

**TOWN OF GREAT BARRINGTON  
SELECTMEN'S MEETING MINUTES  
June 23, 2014**

**PRESENT:**

DEBORAH PHILLIPS, Board of Selectmen  
SEAN STANTON  
STEPHEN C. BANNON  
DANIEL BAILLY  
ED ABRAHAMS  
JENNIFER TABAKIN, Town Manager

**1. CALL TO ORDER:**

The meeting began at 7 P.M. at Town Hall.

**2. MINUTES:**

May 27, 2014, regular meeting, approved on a motion by Mr. Stanton, seconded by Mr. Bannon and agreed to by all

June 2, 2014, strategic planning priorities meeting, approved on a motion by Mr. Stanton, seconded by Mr. Bannon and agreed to by all

June 17, 2014, special meeting, approved on a motion by Mr. Stanton, seconded by Mr. Bannon and agreed to by all

**3. SELECTBOARD'S ANNOUNCEMENTS/STATEMENTS:**

A. GENERAL COMMENTS BY THE BOARD.

B. UPCOMING MEETING CALENDAR.

**4. TOWN MANAGER'S REPORT:**

A. FOLLOWUP: VACANCIES ON TOWN BOARDS/COMMITTEES/ COMMISSIONS.

The town manager invited legal residents of the town to apply for openings on the Tree Committee, Design Advisory Committee, Five-Town Cable TV Committee, Downtown Parking Task Force, Southern Berkshire Technology Committee, Energy Committee and Board of Registrars. There is also an opening for fence viewer.

**5. LICENSES/ PERMITS:**

A. CONTINUATION OF LYNN A. HUTCHINSON APPLICATION FOR A DRIVEWAY PERMIT AT THE WEST SIDE OF LONG POND ROAD/NORTH SIDE OF ASSESSOR MAP 33, LOT 3.

Hearing a brief description from surveyor Michael Parsons, the board on a motion by Mr. Stanton, seconded by Mr. Bannon and voted unanimously, approved the application. Ms. Tabakin reported that another matter between the applicant and the Zoning Board of Appeals had been resolved, though the applicant still had right to make a court appeal.

B. RICHARD ROTHBARD/AMERICAN ART MARKETING D/B/A BERKSHIRE ARTS FESTIVAL FOR TWO (2) TEMPORARY WEEKDAY ENTERTAINMENT LICENSES FOR JULY 4 AND 5, 2014, FROM 1 to 3 PM AT SKI BUTTERNUT, 380 STATE ROAD.

The board on a motion by Mr. Stanton, seconded by Mr. Bannon, unanimously approved the application.

C. RICHARD ROTHBARD/AMERICAN ART MARKETING D/B/A BERKSHIRE ARTS FESTIVAL FOR TEMPORARY SUNDAY ENTERTAINMENT LICENSE FOR JULY 6, 2014, FROM 1 to 3 PM AT SKI BUTTERNUT, 380 STATE ROAD.

The board on a motion by Mr. Stanton, seconded by Mr. Bannon, unanimously approved the application.

D. ILAN BACHRACH/MASS LIVE ARTS FOR 16 ONE-DAY BEER AND LIQUOR LICENSES FROM JULY 7 to 26, 2014 (PER DOCUMENT PRESENTED) FROM 6 PM to 12 AM AT DANIEL ARTS CENTER, BARD COLLEGE AT SIMON'S ROCK, 84 ALFORD ROAD.

The board on a motion by Mr. Stanton, seconded by Mr. Bannon, unanimously approved the application.

E. CATHY INGRAM/BARD COLLEGE AT SIMON'S ROCK FOR ONE-DAY BEER AND WINE LIQUOR LICENSE FOR SATURDAY, JULY 12, 2014, FROM 3 to 9 PM AT DINING HALL AND TRI DORM LAWN AT BARD COLLEGE AT SIMON'S ROCK, 84 ALFORD ROAD.

The board on a motion by Mr. Stanton, seconded by Mr. Bannon, unanimously approved the application.

F. JOHN KROL/THE KINDRED GR8T ROAD RACE FOR PERMISSION TO HOLD AN 8-MILE ROAD RACE ON SATURDAY, AUGUST 16, 2014, START AT 8 AM NEAR THE NEWSBOY STATUE ON SILVER STREET AND FINISH NEAR THE KINDRED FACILITY ON MAPLE AVENUE.

The board on a motion by Mr. Stanton, seconded by Mr. Bannon, unanimously approved the application.

