

Site Plan Review Application

Dover Road Solar, LLC

140 Dover Road, Millis, Massachusetts
February 14, 2024

Table of Contents:

Section 1: Letter to the Planning Board

Section 2: Site Plan Review Application Forms

- Site Plan Review Checklist
- Application Form
- Abutter's List

Section 3: Site Plan and Single Line Drawing

Section 4: Additional Documentation

- Development Timeline
- Module Cutsheet
- Inverter Cutsheet
- Proof of Insurance
- Building Permit Rejection
- Racking Designs
- Site Control – Deed
- O&M Plan
- Decommissioning Plan
- Utility Permission/Interconnection Services Agreement
- Stormwater Management Plan

Section 1: Letter to the Planning Board

Site Plan Review Application

Dover Road Solar, LLC

February 12, 2024

Town of Millis
Planning Board
900 Main Street
Millis, MA 02054
Attention:

Town of Millis
Zoning Board of Appeals
900 Main Street
Millis, MA 02054
Attention:

Reference: Application for Variance
Project: Large-Scale Ground Mounted Photovoltaic Installation
Applicant: Dover Road Solar, LLC
Property Owner: BASF Corporation
Location: 140 Dover Road, Millis, MA 02054
Assessor Map: Map 53 – Lot 6

Dear Chair and Members of the Boards:

I write on behalf of Dover Road Solar, LLC ("Applicant"), as applicant for the development of a proposed 498 KW AC Large-Scale Ground Mounted Photovoltaic Installation at the location commonly known and numbered as 140 Dover Road, Millis, Massachusetts (the "Property"), in order to manufacture alternative energy, with such proposal as further described in the plans prepared by GZA Geoenvironmental, Inc. ("Plans") and additional supporting documents (collectively, the "Application").

A. Application Background

The Property consists of a single heavily wooded and unimproved parcel located on the westerly side of Dover Road, on tax parcel identified as Map 53, Lot 6, consisting of approximately 7.6 acres of land. The Property's sole frontage is along the eastern lot line running parallel with Dover Road. The lots to the north/northwest and the south are improved, respectively, with a commercial facility and a residential dwelling. The lot to the west is unimproved and heavily wooded.

The parcel is a split lot with the southeasterly portion of the Property located in the Residential Suburban (R-S) zoning district and the northwesterly portion of the Property located in the Residential Town (R-T) zoning district. Pursuant to a Purchase and Sale Agreement by and between the Applicant, as purchaser, and BASF Corporation, as seller, the Applicant is in contract to purchase the entire Property.

{01322536.DOC/6}

As indicated in the Plans, the proposed solar array would be surrounded by a fifty (50) foot vegetated buffer along Dover Road, the residential property to the south at 126 Dover Road, and for a large portion of both the northerly and westerly lot lines. In all instances, the solar array itself would be located well in excess of the setbacks required under Section XXI(9) of the Millis Zoning By-Law (the "Zoning By-Law"), with the closest portion of the array and all appurtenant structures, roads, and above-ground utility poles located more than two hundred (200) feet from the residential structure located at 126 Dover Road. A seven (7) foot chain-link security fence will surround the entire solar array with the majority of the fencing to be further screened with new tree plantings on the easterly, southerly, and westerly sides. As part of the installation, the Applicant will also be installing sediment and erosion control barriers and will construct three (3) detention basins.

B. Site Plan Review and Variances

The Application, as a ground mounted solar photovoltaic installation: (i) is subject to Site Plan Review by the Planning Board pursuant to Section XXI.5 of the Zoning By-Law; and (ii) requires a variance from the Zoning Board of Appeals to permit installation in a Designated Location measuring less than 15 acres in total pursuant to Section XXI.3(b)(i) of the Zoning By-Law.

i. Site Plan Approval

The Application is subject to General Requirements of Sections V.E and XIII.C of the Zoning By-Law, as well as the specific Site Plan Review instructions set out in Section XXI.5 of the Zoning By-Law. In reviewing these provisions, the Planning Board is instructed to take into consideration specific items which are detailed in Section XIII.C.5 of Zoning By-Law and include:

- (a) Protection of adjoining premises against detrimental uses by provision for surface water drainage, sound and sight buffers and preservation of views, light and air;
- (b) Convenience and safety of vehicular and pedestrian movement within the site, the location of driveway openings in relation to traffic or to adjacent streets and, when necessary, compliance with other regulations for the handicapped, minors and the elderly;
- (c) Protection and enhancement of existing site features;
- (d) Adequacy of the arrangement for parking and loading spaces in relation to the proposed uses of the premises;
- (e) Adequacy of the methods of disposal of refuse and other wastes resulting from the uses permitted on the site;
- (f) Relationship of structures and open spaces to the natural landscape, existing buildings and other community assets in the area and compliance with other requirements of this By-Law; and

- (g) Protection of environmental features, particularly groundwater resources, on the site and in adjacent areas, adequate protection to prevent pollution of surface and groundwater, soil erosion, increased runoff, changes in groundwater recharge or elevation and flooding.

