

**COMMONWEALTH OF MASSACHUSETTS
LAND COURT
DEPARTMENT OF THE TRIAL COURT**

FRANKLIN, ss.

No. 25 MISC 000081 (KTS)

BWC ASHUELA BROOK, LLC and
BLUEWAVE ORIGINATION, LLC,

Plaintiffs,

v.

PLANNING BOARD OF THE
TOWN OF NORTHFIELD, *et al.*,

Defendants.

DECISION ON PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT

This is a Dover Amendment case involving a proposed solar facility. The Plaintiffs, BWC Ashuela Brook, LLC and BlueWave Origination, LLC (collectively “BlueWave”), have brought this G. L. c. 40A, § 17 appeal of the denial of a special permit by the Defendant, Town of Northfield Planning Board (the “Board”), to construct a large-scale solar power facility on Pine Meadow Road in Northfield. BlueWave contends that summary judgment is warranted because, under G. L. c. 40A, § 3, paragraph 9, solar facility projects enjoy special protection from local zoning regulation. It contends that, given this protection, the Board had no authority to deny the special permit; instead, it was required to approve the project with conditions. BlueWave asks the court to annul the Board’s decision and order the issuance of the special permit without remand.

The parties appeared before the court on January 29, 2026 for oral argument, after which the court took the motion under advisement.

Undisputed Facts¹

1. BlueWave has proposed to construct a 2.29 MW DC agrivoltaic array on a 16.1-acre parcel of land on Pine Meadow Road in Northfield (the “Project”).² The array would interconnect with existing Eversource-owned power lines in the immediate area.

2. The Project is proposed in the Rural Agricultural (“RA”) zoning district and partially within the Floodplain Overlay District under the Northfield Zoning Bylaw (the “Bylaw”). While the Town of Northfield (“Town”) has a Solar Overlay District where large-scale, ground-mounted solar installations are allowed by right, the Project is not located within that overlay district.³

(i) Pertinent Provisions of the Northfield Zoning Bylaw⁴

3. Large-scale, ground-mounted solar installations are allowed by special permit *and* site plan review if located on land in the RA District that also falls within the Floodplain Overlay District.

4. The Bylaw contains two sets of special permit criteria when land falls within these districts – the general special permit criteria and the Floodplain Overlay District special permit criteria.

a. General Special Permit Criteria

5. The general special permit criteria are set forth in Section 200-3.4(C) as follows:

Decision Criteria. Unless otherwise specified herein, special permits shall be granted by the special permit granting authority only upon its written determination that the adverse effects of the proposed use will not outweigh its beneficial impacts to the town or the

¹ The undisputed facts germane to this decision are taken from the parties’ respective Statements of Material Facts.

² An agrivoltaic array is a ground-mounted solar photovoltaic installation which coexists with agricultural activities on the same land.

³ Large-scale, ground-mounted solar photovoltaic installations that occupy no more than five acres of land on one or more adjacent parcels in common ownership are permitted as of right in the Solar Overlay District. Section 200-10.3 of the Bylaw establishes specific requirements for their “construction, operation, modification, and/or repair” in this District, including setback, height, lighting, signage, utility connection, noise and surety requirements.

⁴ Exhibit (“Exh.”) 2 of Plaintiffs’ Appendix in support Motion for Summary Judgment.

neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. The determination shall include findings that all of the following criteria for granting a special permit are met:

- (1) The use is in harmony with the general purpose and intent of this Zoning Bylaw;
- (2) The use is in an appropriate location and is not detrimental to the neighborhood and does not significantly alter the character of the zoning district;
- (3) Adequate and appropriate facilities will be provided for the operation of the proposed use;
- (4) The proposed use will not be detrimental or otherwise offensive to the adjoining zoning districts and neighboring properties due to the effects of lighting, odors, smoke, noise, sewage, refuse materials, or visual or other nuisances;
- (5) The proposed use will not cause undue traffic congestion in the immediate area;
- (6) To the maximum extent possible, the proposed use conforms to the principles of rural design in § 8.1.1 of this bylaw; and
- (7) The proposed use is consistent with the Northfield Master Plan.