G. VERIZON NEW ENGLAND, INC. FOR PERMISSION TO REPLACE MANHOLE ON THE WESTERLY SIDE OF MAIN STREET AT THE INTERSECTION OF ELM STREET; REPLACE MANHOLE ON THE WESTERLY SIDE OF MAIN STREET AT THE INTERSECTION OF DRESSER AVENUE AND INSTALL TWO 4-INCH CONDUITS BETWEEN MANHOLES.

John Martino, representing Verizon, was unable to specify an exact date when work would be done as he said Verizon was under the impression no street work could be done between July 4 and Labor Day, but the work would be accomplished ASAP and comply with what is being done in the downtown section. DPW Superintendent Joe Sokul said there have been problems with the old conduits and the work will be done just outside the shut down downtown area. The board on a motion by Mr. Stanton, seconded by Mr. Bannon, unanimously approved the application.

## **6. PUBLIC HEARINGS:**

A. CONTINUATION OF HEARING ON SPECIAL PERMIT APPLICATION OF ST. JAMES PLACE/FRED AND SALLY HARRIS, 352 MAIN ST., GREAT BARRINGTON FOR A COMMUNITY CENTER USE IN B-2 ZONE, DEVIATION FROM CERTAIN PARKING REQUIREMENTS AND EXTERIOR ALTERATIONS IN THE VILLAGE CENTER OVERLAY DISTRICT, IN ACCORDANCE WITH SECTIONS 3.1.4 B (6), 6.1, 9.6 AND 10.4 OF THE GREAT BARRINGTON ZONING BYLAW.

The hearing re-opened at 7:15 PM. Applicants Sally and Fred Harris appeared before the board. Mr. Harris said the plan is to convert the former (built in 1857) St. James Episcopal Church as a community center and office space. He said the building, suffering major structural problems, was purchased in 2011. It has 17,000 square feet of space. The plan is to create three performance spaces, six offices for cultural organizations and a basement space for People's Pantry.

Mr. Harris asserted the community center's goals align with the town's Master Plan. He said the building is in keeping with the downtown architectural character that includes other dolomite buildings such as Searles Castle, First Congregational Church and the former Christian Science Church. He said there is a very old sugar maple tree on the front lawn. He said the building will generate revenue. He said the plan incorporates changes suggested by the Planning Board, particularly an access to the basement People's Pantry for deliveries.

Nick Anderson of Berkshire Engineering said there is very little real estate with St. James Place, and an arrangement had to be worked out with the owner to the north for shared use of 20 parking spots to the rear of that property, next to the play area behind Town Hall. The center will need spots mostly in evenings. He said the driveway, which is shared, cut will be widened to 18 feet and be able to handle two-way flow. He said the old garage will be preserved, there will be new accessible entrances, the sidewalk will be replaced and improved, new stormwater drainage will be put in and a new transformer will be installed. Some small trees will be removed. Three parking spots will be created on St. James Place/West Avenue, one of them designated for disabled drivers.

Ms. Tabakin reported the Planning Board, Design Advisory Committee and Board of Health recommended approval and the Conservation Commission said it had no jurisdiction. There was discussion of wording to go on signage for the loading zone. Mr. Stanton suggested there might be room for a fourth parking space, and Mr. Anderson agreed, but said it would be on town land. In answer to another question, the engineer agreed motion-activated switches on parking lot lights on two poles could be accomplished. On a motion by Mr. Bannon, seconded by Mr. Stanton and agreed to by all board members, the hearing closed at 7:45 PM.

**VOTE** Mr. Stanton moved, Mr. Bannon seconded: To approve the Findings of Fact for Special Permit 829-14 for St. James Place, 352 Main Street, Great Barrington, as submitted and referenced as Exhibit A. By roll call, all members said yes and made the following FINDINGS OF FACT:

Special Permit 829-14. St. James Place

A. Introduction

The Special Permit application was filed on April 24, 2014 by St. James Place Inc., 352 Main Street, Great Barrington, owners of the site. The Special Permit application seeks permission from the Great Barrington Selectboard for a community center use in a B-2 zone per Sections 3.1.4 B(6), deviation from certain parking requirements per Section 6.1, and exterior alterations in the Village Center Overlay District per Section 9.6, and in accordance with Section 10.4 of the Great Barrington Zoning Bylaw.

