

**BOARD OF APPEALS
REGULAR MEETING MINUTES
WEDNESDAY
MARCH 29, 2017**

Members Present: Christopher Graham, Chairman
Gerald Coutinho, Vice Chairman
Gary Simmons
Donna Lambert
Roger Menard
Peter Borden
Also present: Ralph Souza, Building Commissioner

Chairman Graham called the Zoning Board of Appeals meeting to order at 7:00 PM in the Westport Town Hall, 816 Main Road, Westport, MA with the reciting of the Pledge of Allegiance.

Pledge of Allegiance

Chairman's Announcement - Under MGL Chapter 30A, section 20(e) – Meeting being recorded.

BWC Connecticut River, LLC – RE: Petitioner is seeking a Special Permit by the Zoning Board of Appeals under Article 8, Section 8.3.2. Petitioner is proposing a commercial use (solar array – solar field) in an Aquifer Protection District. The property is located at 0 Adirondack Lane, Westport, MA and shown on Assessor's Map 1, Lots 13 & 14.

Hearing the Petition: Graham, Coutinho, Simmons, Menard and Borden
Also Present: Ralph Souza (Zoning Enforcement Officer/Building Commissioner)
Richard R. Riccio, III P.E. (representing applicant)
Michael Marsch and Giovanna Olson (BWC Connecticut River, LLC)
Steve J. Sampson, 1218 Old Fall River Road, Dartmouth, MA
Abutters Present: None

Chairman Graham called the meeting to order at 7:00 PM with the Pledge of Allegiance and announced the meeting was being recorded under MGL ch.30A, section 20(e). Mr. Graham then read the Public Hearing Notice and asked if anyone wishing to speak on this petition, must give their name and address for the record.

Mr. Riccio stated the applicant is proposing to construct a fixed-array photovoltaic (“PV”) power generation facility on two parcels of land located off of Adirondack Lane in the far northern section of the Town of Westport. The project will consist of the construction of multiple fixed solar panels on an above ground mounting system. The project will be divided into two arrays: Adirondack Lane A, consisting of approximately 13,200 solar panels producing approximately 4.5 megawatts (MWDC) of power will be located on Map 1, Lot 14 and Adirondack Lane B, consisting of approximately 5,800 solar panels producing approximately 2.0 megawatts (MWDC) of power will be located on Map 1, Lot 13.

The disturbed areas beneath the solar panel arrays will be loamed and seeded as necessary to stabilize the ground following installation of the solar panel foundations and structures and the array area will be maintained in a grassed condition. The applicant is also considering the use of an agricultural canopy configuration for the array which would allow continued agricultural use of the land beneath the array. The site will be accessed via a gravel access road off of Adirondack Lane. This gravel access road will enter the site in the location of an existing cart path that the landowner currently uses to access the area of the parcel being considered for the array and maintain an active agricultural use that will remain. The gravel access road will be 20' wide and will traverse to the main equipment panels centrally located between the two arrays. The entire installation will be protected with a chain link fence installed around

the perimeter of the project. As this site will be an unmanned installation, there will be no water or sewer utilities required at the facility. The proposed installation will be tied into the existing power lines along Blossom Road via an overhead (or underground) wire connection from the proposed customer owned equipment pad at the array site to the existing power lines. The details of the proposed interconnection are currently being finalized between the applicant and National Grid.

Mr. Riccio also mentioned that the proposed project has already been through Site Plan Review and the Special Permit process with the Westport Planning Board and has obtained an Order of Conditions from the Westport Conservation Commission. In addition, the applicant stated that he has had multiple discussions with the Superintendent of the Fall River Water Department (Michael Labossiere), who owns the land to the north and west of the proposed array and the Fall River Water Department was satisfied that the array posed no threat to the North Watuppa Pond aquifer.

The Board then discussed the entire project with the applicant and engineer. Mr. Graham then called upon any abutters for public input; none was received.

8:10 PM

Motion made by Mr. Coutinho to close the hearing and begin Board discussions. Second by Mr. Simmons. The Board voted unanimously in favor.

Discussion

Overall, the Board agreed that they had no problem with the proposal as long as the proper conditions were imposed. The Board acknowledged the plans that were submitted to the Westport Planning Board and Westport Zoning Board of Appeals. The array will consist of 22 acres, fenced in, as shown on the plan. There will be no roof structures on the property. There will be no storage of chemicals or fuels or fuel-powered equipment. In addition to those provisions in the Town Bylaw, a dismantling/decommission provision will be addressed in the lease agreement with the applicants. There is a plan on file for Operations and Maintenance. The Special Permit will be specific to the property and not the applicant or owner. There will be no washing of the arrays with chemicals, the applicant will rely on the natural elements (snow, rain). The fluids in the electrical equipment consist of non-toxic mineral oils.