b. Floodplain Overlay District Special Permit Criteria

6. The Floodplain Overlay District introduces additional special permit standards in Section 200-10.1(I) as follows:⁵

- (1) All subdivision proposals and development proposals subject to site plan review or requiring a special permit for property in the Floodplain Overlay District shall be reviewed by the Planning Board or Zoning Board of Appeals to assure that:
 - (a) Such proposals minimize flood damage potential and, to the maximum extent feasible, locate all structures, roads, utilities and other infrastructure out of the Floodplain Overlay District;
 - (b) Public utilities and facilities are located and constructed so as to minimize flood damage potential; and
 - (c) Adequate drainage is provided.

⁵ The purposes of the Floodplain Overlay District that the special permit criteria are intended to achieve are described in Section 200.10.1(A)(1)-(5) as follows:

- (1) Ensure public safety through reducing flood threats to life and personal injury;
- (2) Eliminate new hazards to emergency response officials;
- (3) Prevent contamination and pollution of water resources resulting from flooding, so as to protect public safety and avoid damage to wildlife habitat;
- (4) Avoid loss of utility services which if damaged by flooding would disrupt or shut down the utility network and impact regions of the community beyond the site of flooding;
- (5) Eliminate costs associated with the response and cleanup of flooding conditions; and
- (6) Reduce damage to public and private property resulting from floodwaters.

- (2) Where such development is subject to a special permit or site plan review under Sections 3.4 and 3.5 and any other sections of the Northfield Zoning Bylaws, the Planning Board or the Zoning Board of Appeals shall incorporate these standards into their review. When such development is subject to the Subdivision Regulations of the Town of Northfield, the Planning Board shall incorporate these standards into their subdivision plan review.

c. Site Plan Review Criteria

7. Site plan review is provided for under Section 200.3.5(A) as “a means of managing aesthetics and environmental impacts of land use by the regulation of permitted uses, not their prohibition. Its purpose is to assure the protection of the public interest consistent with a reasonable use of the site for the purposes permitted in the district.” The site plan review criteria are set forth in Section 200.3.5(F) and directs the Board to address each of these criteria “at a minimum:”

- (1) Principles of rural design in § 200-8.1 of this bylaw;
- (2) Siting of facilities;
- (3) Design guidelines for buildings and sites;
- (4) Open space and natural features;
- (5) Pedestrian, bicycle, and vehicular safety and circulation;
- (6) Water quality;
- (7) Stormwater;
- (8) Utilities, exterior lighting, parking, and snow removal;
- (9) Trees and landscaping;
- (10) Historic significance;
- (11) Signage;
- (12) Energy-efficient site design;
- (13) Potential adverse effects and mitigation thereof.

(ii) The Public Hearing and Board’s Decision

8. On March 4, 2024, BlueWave filed an application with the Board for a special permit and for site plan approval for the Project.

9. According to the application, as revised during the public hearing, a portion of the land on which the Project is proposed is in a floodplain, which is designated as AE under the Federal Emergency Management Agency (“FEMA”) 1980 Flood Insurance Rate Maps and the

new preliminary Flood Insurance Rate Maps, dated May 23, 2024.⁶ According to the 2024 FEMA Maps, a portion of the Project land is located in an area of Northfield near the Connecticut River and its associated floodway.

10. As designed, the solar infrastructure for the Project will be in the floodplain but raised above the “base floodplain elevation” depicted in the FEMA Maps. The equipment pad will be located outside the floodplain.

11. The Project will be completely enclosed with a fixed knot, wire fence; the equipment pad will be enclosed by a secondary internal fence. Access to the Project will be via a gravel driveway from Pine Meadow Road.

12. During the public hearing, the Board engaged Beacon Integrated Solutions, LLC (“Beacon”) to provide independent peer review of the Project for compliance with the Bylaw and to present findings and recommendations to the Board. Beacon submitted a final report to the Board with a final revision date of December 19, 2024.⁷ That report recommended eleven conditions for the Board to include as part of any approval of the Project.

