from a member of the water district about this. Preservation of drinking water. Hazardous materials, concerns. Need to review more material about this. How can affect groundwater? Fire safety concerns. Design of this site, any risk assessments done and is properly set up to deal with if emergency.

Ray Sexton, ZBA decisions appear to change or preempt Planning Board's permitting process. How is this dueling authorities?

Jim Kupfer, local ordinance have Dover Act - have 40A §3 uses, certain types of exceptions, bulk and density. ZBA purview under 40A, §3 limited to those exemptions. Two step process.

Ray Sexton, will next solar project come before ZBA as well?

Town Attorney McLaughlin, Bulk regulations. As of right. §240-8(3):

The use of land or structures exempt from the use provisions of this chapter pursuant to MGL Ch. 40A, § 3, and any other statute.

(a) Where such exempt uses are subject to reasonable regulation of bulk, density and parking regulations by MGL Ch. 40A, § 3, reasonable regulation shall be deemed to be: the bulk regulations of the zoning district, except that church steeples may be permitted up to 75 feet in height; Article VI, Off-Street Parking Regulations; and Article IX, Site Plan Review.

(b) Where the proposed use does not comply with Subsection A(3)(a) above, the Zoning Board of Appeals shall by a modification permit, modify the bulk regulations of the zoning district and/or the parking requirements of Article VI, Off-Street Parking Regulations, where such regulation would substantially diminish or detract from the usefulness of a proposed development, or impair the character of the development so as to affect its intended use, provided that the modification of the bulk regulations and/or parking requirements will not create a public safety hazard along the adjacent roadways and will not create a nuisance to other, surrounding properties such that it will impair the use of these properties.

(c) A modification permit shall be subject to the same procedural requirements as a special permit, except that approval of the modification permit shall require a majority of the members of the Board.

Ray Sexton, decommissioning, disposal, has cost sheet been done? Things removed and disposed. Unclear if we have expertise in this area. Has concerns. Conservation restricted area/drinking water issues, doesn't think 16 ft. will be adequate. Have we received Dept. of Public Works (DPW) response or COMM Water and Fire Districts?

Jim Kupfer, haven't received from COMM Water of final from DPW - have COMM Fire who is here tonight.

Chair Stephen Robichaud, 240-A why did feel like the regulation detracted or impaired so as to affect its intended use?

Attorney Ford, TC knew in Groundwater Protection (GP) zone and next to the property being questioned and TC agreed to zone it. Set backs to control noise. 150 ft. added by a motion to amend by TC Councilor Paula Schnepf. Planning Board holds a public hearing and makes a recommendation. It was TC's amendment that added the 150 ft. Typical special permit, states you shall issue/this is an exempt use. Almost 30% of area, for section of ordinance to control noise. Took out 28% for electricity, for observation of the setback. Nothing in ordinance about protecting groundwater. Nor is groundwater the reason for the setbacks.

Jim Kupfer interjects to Chair – ZBA was reviewing a specific sub section of the ordinance. Groundwater is a concern and can provide some education and assurance. FR3 there are some issues – and because of the holistic nature of this ordinance.

Attorney Ford, reduction in number of solar panels, conservation area. Noise setback.

Bob Twiss, this is a process. Have spent a huge amount of time on this/town ordinance. A lot of research, battery, fluids, safety concerns. Bylaw would apply to all areas. Can't pick apart the regulation, it stands as a whole to protect health, safety and welfare. Water pollution concerns more than anything else and what went into this. How many panels lost through modification of the access road?

Brendon Reali response – total lost roughly 33%, 3,000 panels. Just the access road would be roughly 10%.

Attorney Ford about 1,100 just for the access road.

Bob Twiss looks like you gained 900 solar panels, numbers don't add up.

Jim Kupfer, with addition of the maintenance road, moved into setback, so no panels have been lost.

Discussion re setbacks and access road and loss of solar panels. Residential zoning district.

Bob Twiss clarifies this is a package. ZBA granted setback waiver. Are we bound by ZBA's determination? What's appropriate to maintain for this particular site?

Attorney McLaughlin replies – in review and what was the intent in creating 240-A and context as of right with authority for bulk regulations on particular event. Is that determination binding? Who's word is binding as a baseline.

Bob Twiss, this board may determine that a 16 ft. setback may not be adequate.

Attorney McLaughlin, need input from Water Dept. See what evidence is presented.

Tim O'Neill, complicated project. Engineer have benchmark elevations for groundwater. Brendon Reali, does not, probably 20 to 30 ft. below grade.

Tim O'Neill, biggest grade change, what is biggest downward from existing? Drainage basins? Basin being developed with stone? Can request a perc/soil test sample.

Brendon Reali, the center has little grade change, lowest center area roughly 64. Highest elevation is northern side 102 – 104. Sheet 6 of the site plans. No stone, can infiltrate up to 100 year storm. USDA soil sample.

Jim Kupfer, can be done by applicant and witnessed.

