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TOWN OF ASHLAND MASSACHUSETTS
OFFICE OF
ZONING BOARD OF APPEALS
101 MAIN STREET

John Trefethen, Chairman
Josh Chase, Assistant Town Planner

Appeal of Building Inspector's Decision
0 MBTA Access Rd.
Map No.: 13, Parcel No.: 138
September 12, 2017
Case#: AP2-18

Appellant: Citizens Energy Corporation
88 Black Falcon Ave., Suite 243
Boston, MA 02210

RECEIVED
TOWN CLERK
ASHLAND, MA
2017 OCT -2 AM 8:40

BACKGROUND AND PROCESS

1. The Zoning Board of Appeals (the "Board") received an Application to Appeal the Building Inspector's Decision on August 21, 2017 of a Zoning Determination.
2. The application packet for the Appeal of the Building Inspector's Decision, stamped in by the Town Clerk on August 21, 2017, contained:
 - a. Completed Application
 - b. Letter from Robert E. Gayner authorizing Citizens Energy Corporation, and their consultant, Allen & Major Associates, Inc., to file the appeal dated August 17, 2017.
 - c. Abutters list for 0 MBTA Access Road dated August 7, 2017.
 - d. Copy of the Property Card for 0 MBTA Access Road.
 - e. Letter from Phil Cordeiro, of Allen & Major Associates, Inc. asking for a zoning determination.
 - f. Letter from Mike Crisafulli, Ashland Building Commissioner, of a zoning determination.
 - g. Site Plan prepared by Allen & Major Assoc., Inc. of Lakeville, MA titled "Conceptual Ground Mount Solar Farm", dated August 16, 2017.
 - h. Planset (5 pages) prepared by Hancock Survey Associates, Inc, of Danvers, MA, titled Plan of Land, signed and stamped by Wayne C. Jalbert, Professional Land Surveyor No. 36118, dated January 8, 2003.
3. Additional material submitted after the application was submitted:
 - a. Memo from Josh Chase, Ashland Assistant Planner, dated September 8, 2017.
 - b. Memo from the Ashland Planning Board, received on September 11, 2017.

4. A properly noticed public hearing was held on September 12, 2017. The notice was as follows:

Citizens Energy Corporation, prospective tenant, has applied to the ZBA to Appeal the Building Commissioner's Decision under Chapter 282 Section 8.4.4 and Section 9.2.2.3, along with any other applicable sections of the Ashland Zoning Bylaws, the decision that construction of solar energy panels within the Rail Transit District (RTD) -E Zoning District is not allowed. It is of the Applicant's opinion that the use is allowed with a Site Plan Review application through the Planning Board. The property is located at 0 MBTA Access Road in the RTD-E Zoning District and is not located in the Photovoltaic Installations Overlay District. A public hearing will be held on September 12th, 2017 at 7:45 PM in the Board of Selectmen's Room located at Ashland Town Hall, 101 Main Street, Ashland, MA.

Parties wishing to be heard on this matter should appear at the time and place indicated above.

DETERMINATION

After a presentation by the appellant, questions from the Board, and comments from the public, the Board discussed the case.

The property at 0 MBTA Access Road, identified as Parcel 138 on Map 13, is 123.22 acres and is located in the Rail Transit District (RTD) Zoning District. The petitioner is appealing the decision by the Building Inspector that a large scale solar installation is not allowed by-right in the RTD-D zone. It is of note that the application misidentified the area in question as RTD-E, when in fact it is RTD-D that is in question.

The appellant sent a letter to the Ashland Building Commissioner (who is also the Ashland Building Inspector) on July 20, 2017 requesting a zoning opinion on a proposal to apply for a Site Plan Review with the Planning Board. It was the Building Commissioner's decision that the proposed project was not allowed in the RTD-D zone as the RTD-D zone was not included in the Photovoltaic Installation Overlay District (PIOD).

The appellant argued that the definition of "Alternative Energy and Renewable Energy Manufacturing Facilities", which is an allowed use in the RTD-D zone as per Section 8.4.4 of the Zoning Bylaw, contained the phrase "Include, but not limited to, the following...". He also argued that the original intent of the entire RTD zone was to include solar projects. Therefore, the fact that the RTD-D zone was not included in the PIOD was not relevant. The definitions are located in Section 10 of Chapter 282 of the Ashland Bylaws.

The appellant also argued that a large scale solar installation is in fact a manufacturing facility as the solar panels manufacture electricity.

The Board discussed whether the proposed solar farm project fits under the definition of "manufacturing", as stated in Section 10 of the Zoning Bylaw. The Board concluded that, as manufacturing is defined as "A use engaged in the basic processing and manufacturing of materials, or the manufacture from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, packaging, incidental storage, sales and distribution of such products," the proposed use did not fit that definition.

The Board also discussed whether or not the question of whether the PIOD was in fact created as intended is an appropriate matter for the Board to discuss, but it was agreed that the Board did not have that authority. The Board, and several residents, thought it would be a matter for Town Meeting.

The Board must unanimously agree to overturn the Building Inspector's zoning opinion.

DECISION

The following members sat and voted on this hearing:

Stuart Siegel voted to uphold the Building Inspector's Decision that large scale solar installations are not allowed in the RTD-D zoning district.

Brian Forestal voted to uphold the Building Inspector's Decision that large scale solar installations are not allowed in the RTD-D zoning district.

John Trefethen voted to uphold the Building Inspector's Decision that large scale solar installations are not allowed in the RTD-D zoning district.

The Board voted 3-0. The Building Inspector's decision is upheld.

Pursuant to Section 9.4.17 of the Zoning Bylaw, any appeal of this decision shall be made in accordance with G.L. c. 40A, § 17 within 20 days of the date this decision was stamped by the Town Clerk's Office.

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Town of Ashland Zoning Board of Appeals

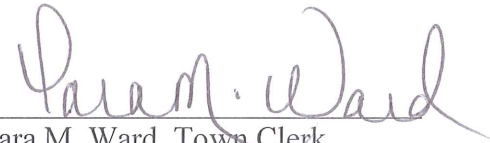
By: 
John Trefethen, Board Chair

By: 
Stuart Siegel, Member

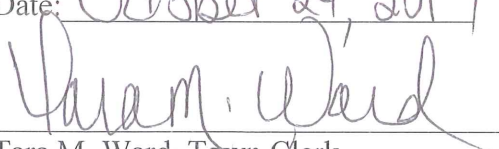
By: 
Brian Forestal, Associate Member

Filed with the Town Clerk on:

Date: October 2, 2017


Tara M. Ward, Town Clerk

I HEREBY CERTIFY THAT TWENTY DAYS HAVE ELAPSED FROM THE DATE THIS DECISION WAS FILED IN THE TOWN CLERK'S OFFICE AND THAT NO APPEAL HAS BEEN FILED.

Date: October 24, 2017

Tara M. Ward, Town Clerk