13. The Board also had before it a peer review report prepared by Lerner Consulting for the Northfield Conservation Commission.⁸ That report concluded that the Project complied with the Department of Environmental Protection Stormwater Handbook Standards and “provides more than adequate volume of compensatory [flood] storage.” It also found that “the [P]roject as presented meets all performance standards under the Wetlands Protection Act...”

14. On December 19, 2024, after closing the public hearing, the Board took two votes. First, it voted 3-1-1 to approve BlueWave’s site plan subject to the eleven conditions

⁶ The AE floodplain is a special flood hazard area with a 1% annual chance of flooding in a hypothetical 100-year storm. The preliminary 2024 FEMA Maps revised the boundary of the 100-year floodplain for the Property.

⁷ Exh. 3.

⁸ Exh. 5.

recommended in the Beacon Report.⁹ Second, it voted 0-5 to approve the special permit subject to the same eleven conditions, resulting in the denial of the special permit.

15. The Board issued a lengthy written decision explaining that the Project did not comply with either the general special permit criteria in Section 200-3.4(C) or the Floodplain Overlay District special permit criteria in Section 200-10.1.¹⁰

16. The Board summarized its reasons for the denial as follows:

The installation does not produce benefits that outweigh the hazards of an industrial installation within the Floodplain. The installation does not conform in any way to the historic character, natural setting, or general purpose of the area. It would be detrimental to residence, beyond the direct abutters, affect public use of the Massachusetts Scenic Byway and the Franklin County Scenic Byway, and goes against the Master Plan of Northfield.

17. The decision, then, attempted to address each criterion of both special permit provisions, making findings on the compatibility of the Project with the surrounding neighborhood, its impact on views, its negative impact on property values, and its conflict with the Northfield Master Plan.

18. As to the general purpose of the special permit criteria in Section 200-3.4, the Board wrote:

The benefits do not outweigh the hazards. Installing hazardous materials within a Floodplain, and an overflow area utilized by First Light Northfield Mountain Pumped Hydro Storage Station for flooding with water and debris, presents too great a danger to the community members that live within the area. It could potentially destroy, through debris or contamination, sensitive habitat and prime farmland that the installation would be occupying. Once that area is contaminated, it cannot be reclaimed. The potential exposure of residents to hazardous material, loss of prime farmland, and the following loss of life are far too great to balance against a potential gain of energy, that does not directly benefit the community, for a limited span of time.

19. With respect to the Floodplain Overlay District special permit criteria in Section

⁹ Exh. 1.

¹⁰ Exh. 9.

200-10.1, the Board made a series of findings concerning the negative impact of the Project on the surrounding area in the event of “a major flood event.” The Board concluded that “the location and siting of a large-scale solar array in the flood plain is a serious threat to the health, safety and welfare of the neighborhood, abutters, the Town and the Commonwealth.”

Discussion

BlueWave seeks the annulment of the Board’s decision on summary judgment. The court must then evaluate BlueWave’s motion against the standard for summary judgment under Massachusetts Rule of Civil Procedure (“Mass.R.Civ.P.”) 56 and the standard of review of a zoning appeal under G.L. c. 40A, § 17.

(i) Standard of Review Under Mass.R.Civ.P. 56

Summary judgment is appropriate where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Mass. R. Civ. P. 56(c); *Hakim v. Massachusetts Insurers’ Insolvency Fund*, 424 Mass. 275, 283 (1997); *Kourouvacilis v. General Motors Corp.*, 410 Mass. 706, 711 (1991). The moving party bears the burden of demonstrating the absence of a genuine issue of material fact on every issue, regardless of which party has the burden of proof at trial. See *Arcidi v. Nat’l Ass’n of Gov’t Employees, Inc.*, 447 Mass. 616, 619 (2006); *Tetrault v. Mahoney, Hawkes & Golding*, 425 Mass. 456, 459 (1997); *Flesner v. Tech. Comm’n Corp.*, 410 Mass. 805, 808-809 (1991). To avoid summary judgment, the party opposing the motion must set forth specific facts showing that there is a genuine issue for trial. See *Pederson v. Time, Inc.*, 404 Mass. 14, 17 (1989). It is not enough for the adverse party to rest upon mere allegations or denials in his pleading. See *Bardige v. Performance Specialists, Inc.*, 74 Mass.App.Ct. 99, 103 (2009); *Suntrust Mortg., Inc. v. Forsberg*, 21 LCR 585, 587 (2013); *Pepe v. DeSanctis*, 15 LCR 330, 331 (2007).