B. General Findings

The Owners / Applicants are proposing to renovate the former St. James Church, now known as St. James Place, and its attached parish house to provide a nonprofit community center. The center will have performance space in the former sanctuary, offices for nonprofits and arts groups in the parish house, a community hall and kitchen space, and, in the basement, office and space for the People's Pantry. Because the proposal is not solely office space or performance space, but includes a number of uses to benefit the community at large, the owners have defined their use as a "community center" which is allowable through a special permit. The zoning bylaw defines these uses as follows: *Indoor and/or outdoor facilities such as playgrounds, gym, swimming pool, exercise rooms, recreational areas, meeting rooms, food service, and similar compatible uses as determined by the SPGA during the special permit approval process.*

The church was built in 1857 and is listed on the National Register of Historic Places as part of the Taconic and West Avenues National Historic District. The Parish House was added to the south west side in 1912. Together with Searles Castle across the street, it frames the southern

gateway to downtown. Because the site is within the Village Center Overlay District, a special permit is required for exterior alterations and change of use, per Section 9.6.

The existing parking area in the rear will be expanded to accommodate a total of 21 spaces (2 handicapped). Twelve of those spaces are on the adjacent property, but a draft access and use agreement has been drafted to facilitate shared parking. Thus, technically, there will only be 9 spaces on-site. This is enough to serve for the office space, but not enough for a 200+ seat performance space. Since performance events will most likely occur when office space is not in use, shared parking is possible. Even so, 21 total spaces would accommodate less than 100 seats in a performance space. Since the site as designed will not accommodate sufficient parking spaces, a parking waiver per Section 6.1.9 is requested.

To create the parking that is proposed, grading is required, as shown on the plans. New drainage patterns are created, so a series of swales, curtain drains, and roof gutters are proposed to capture and eventually directed off-site into the town system. Most of the rear yard will remain grass, keeping most of the nature of the site intact.

A large grade cut in the existing bank is proposed required to accommodate a new entrance into the basement level, which will house the People's Pantry. The proposed grades of the bank cut would not be greater than the adjacent slopes, and proper drainage is provided. A new curb cut is proposed here also. The curb cut, developed in coordination with the Town, proposes three short-term parking spaces, where clients of the People's Pantry can park temporarily.

An elevator will be located in the rear, accessible from the rear parking lot. The two front entrances, the south side main floor entrance, and the People's Pantry entrance will all be ADA accessible. The site work corresponds to the proposed Main Street Reconstruction plans.

The Special Permit application received positive recommendations from the Planning Board and Board of Health. The Design Advisory Committee made a positive recommendation. The Conservation Commission does not have any jurisdiction here under either the Wetlands Protection Act or Scenic Mountains Act.

The Owners met with the Planning Board twice in order to finalize the site plans. The proposal received Site Plan Approval from the Planning Board per Zoning Section 10.5. The Planning Board included several conditions with the Site Plan Approval

#### C. Village Center Overlay District Criteria and Specific Findings

Section 9.6 of the Zoning Bylaw requires a determination by the Special Permit Granting Authority that the proposed use meets the following criteria, to the extent practicable.

1. Improves village vitality and walkability;
2. Promotes mixed-use; and
3. Promotes economic revitalization.

Finding: By restoring and revitalizing a historic structure this proposal maintains the pleasant walking environment, maintains an iconic landmark of downtown, and provides a new mixed-use destination in downtown. By including a mix of performance space, office space, and community space, this proposal promotes mixed-use. Through significant investment to restore a historic structure to provide needed community uses, this proposal promotes economic revitalization. The Selectboard finds that this proposal meets the criteria of the Village Center Overlay District to the extent practicable.

#### D. Parking Waiver Criteria and Specific Findings

Section 6.1.9 of the Zoning Bylaw allows the Special Permit Granting Authority to waive the parking requirements of Section 6.1, in accord with a finding from the Planning Board.

The Planning Board, in its letter dated June 17, 2014, transmitted the following findings: (1) there is sufficient onsite parking provided for the building's offices and additional parking spaces are available during off-peak hours based on a shared use agreement with 342 Main Street; (2) short term parking and loading for the People's Pantry is provided on St. James Place; (3) the

proposed plans maintain pedestrian safety and vehicular safety on the site, around the site and accessing and exiting the site; (4) future pedestrian or vehicular connections to the Town Hall parking lot may be possible; (5) off-site parking is regularly available within walking distance; (6) the building has been historically used for assembly uses with less parking than is now proposed; therefore this proposed use would not be more detrimental than the previous use; and (7) the proposed plans provide for historic renovation of the building while preserving green space in the Town.

Findings: The Selectboard concurs with the Planning Board's findings.

