



Zoning Board of Appeals – Town of Spencer

*Minutes*

Zoning Board of Appeals Meeting

**March 12, 2024, at 7:00pm**

In-Person & Remote

Conference Room A, 157 Main Street Spencer, MA 01562

Memorial Town Hall

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Zoning Board Members Present: Chair Gina Beford (in-person), Donna Parker (in-person), and Alan Collette (in-person), Jennifer Dufresne (in-person), Jeffrey Butensky (in-person)

Zoning Board Members Absent: none

Staff Present: Lauren Vivier, Town Planner/Conservation Agent (in-person), Monica Santerre-Gervais, ODIS Senior Clerk (remote), Sarah Campbell, ODIS Planning Assistant

Staff Absent: None

**1. The Chair opened the meeting at 7:01 pm**

**2. Special Permit– Applicant: Daniel Rubin/ Freedom Forever, Owner: Michael Fish**

**Location: 23 Condon Drive, Spencer Assessor’s Map R21-17. The applicant is seeking a Special Permit under Sections 4.8.9 (solar photovoltaic generating installations) of the Spencer Zoning Bylaw to install 5kw ground mounted solar panels with 16 modules for private use. The property is in the Suburban Residential (SR) zoning district.**

Ms. Vivier stated the representative, Freedom Forever requested another continuance to the April meeting due to the project being on hold.

**MOTION: Mr. Collete motioned to continue the public hearing for April 9, 2024.**

**SECOND: Ms. Parker**

**DISCUSSION: None**

**ROLL CALL VOTE: G. Beford-aye, D. Parker-aye, A. Collette-aye, J. Dufresne-aye, J. Butensky-aye. (vote 5-0 motioned carried)**

**3. Public Hearing: Special Permit– Applicant/Owner: 126 OP LLC; Location: 126 Main Street, Spencer Assessor’s Map U07-01. The applicant is seeking a Special Permit under Sections 6.1.1 (Off Street Parking & Loading Requirements) of the Spencer Zoning Bylaw to designate parking to an existing mixed-use building, containing 12 dwelling units and one commercial unit. The property is in the Town Center (TC) zoning district.**

Kurt Cawley, 126 Main Street, stated currently the building is a mixed-use, with a commercial unit on the first floor and a common group home area on the second floor. Mr. Cawley stated his intentions were to keep the building as a mixed-use and renovate the interior and exterior. Mr. Cawley stated

there will be six 1-bedroom apartments and six 2-bedroom units, totaling 12 units. Mr. Cawley stated he kept the same bedroom count for the building, just different sizes.

Mr. Cawley stated the goal was to rent out the units rather than have it as a group home living area. Mr. Cawley mentioned new sprinklers, new siding, new countertops, new paint, etc. would all be updated in each unit and throughout the building. Mr. Cawley stated the goal downstairs was to turn the two retail units into one commercial unit and rent out the space to a coffee shop or another retail business.

Ms. Parker wanted to confirm the units upstairs would be rented out as apartments and not as a group home setting.

Ms. Vivier stated group housing is prohibited in the Town Center district and is unsure how the previous property owners were able to be permitted but the current bylaw does not allow the use. Ms. Vivier stated the water and electricity hook ups will stay the same, nothing is being done inside besides framing, and that is why the special permit request is just for parking. Ms. Vivier stated the applicant provided an updated designated parking plan, and stated as of right now there is no parking plan in effect for the location.

Mr. Collete stated six parking spaces for all 12 units would not be enough parking. Mr. Collete stated a lot of the previous tenants for SMOG housing did not have the means to drive, Mr. Collete mentioned having the town allow the residents to park in a nearby town owned parking lot. There was some discussion between the Board about how the town could update the parking downtown, but Ms. Vivier stated it was a future discussion and no action would be taken tonight.

Lucy White, 5 Wall Street stated the previous tenants would park across the street at 15 Wall Street and they had no issues previously.

Ms. Beford asked Ms. Vivier if the six parking spaces were designated to the building currently, and was grandfathered in. Ms. Vivier stated that currently the property has no designated parking and no approved parking layout and has been what it is. Ms. Vivier stated the applicant had the parking lot surveyed and the six spaces was what they could come up with. Ms. Vivier then stated the building could be occupied with no parking plan currently.