In ruling on a motion for summary judgment, the court must draw “all logically permissible inferences” from the facts in favor of the non-moving party. *Willits v. Roman Catholic Archbishop of Boston*, 411 Mass. 202, 203 (1991); *White v. Univ. of Mass. at Boston*, 410 Mass. 553, 556-557 (1991). However, the court does not “pass upon the credibility of witnesses or the weight of the evidence (or) make (its) own decision of facts.” *Attorney Gen. v. Bailey*, 386 Mass. 367, 370 (1982), quoting *Hub Assocs. v. Goode*, 357 Mass. 449, 451 (1970). Rather, the court only determines whether a genuine issue of material fact exists. *Id.*

(ii) Standard of Review for Zoning Appeal Under Chapter 40A, § 17

When reviewing a municipal board’s decision under G. L. c. 40A, § 17, the court may not disturb the decision unless it “is based on a legally untenable ground, or is unreasonable, whimsical, capricious, or arbitrary.” *MacGibbon v. Bd. of Appeals of Duxbury*, 356 Mass. 635, 639 (1970). This is a two-part inquiry.

The court starts by determining whether the board made its decision based on a legally untenable ground, which is a “standard, criterion, or consideration not permitted by the applicable statutes or by-laws.” *Britton v. Zoning Bd. of Appeals of Gloucester*, 59 Mass.App.Ct. 68, 73 (2003). Under this review, the court gives “some measure of deference to the local board’s interpretation of its own zoning by-law. In the main, though, the court determines the content and meaning of statutes and by-laws and then decides whether the board has chosen from those sources the proper criteria and standards to use....” *Id.* (internal citations omitted); see also *Wendy’s Old Fashioned Hamburgers of N.Y., Inc. v. Bd. of Appeal of Billerica*, 454 Mass. 374, 381 (2009).

If the court concludes that the board applied the proper standard, it must, then, consider whether that standard was properly applied to the facts. This “involves a ‘peculiar’ combination

of de novo and deferential analyses.” *Wendy’s Old Fashioned Hamburgers of N.Y., Inc.*, 454 Mass. at 381, quoting *Pendergast v. Bd. of Appeals of Barnstable*, 331 Mass. 555, 558 (1954). Indeed, the reviewing court must uphold the board’s decision if “any ‘rational view of the facts the court has found supports the board’s conclusion....’” *Sedell v. Zoning Bd. of Appeals of Carver*, 74 Mass.App.Ct. 450, 453 (2009), quoting *Britton*, 59 Mass.App.Ct. at 75. However, a zoning or planning board is nonetheless “obligated to apply its own standards rationally.” *Shirley Wayside Ltd. P’ship v. Bd. of Appeals of Shirley*, 461 Mass. 469, 485 (2012). In so doing, the special permit granting authority is required to make detailed findings in support of its decisions. G. L. c. 40A, § 9; *MacGibbon v. Bd. of Appeals of Duxbury*, 347 Mass. 690, 692 (1964) (board’s decision must contain “definite statement of rational causes and motives, founded upon adequate findings”); see also *Prusik v. Board of Appeal of Bldg. Dep’t of City of Boston*, 262 Mass. 451, 458 (1928).

