



**Minutes of Meeting
December 06th, 2022
7:30PM
Virtual (Zoom) Meeting**

Board of Appeals members in attendance: Ken Kozik, David Schena, Adam Hoffman
Staff Present: Kristen Guichard, Planning Director, Kaila Sauer, Assistant Planner, Alicia Burak, Admin Assistant

Opening

Chair, Ken Kozik opened the meeting at 7:31PM. He read the guidelines for the virtual meeting. He called the roll. Ken Kozik- Aye, Adam Hoffman- Aye, David Schena – Aye.

I. Regular Business

1. Approve previous meeting minutes

Adam Hoffman motioned at 7:31PM to approve the October 12th, 2022 meeting minutes as drafted. David Schena seconded the motion. Roll Call Vote: Ken Kozik- Aye, Adam Hoffman-Aye, David Schena- Aye

2. Administrative Updates: 2023 meeting dates discussed

II. New/Special Business

1. ZBA22-11 –Public Hearing–55 Knox Trail, Variance

ZBA members agreed to continue the public hearing to 1/3/23 at 7:40pm

2. ZBA22-05 – Continued Public Hearing – 9 Lilac Court, Special Permit

ZBA members agreed to continue the public hearing to 1/3/23 at 7:35pm

3. ZBA22-12 –Public Hearing– 100 Discovery Way, ZEO Appeal

Chair, Ken Kozik opened the public hearing at 7:45PM

Ken Kozik gave a brief summary on the history that lead to the appeal of the ZEO's determination of classifying the facility as a warehouse. Ken Kozik asked Planning Director/ZEO Officer Kristen Guichard if she sought legal advice on replying to the petitioner, Ms. Wulson. Kristen stated that she did not, but she sought legal advice with Town Counsel in the spring prior to reaching out to Bluewave Solar on whether the project would be an allowed

use. Kristen Guichard advised the board on how and why she came to her decision by using the Town bylaws and State law which she noted in her response to the petitioner.

Attorney Dennis Murphy, on behalf of the petitioner Rachel Wulson, stated he thought her conclusion was wrong because the battery storage facility that is proposed will not be connected to any solar energy generating facility, and he believed it was not protected under state law, Chapter 40A Section 3. They discussed the language of the state law and chair Ken Kozik did not agree with Attorney Murphy. He stated that in the local bylaw a warehouse is where you store something for a period of time and a distribution center is where something goes in and out quickly, and because the electricity is being held there for a very short time he believes it is a distribution center. Attorney Ken Kozik pointed out that the bylaw defines a warehouse, as a building primarily for the enclosed storage of goods and materials and it goes on to say for any length of time stating the time is not defined.

Kristen stated that she did not believe it fit under Acton's definition of a distribution center because of the size. She stated that a distribution center is meant for large scale packaging centers such as Amazon that is larger 5,000 square feet is used primarily for receiving short term enclosed restorage, packaging or shipping and doesn't qualify as that.

David noted that the battery system is warehousing a certain amount of electricity, which constitutes a good.

Public Comment:

Michael Shulze, 24 Brucewood Rd- Expressed concerns about the safety of new technology and possible hazards.

Terra Friedrichs, Mass Ave- stated she did not believe that electricity is a good and did not think it was a warehouse.

Angela Morrison, 15 Brucewood Rd- Referred to Dan Hill's memo and asked if it was still categorized as a warehouse. Kristen Guichard stated she did believe it was a warehouse.

Hongfeng Deng, 11 Brucewood Road- stated she did not believe electricity is a good.

Adam Hoffman motioned at 8:36PM to close the public hearing. David Schena seconded the motion. Roll Call Vote: Ken Kozik-Aye, Adam Hoffman-Aye, David Schena- Aye.

Deliberations:

All Board Members agreed that the interpretation by Kristen Guichard was well reasoned, she was correct in her determination, that a warehouse comprises of an enclosed storage of goods for

any length of time, and that electricity is a “good”. They also agreed that that facility is protected under Chapter 40A Section 3.

Adam Hoffman motioned at 8:41PM to deny ZBA22-12, the petition to overturn the decision of the Zoning Enforcement Officer. David Schena seconded the motion. Roll Call Vote- Ken Kozik- Aye, Adam Hoffman-Aye, David Schena- Aye.

Adam Hoffman motioned to close the meeting at 8:43. Roll Call Vote: Ken Kozik-Aye, Adam Hoffman-Aye, David Schena-Aye

Meeting closed at 8:43PM

Ken Kozik to write the decision.

Materials Used at the Meeting:

ZBA How to Participate Remotely

12-06-Agenda

Draft 11/01 ZBA Minutes

9 Lilac Extension.

55 Knox Trail Extension

100 Discovery Way Application Materials as follows:

100 Discovery way 300FT

ZBA Appeal Package 10.19.22

Accountable Mail

Memo of Law ZBA 12.1.22

Legal ad

100 Discovery Way Proposal Email 10.21.22

Acton ZBA-Bluewave correspondence – 100 Discovery Way- 2022-11-30

Acton ZBA- Bluewave correspondence- 100 Discovery Way-12-02-22

Courtney Elias Email 10/29

Janice Ward Email 11.8.22

Memo of Law to ZBA 12.1.22 (final)

Michael Shulze Email 11.29.22

Michael Shulze Email 11.30.22

Xerox Scan

Health Comments

Planning Division memo 11.28.22

Request for Zoning Determination by Rachel Wulsin 9.8.22

Zoning Determination by ZEO 9.20.22