

EAST LONGMEADOW ZONING BOARD OF APPEALS

Date: March 9, 2020

Time: 6:30 PM

Place: East Longmeadow Library-Conference Room
60 Center Square
East Longmeadow, MA 01028

MINUTES

Chair Mark Beglane opened the meeting at 6:32 PM and called the roll.

CALL THE ROLL:

Present: **Mark Beglane, Chair**
 Charles Gray, Vice Chair
 Brian Hill, Clerk
 Francis Dean
 Daniel Plotkin
 James Channing

Staff Present: Constance Brawders, Planning & Community Development Director;
Bethany Yeo, Planning & Community Development Administrative Assistant

APPROVAL OF MINUTES:

February 10, 2020

Motion made by Clerk Brian Hill; second by Board member Francis Dean and approved by a vote of five (5) - zero (0).

CONTINUED PUBLIC HEARINGS

No continued Public Hearings

NEW PUBLIC HEARINGS

- 1. Case ZV 2020-01:** A request by Applicant for Variance under East Longmeadow Zoning By-law Table 3-1: East Longmeadow Schedule of Use Regulations, 3.2 Dimensional and Density Regulations, to reduce the Minimum Frontage Requirement from 175 feet to zero feet located at 0 Rear Pease Road (Assessor's Parcel ID 33-1-0) in the Residence AA zoning district. Applicant's Agent: Atty. James F. Martin, Robinson Donovan, PC, 1500 Main Street, Ste. 1600, P.O. Box 15609, Springfield, MA 01115-5609.

Clerk Brian Hill read the legal notice into the record.

Speaking on behalf of the variance petitioner was applicant's attorney and agent, James Martin [Robinson Donovan, P.C., 1500 Main Street, Suite 1600, Springfield, MA 01115]. Atty. Martin described the complexity of this particular variance by providing the ZBA with an overview of

the parcel ownership, geographic location of the site which abuts and adjoins a neighboring parcel in Connecticut, shape and current use of the parcel as farmland, and proposed use of the parcel for a ground mounted solar energy installation. Atty. Martin summarized the status of the site plan development proposal for a Ground Mounted Photovoltaic Installation, which had been initially submitted to Town Council under a petition for zoning change from Residence AA to Industrial District or Industrial Garden Park [where Ground Mounted Photovoltaic use is permitted by right], then referred to Planning Board, and subsequently returned to Town Council without a favorable recommendation by the Planning Board to rezone the parcel as Industrial.

After appeal to the Land Court, a summary judgement was issued [08/20/2019] in favor of PLH LLC with a recommendation by the court that the town go forward with site plan review [as solar was considered under summary judgement as an exemption under state statute]. The proposal for development now stands before the Planning Board. A Request for Determination of Applicability was submitted to the Conservation Commission; the Commission issued a negative determination for wetlands [01/08/2020]. The matter was now before the ZBA to request relief from the 175 foot frontage required in the Residence AA zoning district, as access to this site was available via the contiguous Somers, CT parcel.

Atty. Martin respectfully rebutted legal opinion offered by recently appointed Town Attorney Michael Pill, summarizing that lack of frontage did not qualify for granting a zoning variance, as Atty. Martin stated that he and previous Town Attorney [Kevin Maynard] had a meeting of the minds regarding the access to the landlocked site [through the Connecticut parcel which met regulations for frontage at Bilton Road in Somers, CT]. In addition, Atty. Martin reminded the ZBA that Zoning was adopted by East Longmeadow in 1962 and furthermore, stated use of these parcels was as a preexisting non-conforming use since 1905.

Atty. Martin stated that a solar facility project had received approval and is being constructed on the adjoining parcel in Somers, CT.

Exhibits submitted into the record by Atty. Martin:

1. Exhibit 1: Petition No. 1323 – Connecticut Siting Council approval of Windham Solar LLC Development and Management Plan for the construction, maintenance, and operation of three 2.0 Megawatt AC and two 1.0 Megawatt AC solar photovoltaic electric generating facilities on an approximate 43 acre parcel located at 134 Bilton Road in Somers, CT (November 9, 2018).
2. Exhibit 2: Petition No. 1323 – Connecticut Siting Council ruling that the Windham Solar LLC petition for a three 2.0 Megawatt AC and two 1.0 Megawatt AC solar photovoltaic electric generating facilities on an approximate 43 acre parcel located at 134 Bilton Road in Somers, CT met air and water quality standards of the Department of Energy and Environmental Protection (January 22, 2018).