When a board denies a special permit, the requirement that it provides reasons for its decision is less demanding than if it had granted the special permit. *Schiffone v. Zoning Bd. of Appeals of Walpole*, 28 Mass.App.Ct. 981, 984 (1990); *Gamache v. Town of Acushnet*, 14 Mass.App.Ct. 215, 220 (1982). However, this less-rigorous standard does not relieve the board of its obligation to state factual reasons for its decision. When the reasons given by the board are merely conclusory, that is, “[w]hen a decision contains conclusions that do nothing more than repeat regulatory phrases, and are unsupported by any facts in the record, [the court is] constrained to conclude that the decision is unreasonable, whimsical, capricious or arbitrary and therefore invalid.” *Wendy’s Old Fashioned Hamburgers of New York, Inc.*, 454 Mass. at 386 (internal citations omitted).

(iii) Analysis

BlueWave's motion for summary judgment offers two distinct legal bases for the annulment of the Board's decision. First, it argues that the Board had no authority to deny a special permit because the development of solar facilities is protected from local zoning by the Dover Amendment, G. L. c. 40A, § 3, para. 9. Second, and alternatively, it argues that, even if the Board had the authority to deny the Project, in this instance, its denial was not supported by sufficient facts and, therefore, was arbitrary and capricious as a matter of law. This decision will address BlueWave's arguments in the order presented.

a. *Whether the Board Applied a Legally Untenable Standard*

BlueWave contends that the Board had no legal authority to deny a special permit for the Project because the Dover Amendment prohibits such a denial. Instead, the Board should have applied the more deferential standard reserved for site plan review and issued the special permit with conditions.¹¹ The current state of the law does not support this argument.

The Dover Amendment prohibits municipalities from enacting zoning regulations that preclude or unreasonably interfere with uses that the Legislature has deemed valuable as a matter of public policy. While the Dover Amendment was originally adopted to protect religious, educational, and agricultural uses, the Legislature added paragraph 9 in 1985 specifically to protect the development of solar energy systems as follows:

No zoning ordinance or by-law shall prohibit or unreasonably regulate the installation of solar energy systems or the building of structures that facilitate the collection of solar energy, except where necessary to protect the public health, safety or welfare.

¹¹ Site plan review is a creature of local zoning bylaws that authorizes either a zoning board or planning board to review the site plan for a project, where the underlying use is permitted by right or allowed by special permit, for the purpose of determining whether the project meets certain design standards which have been established by that board. A board may only deny site plan approval where it identifies a problem presented by the site plan that is "so intractable that it could admit [] no reasonable solution," or if the site plan application "fails to furnish adequate information..." *Prudential Ins. Co. v. Bd. of Appeals of Westwood*, 23 Mass.App.Ct. 278, 283 n. 9 (1986); see also *Castle Hill Apartments Limited Partnership v. Planning Board of Holyoke*, 65 Mass.App.Ct. 840, 845-846 (2006).

The legislative purpose of paragraph 9 is to advance the Commonwealth’s goal of promoting solar energy and, as a key component of achieving that goal, creating opportunity for the development of “standalone, large-scale systems, not ancillary to any residential or commercial use.” *Tracer Lane II Realty, LLC v. City of Waltham*, 489 Mass. 775, 781 (2022). In *Tracer Lane*, the Supreme Judicial Court ruled that the prohibition of large-scale solar projects in all but one to two percent of a municipality’s land area unreasonably restricted the development of solar energy facilities and that “in the absence of a reasonable basis grounded in public health, safety or welfare, such a prohibition [wa]s impermissible under the provision.” *Id.* at 782. The *Tracer Lane* court did not provide further guidance concerning the manner or extent to which municipalities may restrict construction of large-scale solar projects without running afoul of the purpose of paragraph 9. Since *Tracer Lane*, no appellate decision has weighed in on this topic.

