

**Town of Windham Maine
Zoning Board of Appeals
October 7, 2021
Council Chambers- 6:30 P.M**

Meeting Start Time: 6:30 P.M.

IMPORTANT NOTE: No visual recording was done for this meeting. Meeting was recorded using Voice

Recorder from the Code Enforcement Office.

Roll Call

Members in Attendance: Chuck Fleck, Chair, Christopher McDonald, Vice Chair, Jim Cobb, Raymond Batchelder

Staff in Attendance: Jon Rioux, Code Enforcement Director, Kelsey Ledoux, Code Enforcement Administrative Assistant, Kristin Collins, Town Attorney

Others in Attendance: Jeff Sparrow Green Sun Solar, Aubrey Strause, Acorn Engineering, and Legal Counsel for Green Sun Solar, Greg Bowers Day One, Becky Humphries Day One, Curtis Robinson Port City Architecture, Legal Counsel for Day One

Minutes of September 16, 2021

Motion to accept meeting minutes of September 16, 2021: Jim Cobb

Second: Christopher McDonald

Vote: All - In - Favor 4-0

Public Hearings Opened - These hearings are a continuation of the meeting on September 16, 2021.

ZBA 21-006 Green Lantern Solar are applying to obtain a variance from Chapter 140, Land Use Ordinance, Sec. 400 Zoning District, Commercial District II (C-2)/ Limited Density Residential (RL) dimensional standard requirement of 150ft of public road frontage, due to landlocked parcel, at 994 Roosevelt Trail - Map 21 Lot 3 (C-2/RL) to create an access road, solar panel array and related infrastructure.

The Board recalled questions and concerns that were brought up at the September 16th meeting and informed the public that the Town Attorney was asked to be present for this meeting to advise the Board.

The Town Attorney questioned when the lot in question was created, as it may be a legally nonconforming lot. She explained that to know this, we would need to know when the lot was created and when the relevant frontage standard came into effect. Green Lantern stated that it

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had performed title research and confirmed – along with title research performed by the Town Attorney later in the meeting – that the lot dated back to the 1920s.

Christopher MacDonald inquired whether a variance runs with the applicant or with the land. The Town Attorney responded that there is a provision in the Ordinance (Section 1106(A)(1)) which states that “Approved variances shall run with the land and thus pass from the owner of a property to the next owner of said property.” She further explained that a variance could only be conditioned to run with the applicant if there was something particular about the applicant or the development that satisfies an approval standard, and could not be met by another owner.

Jim Cobb raised concerns about stormwater runoff and buffering, and Chuck Fleck also raised concerns about buffering. Mr. Fleck asked whether those requirements could be conditioned by the Board. The Town Attorney responded that these issues should be addressed by the Planning Board and that conditions should only be placed if related to the dimensional standard variance questions and issue of reduced frontage.

The Chair asked if any Board member had information or circumstances that would not allow for an unbiased opinion. Raymond Batchelder stated that he is part of the Road Association which does abut the property. He is not a direct abutter to the project, but does live on Linnell Road. The Chair asked if he could be unbiased and objective, which he responded in the affirmative. The Board and the applicant verbally consented to Mr. Batchelder’s participation in the review.

Public Comment Opened

No Public Comment

Public Comment Closed

Applicant Comment Opened

Aubrey Strause addressed the Board and stated that comments made by Board confirm the thoughts of the applicant. Most applications would require the access road be widened, this application does not. Access road is easily visible from Route 302.

Wants to discuss seven (7) criteria, applicant would not change or add any comments. Does want to address Jim Cobb’s question, and asks to look at the questions focused on the road frontage variance.

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Further discussion was had regarding the lot's status as a legally nonconforming lot. The Town Attorney indicated that to the extent this is relevant, it should simply be noted in the decision that the lot may be legally nonconforming.

**Applicant Comment Closed
Board Discussion Opened**

Jim Cobb requests that the Board recommend that the Planning Board closely review stormwater runoff and buffering issues. The Board reviewed the approval criteria at its prior meeting and did not feel the need to review the criteria again. Its questions have been addressed.