Vote taken

Motion made by Mr. Coutinho to grant a Special Permit in accordance with Article 8 of the Zoning Bylaws for approval of a commercial use of a solar array located within an Aquifer Protection District with the following findings and conditions:

Findings:

The Board made the following findings:

1. The Board found that the proposed uses of and proposed structures to the property satisfy the requirements of ZBL §8.3.3A.
2. The Board found that the proposed uses and structures do not pose an actual or potential threat of material damage to groundwater quality.
3. The Board found that all adverse impacts to groundwater and disturbance of natural vegetation have been avoided or minimized to the maximum extent reasonably practicable, giving due regard to the economic scope of the project, and the public benefits to be secured from the project.
4. The Board found that the proposed use is in harmony with the purpose and intent of the bylaw and purpose of the Aquifer Protection Overlay District.
5. The Board found that the proposed use is appropriate to the natural topography, soils and other characteristics of the site to be developed.
6. The Board found that no pesticides, fertilizers or chemicals shall be stored or used on the entire property, including buffered areas.
7. The Board found that no toxic substances shall be stored or used in or around the property.

8. The Board found that no salt or de-icing chemicals shall be stored or used; no off-site snow or ice shall be dumped and stored at the property.
9. There will be no roof structures on the property.
10. There will be no storage of chemicals or fuels or fuel-powered equipment on the property.

Conditions:

The Board imposed the following conditions on the exercise of any Special Permit relief granted and exercised hereunder:

1. All of the Findings of Fact and Conditions noted in the above Findings shall be in force and effect at all times.
2. This Special Permit shall be recorded by the Applicants as a condition of approval and shall not take effect or be exercised until and unless it is duly recorded at the Registry of Deeds.
3. This Special Permit shall lapse if it is not duly recorded at the Registry of Deeds of its substantial use or construction under the permit is not commenced within two (2) years from the date the permit takes final effect (i.e. either 20 days after the decision is filed with the Town Clerk, with no appeal having been filed, or upon final resolution of an appeal from this decision in the applicant's favor), except for good cause or the final determination of an appeal.
4. The applicant shall construct the project in accordance with the approvals as granted by the Westport Planning Board and the Westport Conservation Commission.
5. The Plans of Record are as follows:
 - A. Site Plans entitled: Proposed Solar Array – Adirondack Lane A&B
Prepared by Field Engineering Co., Inc. for BWC Connecticut River, LLC
Dated: 1/23/17 and last revised: 2/23/17
Applicant Project # 2117-3
6. The project will be built in accordance with the plans and data submitted to the Zoning Board of Appeals.
7. All equipment fluids shall be non-toxic (reference to MSDS sheets).
8. All provisions of Article 24 and applicable sections of Article 8 are to be adhered to.

Second by Mr. Menard. The Board voted 5 in favor, 0 opposed.

The hearing ended at 9:10 PM.

Gerald S. & Vivian C. Coutinho – RE: Petitioner is seeking a Finding to amend, change, alter and/or delete the special permit(s) of August 22, 1984 and May 01, 1992 and May 27, 1992 and November 23, 1992. The property is located at 4 Main Road, Westport, MA and shown on Assessor's Map 51, Lot 8.

Members Present: Graham, Simmons, Lambert, Menard and Borden

Also Present: Ralph Souza, Building Commissioner/Zoning Enforcement Officer
Gerald S. Coutinho, petitioner

Abutters Present: Terri S. Babcock, 12 Main Road
Debra J. Silvia, 22 Main Road

Chairman Graham opened the hearing at 9:15 PM with the reading of the Public Hearing Notice and asked that if anyone wished to speak on this petition, to state their name and address for the record.

Mr. Coutinho stated he was here tonight to request relief from a provision, which is now found to have been wrongly put into his decision by the Zoning Board of Appeals a long time ago. Mr. Coutinho stated he bought the property located at 4 Main Road, approximately 33 years ago, in 1984. The property was owned by the Ferreira Family and consisted of an apartment, a TV sales & service business and a garage. Mr. Coutinho stated the property owner and real estate agent who was handling the sale of the property for the Ferreira Family, petitioned the Zoning Board of Appeals at that time for relief. Mr. Coutinho stated findings were applied for, because there had been an ongoing existing business at that time, and other types of businesses which were allowed for under our zoning bylaws, for changes or alterations of non-conforming uses. When the owners/real estate agent applied, an application then used by the Zoning

Board which is no longer used, had at the top of the application, Variance or Special Permit; the word Variance was crossed out. Mr. Coutinho stated what the applicant was really looking for was a Finding that these proposed uses were not substantially more detrimental to the neighborhood than what had been there. Mr. Coutinho stated hearings were held on this request and his neighbors were present for those hearings. Mr. Coutinho stated he presented his case to the Zoning Board of Appeals; noting that he was not a member on the Board at that time. The Board, after considering all the information submitted, positively acted on the request which was to alter the building, whereby the garage was allowed to be changed into a commercial facility; the first floor of the main building which was the sales & service of electronic equipment and televisions, was renovated; and the apartment was simply upgraded. Mr. Coutinho stated the Board also approved the uses. Mr. Coutinho stated rather than applying constantly to the Board for each type of new tenant, he had submitted a list of potential non-nuisance businesses; none having to do with fuel or liquor out of a concern for the High School across the street. The Board reviewed the list, eliminating two or three uses and then gave approval of those uses. Mr. Coutinho stated the Board found that the approved uses would not be substantially more detrimental. Mr. Coutinho stated he did come back to the Board a few more times depending on what his tenant wanted to do. Mr. Coutinho stated the key piece, Item #4 states this Special Permit is personal to Gerald S. & Vivian C. Coutinho and will expire when such persons are no longer responsible for the operations of these premises. Mr. Coutinho noted that there is inconsistency in the ZBA method of dating the previous decisions, so all dates are approximate.