The Land Court, however, has had occasion to address the validity of municipal zoning restrictions on solar facilities where a local bylaw allows such a use by special permit. *Summit Farm Solar, LLC v. Planning Bd. for Town of New Braintree*, 30 LCR 61, 67 (Mass. Land Ct. 2022) (Speicher, J.); see also, *PLH LLC v. Ware*, 2019 WL 7201712, at *3 (Mass. Land. Ct. Dec. 24, 2019) (Piper, C.J.); *NextSun Energy LLC v. Fernandes*, 29 LCR 52 (Mass. Land Ct. 2021) (Foster, J.); *Duxbury Energy Storage, LLC v. Town of Duxbury*, 33 LCR 293 (Mass. Land Court 2025) (Reznick, J.). What has emerged from those decisions is a general rule that a municipality may limit construction of solar facilities by special permit, but that permit

cannot unreasonably regulate, cannot impose conditions that go beyond statutory limits provided under § 3, cannot be used either directly or pretextually as a way to prohibit or ban the use, and cannot be used to allow the board any measure of discretion on whether the protected use can take place in the district, because to do so would be at odds with the penumbral protections that are provided under § 3.

PHH LLC v. Ware, 2019 WL 7201712 at *3. The penumbral protections are, of course, the health, safety or welfare of the municipality's residents.

Here, BlueWave argues that the special permit criteria of the Bylaw constitute an unreasonable regulation of a solar facility because they do not expressly require that the Board consider the protection of public health, safety, and welfare. As a result, the Board was limited to applying the standard for site plan review – approval of the special permit with conditions – when it considered BlueWave's project. BlueWave's interpretation of the Bylaw goes well beyond the holding *Tracer Lane* and the Land Court decisions rendered to date. Most importantly, it runs counter to the fundamental protections set forth in G. L. c. 40A, § 3, para. 9.

Whether expressly stated in a local bylaw or not, a municipality may deny a solar facility where necessary to protect the health, safety or welfare of its community. This authority stems from the Dover Amendment itself and need not be repeated in the local regulation in order for it to be properly considered by the local board. Furthermore, there is no law that supports BlueWave's premise that, in the absence of special permit criteria expressly incorporating the penumbral protections of G. L. c. 40A, § 3, para. 9, the Board was mandated to evaluate the application under the standard for site plan review rather than for a special permit. In this case, the Board applied the proper standard when it considered the health, safety and welfare of the community in denying a special permit for BlueWave's Project.

b. *Whether the Board's Decision is Arbitrary as a Matter of Law*

Turning to BlueWave's second argument – that the Board's decision is arbitrary as a matter of law – the analysis is different. BlueWave has offered two theories in support of its position.

First, BlueWave points to the language of Section 200-10.1(I)(2) of the Floodplain

Overlay District Bylaw which provides:

Where such development [in the Floodplain] is subject to a special permit or site plan review under Sections 3.4 and 3.5... the Planning Board... *shall incorporate* these [floodplain] standards into their review.

BlueWave posits that, by operation of the “shall incorporate” language of this provision, the Board’s decision to grant site plan approval necessarily means that it also found that the Project satisfied all criteria for the Floodplain Overlay District special permit. Thus, it could not, then, deny the special permit under the same criteria without acting arbitrarily as a matter of law. The court is not persuaded by BlueWave’s reasoning primarily because it ignores the substance of the site plan approval decision.

In its site plan approval decision, the Board neither made findings concerning the Floodplain Overlay District special permit criteria, nor *referenced* that criteria. Similarly, the peer review report on which the Board based its eleven site plan conditions did not mention the Floodplain Overlay District special permit criteria. Thus, even though Section 200-10.1(I)(2) of the Bylaw mandates that the Board consider that criteria when making its decision on site plan approval, in this instance, the Board manifestly did not. Therefore, the Board’s decision to approve the Project’s site plan does not, perforce, mean the Project satisfied the Floodplain Overlay District special permit criteria.

BlueWave’s second attack on the Board’s findings charges that, in concluding that the Project failed to satisfy the special permit criteria, the Board merely repeated words and phrases from the Bylaw rather than making findings based on facts as required by *Wendy’s Old Fashioned Hamburgers of New York, Inc.* It contends that, absent factual findings, the court must conclude that the decision was unreasonable, whimsical, capricious or arbitrary and therefore invalid.