E. General Special Permit Criteria and Specific Findings

§10.4.2 of the Zoning Bylaw, granting of a special permit requires a written determination by the Special Permit Granting Authority "that the adverse effects of the proposed use will not outweigh its beneficial impacts to the town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site." This determination shall include consideration of the following six criteria:

1. Social, economic, or community needs which are served by the proposal;
2. Traffic flow and safety, including parking and loading;
3. Adequacy of utilities and other public services;
4. Neighborhood character and social structures;
5. Impacts on the natural environment; and,
6. Potential fiscal impact, including impact on town services, tax base, and employment.

Consideration of the Criteria in relation to SP #829-14:

Per §10.4.2 of the Zoning Bylaw, granting of any special permit requires a determination by the Special Permit Granting Authority "that the adverse effects of the proposed use will not outweigh its beneficial impacts to the town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site." The six criteria and the Board's considerations in relation each are detailed below:

1. Social, economic, or community needs which are served by the proposal.
  - The proposal serves the community's needs by providing space for the People's Pantry, office space, commercial kitchen space, meeting space, and performance space. These uses provide for acknowledged community needs and serve the region's arts and cultural economy. The proposal is 100 percent in harmony with the Town's Master Plan.
2. Traffic flow and safety, including parking and loading.
  - Traffic flow into and out of the site is improved via the existing driveway. The access on St. James Place is sited in order to be out of the travelled way providing safe loading and unloading.
3. Adequacy of utilities and other public services.
  - There is adequate water and sewer to serve the use.
4. Neighborhood character and social structures.
  - The proposal is in keeping with the character of area. It maintains the historic structure intact. Its uses are in keeping with the downtown's business, arts, and cultural activities.
5. Impacts on the natural environment.
  - The proposal has no negative impacts on the natural environment. It has positive impacts by virtue of reusing an existing building, maintaining much of the existing green space, and encouraging walking and shared parking.
6. Potential fiscal impact, including impact on town services, tax base, and employment.
  - The proposal is a nonprofit but the reuse of a historic building in the downtown will be a positive sign for continued area revitalization. New employment may occur related to the office and performance space.

Finding: In consideration of the above Findings, this Board finds that the benefits of the proposal outweigh any possible detrimental impacts.

F. Proposed Conditions

Install motion-sensitive dimmers on the two light poles in the parking lot and construct a fourth parking space on St. James Place/West Avenue.

**VOTES:** Mr. Stanton made three motions. Mr. Bannon seconded in each case. On roll call, all members in each instance voted in favor:

- In view of the approved Findings of Fact, move to approve Special Permit 829-14 for St. James Place, for exterior alterations in the Village Center Overlay District per Sections 9.6 and 10.4 of the Zoning Bylaw.

- In view of the approved Findings of Fact, move to approve Special Permit 829-14 for St. James Place, for parking waiver per Sections 6.1.9 and 10.4 of the Zoning Bylaw and the Planning Board's findings dated June 17, 2014. Approval is with the stipulation permission is given to install a fourth 22-foot parking spot to the west of planned parking on St. James Place and the applicant is to install motion sensors on planned parking lot lights

- In view of the approved Findings of Fact, move to approve Special Permit 829-14 for St. James Place, for a community center in a B-2 zone, per Sections 3.1.4 and 10.4 of the Zoning Bylaw.

**B. HOUSATONIC SOLAR 1, 105 TAMARA CIRCLE, AVON, CT, FOR WORK IN THE FLOODPLAIN AT 0 PARK STREET (MAP 7, LOT 30), HOUSATONIC, MA IN ORDER TO CONSTRUCT A SOLAR ARRAY IN ACCORDANCE WITH SECTIONS 9.1 AND 10.4 OF THE GREAT BARRINGTON ZONING BYLAW.**

Ms. Tabakin said the Selectmen are the special permit granting authority for the Flood Plain Overlay district. Kirt Mayland, owner and attorney for Housatonic Solar I, said he intends to purchase 65 acres from Hazen Papers, 26 acres of which are considered brownfields/landfill. Previous owner Neenah Paper did considerable remediation work on the land, he said, but there is still some strewn and buried debris. He said he expects a positive determination from Massachusetts Department of Environmental Protection, The land where he wants to install a solar panel array is regulated by several agencies, and it is habitat for a wood turtle species, so is subject to Natural Heritage requirements. He said he plans to place a conservation restriction on 15 acres, but has not identified a CR holder. He said he has no development plans for the land other than solar. He said the solar will be on 13 acres, and will produce 3MW. It is adjacent to existing utility lines that should be able to handle that amount of electricity. He said the site is hidden from view even in winter. He said he wants to do some tree cutting, to reduce blockage of sun reaching the panels. Panels will be installed on concrete ballasts 18 by 36 inches, because DEP doesn't want poles inserted into the soil to potentially disturb buried debris. He said records show the site hasn't flooded since 1944. He said there would be monthly visits to the site, but otherwise little traffic. Access will either be through Hazen Paper or through revival of an old woods road off Park Street. He said he may install a fishing path from a parking place on Division Street. Any fishing will be catch-and-release.

