



Stratham Planning Board Meeting Minutes
December 8, 2021
Stratham Municipal Center
Time: 7:00 pm

Member Present: Tom House, Chair
David Canada, Vice Chair
Mike Houghton, Selectmen's Representative
Joe Anderson, Alternate Member
Chris Zaremba, Alternate Member

Members Absent: Pamela Hollasch, Member
Robert Roseen, Member

Staff Present: Mark Connors, Town Planner

1. Call to Order/Roll Call

Mr. House called the meeting to order and called roll call. Mr. House appointed Mr. Anderson and Mr. Zaremba voting members.

2. Review/Approval of Meeting Minutes

1) November 17, 2021

Mr. House stated Line 27 needs to be corrected from "Ms." to "Mr." Mr. Anderson made a motion to approve the meeting minutes of November 17, 2021 as amended above. Mr. Canada seconded the motion. Motion passed unanimously.

2) December 1, 2021

Mr. Anderson made a motion to approve the meeting minutes of December 1, 2021 as submitted. Mr. Canada seconded the motion. Motion passed unanimously.

3. Public Hearing:

- a. Mr. House recused himself from the hearing because he is an abutter to the subject property. Mr. Houghton took over the chairmanship for the hearing.

Aberdeen West Cooperative (Owners) - Request for a determination on, or an amendment to, a condition placed on a 1988 site plan approval and for approval of a Conditional Use Permit and Site Plan to construct a 90 kilowatt ground-mounted solar array at the Aberdeen West Cooperative, Lovell Road and Aberdeen Drive (Tax Map 19, Lot 36), Zoned Manufactured

Housing. Applicant's representative is Horizons Engineering Inc., 34 School Street, Littleton, NH 03561. *(This application was postponed from the December 1, 2021 Planning Board meeting).*

Mr. Connors stated the original hearing was noticed for the September 15, 2021 hearing and was postponed October 20, 2021 at the applicant's request. A site walk was scheduled and held on November 2, 2021 with a hearing date of November 17, 2021. The applicant requested a postponement to December 1, 2021 at which time the Municipal Center was closed to the public and the application was postponed to December 8, 2021. A number of written comments were received for this hearing; Michael Daley, 40 Pleasant Street, Epping, NH; Laura Grimstead, 95 Willowbrook Avenue, Stratham; Richard Beauregard, 9 Aberdeen Drive, Stratham; Lorraine Laroche, 7 Aberdeen Drive, Stratham; Roger LaPlante, 58 Lovell Road, Stratham; Doreen Rafferty, 5 Aberdeen Drive, Stratham; Cynthia Mariano, 1 Aberdeen Drive, Stratham; Rory McCorkell, 91 Willowbrook Avenue, Stratham; Rebecca Mitchell, 200 Portsmouth Avenue, Stratham; Rose Rowe, 2 Aberdeen Drive, Stratham; Joan Gilman, 6 Aberdeen Drive, Stratham; Ada Dolloff, 8 Aberdeen Drive, Stratham; Kim Wood, 16 Aberdeen Drive, representing the Aberdeen West Cooperative, Stratham; Attorney Eric Maher, representing Roger & Cassandra LaPlante, 58 Lovell Road, Stratham; Crystal Ducharme & Amy Carr, Great Island Realty, LLC, Portsmouth, NH representing Roger & Cassandra LaPlante; and Nate Merrill, 73R College Road, Stratham.

Jeannie Oliver, Vermont Law School Energy Clinic, representing Aberdeen West Cooperative introduced herself. Ms. Oliver introduced Ryan Fowler from Horizons Engineering and Austin Andersen of the Vermont Law School, also representing the applicants, and gave a brief review of the application before the board. Mr. Fowler stated, as a result of the site walk on November 2, 2021 screening in front of the proposed access and landscaping was added to the plan, but the site plan remains the same. The angle of the arrays were changed which changed the height from the proposed 11 foot to approximately 7 foot 9 inches. Mr. Anderson questioned if trees would be planted along with western side of the array. Mr. Fowler stated no changes were made to the planting, the proposal is to use eastern cedar trees.