The Board's decision to deny the special permit is laid out in single-spaced typing over eleven pages, with point-by-point findings under the special permit criteria of Sections 200-4(C) and 200-10.1(I)(2) of the Bylaw. Most of the Board's reasons focus on the general suitability of the Project to the immediate neighborhood – precisely the type of reasoning that G. L. c. 40A, § 3, para. 9 was intended to prohibit. For example, the decision cites the Project's likelihood of contributing to change in neighborhood character, a negative impact on views, a decrease in property values, and the loss of recreational space as reasons supporting denial of the special permit.¹² None of these reasons implicate or threaten the health, safety or welfare of the community and, therefore, do not withstand scrutiny in light of protections afforded a solar energy facility under G. L. c. 40A, § 3, para. 9.

However, by the time this matter came before the court on summary judgment, the Board had narrowed the defense of its decision to the finding that the location of the Project in the AE floodplain would create an unreasonable risk of harm to the public. Namely, it found that “there is a high likelihood that this Project is prone to being inundated during a major flood event” and that “the location and siting of a large-scale solar array in the flood plain is a serious threat to health, safety and welfare of the neighborhood, abutters, the Town and the Commonwealth.”

Whether those statements hold up under scrutiny depends on the facts before the Board. Here, the design of the Project is intended to accommodate the floodplain by raising the solar infrastructure above the AE flood elevation shown on the 1980 FEMA Maps, and locating the associated equipment pad outside the floodplain depicted on the preliminary 2024 FEMA Maps. The Project proposes to create compensatory flood storage – which Larner Consulting

¹² It is worth noting that the summary judgment record includes evidence that, at the Board's request, BlueWave established with a “balloon” test that the Project would have *no impact* on any neighbor's views and would not be visible from the Franklin County Scenic Byway. The record is also devoid of evidence concerning the impact of the Project on property values in the area.

characterized as “more than adequate” – to offset the loss of flood storage caused by placing the Project infrastructure in the floodplain. As a result, there will be a net gain in flood storage in the area after the Project is completed. There are no other facts in the record concerning the impact of constructing the Project in the floodplain.

With these limited facts before it, the Board offered four justifications for its conclusion that the Project would cause an unreasonable risk of harm to the public health, safety and welfare. First, the Board took issue with the Project design as follows:

Adequate drainage paths shall be provided around structure on slopes, in order to guide floodwaters around and away from proposed structures. *That requirement has not been designed into this Project* as there will be a fence completely surrounding this Project resulting in congestion of flood waters and debris and stifling the elasticity of the flood plains ability to allow a path down to the channel of the River to eliminate as much as possible flooding to the local neighborhood. (emphasis supplied)

However, this language is cherry-picked from Section 200-10.1(N) of the Bylaw, which requires the provision of “adequate drainage paths” for projects located in an AO or AH flood zone – not projects in the AE zone like BlueWave’s. Therefore, having “adequate drainage paths” in the Project design is not required by the Bylaw for this site, nor is it part of any criteria that justifies denying a special permit for the Project.

Second, the decision states that

[i]n Zones A1-30 and AE, along water courses that have a regulatory floodway¹³ designated on the Northfield, FIRM, or Flood Boundary and Floodway Map, encroachments are prohibited in the regulatory floodway, which would result in any increase in flood levels within the community during the occurrence of the base flood discharge. This is the likely outcome of this Project in a major flood event.

Most of this finding repeats the regulatory language in Sections 200-10.1(L)(1) and (2), titled “Floodway encroachment,” without identifying specific floodway encroachments created by the

¹³ A “Floodway” is defined in the Bylaw as “[t]he channel of the river, creek, or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.” Bylaw, § 200-10.1(Q).

Project and how they will result in increased flood levels “during the occurrence of the base flood discharge.” Thus, the finding that “[t]his is the likely outcome of this Project in a major flood event” is entirely conclusory.

