

Call to Order:

The meeting was called to order at 7:35 PM in the 3rd Floor Conference Room of the Town Offices. Present were Chair Zach Bergeron, Vice Chair Vincent Chiozzi Jr., Neil Magenheim, and Rocky Leavitt. Also present was Paul Materazzo, Director of Planning.

The order of the agenda was altered to start with the discussion of the Solar Bylaw which included an update by the Andover Green Advisory Board (AGAB) and followed with the discussion of the Sign Bylaw with an update by the Zoning Bylaw Study Committee (ZBSC).

Solar Bylaw – Update by the Andover Green Advisory Board (AGAB)

Harry Voorhees of AGAB began the presentation by introducing the bylaw as a working draft. The intent is to bring the solar bylaw to Town Meeting. It will be a Town Bylaw under the auspice of AGAB. Mr. Materazzo recapitulated the history of the bylaw and the concerns of the residents that were considered in the drafting of the bylaw. Mr. Voorhees mentioned that Jacki Byerley, Planner, wrote the initial framework for the draft. The bylaw states that all roof mounted and small-scale solar arrays are allowed in every zoning district. The state solar bylaw was the model for the Town's solar bylaw. The state bylaw limited ground mounted solar to 1,750 square feet. AGAB felt as though that was too large for Andover's single residency (SR) districts A and B and decided to limit ground mounted solar to 1000 square feet in those districts. In other districts, including commercial, the limit for small scale arrays will be 1,750 square feet. Mr. Magenheim commented that the amount of ground mounted solar that would be allowed in SRA or SRB in accordance with the bylaw sounds like a large portion of the plot of land. Mr. Materazzo clarified that the array would only be allowed to supply power for the single residency. It would not be able to produce energy to be distributed. Only the industrial zone is allowed to distribute more power than is necessary for the single property. Mr. Magenheim asked if in their research AGAB had come across any communities that have denied ground mounted solar. Don Schroder, in the audience, answered that he never heard of a denial. In his research, it seemed as though 1000 square feet was the lowest maximum allowable.

The Board discussed the possibility of having ground mounted arrays be regulated by a percentage of the property, such as 15% of the total land, instead of a designated area, such as 1,750 feet. Mr. Voorhees agreed that the percentage could be added to the bylaw.

Mr. Voorhees brought the Board's attention to the section of the bylaw concerning medium scale arrays. With medium scale arrays, the Board would be more involved in the decision-making process. Any array larger than 1,750 square feet would be considered medium scale. AGAB wants to make sure the bylaw is definitive enough to make the Board's decision-making process as straight forward as possible. The medium scale arrays would be presented to the Board as a special permit. Mr. Materazzo stated that if the General Business District or Mixed-Use zoning districts included medium scale solar arrays it could disturb the vibrant atmosphere that has been cultivated in those districts. Mr. Bergeron added to that sentiment saying that he could envision a medium scale solar array included on a property such as Dundee Park. Mr. Materazzo agreed that ground mounted or solar carports on a property such as Dundee Park, which is located in an industrial zone, would be a positive development.

Mr. Leavitt pivoted the discussion and asked the question: who would regulate the amount of onsite solar needed to power a house or business? Mr. Voorhees stated that it would depend on the previous

year's electric bill and if there were any improvements done to the house or solar panels. Mr. Voorhees assured that there would be no point to installing more solar panels than what is needed to provide power to properties in SR – A, B or C. If a special permit is issued to a residential property it would have a two-year lifespan and the applicant would have to come back to the Board to renew the permit. This renewal would be an enforcement tool. The applicant would provide their electric bill to the company that is installing the solar panels in order for the company to know the scale of their array. The bylaw also regulated the placement and height of the solar panels.

Mr. Voorhees continued to section 4.2.5 of the Solar Bylaw which regulates accessory use of the solar panels. The bylaw states that the solar panels cannot be near the property line. They have to be off the rear. The height of the panels is limited to 15 feet from the ground.

The bylaw does not apply to Town owned property. The fire station could have solar carports and they could increase the height limit to 20 feet. Don Schroder commented on carports ruining the character of residential areas. Carports can be very solid structures and can be large in some areas. Mr. Voorhees pointed to the bylaw which states that design standards minimize the visual impacts of solar arrays and allow the Planning Board flexibility in approving special permits.

Mr. Magenheim was reassured that there would be situations that would be 'by right' and would not come to the Planning Board for approval. In all cases, the building inspector would be involved in approving the installation of solar panels.

Large scale solar arrays were the only part of the bylaw left to be discussed. Mr. Voorhees noted that vegetation improves the effectiveness of the solar array by reducing the heat in the vicinity of the arrays. The design guidelines call for low lying, native species to be used in order to create a natural environment and improve operations. Susan Johnston, of North Andover, and representative of the Andover Garden Club, referenced Vermont's habitat score card which can be used to evaluate the vegetation. Vegetation, along with sufficient setbacks will act as a visual buffer.