Mr. Andersen introduced and gave an overview of this project. The solar project will be approximately 7,600 square feet. The array will take under an acre of the common land leaving 19 acres open. The array will be approximately 8 feet tall. The proposed solar array meets Town of Stratham Zoning Ordinance criteria. The zoning requires at least 50 percent of the property remain in open space and this project will leave 64 percent, or 19 acres open space. The Town of Stratham Master Plan recognizes several aspects of what this project hopes to address; climate change, the commitment to affordable housing, a commitment to renewal energy, specifically solar energy, and the commitment to protect natural resources. The applicant believes this project is compatible with the spirit and intent of both the master plan and zoning ordinance. Mr. Andersen stated the temporary driveway will provide adequate access and be reseeded after construction has been completed and future maintenance access will be provided from a pedestrian access point. The wetlands are the only environmental constraints are the presence of wetlands which has been avoided. The use of electricity generation is the ability to interconnect with the distribution grid on Lovell Road. The only increase in traffic will be during the installation phase and very minimal. The construction noise will be limited to working hours between 7:00 am-6:00 pm. There is no concern with exterior lighting or glare resulting from this project. All reasonable methods will be taken to mitigate aesthetics impacts for this project. Mr. Andersen stated there will be 28 red cedar trees planted along the

northwest, north, and northeast side of the array. The height will be 6-7 feet and 8-10 feet in alternating heights to provide a more natural look and will be spaced 8-9 feet apart. The environmental preservation that this project allows for will offset 80.5 times of carbon dioxide every year for the 20 years it is slated to be in operation. Mr. Andersen stated there are a number of studies that state solar projects lead to none, if not a positive, impact to the property values. One study provided was taken from densely urban areas in Rhode Island and Massachusetts for solar projects much larger than what is being proposed today and is not an appropriate study to rely on and previously provided a link to studies that solar projects have no impact on property values. A solar project does not require public or private services into place. The only utility needs are to access the Unitil distribution grid. The site plan includes erosion and sediment control to avoid any environmental impacts of runoff. The project will not have a negative fiscal impact on the town. There will be no increase demand on municipal surfaces or resources. This project will contribute to the carbon reduction for the Town of Stratham and NH as a whole. This project also encourages affordability of the community of Aberdeen West and also energy costs into the future. This project will provide 103,089 kilowatt hours per year for the 20 years of the projects life; this equates to a significant reduction of CO2 that will not be entering the atmosphere.

Mr. Anderson made a motion to open the hearing for public comment. Mr. Zaremba seconded the motion. Motion carried unanimously.

Mr. Tom House, of 89 Willowbrook Avenue, asked the applicant to speak to where the construction vehicles will park during construction so as not to be a hazard to the main roads. Mark Weissflog, representing KW Management for the applicants, stated his company will be constructing this project. Mr. Weissflog stated there will be two 18-wheel delivery trucks that will drop materials, a backhoe type vehicle that will dig the holes for the posts, and regular pickup trucks during the construction. He said the scope of the project is pretty limited so there is not a great deal of construction equipment and vehicles needed. Mr. Houghton asked what the duration of the construction will be. Mr. Weissflog stated it will take approximately eight (8) weeks. Ryan Fowler, of Horizons Engineering, stated a temporary driveway could be built and covered once construction is complete.

Eric Maher, Attorney Donahue Tucker & Cindella, representing Cassandra and Roger LaPlante at 58 Lovell Road. Attorney Maher stated the board must determine whether or not this project is consistent with the condition of approval reflected in the Planning Board's 1988 subdivision approval of this site. The condition states there will be no further development on the site and common land and/or open space will remain perpetually conservation, recreation, or park area. Attorney Maher stated the applicant does not agree an approval is consistent with the 1988 approval. The zoning board has existed since 1988 and defines "open space" as areas in which there would be no structures, as a structure is anything fixed to the site. This is clearly inconsistent with that definition. Attorney Maher stated the suggestion that this project is consistent with conservation use is remarkably broad definition of conservation and inconsistent with how that phrase has been applied by the Land Use practitioners in the state. Attorney Maher stated it must be considered whether that open space land, which the town's subdivision regulations is recognized to be for the purpose of providing buffers between lots to enhance privacy and esthetic value is maintained by the construction of the solar array on this site and the applicant believes it is not. If this was possibly consistent the board then must make a determination in that condition to modify. There is no premise to the law for the proposition that an open space designation, once made, may be revised or amended and it does not exist in the