He said he hopes to sell the power to Berkshire Hills Regional School District, Southern Berkshire Regional School District and the Town of Great Barrington at a 15-20 percent discount, to be worked out separately. He said some \$6 to \$7 million in equipment will be installed and will generate about \$75,000 a year in personal property tax to the town.

Ms. Tabakin said a Notice of Intent will be filed with the Conservation Commission as the land is in a floodplain. Mr. Mayland said there will be a security fence, but one that allows turtles to move through. He said ideally construction will be in October and November, when turtles are in the river. He said a mowing plan takes turtles into consideration. Ms. Tabakin said the Planning

Board of Board of Health recommend approval of the application. The array will all be in the I zone, Mr. Mayland said. From the audience, David Magadini asked about the efficiency of the solar installation and if it used moveable panels. He also pointed out fish in the river are likely contaminated with PCBs. To the latter, Ms. Phillips said signs would advise fishermen not to eat the fish. Mr. Mayland said the panels would be fixed. He said calculation of daylight hours and other factors suggested about 16 percent efficiency, collecting solar energy 1,300 hours out of 8,000 in a year. Richard Needleman of the Great Barrington Housing Authority said that agency would be interested in taking part in the program. In response to an audience question, Mr. Mayland said compensatory storage would be achieved by cutting out several hummocks on the property. Mr. Mayland said the panels, yet to be selected, will be glass and impervious to the effects of acid rain. He said the Planning Board has asked for a \$20,000 performance bond. Mr. Mayland said the land will be sold to another entity, and there will be a 30-year lease for the panels. In answer to a question from Ms. Tabakin, he said it is in his company's interest to maintain the equipment and achieve the greatest amount of electricity it can. He said he will sell metering credits and solar renewable energy certificates. He said the program of selling energy to the town will likely end in 15 months, and he sees it as a bargain for the town and school districts. Mr. Rembold pointed out that any future owners will have to meet the requirements that go with the special permit.

On a motion by Mr. Stanton, seconded by Mr. Bannon and voted by all, the hearing closed at 8:57 p.m.

**VOTE:** Mr. Stanton moved to approve the Findings of Fact for Special Permit 832-14 for Housatonic Solar 1, LLC, as submitted and referenced as Exhibit A. Mr. Bannon seconded. All members agreed on a roll call vote.

These are the FINDINGS OF FACT for Special Permit 832-14, Housatonic Solar 1, LLC

G. Introduction

This Special Permit application was filed on May 5, 2014 by Housatonic Solar 1 LLC, 105 Tamara Circle, Avon, CT. The Special Permit application seeks permission from the Great Barrington Selectboard to do work in the floodplain to install a solar energy array, at 0 Park Street (Map 7, Lot 30), Housatonic, MA. The application has been filed in accordance with Sections 9.1, and 10.4 Great Barrington Zoning Bylaw.

Housatonic Solar 1, LLC, the Applicant, has an option to purchase the entire property from the Owner, Neenah Paper. This application has been filed with the Owner's permission.

H. General Findings

The subject site is about 67 acres in total. The site does not include the former baseball field, which is 5 acres more or less and is a separate lot on Park Street. The proposed solar array will occupy about 13 acres of land (including the fence line). The property is both an I zone and an R2 zone, with the I zone being most of the northern half of the site. The solar array is sited on the I zone portion of the property. Much of the property is in the 100-year floodplain and thus is subject to the Floodplain Overlay District (FPOD). Criteria for floodplain special permits can be found in Zoning Section 9.1.

The proposed solar array will use concrete ballasts as foundations, rather than pile-driven or screw-in support posts. The calculations regarding floodplain impacts are based on using the ballast system.

A Notice of Intent (NOI) has been submitted to the Conservation Commission, since land subject to flooding is also subject to the Massachusetts Wetlands Protection Act. Applicant has also filed with Massachusetts Department of Environmental Protection (Mass DEP). Since much of the site is classified as endangered species habitat, the application is also pending with the Massachusetts Natural Heritage Endangered Species Program (NHESP).