3. Exhibit 3: Town of Somers, CT Building Department Building Permit No. 19-0380 issued 08/01/2019 for the installation of ground mounted solar array on approximately 27.3 acres consisting of 9000 modules and 18 inverters.

In addition, Atty. Martin provided an email dated 11/22/2019 from East Longmeadow Fire Chief Paul Morrissette assuring the solar array project manager, Steve Broyer, that the Towns of Somers, CT and East Longmeadow, MA have agreed to a dual agency response to any incident at the site. This email was entered into the record as Exhibit 4.

Atty. Martin addressed future ownership and operation of the facility. Atty. James Martin stated the current property owner is PLH LLC and explained that PLH LLC will convey a separate entity to operate the facility when the required permits are received and easement will be recorded for right to access the interior parcel.

In summary, Atty. Martin reminded the ZBA that the intent of the Zoning Bylaw was to promote the health, welfare, and safety of the community. Atty. Martin stated that PLH LLC strongly believes that solar energy promotes the health, welfare and safety of the community by removing fossil fuel generation. Atty. Martin stated the energy produced by the proposed ground mounted solar array would serve East Longmeadow's needs by tying the energy produced at the site to the grid owned by the electrical service provider [Eversource and National Grid].

Atty. Martin referred to the written findings for granting a variance provided with the application to the ZBA and opined that the project proposal satisfied the circumstances for relief under soil conditions, shape of parcel and topography, and that literal enforcement of the zoning by law would create a hardship to the land owner, as there is no access to the land locked parcel via East Longmeadow.

In response to Atty. Martin, Chair Mark Beglane opined that the frontage requirement may be satisfied as it adjoins and abuts land in Somers, CT. James Martin elaborated by stating that the two parcels in question are legally defined as two separate parcels due to the state and municipal boundaries. Chair Mark Beglane explained each parcel has its own deed because the deeds had to be recorded in their respective states/towns. If it were not for the MA/CT state line, the site could be under one deed for one parcel.

Chair Mark Beglane requested the petitioner enter into a written inter-municipal agreement for mutual assistance between the respective the communities' departments of public safety and that this documentation from CT and MA be provided for Planning and Community Development files.

Furthermore, Chair Beglane requested that approved Site Plans for the CT phase of the development be revised to show the extension of the solar array service road into the East Longmeadow parcel and that the service road be constructed to standards that will satisfy Public Safety and the East Longmeadow Department of Public Works. Atty. James Martin

stated the access road will incur minimal use with one truck per month to provide general landscaping and maintenance as needed.

Atty. James Martin reiterated email comments [Exhibit 4] from Fire Chief Morrisette. **Atty. Martin will provide written comment from East Longmeadow Chief of Police, Jeffrey Dalessio, to the Department of Planning and Community Development for the file folder supporting mutual assistance for public safety.**

Chair Mark Beglane inquired of the project site's proximity to any residence in Somers, CT and East Longmeadow, MA. Atty. James Martin stated the parcel is an estimated distance of 300-400 feet from the nearest residence. [Under the current Zoning Bylaw, 7.5.12 Buffer Strips, For all ground-mounted solar photovoltaic installations abutting a Residential District or a Residence, the fifty (50) foot setback for either side or rear yards shall consist of twenty-five (25) feet of a landscaped buffer. Said buffer is to consist of plantings a minimum of six (6) feet in height at planting and staggered so as to fill that twenty-five (25) foot buffer area and keep the arrays from view year round]. Atty. Martin stated existing trees will remain to buffer the parcel development from the residential structures as stipulated by the Zoning Bylaw. Atty. Martin explained there will be a fence surrounding the solar array itself and a screening buffer around the boundary of the parcel.

Board member Daniel Plotkin asked if it were under the purview of the Zoning Board of Appeals to grant a waiver of frontage; Chair Beglane confirmed that such a variance was under the authority of the ZBA. Mr. Plotkin then asked if granting this petition might set precedent. Chair Beglane opined that the purpose of the frontage requirement was to provide adequate access to the site and that access was met in this case via CT.

Vice Chair Charles Gray recognized the uniqueness of this case, noting his concern is accessibility by emergency service vehicles. Mr. Gray concurred with Chair Mark Beglane on the need for an inter-municipal agreement and forthcoming comments from Chief of Police Jeffrey Dalessio.

Chair Mark Beglane stated he preferred an easement to a deed restriction, as deed restrictions may expire after 30 years. Atty. Martin responded that an easement can be created permanently to run with the land, rather than the property owner. Atty. Martin stated his client is not opposed to deed restriction or easement; whatever the Town of East Longmeadow wanted as an agreement to access the land will be provided to East Longmeadow by the applicant/owner.

