

Special permit not required for Pilgrim Station dry cask storage

By Frank Mand

Wicked Local Plymouth

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What's this?

PLYMOUTH — The Zoning Board of Appeals will not reverse a decision to grant Pilgrim-owner Entergy an unconditional permit to build dry-cask storage at its Rocky Hill Road facility.

The appeal by residents who would like to see greater oversight of the project took two nights and nearly seven hours of testimony, but in the end, a majority of the board felt that Building Inspector Paul McAuliffe's original decision was reasonable.

It would have taken a super majority (four of five members) of the board to overturn the initial decision. Board members Bill Keohan and Michael Main voted for reversal.

Early in the hearing it was difficult to discern which way the board was leaning. And with counsel for both sides disagreeing on just about every aspect of state law and how to interpret local regulations, it seemed the board would have found a Solomonesque solution.

This past Wednesday night though – the second night of the hearing – the board appeared to be offered a path around the legal arguments: permission to come up with its own interpretation.

Town Counsel Elizabeth Lane told board members they had the authority to affirm or reverse in whole or part, or modify McAuliffe's decision as they saw fit – as long as their rationale was reasonable.

Attorney Richard Serkey, representing Entergy, countered with what he called "practicalities."

If the board upheld the building inspector's decision, then the appellants would appeal to a higher court, Serkey acknowledged, and town counsel would likely adopt a "passive defense," with most of the costs born by those appellants.

However, if the ZBA were to grant the appeal," Serkey warned, "Entergy would appeal, and then who will represent the zoning board?"

In that scenario town counsel would likely have to recuse herself, and the town would have to hire – at great expense, Serkey suggested – a special town counsel.

"The way you vote has financial ramifications to the town," Serkey said.

Another one of Serkey's arguments against reversal was that the town had ceded its rights to the Nuclear Regulatory Commission – then the Atomic Energy Commission – when approved the project in 1967.

Town counsel disagreed with that assertion.

On the first night of the hearing Serkey raised the issue of a special understanding that he said existed between the plant owners and the town, that Entergy projects would not be subject to the special permit process.

Serkey later became indignant that this "understanding" was being cast as a backroom deal.

"There was no smoke-filled room," Serkey said, although he could not produce documentation of that from the time in question.

He did elicit affidavits from Town Planner Lee Hartmann and his predecessor, Jack Lennox.

Hartmann's affidavit said his understanding was that projects were viewed on a case-by-case basis, and that in this case a special permit was not required.

Lennox' affidavit echoed Serkey's argument that the 1967 permit delegated review to federal regulators.

Attorneys for the appellants scoffed at this alleged understanding, however it was conceived, asking why Boston Edison had still requested special permits for a variety of projects

They also criticized what they called an "Iron Curtain of Secrecy" regarding the development of the dry-cask storage project at Pilgrim.

Entergy had begun preliminary work on the project without obtaining permits of any kind.

Only after evidence of that construction was discovered through aerial photographs – and questions raised at a meeting of the town's Nuclear Matters Committee – did Entergy seek permits.

Despite that lack of transparency, a majority of the board felt McAuliffe's decision should stand.

"Did the director of inspection services use his reasonable judgment," Board Chairman Peter Conner asked rhetorically during the lead-up to a vote? Yes, both Conner and fellow appeals board member Ed Conroy concluded.

Those two votes were enough to deny the appeal, but Entergy also received the vote of Vice Chairman David Peck.

Dry cask storage, Peck said, was just another technical modification to the plant.

“My position is that, whether internal or external storage, it is part of the assembly,” Peck said. “When the special permit was approved in 1967, it was for all of the components then required, or required in the future.”

The two board members who voted to overturn the inspectors’ decision were equally certain of their arguments.

Main explained that he had reached his decision to support reversal by first researching the history of zoning all the way back to the first Supreme Court ruling on zoning, in a case involving Euclid, Ohio.

His research led him to believe, Main said, that that the most important point to consider in this appeal was intent.

“When the plant was originally permitted, in 1967 the intent was to build a power plant that produced electricity,” Main said. “The intent was never for there to be a spent-fuel dump.”

“It is reasonable to disagree with the director of inspectional services,” board member Bill Keohan said. “(McAuliffe) reached his conclusion with the information he was provided. We have had a chance to sit down and hear extensive presentations by both parties, and I think it is reasonable to conclude that this issue should be sent to the special permit process.”

What’s next?

The town has 65 days to file the decision with the town clerk.

Attorney Meg Sheehan, one of the volunteer attorneys supporting the 18 appellants, said that when that happens they would likely take the case to the next level, either land court or superior court.

“We believe this decision is contrary to the clear provision in the Plymouth zoning bylaws that require a special permit for the storage of waste byproducts,” Sheehan said. “At that point the ZBA decision would largely be irrelevant because the court will look at this anew, take a fresh look.”

Sheehan said the appellants feel confident they will win that appeal.

Ultimately, Sheehan said, they want Plymouth and its residents to have a say in how dry-cask storage is done at Pilgrim.

“We want dry cask done right,” Sheehan said. “We don’t trust Entergy or the NRC to make this the best possible dry-cask storage for our community. There are many improvements that experts such as the Union of Concerned Scientists recommend above the bare-bones design the NRC allows.

“The town has authority to impose those conditions, pursuant to a special permit. The public has the right to help educate the town to what conditions will make this dry-cask storage facility the best they can get.”

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Do you suppose that Richard Serkey actually believes what he just got through the zoning board? This was a great chance for our town to have a little say in how this whole high level nuclear waste thing goes down... I mean this will affect this town longer than you or I will be here.



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