About 26 acres of the site was used as dumping area for debris from the mill as well as household goods. When the Owner took over this site, they proceeded to clean up the site and restore the riverbank. The worst of the debris was removed over the last few years, after extensive permitting through the Mass DEP, NHESP, and the Conservation Commission. The riverbank, which failed in 2012, was restored and stabilized. According to the permits issued by NHESP for this work, about 16 acres of the site, along the riverbank must be permanently conserved. Also, following cleanup, a DEP ordered “Activity Use Limitation” has been imposed on the site. The AUL specifically allows solar. That AUL is included in this application.

The NOI is also included in this application. It includes a stormwater report and the floodplain calculations, as well as a description of the general condition and flora and fauna on the site. Also, NHESP has been consulted, and the proposed fencing will be 6 inches above the ground to allow for migratory movements of the turtles. The Conservation Commission has continued its NOI deliberations until July, in the expectation that NHESP will have issued its decision by then. Therefore the Conservation Commission decision—an Order of Conditions—can be issued consistent with NHESP’s decision.

The application proposes a walking trail proposed of approximately 3,000 linear feet along the river. A parking access for the trail would be on Division Street, near the bridge over the Housatonic River, where the existing curb cut is.

Construction access is proposed to occur through the Hazen Paper (Rising Mill) property to the immediate north. However, if that access cannot be secured, access is proposed from Park Street near the existing power lines, between Spruce and Walnut Streets.

Since the site is lower than Park Street and screened by trees, the solar array is unlikely to be prominent from Park Street. However there are several vantage points from which it will be visible. Noise and lights are minimal, as detailed in the application. Detail about lighting is included in the narrative included in the proposal. Security, emergency response, operations and maintenance, and decommissioning plans are all included in this application.

The proposal is in keeping with the vision and recommendations of the Master Plan: it reuses abandoned land, it provides renewable energy, and it proposes recreational access to the Housatonic River. The application includes a narrative in this regard. The proposal will result in a fiscal positive for the town.

The Special Permit application received positive recommendations from the Planning Board and Board of Health. As noted above, the Conservation Commission is awaiting the NHESP decision before issuing an Order of Conditions.

The proposal received Site Plan Approval from the Planning Board per Zoning Section 10.5 as a new commercial use. The Planning Board included several conditions with the Site Plan Approval, including requiring a bond for decommissioning costs.

#### I. Floodplain Overlay District Criteria and Specific Findings

§9.1.6 of the Zoning Bylaw requires the Special Permit Granting Authority (SPGA), in this case the Selectboard, to find the following in order to grant a floodplain special permit:

(1) The use would otherwise be permitted if such land were not, by operation of this section, in the Floodplain Overlay District;

Finding: The Applicant is proposing a commercial scale solar array, which is a by-right use in the Industrial use, subject to Sections 6.4, Performance Standards and 10.5, Site Plan Review.

(2) The use of such land for the proposed purpose will not interfere with the general purpose for which such Floodplain Overlay Districts have been established.

Finding: The proposed use as a solar array as described and depicted in this application is in harmony with the general purpose of the Floodplain District. It does not establish a new residential use in a flood-prone area. The Selectboard has also determined based on this application and exhibits that the proposal will not interfere with the natural flow of the 100-year flood, will not impede floodwater storage capacity and will not impact water recharge areas.



§9.1.5 requires the SPGA to ensure that the applicant provides sufficient information to determine:

(a) That the floor level of areas to be occupied by human beings as living or working space shall be at a safe elevation;

Finding: The Selectboard hereby determines that no areas of permanent occupancy are being created by the proposal.

(b) That furnaces and utilities are protected from flooding and that the structure will withstand the effects of flooding in accordance with the State Building Code;

Finding: The evidence of the application and its exhibits have shown that electrical equipment will be above the floodplain level and will not be impacted by the effects of flooding.

(c) That the proposed construction, use or change of grade will not obstruct or divert the flood flow, reduce natural water storage or increase stormwater runoff so that water levels on other land are substantially raised or danger from flooding increased;

Finding: The application has demonstrated that the same amount of cut and fill in the floodplain will result in a small net gain of floodplain storage and will not increase flood water levels on other land. The Selectboard notes that this particular site has rarely flooded, even during recent heavy storm events of 2011 and 2012.

(d) That safe vehicular and pedestrian movement to, over and from the premises is provided in the event of flooding; and

Specific Finding: The proposed access roads are above flood level providing safe vehicle movement. If the site in full flood stage, the walking trail will be inundated and therefore it will not be in use.