Board Discussion Closed

Motion to direct Town Counsel and Staff to provide findings to review at the next meeting to be set and application to be approved: Christopher McDonald

Second: Jim Cobb

Vote: All-In-Favor 4-0

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ZBA 21-007 Port City Architecture is applying for a Conditional Use expansion in the Commercial 1 District (C-1) for the property located at 86 Tandberg Trail, known as Day One/Smart Child and Family Services. Currently in use as a private rehab center, the conditional use expansion would be for a renovation of the existing building to include a residential treatment program for teen boys.
* a formal e-mail request was made to alter this description. The treatment center would be open to all adolescents, not just teen boys.*

Christopher McDonald reads a prepared statement to the Board and recused himself. He then sat as a member of the public for the duration of the review.

Board discussion opened

Jim Cobb states Board received letters from Police and Fire/EMS. He questioned the Town Attorney regarding whether the Planning Board can address security of the building. The Attorney stated that it is a conditional use review and the Board would need to review the conditional use questions. Safety and security may be a part of that discussion.

The Attorney asked for confirmation that all Board members were present at the last meeting. Raymond Batchelder stated that he was not, but had reviewed all the material and watched the video of the last meeting. Legal counsel for Day One had no concerns about Mr. Batchelder's participation.

The Chair asked if there would be any information that would identify a bias, there was none.

Public Comment Opened

Christopher McDonald addresses Board and argued that the use would lower property values. That the change of use from outpatient to inpatient would change the demeanor of the facility. He has concerns for the local community and their safety, and asked the Board to consider the application fully and the side effects.

Public Comment Closed

Applicant Discussion Opened

Legal Counsel for Day One addressed the Board. He noted that these

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safety and security questions have come up the past with other facilities. He clarified that this facility is not a jail. Procedures are required to be followed from the Office of Child and Family Services. Family and/or Police would be called if a resident wants to leave the program.

He responded to Public Comment, that the concern is understood

In response to article raised in previous meeting regarding property values, this building is pre-existing not new, and is in a Commercial Zone. He noted that the septic report was completed as requested.

Jim Cobb addressed the applicant and asked what is being done for a buffer to make it look less business-like.

Greg Bowers of Day One said that the facility wants to be part of the community, does not want to stick out.

Greg Bowers from Day One noted that it had submitted a revised cover letter to be more inclusive; it may not only be boys living there. Email was sent on day of meeting.

**Applicant Discussion Closed
Public Comment Reopened**

Christopher McDonald is not concerned with the visual aspect of the building, but he is concerned with the use.

There was a request from the last meeting, to have a letter from the school sent on the hardship, and he asked if it was received?

Public Comment Closed

The Chair stated that after the last meeting, additional information was requested from the school; it was not requested during the meeting. The Attorney asked whether this information was requested by the Board or a member of the public. The Chair responded that it was a member of the Board who asked. The Town Attorney stated that a request would need to come from the Board during a meeting. It must be relevant to the approval standards. The Chair asked if the requested information from the school on safety fits in with the question of burden on Police and Fire / EMS. The Attorney responded that the letters from Police and Fire / EMS are sufficient to address this point and it would be beyond the Board's purview to seek information beyond these letters.

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The Chair asked if Code Enforcement has an issue with the wording on the nature of the applicant. Jon Rioux responded that gender is “not in play” and is not a factor in the use.

The Chair asked whether each review criterion needed to be unanimously agreed upon. The Town Attorney responded that each vote needs a majority of the quorum.

Jon Rioux noted that Code Enforcement still needs to review the permit application, and septic will still need to be reviewed. This application does not go to the Planning Board and may just be Fire Department and Code Enforcement review.

Legal Counsel for Day one addressed the Board.

Becky Humphries addressed the Board

Greg Bowers addressed Board. This is a voluntary program; kids want to be in Treatment. He does not want kids to be painted in a bad light.

Public Comment Reopened

Christopher McDonald addressed the Board.

Public Comment Closed

The Board addressed the letters from Police and Fire Departments. Jim Cobb noted that it sounds like the Police Chief is not concerned. Ray Batchelder stated that this is a small facility. Chuck Fleck stated that there is no evidence that property values would decrease significantly, but he is unsure. There is still a question mark concerning public safety as well.