Board member Daniel Plotkin inquired [of Atty. Martin] if PLH LLC was aware of the limitations of the parcel due to the zoning bylaw, including its access limitations as a landlocked parcel, prior to purchasing it for the solar facility project. Atty. James Martin stated his client was aware that the parcel was zoned Residence AA prior to purchasing it. Board member Daniel Plotkin inquired if PLH LLC was aware that there was no frontage on the lot as well. Atty. James Martin stated his client believed the frontage on Bilton Road in Somers, CT was sufficient

frontage for the project based on the applicant's interpretation of case law, East Longmeadow's Zoning by-law, and the Massachusetts statute.

Associate Member James Channing asked Atty. Martin to clarify where jurisdiction of the site ended, as there is no interstate compact on this lot. Atty. Martin stated East Longmeadow's jurisdiction stopped at the state line. However, a statement could be made that frontage was satisfied by the CT parcel.

Clerk Brian Hill inquired if future land development of abutting parcels could be impacted. Atty. Martin opined a developer would be aware of the solar facility's location follow the zoning bylaw to provide an adequate landscape buffer between the uses.

The ZBA chair opened comment to the public. No one spoke in support. The following spoke in opposition:

Town Councilor Marilyn Richards [342 Pinehurst Circle] spoke in opposition of the project, point being that PLH LLC had imposed their own hardship by purchasing land that was not zoned for their intended use of the land. She noted the petition for zone change was not recommended for approval by the Town Council Subcommittee on Zoning.

Chair Mark Beglane responded that the frontage was not being waived for *frontage on the lot*; the variance was being considered so access to the lot might be granted through Connecticut for the proposed use.

Mrs. Richards also expressed her concern with removal of the landscape buffer, which were waived by the Planning Board, until such time there was a change of use from the photovoltaic installation.

Board member Daniel Plotkin opined the Zoning Board of Appeals must look at the case as a matter of law. Mr. Plotkin alluded to individual property rights.

Associate Board member James Channing offered case law whereby a state line can create a hardship. If you own the two parcels, the fact that the parcels of contiguous land straddle a state line, this is the hardship that the ZBA must take into consideration.

Town Councilor Ralph Page [137 Pease Road] spoke in opposition of the project. His point emphasized that granting the variance would waive the required frontage from 175 feet to zero in utilizing the frontage in Somers, CT.

Mr. Page also questioned [because there were two separate deeds] if the frontage requirement could be conveyed [to the East Longmeadow parcel] if the Somers, CT parcel met Connecticut's zoning requirements. Mr. Page informed the ZBA that the parcel under discussion had been considered by the Town of East Longmeadow under right of first refusal, but because of the land locked status, the right was not exercised.

Chair Mark Beglane maintained that the parcel is being considered as one with the adjacent Somers, CT parcel but explained that if the proposed use of ground mounted solar voltaic installation were abandoned, the Variance would be moot, or extinguished.

Marilyn Richards reminded the Board that there had been decisions in Land Court for similar cases that were directly contradictory to the judgement. Chair Mark Beglane cautioned the ZBA on the financial expense to the Town of East Longmeadow for appeal to the Land Court's decision.

Planning Board member, Jonathan Torcia [79 Thompkins Avenue] commented that the Planning Board had made every effort to conduct a fair and timely hearing for the petitioner's pending Site Plan Review.

John Pearson [311 Pease Road] asked for clarification on what was meant by waiving a buffer.

Atty. James Martin explained the perimeter landscape buffer installation had been waived for the proposed use of the ground mounted solar array because the natural buffer will remain intact. The trees will not be clear cut to the edge of the property line. Mr. Pearson was shown a copy of the site plan and Atty. James Martin offered to provide any information on the project to Mr. Pearson.

Hearing no further comment, the hearing was closed.

Motion to close made by Board member Daniel Plotkin; second by Clerk Brian Hill and approved by a vote of five (5)- zero (0).

Chair Mark Beglane restated the following conditions discussed in the hearing:

1. That the petitioner enters into a written inter-municipal agreement for mutual assistance between the respective the communities' departments of public safety and that this documentation from CT and MA be provided for Planning and Community Development department files;
2. That the Site Plans approved by the Connecticut Siting Council for the CT phase of the development be revised to show the extension of the solar array service road into the East Longmeadow parcel. Revised plans shall be provided to the Planning and Community Development department files;
3. That the service road be constructed to standards that will satisfy East Longmeadow's Departments of Public Safety and the East Longmeadow Department of Public Works. A letter from these respective departments shall be provided to the Planning and Community Development department files;

4. That a memo be provided for the Planning and Community Development department files from the East Longmeadow Chief of Police stating project site conditions have been met, as they pertain to the Police Department;
5. That the DRAFT copy of the deed restriction or easement be provided for review and approval be provided to ZBA Chair Mark Beglane by the applicant. Final documents are to be provided for the Planning and Community Development department files.