(e) That the proposed methods of drainage and sewage disposal are approved by the Board of Health and will not cause pollution or otherwise endanger health in the event of flooding.

Finding: The Board of Health has reviewed this application and has made a positive recommendation to the Selectboard. There is no need for drainage or sewer disposal for the proposed use.

§9.1.7 states that special permits for work in the floodplain issued under this section may be subject to such conditions as the SPGA deems necessary in the interests of the public health, safety and welfare. The burden of proving that the proposed use will not endanger the public health and safety of the occupants or the public shall rest upon the applicant.

Finding: The Selectboard does not see the need for any conditions of this nature.

§9.1.8 requires certification by a professional engineer, registered and licensed in the Commonwealth of Massachusetts, to demonstrate that proposed floodplain encroachments shall not result in any increase in flood levels during the occurrence of the one-hundred-year flood.

Finding: The applicant's engineer, duly registered in Massachusetts, has provided certification that the proposed work in the floodplain will not result in any increase in flood levels during the one-hundred year flood. The certification letter is signed by Stuart Clark, PE, is dated June 18, 2014, and is attached to this special permit application.

§9.1.9 states that granting of a special permit under this section by the SPGA does not in any way indicate compliance with the provisions of the Wetlands Protection Act, MGL c. 131, § 40, which provides, among other things, that no person shall remove, fill, dredge or alter any swamp, creek, river, stream, pond or lake or any land subject to flooding, except with a written permit from the Conservation Commission.

Findings: Applicant has filed for permits as necessary under the WPA.

#### J. General Special Permit Criteria and Specific Findings

§10.4.2 of the Zoning Bylaw, granting of a special permit requires a written determination by the Special Permit Granting Authority "that the adverse effects of the proposed use will not outweigh its beneficial impacts to the town or the neighborhood, in view of the particular

characteristics of the site, and of the proposal in relation to that site.” This determination shall include consideration of the following six criteria:

7. Social, economic, or community needs which are served by the proposal;
8. Traffic flow and safety, including parking and loading;
9. Adequacy of utilities and other public services;
10. Neighborhood character and social structures;
11. Impacts on the natural environment; and,
12. Potential fiscal impact, including impact on town services, tax base, and

employment.

Consideration of the Criteria in relation to SP #832-14:

Per §10.4.2 of the Zoning Bylaw, granting of any special permit requires a determination by the Special Permit Granting Authority “that the adverse effects of the proposed use will not outweigh its beneficial impacts to the town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site.” The six criteria and the Board’s considerations in relation each are detailed below:

7. Social, economic, or community needs which are served by the proposal.

- The proposal serves the community’s needs by providing clean, renewable energy, which may be purchased at a reduced rate by the Town or the School District. The site will generate tax revenue for the Town from a site that is otherwise mostly undevelopable given floodplain constraints and the AUL. The proposal includes a walking trail along the river, a recreational asset envisioned by the Master Plan.

8. Traffic flow and safety, including parking and loading.

- Safety would be best provided by an access through the Hazen Paper property. If that access cannot be secured, the Applicant will obtain permission from the Town for a suitable access and traffic control measures from Park Street.

9. Adequacy of utilities and other public services.

- There will be no need for water or sewer facilities. The proposal will add renewable energy to the electric grid. Adequate provisions for fire and police emergency response have been included as detailed in the Application.

10. Neighborhood character and social structures.

- The proposal is in keeping with the character of an industrial zone. Since an unused or abandoned site would not be in keeping with the character, the Applicant must provide a decommissioning bond that would allow the Town to return the site to a more natural state.

11. Impacts on the natural environment.

- The proposal, properly permitted through this special permit, an NOI, and through NEHSP, will have no detrimental impacts on the environment. Since additional construction or a greater extent of solar panels would impact the natural environment, the maximum extent of the solar panels should be limited to as shown on the plans.

12. Potential fiscal impact, including impact on town services, tax base, and employment.

- The proposal does not require town services, and will add to the tax base.

Finding:

In consideration of the above Findings, this Board finds that the benefits of the proposal outweigh any possible detrimental impacts, provided certain conditions, as proposed below, are met.

K. Proposed Conditions

1. Vehicle access through Hazen Paper is preferred. If it is not secured, then suitable access from Park Street shall be obtained from the Town of Great Barrington and appropriate traffic controls shall be in place prior to the start of any clearing or construction.

