

MINUTES OF REGULAR PLANNING BOARD MEETING OF MARCH 12, 2012
Planning Board's Meeting Room #315, Town Office Building
400 Slocum Road, Dartmouth, MA

Planning Board

Mr. Joseph E. Toomey, Jr., Chairman
Mr. John P. Haran, Vice Chairman
Mrs. Lorri-Ann Miller, Clerk
Mr. Joel Avila

Absent

Mr. John V. Sousa

Planning Staff

Mr. Donald A. Perry, Planning Director
Absent - Mrs. Joyce J. Couture, Planning Aide

The Chairman called the meeting to order at 7:00 p.m. with four Planning Board members and the Planning Director present. Ms. Jane Kirby, Principal Clerk for the Zoning Board of Appeals, was present in Ms. Couture's absence.

Administrative Items

(1) Approval of Minutes

Regular Meeting of February 27, 2012

A motion was made by Lorri-Ann Miller, duly seconded by John Haran for discussion, and voted (4 yes-1 absent) to approve the minutes of the regular meeting of February 27, 2012 as written.

(2) Correspondence

Memo from David Cressman, Executive Administrator
Legal Notices from Conservation Commission
Legal Notices from Board of Appeals
Legal Notice from Fall River
Legal Notice from Freetown

A motion was made by Lorri-Ann Miller, duly seconded by John Haran, and voted (4 yes – 1 absent) to acknowledge and file the above referenced correspondence, with a discussion planned at the end of this meeting regarding Mr. Cressman's letter.

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(3) Endorsement of Approval Not Required (ANR) Plans State Road, Michael Panagakos, dated November 8, 2011

Present: Steven Gioiosa, P.E. – SITEC Inc.

John Haran, who owns property near the subject property, recused himself.

The Planning Director gave a brief summary of the plan before the Board, noting the ANR plan is proposing to combine two existing lots located at the southwest corner of State and Old Westport Roads into one lot, with no new lots being created.

Brief discussion ensued.

A motion was made by Lorri-Ann Miller, duly seconded by Joel Avila, and voted (3 yes -1 abstain -1 absent) to endorse the ANR plan prepared for Michael Panagakos for property located on State Road and dated November 8, 2011.

(4) Endorsement of Definitive Subdivision Plan entitled “Rhody Estates”

The Planning Director gave a brief summary, noting that the plans were revised; the Town Clerk certified that no appeals were filed, and the Performance Covenant was received. He recommended the Planning Board endorse the plan.

A motion was made by John Haran, duly seconded by Lorri-Ann Miller, and voted (4 yes-1 absent) to endorse the Definitive Subdivision Plan entitled “Rhody Estates”

(5) Endorsement of Definitive Subdivision Plan entitled “The Preserve at High Hill”

The Planning Director gave a brief summary, noting that the plans were revised; the Town Clerk certified that no appeals were filed, and the Performance Covenant was received. He recommended the Planning Board endorse the plan.

A motion was made by John Haran, duly seconded by Joel Avila, and voted (4 yes-1 absent) to endorse the Definitive Subdivision Plan entitled “The Preserve at High Hill”

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(6) Time Extension for “Antonio Way Extension” Subdivision

The Planning Director gave a brief summary, noting that the property owners on the unfinished road submitted a letter dated February 18, 2012 agreeing to a one year time extension to complete the road in the “Antonio Way Extension” subdivision.

A motion was made by John Haran, duly seconded by Lorri-Ann Miller, and voted (4 yes-1 absent) to grant the requested one year time extension to April 3, 2013 for the completion of the road for the Antonio Way Extension subdivision.

(7) Acknowledgement of Chapter 91 Waterways License Application for ECTL Realty Trust, 11 & 13 Pokanoket Lane

The Planning Director stated that the license application is for dredging a small area next to an existing stone pier in Nonquitt.

A motion was made by John Haran, and duly seconded by Joel Avila, and voted (4 yes-1 absent) to authorize the Planning Director to sign the license application and to forward the standard letter to DEP regarding this application.