Mr. Coutinho stated in 1992, he was before the Board again for another hearing. At that time, his tenant wanted to have an addition put on the building, the Board gave their approval; in addition, some additional uses were requested and the Board found again, this would not be substantially more detrimental to the neighborhood. Mr. Coutinho stated at that same hearing, he requested that the personal condition be removed because he felt it was not fair because the Board almost never made it personal to the owners. Mr. Coutinho stated in 1992, the Board did not approve the request for removal of "personal". Mr. Coutinho continued to explain the changes that were made and read from the decision of May 6, 1992.

Mr. Coutinho stated he has lived with this decision since 1992 and was only here tonight, not with any requested changes, only for the removal the "personal" part to himself and his wife. Mr. Coutinho stated the Board previously found everything with "Findings" but they listed the decision as a Special Permit, personal to himself and his wife. Mr. Coutinho stated more importantly, he has since found out that the Special Permit was wrongly issued in the sense that it was made "personal" to the applicant.

Mr. Coutinho stated the Board has been provided with an emailed decision dated March 2, 2016 from Attorney Ilana Quirk, Town Counsel; this is one of the key pieces, along with our bylaw. Mr. Coutinho stated under Special Permits, the same bylaw that has not been changed from 1992 to now, the key piece is Article 2.5.0 for Special Permits. Mr. Coutinho reviewed the bylaw and the last two paragraphs of Town Counsel's opinion, stating that when there is a change of use in a non-conforming situation, it is a Finding not a Special Permit. Mr. Coutinho stated the State Law Chapter 40A, Section 6 goes even further on this. Mr. Coutinho stated that over the last 33 years, he has improved the property substantially and there is nothing else someone could do that would violate the law without running into trouble with Mr. Souza, the Building Commissioner, the Board of Health, etc. Mr. Coutinho stated if the abutters had concerns, they could go to the different departments for relief.

Again, Mr. Coutinho stated he was applying tonight to have the "personal" removed from these decisions, no other changes, allowing the next owner to be able to continue any of the prior approved uses. Mr. Graham stated as he understands this, Mr. Coutinho is looking for a Finding to remove the names of Mr. & Mrs. Coutinho from the Special Permit. Mr. Coutinho stated he just wanted this corrected, however the Board chooses to correct this. Mr. Coutinho stated if the Board wanted to seek counsel on this matter, that would be fine with him. Mr. Coutinho stated he was trying to avoid expense for everyone on this matter and he does not violate any ethics.

Mr. Menard stated he has known Mr. Coutinho for a while and in his case, he feels that he can render an impartial decision and he does not have a conflict of interest in this matter. Mr. Menard stated as Board members, each member should be able to say this. Ms. Lambert stated there is no personal or financial gain by any of the members on this Board.

Mr. Coutinho stated back in 1984 and 1992, neither the Board or himself, had the knowledge which was provided by court case interpretations, which was provided by Town Attorney, in dealing with Special Permits. Mr. Graham stated he was not sure whether an amendment to the Special Permit or a Finding needed to be done; this was probably best answered by Town Counsel. Discussion ensued.

At this time, Mr. Graham called for any input from abutters.

Input was received from Ms. Babcock and Ms. Silvia expressing concerns over a new owner of the property, who does not live in Town and does not take care of the property such as the Coutinho's, who have been wonderful neighbors; both were concerned over the hours of operation and what type of business would go onto the property. The abutters felt the decision should stay with the Coutinho's and stated they did not want to have their quiet enjoyment of their property disturbed; and they wanted to protect the neighborhood and their properties. Discussion ensued. Mr. Coutinho stated he understood the neighbor's concerns but what has been done is illegal by putting this personal to our names; and secondly, many of those uses could not be put there today because of the Town's new Site Plan approval process and other law and regulation changes.

The Board decided to request Town Counsel's opinion on whether this was done improperly in the past and how can this be undone.

Motion made by Mr. Simmons to continue to April 19, 2017 at 7:00 PM. Second by Ms. Lambert. The Board voted unanimously in favor.

The hearing is adjourned at 10:05 PM.

Action Items

None

Correspondence

None.

Other business

None.

Topics not reasonably anticipated forty-eight (48) hours in advance of the meeting

None.

Approval of Minutes

None.

10:05PM

Motion made by Ms. Lambert to adjourn the meeting. Second by Mr. Simmons. The Board voted unanimously in favor.

Adjournment.

Respectfully submitted,
Diane Pelland, Principle Clerk
to the Zoning Board of Appeals

APPROVED: Christopher Graham, Chairman