Tim O'Neill – transformers. Concrete plans, plan available at what location and elevation and equipment? Containment around the transformers. What elevations to site perc? Section view of what is being proposed? Concerns about materials contained.

Brendon Reali, can say where on pad. Transformers 500 gallons each. Proposing equipment pad in north and one in the south.

Attorney Ford, no hazardous materials or waste, if leaks notify. If Planning Board or Board of Health (BOH) requires a containment for each, 150 ft. away, will provide the containment. Can show you and have BOH review this. DPW will have this done with them.

Tim O'Neill – solar arrays, two transformer locations. Are there other areas outside, telephone poles, what happens after leaves the transformers, any plans from Eversource?

Brendon Reali, process DC power goes to inter connection equipment, like a meter for Eversource to keep track of what's going into the grid and how much being paid for the electricity. Closer, there will be another transformer on one of the poles, like a standard utility pole transformer. Eversource owns, their equipment. Customer and Eversource both have meters. Can the grid handle what you are proposing to put in.

Tim O'Neill – Eversource, they would also have ground mounted equipment. Discussion for interconnection with overhead and Eversource. Grading and possibly another visit at the site.

Chair Stephen Robichaud, yes would like to do before next Planning Board meeting.

Tim O'Neill, interested in what Fire Dept has to say.

Michael Mecenas. Need more information. FR3 fluid, not classified as dangerous. Health, safety and welfare is of utmost importance.

Lt. Patrick Hill, COMM Fire Dept. some concerns with this site. Battery storage is the biggest threat. If no battery storage less threat. TJA is very forthcoming. Top 3 concerns:

Some type of emergency preparedness plan – we cannot attempt to shut them down and will not put our firefighters to do this. Need someone to shut system down.

Access road – agreed on 20 ft. road. Annual maintenance to the road/maintained as well and will inspect on an annual basis.

Hazardous materials stored on site – most on construction basis. Hydraulic oil systems. FR appears to be less hazardous. Always potential hazards when dealing with large quantities. In favor of emergency containment.

Ray Sexton – we have gotten a lot of information from the public. Battery is big concern. Solar panel materials as well.

Lt. Hill, new to all of us. The biggest risk is battery storage, this is low risk, high hazard. Could be serious. Fire suppression would be the biggest delay, they will not do this shut down.

Ray Sexton, will have to make some provision for this.

Chair Stephen Robichaud, whomever would need to be nearby. Once site is shut down, what will it be water, foam, hazardous?

Lt. Hill, use water as much as can, but cannot do on a solar site, there is information that we could gather if foam was used.

Chair Stephen Robichaud, factor to switch from water to foam.

Lt. Hill, will have to look into that further.

Chair Stephen Robichaud, are you aware of any other solar sites that have had incidents?

Lt. Hill, no.

Jim Kupfer, source of water on site here? Or close hydrant? Who's jurisdiction?

Brendon Reali, show closest fire hydrants, these are on the plan. Maintenance, bring in a vehicle with water.

Jim Kupfer, lighting, security lighting?

Lt. Hill, don't require lighting, have our own if needed.

Chair Stephen Robichaud, guidelines for shut down?

Lt. Hill, needs to be addressed and looked into as well. Will go on an additional site visit with Board.

Attorney McLaughlin, water on site, may need to be some evidence with respect to adequate irrigation. Maintenance for also.

Chair Stephen Robichaud opens up public comment.

Anne Salas in attendance. Hands out document, Exhibit C. Who will be owner and operator after sold so emergency personnel can be located. Maybe DPW and BOH, Com water looking for hazardous materials list. A transformer – no berm and no plantings, for these 2 homes. Land and within several miles could be destroyed. High voltage cables. Solar fires are under reported, 2 miles to the west are megawatt installations. Land Court analyzed document should be provided. Thick soot, Waltham has not permitted their megawatt plant. System documentation shall be completed only after permitting, lots of confusion here. Spec sheets. Hazardous materials list, should have this list. No provision in the decommissioning plan lack of clarity about what components are. Solar panels are hazardous waste. Must protect the health, safety and welfare of the citizens of this Town.

Catherine McDonough in attendance. Great deal of missing information. Flawed decommissioning report. Concerns about - in accuracies and discrepancies. Setback, sound on the property. Sound really travels do to topography of the land. Setback change due to lawsuits with the Town. No water on site, this needs to be addressed. Cannot be defined, clearly no guarantee about health, safety and welfare.

Christine McDonough, 111 Mockingbird Lane. Been before these Boards years ago when owner took all the dirt and dug up this property. Neighbors are all in unisom. Concerns with health safety and welfare.

Mary Burkinshaw in attendance. Concerns with the setbacks, now they have been changed. Go behind the cell phone tower off Wakeby, on a site visit, this is a cliff. The trees have been removed twice, clear cut. Dredging spoils dumped here. Illegal mining that capped the dump, was dug below the water table. Doesn't have faith that the buffer trees will be maintained. Town could put this elsewhere.