Recommended conditions by Ms. Vivier:

1. All work authorized under this Special Permit shall be in accordance with the Application, supportive materials and testimony submitted by the Applicant and its representative to the Zoning Board of Appeals.
2. Prior to the commencement of the use permitted by this Special Permit, all necessary and required permits must be obtained from all other municipal, state and or federal departments, boards, commission or agencies, and all work shall be done in accordance with said permits.
3. If the property owner is able to provide additional designated parking for this site, a copy of the improved parking plan will be provided to the Office of Development and Inspectional Services and Registry of Deeds.

**MOTION: to close the public hearing by Mr. Collete**

**SECOND: Ms. Parker**

**DISCUSSION: None**

**ROLL CALL VOTE: G. Beford-aye, D. Parker-aye, A. Collette-aye, J. Dufresne-aye, J. Butensky-aye. (vote 3-0 motioned carried)**

**MOTION: to approve the Special Permit for 126 Main Street with the conditions recommended by Ms. Vivier, motioned by Ms. Parker**

**SECOND: Mr. Collette**

**DISCUSSION: None**

**ROLL CALL VOTE: G. Beford-aye, D. Parker-aye, A. Collette-aye, J. Dufresne-aye, J. Butensky-aye. (vote 5-0 motioned carried)**

#### **4. Discussion: CVS As-builts**

Ms. Vivier stated there was a site walk today with the builder, Town Building Inspector, and herself. Ms. Vivier stated the Board is still waiting for a response to the peer review comments from the builders. Ms. Vivier stated the builders have only responded to the number 4 which is Stormwater Authority which is the Planning Boards responsibility. Ms. Vivier stated she is waiting until all comments are received before she sends it out to the peer reviewer.

Ms. Vivier went through the peer review comments and had updates for each one. Ms. Vivier stated the builders are working on the truck path, two of the single lane signs were installed. Ms. Vivier stated the builders are still working on the snow removal plan, the traffic markings on route 9 will now be the Highway department's responsibility since the stripping needs to be done anyway. Ms. Vivier mentioned the illuminated sign facing High Street is still up, the engineer is stating on the approved plan there is a note stating CVS would have the final say in the signage and the signage presented on the plan was a model, and subject to change. Ms. Vivier stated the developers do not want to remove the sign and will ask CVS to turn the illumination off but keep the signage. Mr. Collete stated the sign facing High Street was not on the approved plan and needs to be taken down.

Ms. Vivier restated the developers are claiming on the approved plan it states the signage is subject to change but Ms. Vivier has yet to find it on the plan herself.

Ms. Vivier went back to the rest of the updates and stated the "be prepared to stop" sign had additional concrete added to it, the builders brought down the elevation on Pleasant Street, so the line of sight is what is originally on the plan. Ms. Vivier stated they are still confirming the landscaping and count of plants survived and some replanting will be needed. Ms. Vivier stated a 50-foot truck took out some plantings over by the entrance and exit sign near Pleasant Street and knocked over the stop sign and took out some plants. Ms. Beford asked if they had finished all the planting as it didn't look like it, Ms. Vivier stated they were still confirming but some did not survive as it was late in the season.

Ms. Vivier stated the transformer was being moved from the back corner, Ms. Vivier stated she originally brought it up about a year and a half ago that the transformer was going to be on the pole instead of on the site. Ms. Vivier told the builders to document the change in their response as it was discussed multiple times.

Ms. Vivier mentioned the downspout that was broken and stated it had been fixed. Ms. Vivier then mentioned the curb height towards the front of the building was a tripping hazard, however, the developer stated if they flush the area down, it will affect the water flow and will cause more issues. The recommendation was to do a thirty-six-inch-high guardrail that would go around the edge and down the parking spot and would be about 8 feet long. Ms. Vivier stated the guardrail would be the safest thing as yellow paint would fade easily. Ms. Vivier stated the guardrail would be further than the curb due to the possibility of someone backing into it or hitting it with their car door. The Board agreed the guardrail was the safest bet.

Ms. Vivier asked the Board if a motion could be made for the approval of the guardrail.