The Town Attorney discussed question #7 in the conditional use standards. This question addresses accessibility to the site, etc. The question of incidents in school is not relevant to this approval standard. Questions about whether this type of facility is “right for Windham” are not appropriate.

Board Discussion Closed

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The Board reviewed all criteria of Conditional Use. These minutes reflect the answers of the board and conditions. Please see the attached documents for the applicant responses.

Question 1 (Property Value):

Chuck Fleck did not find this to be met based on the article discussed in the prior meeting.

Jim Cobb agreed with applicant on the condition of having a buffer

Ray Batchelder agrees with applicant.

Condition: To reasonably screen view of the facility from Tandberg Trail through installation of a treed and/or vegetated buffer from

Tandberg Trail.

All In Favor 3-0

Question 2 (Wildlife Habitat): All in Favor 3-0 for reasons set forth in applicant's proposed findings.

Question 3 (Botanical Species): All in Favor 3-0 for reasons set forth in applicant's proposed findings.

Question 4 (Potable Water): All in Favor 3-0 for reasons set forth in applicant's proposed findings.

Question 5 (Sewage Disposal): Septic report was provided. Applicant will update septic as needed.

Code Enforcement says that the septic will need to be reviewed by a site evaluator.

All agree with condition that the plumbing inspector review the system.

All in Favor 3-0

Question 6 (Traffic): All in favor 3-0 for reasons set forth in applicant's proposed findings.

Question 7 (Public Safety): Does not provide additional burdens, Letters provided from Police and Fire/EMS.

Chuck Fleck abstains due to concerns about the school.

Approved 2-1 for reasons set forth in applicant's proposed findings as well as the above.

Question 8 (Vibration):

All in favor 3-0 for reasons set forth in applicant's proposed findings.

Question 9 (Noise): All in favor 3-0 for reasons set forth in applicant's proposed findings.

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Question 10 (Off-Street Parking and Loading):

Code Enforcement says that site plan review may not be triggered, and there's no issues.

Boards says based on the size of the facility the parking is adequate

CEO needs to review that the parking space requirement is met

All in Favor 3-0 for reasons set forth in applicant's proposed findings as well as the above.

Question 11 (Odors): All in favor 3-0 for reasons set forth in applicant's proposed findings.

Question 12 (Air Pollution): All in Favor 3-0 for reasons set forth in applicant's proposed findings.

Question 13 (Water Pollution): All in Favor 3-0 for reasons set forth in applicant's proposed findings.

Question 14 (Erosion and Sediment Control):

Code Enforcement will require Soil and Erosion permit if necessary

All in Favor 3-0 for reasons set forth in applicant's proposed findings.

Question 15 (Hazardous Material): All in Favor 3-0 for reasons set forth in applicant's proposed findings.

Question 16 (Zoning District and Performance Standards):

Counsel and Staff go through Ordinance, most additional requirements are not applicable. As the proposed use is akin to a "boarding home for sheltered care" the facility should be licensed by DHHS. The Applicant confirmed the existing facility is licensed through DHHS, this facility would be added to license.

Condition was approved that the facility remain licensed, and license will be displayed at facility, and confirmed prior to Certificate of Occupancy.

All in Favor 3-0

Question 17 (Solid Waste Management):

Facility will use existing dumpsters

Board asks if the dumpsters need to on a concrete slab

Pursuant to Section 554 a Condition was approved that all solid waste must be on concrete pad and fenced.

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All in Favor 3-0

Motion to incorporate responses and conditions as findings of fact: Jim Cobb

Second: Ray Batchelder

Vote: All In Favor 3-0

Motion to approve application incorporating all conditions: Jim Cobb

Second: Ray Batchelder

Vote: All In Favor 3-0

*Motion To direct staff and Town Counsel to draft Notice of Decision and Findings
of Fact:* Jim Cobb

Second: Ray Batchelder

All In Favor 3-0

Christopher McDonald rejoins Board

Motion to Adjourn: Christopher McDonald

Second: Ray Batchelder

All In Favor 4-0

Meeting Adjourned: 8:40PM