statutes. This is inconsistent with the original approval of the conditions of open space, it is the construction of a 7,000 square foot solar array, a sizable industrial use being put in an open space designated area in the middle of a residential neighborhood and is inconsistent with the original intent of the condition as originally imposed. This will have an impact on neighboring properties and is inconsistent with the spirit and intent of the condition at the outset. Assuming this condition can be amended, this project does not satisfy those criteria. It is not contrary to the spirit and intent of the ordinance and the master plan. The zoning ordinance intends for land is designated to be open space, to remain as open space. This is an industrial use in a residential neighborhood. The open space designation is important and not just to benefit to the landowners, it is a benefit for the public by the terms of this communities subdivision regulations. This open space is intended to act as a buffer to maintain aesthetic values and to ensure privacy. This will have an immediate and apparent impact on the abutters. By the proposed landscaping will mature this project will reach the end of its useful life. The town site plan review regulations require that screening be multi layered and “visually permeable”. A single row of trees will not satisfy that visual impermeability requirement and more is necessary for this to be permitted. A study was submitted that identifies that residential properties located within 1/10th of a mile of these sites can experience reduction in property values of approximately seven (7) percent. This array will not be located within 1/10th of a mile of the abutting property, and more like 20-30 feet. A report was submitted by a local realtor that there is a potential adverse impact of property values in the range of 5-10 percent to the abutting property. The board can apply common sense and independent judgement when considering the impact of property values but it should also be considered that abutting property owner in or around the solar array may be impacted. Attorney Maher stated his clients are not against solar energy and recognize solar energy is to be encouraged when sited correctly.

Mr. Anderson made a motion to close the hearing to public comment. Mr. Zaremba seconded the motion. Motion passed unanimously.

Mr. Canada questioned if the proposed tree could be staggered. Mr. Fowler stated the trees will be staggered in size but will look into staggering side by side and maintain the distance to the property line and impact area. Mr. Fowler stated the proposed trees will visually screen the majority of the array when planted. Mr. Canada asked if the panels are planning to be replaced once they used up their useful life. Ms. Oliver stated the community would make that decision at that time.

Mr. Houghton called for a vote and discussion on the interpretation of the 1988 condition placed on the subdivision approval and possible allowance of the solar array. Mr. Zaremba stated he believes the condition prohibits solar application due to the wording of Note #8 and “conservation” means conservation land only. Mr. Anderson stated the note regarding “open space” is not specifically defined and cannot be forced throughout the entire common area. Mr. Canada stated he believes the note was meant as “common area” and allows for accessory structures. Mr. Houghton stated the board in 1988 the planning board would not have contemplated conversations about clean energy, climate change, and result and impacts of today. The town has adopted very specific regulations for solar and this application falls within those regulations. Mr. Houghton stated the property is not in a “conservation easement” that is maintained by a third party.

Mr. Canada made a motion I move that the Planning Board interpret the 1988 Planning Board condition placed on the Aberdeen West site plan to allow the siting of ground-mounted solar

energy arrays consistent with the application submitted by the Aberdeen West Cooperative, for the following reasons:

1. The proposed use, to generate electricity through sustainable sources, is consistent with a conservation purpose, as permitted by the condition, and the protection of environmental quality.
2. The proposed area of the solar panels represents less than one percent of the total site area and the remaining area will be preserved in its existing natural state.
3. Solar energy installations were not prevalent in 1988 and it is unlikely that solar energy was a significant consideration when the Planning Board placed the condition on the approval. Based on the meeting minutes, it appears that restricting additional housing units was the chief concern.
4. The area of the project is marked as Common Area on the plan, which generally allows for accessory structures and it is unlikely the Planning Board meant to restrict all accessory uses.

Mr. Anderson seconded the motion. Mr. Houghton, Mr. Anderson, and Mr. Canada voted in favor of the motion. Mr. Zaremba voted in opposition. The motion carried on a 3-1 vote.

