

Town of Plympton Zoning Board of Appeals
Minutes For Meeting and Hearing of January 25, 2023

Scheduled Hearing: R&R Renewables, LLC, ZBA Case No. 22-1027

Persons in Attendance

Board Full/Voting Members:

Colleen Thompson, Chair
Ethan C. Stiles, Esq., Clerk
Suzanne Jafferian

Board Alternate Members:

Dave Alberti
Carolyn DeCristofano

Counsel:

Amy E. Kwesell, Esq., Town Counsel
Michael J. Barone, Esq., Attorney for R&R Renewables

Other Persons Present :

Roy Morrison, Manager, R&R Renewables. LLC
Luanne Baker, R&R Renewables. LLC
James A. Pavlik, P.E., Outback Engineering, Inc.
Charles F. Burns, Jr., Property Owner

Location: Deborah Sampson Room, Plympton Town House (in-person only)

Meeting Discussion

The Chair Opened the Meeting at 6:03PPM

The Clerk reported that thirteen notices of hearing mailed to abutters were returned as undeliverable and sixteen return receipts ("green cards") were returned.

Review of minutes of meeting of 12/15/22 passed over because the Board members did not have time to read them.

The Hearing was Reopened at 6:08 P.M.

Hearing Discussion

Ms. DeCristofano projected the spreadsheet she had drafted which listed the requirements for a variance with cells underneath each requirement by which the Board could identify facts which could support each of the three requirements.

Attorney Barone submitted a packet of caselaw and the Attorney General's approval/disapproval letters for bylaw changes for the Towns of Spencer and Wareham. He intended to submit the approval letter for the Town of Plympton but instead had included two copies of the letter for Spencer in the packet. The cases

Town of Plympton Zoning Board of Appeals
Minutes For Meeting and Hearing of January 25, 2023

submitted were Tracer Lane II Realty, LLC v. Waltham, 489 Mass. 775 (2022) and Northbridge McQuade vs. Board of Appeals for Northbridge, Land Court No. 18MISC000519.

Attorney Kwesell observed that when previous hearing had concluded, the applicant was found to be installing a medium sized solar facility on a one acre lot. The bylaw permits one facility on a lot and requires a medium sized facility to be between 8 and 20 acres.

Attorney Barone argued that the dimensions and the site project requirements of the bylaw were unduly restrictive and preempted by c. 40A § 3, the "Dover Amendment." Attorney Kwesell argued that even if that were the case, and she indicated that c. 40A § 3 did not prohibit all regulation of solar, the Board did not have the authority to refuse to enforce the bylaws even if they were unconstitutional. Counsel had a difference of opinion on the matter, but the Board permitted Attorney Barone to make his argument in order to preserve the record for the purposes of any appeal.

Attorney Barone argued that the setbacks were not related to any health, safety or welfare concerns, nor were any expressed in the bylaw. The application of all the setbacks and minimum square footage and acreage given in the various bylaw provisions resulted in a minimum sized lot of 13.88 acres and for the array as proposed, 20.49 acres. He discussed how the septic concerns articulated by the Town of Northbridge in the Land Court case were dismissed by the court because the installation of a solar array would have no impact on septic issues.

The Board offered the Applicant the opportunity to withdraw its application in the anticipation that Town Meeting would amend the bylaws to reduce the dimensional setbacks and requirements, but the Applicant chose to maintain its application in the face of the current regulations. The question was raised whether the Applicant could obtain relief solely by action of the Planning Board, but Attorney Kwesell pointed out that the Planning Board has no authority to grant variances, only the ZBA can grant dimensional variances.

Having heard the Applicant's arguments on the validity of the Zoning Regulations, the Chair asked the Applicant focus its arguments on the three criteria needed for a variance.

Attorney Kwesell observed that in order for the Board to grant relief, it would have to grant three variances, not two originally requested by the Applicant. In addition to the public way setback (600') and the abutter setback (300'), the applicant would need a variance of the area requirement of a medium sized solar array from 8 acres to 1 acre.

Turning to the first requirement, the Applicant noted that the shape of the lot was atypical, containing multiple jogs and a sharp angle cutting into the southern boundary of the lot pinching into the center. If not for the shape, the Applicant could place two 20 acre solar arrays on the lot.

For the second requirement, the Applicant stated that the site proposed in the plan was cleared and the only area on the property suited for the array. The only other area on the 40-acre parcel which could support the array would be a wooded area by the eastern boundary. This would require a lot of clearing of woodland and would be closer to some abutters. The engineering would have to be completely redone and the Applicant would have to wait 5 years to reapply due to land clearing requirements of the bylaw. Mr. Alberti asked if the size of the array could be reduced but the Applicant responded that it would not be feasible to do so.

Town of Plympton Zoning Board of Appeals

Minutes For Meeting and Hearing of January 25, 2023

Considering the third and final requirement, the Applicant pointed out that the land was already cleared, no significant addition to the infrastructure would be required, it would blend into the existing array and is already screened from the road. The site plan had gone through extensive review by the Planning Board and Ms. Sobolewski's letter in support of the project was noted.

The Board Closed the Deliberative Portion of the Hearing at 7:30 P.M.

The Clerk moved and the Chair seconded a Motion to Make Findings

The Board then made the following findings

1. That owing to circumstances relating to the soil conditions, shape or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, including the location of the existing house on the Property and the hills and trees on the Property which do not generally affect lots in the AR district;

Vote: Ms. Thompson – Yes; Mr. Stiles – Yes; Ms. Jafferian – Yes.

2. A literal enforcement of the 100-foot setback requirement of the Zoning Bylaw would involve substantial hardship to the Applicant as the pool would have to be constructed in an area on the Property that is more difficult to supervise and thus less safe and

Vote: Ms. Thompson – Yes; Mr. Stiles – Yes; Ms. Jafferian – Yes.

3. That, subject to the conditions listed below, desirable relief may be granted without substantial detriment to the public and without nullifying or substantially derogating from the intent or purpose the Zoning Bylaw, noting no opposition to the Application from abutters.

Vote: Ms. Thompson – Yes; Mr. Stiles – Yes; Ms. Jafferian – Yes.

Attorney Kwesell was tasked with preparing a draft of the decision.

A Meeting to Approve the Decision was Scheduled for February 1, 2023 at 4:30 P.M.

[Later rescheduled to February 3, 2023 at 4:30 P.M.]

The Hearing was adjourned at 7:35 P.M.

Respectfully submitted,

Ethan C. Stiles, February 1, 2023