Third, the decision states that floodway encroachments are prohibited “*unless certification via registered professional engineer... is provided*” indicating that such an “encroachment shall not result in any increase in flood levels during the occurrence of the hundred year flood. No demonstrable proof that this Project shall not result in any increase in flood levels during the occurrence of 100 year flood.” (emphasis supplied). The source of this requirement – that a registered professional engineer submit “demonstrable proof” of the absence of an increase in flood levels – does not appear to originate with any provision of the Bylaw.¹⁴ Regardless, the only information that the Board had before it, through the Larner Consulting Report, demonstrated that there was more than adequate compensatory flood storage created by the Project. Therefore, there is no factual support for this conclusion.

Finally, the decision notes, without explanation, that the Project is prone to inundation during a major flood event because it is “subject to three (3) flowage easements” and is located in the “NFIP waterways.” What the Board meant when it used the phrase “major flood event” is unclear as there is no explanation in the decision. However, if the Board envisioned the “major flood event” to be a catastrophic flood, exceeding the flood levels assumed by FEMA for land in the AE zone during a 100-year storm event, that conclusion is speculative and, therefore, improper. See *Fitzsimonds v. Bd. of Appeals of Chatham*, 21 Mass.App.Ct. 53, 57 (1985) (finding that “a putative problem to be faced in the indefinite future upon now uncertain facts” is an improper basis to deny a special permit); *Britton v. Zoning Bd. of Appeals of Gloucester*, 59

¹⁴ Although, perhaps, a disputed fact, BlueWave contends that no flooding concerns were ever raised by the Board during the public hearing.

Mass.App.Ct. 68, 74-75 (2003) (a board cannot deny a special permit “based on an undifferentiated fear of the future” or by “simply conjuring a parade of horrors.”).

Whether the Board’s decision was arbitrary as a matter of law turns on whether, despite its length, the decision cites facts to support its denial. In making this determination, the court must respect the discretionary authority of the Board. Here, however, the Board’s decision repeats regulatory terms and phrases that, while on their face evince a keen understanding of the engineering principles behind the limitations on construction in the Floodplain Overlay District or an AE floodplain, lack factual support. Indeed, some of those regulatory terms do not apply to the Project, while others appear to be based on conjecture. Most importantly, the decision points to no evidence that the Project land is uniquely susceptible to a “major flood event,” or that such a flood event is likely to occur beyond that which is assumed in the AE flood zone and accounted for in the Bylaw. Instead, the decision appears to be based on fear that a catastrophic flooding event *may* occur in the future and, if so, the presence of the Project would wreak havoc on the Town.

Based on the summary judgment record, the Board’s conclusion that the “siting of a large-scale solar array in the flood plain is a serious threat to the health, safety and welfare of the neighborhood, abutters, the Town and the Commonwealth” is based on speculation. On balance, the court must conclude that the Board’s decision does not satisfy the minimum requirements described in *Wendy’s Old Fashioned Hamburgers of New York, Inc.* I am thus constrained to conclude that the decision is unreasonable, whimsical, capricious or arbitrary as a matter of law.

Conclusion

For the foregoing reasons, BlueWave’s motion for summary judgment on Count I is ALLOWED and the decision of the Board is hereby ANNULLED. For now, the court will not

rule on Count II of the Verified Complaint as it is unnecessary in light of this decision. The case shall be remanded to the Board with directions to conduct a further public hearing on BlueWave's special permit request. At the close of the public hearing, the Board should either (1) issue the special permit, with or without the conditions that were attached to the site plan approval; or (2) deny the special permit based on factual findings from the record before it. In conducting this further review, the Board must remember that the Project is a protected use under G. L. c. 40A, § 3, para. 9 and, thus, it may only deny the special permit if, based on facts in the record and not a speculative fear of a catastrophic storm, the Project presents an unreasonable risk to the health, safety and welfare of the citizens of Northfield.

Judgment will enter on Count I of BlueWave's Verified Complaint annulling the decision of the Board and ordering a limited remand to the Board.

This court retains jurisdiction over the case in accordance with the remand order set forth in the Judgment issued on this date.

So Ordered.

By the Court. (Smith, J.)

/s/ Kevin T. Smith

Attest:

/s/ Deborah J. Patterson
Deborah J. Patterson, Recorder

Dated: May 5, 2026