Mr. Houghton asked for a vote and discussion on Conditional Use Permit and Site Plan to allow the construction of a Medium-Scale ground mounted solar array at the Aberdeen West Cooperative, Lovell Road and Aberdeen Drive (Tax Map 19, Lot 36), consistent with the site plan dated September 29, 2021. Mr. Houghton asked the Town Planner how the discussion relating to the criteria should be handled. Mr. Connors stated that the Board should discuss each criteria and come to a general determination on each criteria, but that it was not necessary to take a formal vote on each criteria. If the application does not meet every criteria, then the Conditional Use Permit cannot be approved. If it does meet the criteria, the Conditional Use Permit must be approved.

Conditional Use Permit Criteria:

1. Will the proposed development be constructed in a manner compatible with the spirit and intent of the Stratham Master Plan and Zoning Ordinance?

Mr. Zaremba stated this is in line with the master plan's goal promoting solar and conservation.

2. Are there any existing violations of the Stratham Zoning Ordinance on the subject property?

Mr. Houghton stated there is nothing in this application that does not conform to the Zoning Ordinance for solar.

3. Is the site is suitable for the proposed use?
 - a. Adequate vehicular and pedestrian access for the intended use.
 - b. The availability of adequate public services to serve the intended use including emergency services, pedestrian facilities, schools, and other municipal services.
 - c. The absence of environmental constraints (floodplain, steep slope, etc.).
 - d. The availability of appropriate utilities to serve the intended use including water, sewage disposal, stormwater disposal, electricity, and similar utilities.

Mr. Canada stated he is satisfied with the applicant's explanation for this criteria. Mr. Anderson and Mr. Zaremba agreed.

4. Will the external impacts of the proposed use on abutting properties and the neighborhood shall be greater than the impacts of adjacent existing uses or other uses permitted in the zone? In your response, please address the following: traffic, noise, odors, vibrations, dust, fumes, hours of operation, and exterior lighting and glare.

Mr. Canada stated the use is allowed by zoning and there will be no external impacts that are over and above what is allowed.

5. Will the location, nature, design, and height of the structure and its appurtenances, its scale with reference to its surroundings, and the nature and intensity of the use, adversely affect the surrounding environment or discourage the appropriate and orderly development and use of land and buildings in the neighborhood?

Mr. Houghton stated the zoning guides the development of solar and this application conforms with setbacks and buffers and everything necessary to insure the criteria is met.

6. Will the proposed layout and design of the site shall be incompatible with the established character of the neighborhood and shall mitigate any external impacts of the use on the neighborhood?
7. Will the design of any new buildings or structures and the modification of existing buildings or structures on the site be compatible with the established character of the neighborhood?

Mr. Canada stated the applicant has satisfied mitigating the design to meet the zoning regulations and impact on the neighborhood.

Mr. Zaremba agreed.

8. Please explain how will the proposed use of the site, including all related development activities, preserve the identified natural, cultural, historic, and scenic resources on the site and not degrade such identified resources on abutting properties.

Mr. Zaremba stated the applicant chose a location to protect the wetlands on the property and satisfied this criteria.

9. Will project result in a greater diminution of neighboring property values than would be created under any other use or development permitted in the underlying zone?

Mr. Canada stated there were several opposite studies submitted for this project and he believes the impact on values will be minimal. Mr. Anderson stated he does not believe there will be any diminished property value that would be greater than any other use or development permitted in the zone.

10. Please explain if the project provides adequate and lawful facilities or arrangements for sewage disposal, solid waste disposal, water supply, utilities, drainage, and other necessary public or private services, are approved or assured, to the end that the use will be capable of proper operation.

Mr. Houghton stated this application will not have an impact on services.

11. Will the proposed use have a fiscal impact on the Town? In your response please detail any demand on municipal and school related services and resources.

Mr. Houghton stated the proposed use will not have negative impact on the Town and the permit is in the public interest with energy conservation.