Chair Mark Beglane found that the hardship for granting the variance petition as being the shape of the land, which is crossed by a state line, creates a landlocked area otherwise having adequate frontage from Somers, CT for the proposed use.

Motion to grant the Variance for Case ZV 2020-01, with above stated conditions, for relief from East Longmeadow Zoning By-law Table 3-1: East Longmeadow Schedule of Use Regulations, 3.2 Dimensional and Density Regulations, to reduce the minimum frontage requirement *from* 175 feet *to* zero feet located at 0 Rear Pease Road (Assessor's Parcel ID 33-1-0) in the Residence AA zoning district, as presented by Applicant's Agent Atty. James F. Martin [Robinson Donovan, PC, 1500 Main Street, Ste. 1600, P.O. Box 15609, Springfield, MA 01115-5609] was made by Vice Chair Charles Gray. Motion was seconded by Clerk Brian Hill and approved four (4)-one (1) by roll call vote.

Chair Mark Beglane:	YES
Vice Chair Charles Gray:	YES
Clerk Brian Hill:	YES
Francis Dean:	YES
Daniel Plotkin:	NAY

2. **Case ZV 2020-02:** A request by Applicant for Variance from **5.83 Business District 2. Ground Signs a.** setback requirements from 25 feet to ten (10) feet for the installation of a ground sign located at 604 North Main Street (Assessor's Parcel ID 1A-94-321) in the Business zoning district. Applicant Representative: Philip D. Burdick, Architect, 5 Ridgewood Terrace, Springfield, MA 01105.

Clerk Brian Hill read the legal ad into the record. Chair Mark Beglane reviewed the hearing process to the petitioner.

Introducing the facts pertinent to the petition for Variance was owner's representative Philip D. Burdick, Registered Landscape Architect [5 Ridgewood Terrace, Springfield, MA 01105]. Accompanying the agent was his client and business owner Andrew Bonavita, DMD, and one other who did not introduce himself or sign in to the meeting.

Mr. Burdick stated that as the foundation of the building is constructed at the setback line on a corner lot. Installation of a proposed ground sign identifying the business would necessitate encroaching within the 25 foot setback area. Mr. Burdick described other business signs along the North Main Street business corridor whose ground signs have been installed within the setback space. Mr. Burdick also opined attaching the sign face to the front of the building would limit visibility of the dental practice that was relocating to East Longmeadow and perhaps make it difficult to find the business.

The Board opened comment to the public. Not one spoke for or against the petition; however, Town Councilor Ralph Page [137 Pease Road] inquired if there were frontage on both roads (Braeburn and North Main Street).

Chair Mark Beglane determined the applicant would require a variance of nine (9) feet from the side of Braeburn and fifteen (15) feet from North Main Street.

Motion to grant the variance made by Board member Daniel Plotkin; second Vice Chair Charles Gray and approved by a vote of five (5) - zero (0).

Chair Mark Beglane:	YES
Vice Chair Charles Gray:	YES
Clerk Brian Hill:	YES
Francis Dean:	YES
Danial Plotkin:	YES

OTHER BUSINESS

3. Pros & Cons regarding use of The Republican or The Reminder for Legal Notice publication
As the Library was closing, discussion continued to April 13, 2020.

4. Draft letter from ZBA to Town Council petitioning zoning change to allow for LED illuminated signage.

Current Zoning Bylaw:

5.8 SIGNS

C. No sign shall incorporate or be lighted by flashing or blinking lights, Light Emitting Diode (LED) displays or be designed to attract attention by a change in light intensity or direction, or by repeated mechanical, electrical or computerized motion. All illumination shall have either a source of light from within or exterior to the sign and such exterior lighting shall be limited to white in color. No changeable and/or graphic display is allowed on any sign. These restrictions do not apply to digital clocks and thermometers.

As the Library was closing, discussion continued to April 13, 2020.

5. Discussion of the ZBA Rules of Procedure

As the Library was closing, discussion continued to April 13, 2020.

ADJOURN

Motion to adjourn made by Vice Chair Charles Gray; second by Clerk Brian Hill and approved by a vote of five (5)-zero (0) at 8:10 PM.

DATE OF NEXT MEETING: April 13, 2020

Respectfully submitted.

Bethany Yeo,

Planning & Community Development Director