(8) Action on Off-Street Parking Plan entitled “A & A Jewelers, 169 Rockdale Avenue”

Present: Steven Gioiosa, SITEC, Inc., representing the applicant
Paul Murphy, Director of Inspectional Services
Joseph Winterhalter, proprietor of McDonald’s, 149 Rockdale Ave.
Attorney Steven Weil, Doherty, Ciechanowski, Dugan & Cannon, P.C.
Nancy Dittmeier, Property Manager, McDonald’s USA

The Planning Director updated the Board, and stated that correspondence was received from Paul Murphy and Attorney Weil. The Planning Director determined that based on the information provided, the submitted revised plan does not comply with the parking requirements and noted that the revised plan was submitted too late for Mr. Murphy to review.

Donald Perry read Mr. Murphy’s letter into the record, which explained how gross floor area is calculated.

Steve Gioiosa stated that his client Alex Nasrawi was out of the country, but agreed to the proposed changes that he is presenting. Mr. Gioiosa proceeded to review the proposed changes with the Board, which included reducing the existing building’s footprint and two additional parking spaces. Mr. Gioiosa stated that the plan would need to be formally revised to include said changes.

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The Board questioned the size of the utility room and a lengthy discussion ensued.

The Board's main concern was that future applicants may try to evade the zoning by-law by creating oversized utility rooms, which are not calculated as part of the gross floor area according to Mr. Murphy's letter.

Mr. Gioiosa stated that the former bank had utilities located in different portions of their floor plan, and his client is placing all his utility needs in one location.

The Board requested a list of what will be located in the utility room.

Based on the letter submitted by Attorney Weil, the Board questioned Paul Murphy on whether or not the Planning Board had the authority to make an independent interpretation of the zoning by-laws. Mr. Murphy stated that he works cooperatively with Town Boards, but that ultimately it is the Building Inspector's duty to interpret the by-laws.

Attorney Weil clarified that his letter was referencing the Planning Board's authority for interpreting the by-law for off-street parking plans.

Attorney Weil requested that the new revised plans show the actual building footprint dimensions, and stated that he is in possession of the original building survey and will forward copies of this survey to the Board.

Mr. Gioiosa agreed that he will provide the final dimensions on the next revised plan to be submitted to the Board, along with the newly proposed changes to the site.

The Board did not take any action on this item at this time.

Action on this item was postponed to March 26, 2012.

(9) 7:50 p.m. Appointment to discuss proposed Solar Farm By-law Amendments

Present: Deborah Melino-Wender, Director of Economic Development
Melissa Haskell, Town Moderator
Colleen Noseworthy, 895 Old Fall River Road
Jack Arruda, EMI (Energy Management Incorporated)

The Planning Director stated that the Select Board is interested in amending sections of the Solar Farm By-law and that Deborah Melino-Wender is seeking preliminary Planning Board input regarding the proposed changes.

Deborah Melino-Wender stated that staff has been working diligently on this issue trying to address concerns raised by residents at the Select Board meeting, and

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submitted a copy of the proposed amendment language for Section 37 of the Zoning By-laws for Large-Scale Ground-Mounted Solar Photovoltaic Installations, and reviewed the proposed changes with the Board.

The proposed changes included:

- Site plan review prior to the issuance of a building permit, with the Planning Board as the Site Plan Review Authority
- Landscape Plan stamped by a registered landscape architect certifying compliance with the zoning by-law
- Emergency Response Plan
(to be submitted to Fire Chief)
- Design standard setback changes
(Stronger requirements for residential zones and less in industrial zones)
- Buffers
(height of new plantings no less than installed panels at the highest point)
- Utility Connections
(as far away from residential uses as possible)
- Accessory structure and panel support colors
- Financial Surety
(costs determined by qualified engineer selected by the Town)
- Land clearing, soil erosion and habitat impacts
(no tree cutting between April 1st and September 30th)

The Planning Director reminded the Board that this was a general presentation, and although the proposed amended language to Section 37 was sponsored by the Select Board, the purpose of this presentation was to receive Planning Board input prior to a formal submission for recommendation.

Lengthy discussion ensued, with the Board making suggestions in terms of the proposed amendment language.

The Board discussed the proposed utility connection language and determined that “as far away from residential uses as possible” was too vague.

The Board expressed concern with limiting the time for tree cutting, noting that there are no such restrictions for any other type of project in Town.