12. Is the permit in compliance with this ordinance and in the public interest?

Mr. Houghton recommended the applicant work with the Town Planner on the landscaping plan that speaks to the 8-10 foot length between trees and to stagger the array. Mr. Houghton recommended the applicant contemplate taking trees in line on Lovell Road and going further down Lovell Road toward Willowbrook Avenue to screen the property across the road (#61). Mr. Connors asked if the board would like a second row of landscaping on the side abutting the LaPlante property. The board stated yes. Mr. Fowler stated there is a 25 foot non-disturb buffer that is located along Lovell Road toward Willowbrook Avenue which may require a variance. The board recommended the applicant work with the Town on this item.

Mr. Anderson made a motion to approve the Conditional Use Permit and Site Plan to allow the construction of a medium sized ground-mounted solar array at the Aberdeen West Cooperative, Lovell Road and Aberdeen Drive (Tax Map 19, Lot 36), consistent with the site plan dated September 29, 2021 because the applicant meets all of the conditional use permit criteria per the board's deliberation subject to the following conditions to be incorporated prior to the plan signature or as noted.

1. The plan shall be recorded and all recording fees shall be borne by the applicant.
2. Prior to the start of construction, the applicant shall install erosion and sediment control measures that must be inspected and approved by Town staff.
3. The Landscape Plan shall be revised to the satisfaction of the Town Planner to ensure an adequate landscape buffer. Additionally, at the time of planting, the Town Planner may require additional plantings be planted if it is apparent if additional landscaping is necessary to establish a visual buffer. The Landscape Plan shall be updated to indicate a minimum number of plantings, to show landscaping planted in the area of the temporary driveway to provide a continuous landscape buffer, and to show at least three additional trees planted along the west side of the arrays.
4. A note shall be added to the plan indicating that the maximum height of the arrays shall not exceed a level of eight (8) feet from the ground level.
5. All improvements, including proposed landscaping, shall be installed subject to the approved plan.
6. Disturbance to the site shall be minimized to the highest extent practicable and shall be limited to areas necessary to install underground utilities, the solar panels, and associated improvements.
7. After construction of the solar panels, the applicant shall restore disturbed areas,

- including the temporary access driveway, to its predevelopment condition.
8. Hours of construction activity shall be limited to between 8 am and 6 pm.
 9. A note shall be added to the plan, stating “This recorded site plan amends the prior site plan recorded in the Rockingham County Registry of Deeds as Plan No. 18778 to permit the installation of the solar panels and related infrastructure depicted hereon, which shall be used exclusively to serve the residences located on the subject property and for which the Planning Board finds to be generally consistent with a conservation purpose. This site plan is not otherwise intended to change or abrogate any of the conditions of the existing plan No. 18778.”
 10. Prior to the start of construction, the applicant shall provide a financial guarantee to the Town of Stratham to ensure that the arrays are removed and the site returned to its original pre-solar array condition in the event that the use of the arrays is discontinued.
 11. Within 90 days of the completion of construction, the applicant shall submit a certified As-Built Plan to the Planning Department.

Mr. Zaremba seconded the motion. Ms. Oliver asked that the construction hours be changed to 7 am and 6 pm. She stated that 7 am is a more traditional start time for construction. Mr. Anderson said he was open to changing the construction start time to 7 am. Attorney Maher asked that the hours of construction begin no earlier than 8 am because the abutters have small children and 7 am would likely provide disruptive. Mr. Houghton stated that he thought that was a reasonable request. Mr. Anderson stated he would leave Condition #8 as stated in the motion to require a start time of no earlier than 8 am. The motion carried unanimously.

b. Proposed 2022 Zoning Amendments (*postponed from the December 1, 2021 Planning Board meeting*).

- i. Flexible Mixed Use District. *To amend Section III by deleting Subsection 3.7 Flexible/Mixed-Use Development District in its entirety and replacing it with a revised Subsection 3.7 Flexible /Mixed Use Development District.*

Mr. Connors stated modifications were made based on the board’s previous comments. The revised zoning does not allow for senior housing and it has been added as a prohibited use. There were minor modifications to multi-family housing to read as follows:

“3.7.8.b Multi-family and workforce housing developments may take a variety of forms including townhouse or garden style developments. Single occupancy units or duplexes are permitted only if they make up no more than 25 percent of the total number of housing units proposed. Multi-family and workforce housing development shall be restricted to no more than 24 units per structure.”.

