



BELLINGHAM ZONING BOARD

Case #: FY2024-#4
Filing Date: May 3, 2024

TOWN OF BELLINGHAM BOARD OF APPEALS NOTICE OF DECISION

Location of Property:
160 Maple Street, Parcel 1
Bellingham, MA 02019

Assessor's Reference:
Assessor's Map: 26
Lot: 9

Name and Address of Applicant:
NextGrid Mescalbean, LLC,
177 Huntington Ave, Suite 1703
Unit 73069
Boston, Massachusetts 02115

Name and Address of Owner:
Maplegate Realty Trust,
160 Maple Street
Bellingham, MA 02019

DECISION of the Zoning Board of Appeals (the "Board") acting under the Bellingham Zoning Bylaws (the "Bylaws") and Massachusetts General Law c. 40A, on the application of NextGrid Mescalbean, LLC (the "Applicant") for a Use Variance, Section 240-12, to allow an existing access way located on the property at 160 Maple Street, Parcel 1, Bellingham, Massachusetts and identified as Assessor's Map 26-9, (the "Property") in the Town's Suburban zoning district to be used to access a ground mounted solar voltaic array project in the Town of Franklin located at Parcel ID – 239-012,237-36;239-009, and portions of 239-010 (the "Franklin Property"), all shown as Parcel 1 on plans submitted as part of the application.

This Decision is in response to an application dated February 13, 2024 and filed with the Board on February 20, 2024. The Board caused notice of the time and place of the public hearing and of the subject matter thereof to be published in the Milford Daily News on March 21, 2024 and March 28, 2024 and to be posted and mailed to abutters and other parties of interest as required by law. The public hearing was conducted on April 4, 2024 and continued to May 2, 2024 when the hearing was closed. The record of the proceedings and submissions upon which this Decision is based may be referred to in the office of the Town Clerk or the Board office.

Members present and voting at the hearing were Peter Gabrielle, Chairman, Rayan Shamas, Vice Chairman, Brian Salisbury, Brian Wright and Liz Berthelette.

The Board, after considering the materials submitted with the application, together with the information developed at the hearing, finds that:



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1. The Applicant is seeking a use variance under Section 240.12 of the Zoning Bylaw so that it can use an existing accessway located on the Property to provide access to a ground mounted solar voltaic array use to be constructed on the Franklin Property. That access way was previously used by the Maple Gate Country Club to provide golf course access.
2. The proposed large ground mounted solar photovoltaic array use is not permitted in the Town's Suburban zoning district.
3. The Applicant has also contended that no use variance is required because it is proposing to use the Property for a solar project which benefits from the protections contained in G.L. c. 40A, §3, ¶9. While the Board agrees that G.L. c. 40A, §3, ¶9 applies to the proposed use of the Property, the Board disagrees with the Applicant's legal conclusion and finds that a use variance can be required for the Applicant's proposed use of the Property.
4. A literal enforcement of the provisions of the Zoning Bylaws would involve a substantial hardship, financial or otherwise, to the petitioner or appellant, as the use is proposed to be located in the Town of Franklin and limited disturbance shall be created in Bellingham. The already existing access way is the sole access to the land in Franklin where the solar use is to be sited.
5. The hardship is owing to circumstances relating to the soil conditions, shape or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located as limited disturbance is proposed along the existing access way which is the sole access to the said land in Franklin. The Applicant has investigated alternative access points and those alternative access points have been determined to be not feasible as they have substantial environmental concerns.
6. Desirable relief may be granted without either: (a) Substantial detriment to the public good; or (b) Nullifying or substantially derogating from the intent or purpose of this bylaw because the proposed use of the Property is for access over an existing access way and it is expected that the existing access way will experience less use for the solar project than when it was in use for the golf course.

Therefore, the Board, after reviewing the available materials and based upon the above findings, voted Peter Gabrielle, Chairman, nay Rayan Shamas, Vice Chairman aye, Brian Salisbury, aye, Brian Wright aye and Elizabeth Berthelette aye (4 to 1) to **GRANT** the **VARIANCE** subject, to the following:

1. The proposed activity shall be conducted substantially in accordance with the Application submitted and materials contained in the Board's file.
2. The granted use variance is solely and exclusively to allow access over the Property, being 160 Maple Street, Parcel 1, Bellingham to the Franklin Property for so long as the Franklin Parcel is in use for the specifically proposed ground mounted solar voltaic array use. Any change, extension or alteration of the proposed use of the Franklin Property or of the Property shall require a new application to the Board and the issuance of a new or amended variance.
3. Any person aggrieved by the Decision may appeal pursuant to Massachusetts General Laws, Chapter 40A, Section 17 within twenty (20) days after this Decision is filed with the Bellingham Town Clerk.

4. No Variance, or modification or extension thereof, shall take effect until a copy of this Decision has been recorded in Norfolk Registry of Deeds. Such Decision shall bear the certification of the Town Clerk that twenty (20) days have elapsed after the Decision has been filed in the Office of the Town Clerk and no appeal has been filed, or that if such appeals has been filed, it has been dismissed or denied.
5. The Decision rendered herein is concerned only with the Zoning Bylaws and not with the Building Code or any other Town Bylaw. The Applicant is responsible for determining and complying with Town, State, and Federal regulations in using the authorization granted.

TOWN OF BELLINGHAM BOARD OF APPEALS

 , Chair *NA*

Brian Wright yay
~~Brian Wright~~

Elizabeth Berthelette yay
~~Elizabeth Berthelette~~
Brian Sabalung yay

Ryan Shamas Yay