Nancy Minnigerode, 89 Biscayne Rd. Concerns with health safety. The zoning should never have been changed. We are having a housing crisis.

Dianne Sullivan, 140 Mockingbird Lane, this street is a higher elevation, trees would not help, you can see right into this area. Will be highly visible.

Stephen Hukalowicz, 26 Dove Lane. This is not the place for this. Neighbors close, wooded area to the West. Sound, these setbacks had to have been implemented for more than sound. Nothing lost if designed to fit for the setbacks that this was planned for. Fire problems? How fast will be shut down and notified and burn out? Water issue concerns. Brush fire concerns on south west side. Access road maintained?

Attorney Ford, will coordinate with Staff and the concerns mentioned tonight. Town Attorney's office will have a report as well. Site visit as soon as can and with Fire Dept. as well. Would like to reserve the right to address all public comments/concerns.

Chair Stephen Robichaud, security and personnel and response for shutting down the site for hazards. Does stand by the 150 ft. setbacks – because of health, safety and wellness.

Ray Sexton, have been terrorists attacks though out the country, important to think about.

Tim O'Neill, asks to forward ZBA Decision to Planning Board when done.

Chair Stephen Robichaud entertains a motion to continue to May 22, 2023, moved by Ray Sexton to continue Special Permit 2023-02, 810 Wakeby Road to May 22, 2023, at 7:00 p.m., seconded by Michael Mecenass,

Roll Call Vote:

Ray Sexton - aye

Bob Twiss - aye

Tim O'Neill - aye

Michael Mecenass - aye

Stephen Robichaud - aye

Staff Updates

Local Comprehensive Plan

Kate Maldonado, draft conditions on the webpage, existing conditions. Has data, maps, comments closed today. Report available, next meeting Thurs may 11 at 5:30. Will review comments and working a draft vision statement.

Correspondence

Chptr 91 – 24 Flume Ave, Marstons Mills – Matskevich/Pier

Arlene Wilson in attendance, representing Applicant, Matskevich – looking for a pier. The home had been vacant for years, they are redeveloping this, abutters feel like some of their rights are being taken away. 68 ft. based on last summer’s water elevation. 48 ft. off west property line to viewing platform, adjacent to the Herring Run. 92 ft. off east property line. Chapter 91 requires 25 ft. setbacks. Rare habitat for several species of freshwater mussels. Have to have a certified biologist on site when constructing the process. Least impactful design. Concerns about hazardous materials, pipes being used for the project. Process has gotten complicated since Dept. has gone to 100% electronic filings. Now seeking a simplified application. Planning Board got copy of the plans – 30 days have passed for public comment. Not required to comment. Have gotten a lot of public comment/letters. Middle Pond piers. Have only found licenses for six. Freshwater. Has gone through Conservation. Neighbors objected, went on to Dept. of Environmental protection.

Jim Kupfer, Planning Board hasn’t seen many of these. State did change the process for Chapter 91’s. Maybe take the comments and forward to the State.

Chair Stephen Robichaud entertains a motion to not provide a recommendation on the Chapter 91 Simplified License Application, 24 Flume Ave, Marstons Mills, record number 23-WW06-0014-APP, but requests the Board submit a letter strongly urging the Massachusetts Department of Environmental Protection consider the public comments submitted to the Planning Board and to attach all public comments received, seconded by Michael Mecenias,

Roll Call Vote:

Bob Twiss - aye

Tim O’Neill - aye

Ray Sexton - aye

Michael Mecenias - aye

Stephen Robichaud - aye

Approval of Minutes

April 10, 2023 draft minutes

Chair Stephen Robichaud entertains a motion to approve, moved by Bob Twiss, seconded by Tim O’Neill,

Roll Call Vote:

Ray Sexton - aye

Bob Twiss - aye

Tim O’Neill - aye

Michael Mecenias - aye

Stephen Robichaud - aye

Future Meetings: May 8, 2023 and May 22, 2023, @ 7:00 p.m.

Workshop for design guidelines is this Friday,
Chair Stephen Robichaud will do 2 to 5.

Adjournment

Chair Stephen Robichaud entertains a motion to adjourn, moved by Ray Sexton, seconded by Tim O’Neill,

Roll Call Vote:

Ray Sexton - aye

Bob Twiss - aye

Tim O’Neill - aye

Michael Mecenias - aye

Stephen Robichaud – aye

The meeting adjourned at 10:00 p.m.

Respectfully Submitted
Karen Herrand, Principal Assistant, Planning & Development

Further detail may be obtained by viewing the video via Channel 18 on demand at
<http://www.town.barnstable.ma.us>

List of Exhibit Documents

Exhibit A - TJA Clean Energy Special Permit presentation

Exhibit B - TJA Clean Energy Special Permit - Refers to FR3 sheet, EPA, pg. 3, paragraph 12

Exhibit C - TJA Clean Energy Special Permit – handout from Anne Salas

APPROVED