Mr. House recused himself from this discussion due to conflict of interest regarding ongoing potential projects in the area. The board discussed lowering the number of units per structure. Mr. Canada suggested a maximum of 12 units per structure. He noted that would be higher than is what is permitted in other areas of Town where the maximum number of units is capped at eight. Mr. Canada asked what the building height requirement is. Mr. Connors stated 50 feet. Mr. Canada requested the building height be amended to 35 feet.

Mr. Anderson made a motion to open the public hearing for discussion. Mr. Houghton

seconded the motion. Motion carried unanimously.

Hearing no comments from the public, Mr. Anderson made a motion to close the public hearing. Mr. Houghton seconded the motion. Motion carried unanimously.

Mr. Anderson made a motion to continue this public hearing to the next meeting date of December 15, 2021. Mr. Zaremba seconded the motion. Motion carried unanimously.

- ii. Growth Management & Innovative Land Control. *To delete Section XV Growth Management & Innovative Land Control in its entirety as this section includes a sunset provision to expire in March 2014 and is no longer enforceable.*

Mr. Connors stated this is a housekeeping amendment which the board discussed at a previous meeting. Mr. Houghton stated the potential for the town to become overwrought with residential development is fairly non-existent. Mr. Canada, Mr. Anderson, and Mr. Zaremba agreed.

Mr. Anderson made a motion to open the public hearing for discussion. Mr. Zaremba seconded the motion. Motion carried unanimously.

Hearing no comments from the public. Mr. Anderson made a motion to close the public hearing. Mr. Zaremba seconded the motion. Motion carried unanimously.

Mr. Anderson made a motion the Planning Board approve posting an amendment to consideration at the 2022 Town Election to propose deleting Section XV, Growth Management & Innovative Land Control, in its entirety from the Zoning Ordinance as the section includes a sunset provision to expire in March 2014 and is no longer enforceable and to renumber subsequent sections of the ordinance. Mr. Zaremba seconded the motion. Motion carried unanimously.

Mr. Connors stated he will email a draft list of zoning amendments to the board for review prior to the next meeting which then can be updated and included in the December public hearing legal notice for January 2022.

4. Public Meeting:

- a. ZJBV Properties, LLC (Owners) - Request for a Preliminary Consultation to review additional design concepts for a proposed 10,000 square-foot medical office building at 23 Portsmouth Avenue (Tax Map 4, Lot 13), Zoned Gateway Commercial. Applicant's representative is Stonefield Engineering and Design, 120 Washington Street, Suite 201, Salem, MA 01970. *(This application was postponed from the December 1, 2021 Planning Board meeting).*

Mr. Connors stated the board has a revised plan before them. The applicants requested to appear before the Board for a second Preliminary Consultation focused on the proposed architecture of the structure.

Samantha Burgner, Director of Real Estate for Optima, gave the board an overview of the design of the building. Ms. Burnger explained the new building design takes elements from the new buildings in the area; Starbucks, 110 Grill, Chipotle, and Subaru. The building colors were

chosen to blend with the adjacent properties. The roof line was redesigned to compromise the general design of Optima while keeping with Stratham design regulations.

Max Puyanik, of Optima Dermatology, spoke to the changes of the redesign submitted before the board.

Mr. House questioned the materials associated with the design. Ms. Burgner gave an overview of the exterior materials to be used. The applicant has been in contact with NH DOT regarding driveway access and it is in final approvals. Mr. Zaremba, Mr. Anderson, Mr. House and Mr. Houghton stated they appreciate the flexibility to redesign to town standards and believe the applicants are on the right track with the redesign. Mr. Canada stated he is not a fan of the design but if it meets the criteria, that is what is important. The applicant stated they plan to submit the formal application on December 15, 2021 to be heard January 5, 2022.

5. Adjournment

Mr. Anderson made a motion to adjourn at 9:13 pm. Mr. Zaremba seconded the motion. Motion carried unanimously.

Note(s):

- 1. Materials related to the above meeting are available for review at the Municipal Center during normal business hours. For more information, contact the Stratham Planning Office at 603-772-7391 ext. 147.*
- 2. The Planning Board reserves the right to take item, out of order and to discuss and/or vote on items that are not listed on the agenda.*