**MOTION: to approve the guardrail with materials listed on plan motioned by Mr. Collete**

**SECOND: Ms. Beford**

**DISCUSSION: None**

**ROLL CALL VOTE: G. Beford-aye, D. Parker-aye, A. Collette-aye, J. Dufresne-aye, J. Butensky-aye. (vote 5-0 motioned carried)**

Ms. Vivier stated at the last Zoning Board of Appeals meeting there was a discussion about having a right turn only onto Route 9, Main Street. Ms. Vivier stated the builders no longer agree and are not whiling to do it. Ms. Vivier stated the Board cannot require it at this point. Ms. Vivier stated currently you can only turn out onto Pleasant Street, which was approved. Ms. Vivier stated when the new owners require the property the Board could request it and see if they would be whiling to do it. Ms. Vivier stated there is also an outstanding invoice due to the Police Department for roughly \$3,000.00 and would be taken care of as soon as possible. Ms. Vivier mentioned the Highway Department has a \$10,000.00 bond and would be holding onto that until everything is signed off.

Mr. Collete brought up the signage on High Street again, Ms. Vivier restated the developers are claiming on the approved plan there is a note that states the signage is subject to change based on CVS' design. Ms. Vivier stated it has not been confirmed or denied as of yet. Ms. Vivier stated she was not employed by the town when the signage portion of CVS was discussed and is going through the site plans.

Ms. Parker asked Ms. Vivier what the condition for signage is located in the Certificate of Decision. Ms. Vivier responded the conditions would have been in the final approved site plan and more information should have been added to the decision and the Planning Board should have been the one reviewing the Site Plan. Mr. Collete stated a portion of the property on High Street is in Village Residential was the reasoning behind why Zoning was the Site Plan Reviewer. Ms. Beford agreed and stated the site plan was 100 feet into VR.

## **5. Approval of Minutes: 02/21/2024 and 12/12/2023**

**MOTION: to approve minutes for the February 21, 2024, meeting motioned by Mr. Collete**

**SECOND: Mr. Parker**

**DISCUSSION: None**

**ROLL CALL VOTE: D. Parker-aye, A. Collette-aye, J. Dufresne-aye (vote 3-0 motion carried)**

**MOTION: to approve minutes for the December 12, 2023, meeting motioned by Ms. Parker**

**SECOND: Ms. Beford**

**DISCUSSION: None**

**ROLL CALL VOTE: G. Beford- aye, A. Collete- aye, D. Parker- aye. (vote 3-0 motion carried)**

## **6. Town Planner Report**

Ms. Vivier stated there is an anticipated Public Hearing date of April 2, 2024, for the Solar Bylaw Amendment, May 3, 2024, is the Annual Town Meeting, and stated Ms. Vivier will be out of office for the last week in March, and to reach out to Monica or Sarah.

## **7. Citizens Input**

## **8. New Business/ Adjournment**

Ms. Beford nominated Ms. Parker to be Chair of the Zoning Board of Appeals.

**MOTION: to nominate Ms. Parker as chair of the Zoning Board of Appeals, motioned by Ms. Beford.**

**SECOND: Mr. Collete**

**DISCUSSION: None**

**ROLL CALL VOTE: G. Beford-aye, D. Parker-aye, A. Collette-aye, J. Dufresne-aye, J. Butensky-aye. (vote 5-0 motioned carried)**

Mr. Butensky introduced himself officially as an alternate.

**MOTION: to adjourn the meeting motioned by Ms. Beford**

**SECOND: Mr. Collete**

**DISCUSSION: None**

**ROLL CALL VOTE: G. Beford-aye, D. Parker-aye, A. Collette-aye, J. Dufresne-aye, J. Butensky-aye. (vote 5-0 motioned carried)**

Submitted by Sarah Campbell, ODIS Planning Assistant

Reviewed by Monica Santerre-Gervais, ODIS Senior Clerk

Approved by the Zoning Board of Appeals on: 4/9/2024

**List of Documents used on**

**Items sent to Zoning Board Members prior to Meeting by email:**

- Agenda
- Minutes dated 12/12/2023, 02/21/2024.
- Application for 23 Condon Drive, including plan.
- Application for 126 Main Street, including plan and proposed parking plan.
- CVS as- built peer review response.

**Items submitted/ brought to the Meeting:**

- CVS Site Plans dated 2020.