2. The maximum extent of solar panels shall be as shown on the plans submitted and dated June 12, 2014.
3. A bond or other financial surety acceptable to the Town Manager for decommissioning costs and site restoration shall be provided to the Town prior to issuance of building permits.
4. Any conditions imposed by the Conservation Commission, Mass DEP, or NHESP.

**VOTE** Mr. Stanton made a motion, Mr. Bannon seconded: In view of the approved Findings of Fact, move to approve Special Permit 832-14 Housatonic Solar 1, LLC to do work in the floodplain to install a solar energy array, at 0 Park Street (Map 7, Lot 30), Housatonic, MA, per Sections 9.1 and 10.4 of the Great Barrington Zoning Bylaw. In a roll call vote, all members said yes.

## **7. NEW BUSINESS:**

### **A. ISSUING AUTHORITY'S CONSENT/RESOLUTION FOR TIME WARNER'S TRANSFER OF CONTROL TO COMCAST.**

Tom Hatch, town representative to the Five Town Cable Advisory Committee, said the committee had held a public hearing in Lenox for all the towns. The vote does not take a position on the proposed acquisition of Time Warner by Comcast, he said, but only asserts the towns are satisfied Comcast is capable of fulfilling Time Warner's service contracts. Mr. Stanton moved to approve, Mr. Bannon seconded, members all agreed.

### **B. EXTENSION OF AGREEMENT WITH CET FOR HAZARDOUS HOUSEHOLD WASTE COLLECTION.**

The vote was unanimous following a motion by Mr. Stanton, seconded by Mr. Bannon.

### **C. PROCLAMATION FOR W.E.B. DU BOIS FAMILY.**

Randy Weinstein of North Star Books/Du Bois Center and Carol Connare of Du Bois Library, University of Massachusetts, Amherst, appeared before the board to request the signing of a proclamation officially welcoming and honoring the W.E.B. Du Bois family members who are buried in Mahaiwe Cemetery, specifically Nina Du Bois and her children Burghardt and Yolande. Mr. Weinstein said a stone — she's not had one until now — will be installed for Yolande Du Bois Williams at a ceremony July 12 and W.E.B. Du Bois's great-grandson Arthur McFarlane will be among those to attend. Ms. Connare said there will be a history walk and public programs and speakers that day, and a private dedication of new signage on the trail at the Du Bois Boyhood Homesite on Route 23, which UMass owns and maintains. On a motion by Mr. Stanton, seconded by Mr. Bannon, all board members approved the proclamation.

### **D. FY 15 RE-APPOINTMENTS.**

The board appointed Hilda Banks Shapiro, alternate, Agricultural Commission; David Shanahan, Conservation Commission; Olga May Milligan and Stephan Green, Design Advisory Committee; Ryan Caruso and Alana Chernila, Energy Committee; Harold Shaw, fence viewer; Daniel Bailly and Barbara Syer, Historic District Commission; Paul Ivory and William Nappo, Historical Commission; Lisa Bozzuto, Beth Moser and Maria Ahlin, Tree Committee; and Donald Hagberg, associate, Zoning Board of Appeals. The latter appointment was made jointly with the ZBA. Mr. Bannon voiced discomfort with the ZBA having polled its members by email rather than discussed the reappointment at a meeting.

The appointments were made on a motion by Mr. Stanton, seconded by Mr. Bannon and agreed unanimously.

**8. CITIZEN SPEAK TIME:**

Andy Moro, noting Massachusetts government appears to be poised to eliminate a requirement from natural gas system purveyors to first have contracts for new customers before making application to extend lines, suggested this is a good time to urge Berkshire Gas to place a line to Housatonic village from Route 7. He said the fact Brookside School, Taft Farms, Hazen Paper and others already use bottled gas, there would seem to be a ready market. A gas line would benefit development at Housatonic School and the Monument Mills complex in the village. Mr. Stanton moved the board write a letter to Berkshire Gas urging extension, Mr. Bannon seconded and all voted in favor.

Mr. Magadini complained that no public comment was allowed during the Comcast matter. Ms. Phillips said this was not a public hearing, but merely endorsement of the outcome of a five-town advisory committee. Mr. Magadini asked the status of the town charter. Ms. Tabakin said it has been introduced in the state legislature, but there is no recent report.

**9. ADJOURNMENT:**

Mr. Bannon at 9:30 p.m. moved to adjourn. Mr. Bailly seconded. All agreed.

**NEXT SELECTBOARD'S REGULAR MEETING: MONDAY, JULY 14, 2014 AT 7 PM.**

Bernard A. Drew  
Recording Secretary