Mr. Bergeron stated that the solar bylaw is on its way to becoming good legislation. Mr. Magenheim stated that since there is nothing in place right now, this is a great place to start. Mr. Leavitt commented that they should consider implementing a percentage of the property for ground mounted solar as was discussed earlier in the evening.

Sign Bylaw – update by Zoning Bylaw Study Committee

The Sign Bylaw presentation was given by Andy Rouse. Mr. Rouse started the presentation by stating that there are legal issues with the Town's current sign bylaw. The precedent set by the Supreme Court case, Reed v. Town of Gilbert, sets the standard with which the sign bylaw needs to comply. The Town's current sign bylaws violate free speech because they target specific types of signs and the content of signs. Any bylaw that restricts the content of the sign is unconstitutional according to Reed v. Town of Gilbert. It is extremely difficult for the Town to prove that there is a compelling reason for having a content-based sign bylaw. In the presentation Mr. Rouse went through all of the Town's sign bylaws that violate the constitution. The goals of the amendment are to remove all sections of the sign bylaws that do not have a compelling justification and to preserve as many sign bylaws as we can, while removing content-based regulations to comply with Reed vs. Town of Gilbert.

Mr. Rouse stated that the Town must delete section 44 of the general bylaws, which regulates banners in the General Business District, because there are legal issues with that section. Currently, a banner is allowed only for a specific event. It gives an opportunity for some speech, but only by certain groups. There are two options, either make the bylaw content-neutral or delete the bylaw all together. Mr. Bergeron asked if we delete the bylaw, is no one allowed to put up a banner? Mr. Rouse answered the question by stating that by deleting the bylaw, no banners would be allowed. The Town can still put up a banner, but no other institution can put up a banner.

Section 5.2.3.2 regulates that signs must be relevant to the premises or products on the premises. This section has been deleted because it is a content-based sign bylaw.

Section 5.2.3.4.b which regulates signs for a closed store which must be removed within 30 days has to be deleted. Since the bylaw regulates what is being said on private property, it is regulating free speech and should be deleted.

Section 5.2.5.12 has been added to prohibit commercial signs in a residential district. The Town has a compelling interest to preserve our zoning districts which would constitute reason to restrict content of commercial signs in a residential district. Town Counsel, Tom Urbelis, stated that Justice Samuel Alito gave guidance to this point that on premises commercial business signs would be allowed. For example, home businesses or a contractor who is currently working on the property can erect commercial based signs.

Section 5.2.6.3 which gives special allowance for off-premises directional signs in the right of way has been deleted. It has been deleted because directional signs are content based and would be given preference over other signs that are not allowed.

Section 5.2.7 which applies to temporary signs has been deleted. Distinguishing between temporary and permanent signs is difficult. One should be able to put up a sign for any amount of time.

Section 5.2.6 signs allowed without a permit has been changed to allow content-based signs. This section will only regulate the size and location of signs.

Mr. Rouse summarized the presentation by saying that we need to change our sign bylaws so that they can all be legally enforced, where presently the Town's bylaw is not in compliance with the recent Supreme Court decision. The changes should also simplify the bylaws. Heather Lauten, of the Zoning Bylaw Study Committee, stated that the changes were approved unanimously at the latest Zoning Bylaw Study Committee Meeting and that they made sure all the bylaws followed the law. Mr. Bergeron agreed that the sign bylaws addressed the legal concerns, which is the right approach for Town Meeting. Mr. Urbelis added that the changes should be presented as an attempt to remove violations. There is no guarantee that we have covered all the legalities. Even the Attorney General does not offer an opinion on whether town bylaws meet the requirements of Reed V. Town of Gilbert. There is no state model for sign bylaws.

This will be a private article presented at Town Meeting.

Approval of Minutes

Mr. Leavitt moved to approve both the November 12, 2019 and the December 10, 2019 Planning Board minutes. Mr. Magenheim seconded the motion. The Board's vote was unanimous.

Other Business

Since the Planning Board Meeting scheduled for March 24, 2020 falls on election day, the Board discussed March 31, 2019 as a possible day to reschedule that meeting.

The Board also discussed other articles that will go before Town Meeting including the disposition of land at 11 Lewis Street.

Other projects that were discussed were the development located at Dascomb Road and the Route 133 Corridor Project.

Adjournment

Mr. Leavitt moved to adjourn the Planning Board Meeting and Mr. Magenheim seconded the motion. The vote to adjourn was unanimous. The Planning Board adjourned the January 14, 2020 meeting at 9:16 PM.

Documents:

Solar Bylaw:

- Memo titled Solar Bylaw Andover Green Advisory Board Draft. From Jacki Byerley, Planner, to the Planning Board. Dated January 10, 2020
- Solar Bylaw Draft – Amend Andover Zoning Bylaw Article VIII

Zoning Bylaw:

- Zoning Bylaw Study Committee's Presentation on the Sign Bylaw Amendments
- Draft 6 of the Solar Bylaw
- Draft 6 Changes since Draft 5
- Draft 6 with changes since Draft 5

Minutes:

- December 10, 2019 – Andover Planning Board Meeting Minutes
- November 12, 2019 – Andover Planning Board Meeting Minutes