The Board, referencing amended Section 37.412 Solar Panel Mounting System,

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questioned the cost difference between ballast mount systems versus other mounting systems and would like to see a cost analysis.

The Planning Director recommended that the proposed amended by-law be reviewed by industry professionals to determine how they would be impacted by the changes, or to receive technical advice.

The Board suggested the qualified engineers that the Town would consider using to calculate the financial surety could be contacted.

Deborah Melino-Wender will revise the proposed Solar By-law Amendment article for the Select Board.

The Chairman recognized Mrs. Noseworthy and asked for her comment.

Mrs. Noseworthy stated that she would like to see the Town designate areas for solar farms that are not near residential districts and was seeking procedural advice on submitting a zoning article. The Planning Board reviewed timelines and procedure with her, and suggested that she hire an attorney to write a warrant to be presented at Town Meeting, if that was her intent.

The Board believed a similarly proposed zoning article has been scheduled to be heard at a Special Town Meeting proposed for April 24, 2012, and expressed concern in terms of receiving the proposed zoning article in time to make a recommendation.

Melissa Haskell, Town Moderator, reviewed state law timelines and procedures, noting that if the Planning Board recommendation isn't received in time, the article would be ruled out-of-order at the Special Town Meeting proposed for April 24, 2012.

The Board noted that questions or concerns could come up that would need clarification, and used this evening's presentation as an example. If more research or language revisions are needed, it could hinder the recommendation process.

Jack Arruda, EMI, pointed out that even if the community approves a solar farm project, the local utility company (NStar) would still need to approve the interconnection to their distribution system. According to the Green Communities Act, there is a "2% cap" on net metering projects, where the Town receives a utility credit, and a "1% cap" on private industry projects, where the energy is not sold to the municipality. Once the local utility company reaches their "cap", interconnection into the distribution system is not guaranteed.

The Board appreciated his input and the clarification that interconnection approval is needed from the local utility company for all projects "tying into the grid" of their distribution system.

This appointment ended at 9:20 P.M.

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(10) Discussion of Zoning Article Regarding Temporary Uses (Tents)

Lorri-Ann Miller reviewed the existing and proposed zoning article regarding temporary uses with the Board.

Discussion ensued in terms of “tent sales” being beneficial to businesses, and whether or not the Board should sponsor the proposed Temporary Use Article.

The Planning Director emphasized that the existing safety checks would remain in place (review by the Director of Inspectional Services for congestion, traffic impact and pedestrian safety).

A motion was made by Lorri-Ann Miller, duly seconded by John Haran, and voted (4 yes-1 absent) to sponsor the proposed Temporary Use Article and submit it to the Select Board for inclusion in the Annual Town Meeting Warrant in June 2012.

(11) For Your Information/New Business

Reviewer’s Meeting Update:

- Steve Gioiosa, SITEC Inc., met with the reviewers to discuss potential development scenarios for “Brady Estates” located on Hixville Road.

One option was to develop a solar farm on back land which after 20 years or the life expectancy of the solar farm would then be given back to the Town as open space land. Any options other than 40B would require Board of Appeals action and Planning Board approval under the Subdivision Control Law.

- The Solar Farm at the Town Landfill was discussed and how it may be difficult to screen the panels from view since they will be located on top of the landfill mound.
- Painting the Slocum Road curbing around the stadium was discussed as a means of identifying no parking areas.
- A Sewer Overlay District is being studied by the DPW to limit unplanned sewer expansions and reserve treatment plant capacity for existing trouble spots.
- The Select Board has a new policy that for 61A applications, Agricultural Commission input will be required prior to the Select Board’s decision whether to exercise the purchase option.

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Dave Cressman Letter dated February 23, 2012

The Board believed that Mr. Cressman's letter only answered half of the question.

In closing, Mr. Toomey noted that the next Planning Board meeting is scheduled for March 26, 2012, in room #315, Town Office Building, 400 Slocum Road. He then called for a motion to adjourn.

A motion was made by Lorri-Ann Miller, duly seconded by Joel Avila, and unanimously voted (4 yes-1 absent) to adjourn this evening's regular meeting at 10:00 p.m.

Respectfully submitted,

Jane Kirby, Principal Clerk
Zoning Board of Appeals