Since the Application is for a solar array that will not be occupied, per se, and will not be open or accessible to the public, several of these criteria are not applicable. Regardless, the Application should be granted Site Plan Approval on the basis that it does satisfy each of those criteria that do apply.

The site plan sufficiently protects adjoining properties from detriment by providing adequate vegetative and tree buffers, as well as complying with all setback and height requirements. Site clearing is intended to maintain natural buffers and retains existing trees at the site. Similarly, the site plan provides multiple detention basins to assist with managing and controlling surface water and stormwater drainage. Due to the use as a solar array, there will be minimal traffic to and from the Property. After initial site preparation and installation, traffic will be limited to one (1) or two (2) vehicles at a time for short durations while performing inspections or repair work. As shown on the site plan, the premises will be accessed by a gravel driveway replacing the existing paved driveway directly off of Dover Road.

ii. Variance

The Application also requires a variance of Section XXI.3(b)(i) of the Zoning By-Law allowing for installation on a Designated Location measuring approximately 7.5 acres where 15 acres are required. Pursuant Section XII.R of the Zoning By-Law, in considering an application for a variance, the Zoning Board of Appeals must find that "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; a literal enforcement of the provision of the ordinance or By-Law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance of By-Law." This Application meets those criteria.

The Property, as the location of a Massachusetts Department of Environmental Protection ("DEP") clean-up site (DEP Site No. 2-3000380), has soil conditions unique to the site and not otherwise generally affecting other lots within the R-T or R-S zoning districts. Unlike most structures or uses, the proposed solar array will not require excavation in order to pour a slab or foundation, thereby minimizing any disturbance of the soil at the site.

Moreover, the proposed location of the solar array, which is otherwise dimensionally compliant, will be on a portion of the Property that is not an "area of concern" and will not require any further environmental intervention in order to be constructed. On the contrary, the

development of the site for any other number of uses permitted by right under the Zoning By-Law would result in excavation or some degree of soil disturbance during the construction process, thereby requiring the owner or developer to incur significant additional expense to ensure compliance with all environmental requirements or would be precluded as a result of soil conditions.

A literal enforcement of the By-Laws would result in substantial hardship to the Applicant. The Property has been identified as a site almost entirely consisting of prime farmland soil, significantly more than the 50% required for a Designated Location under the Zoning By-Law. Due to the Property's existing status as clean-up site, future use for agricultural or horticultural purposes is not practical. Accordingly, to bar the installation of a solar array at the Property strictly due to the size of the lot would not only deny the Applicant from utilizing a DEP clean-up site for an ecologically friendly and productive use that greatly reduces site disturbance but would instead place the Applicant in a position where its only options are to either not develop the Property or unnecessarily excavate and disturb the site while incurring significant additional cost and expense in order to comply with environmental requirements during construction and use.

The requested variance can certainly be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance of By-Law. According to Section XXI.1 of the Zoning By-Law, the purpose of Section XXI is to "promote the creation of new Large-Scale Ground-Mounted Solar Photovoltaic Installation by providing standards...that address public safety, minimize impacts on scenic, natural and historic resources...." It is generally accepted in Massachusetts that the implementation and installation of solar systems, ranging from smaller residential to large-scale commercial arrays, is highly desirable. In particular, the installation of large-scale arrays contribute to the electricity grid without generating any of the harmful by-products resulting from the burning of fossil fuels. It follows, then, that the installation of solar arrays on otherwise undeveloped parcels is generally beneficial to the public as a whole. In the instant Application, although the project proposes a site with only 50% of the requisite acreage, the project otherwise complies with all requirements relative to height, setbacks, and applicable buffers, all in place to prevent disturbance of neighbors and distraction of motorists. Having satisfied all dimensional requirements other than total site size, there is no risk to public health, safety or welfare. Moreover, authorizing use of this previously impacted site for a solar array that will not disturb or exacerbate existing environmental conditions or generate traffic would certainly seem to further the intents and purposes set forth in the By-Law. Accordingly, the granting of the requested variance will not result in substantial detriment to the public good nor will it nullify or substantially derogate from the intent or purpose of the By-Law.

C. Standards of Approval under Massachusetts Statutory and Case Law

Existing Massachusetts law largely exempts solar photovoltaic installations from local zoning restrictions. See *"Model As-of-Right Zoning Bylaw: Allowing Use of Large-Scale*

Ground Mounted Solar Photovoltaic Installation", Department of Energy Resources, Massachusetts Executive Office of Environmental Affairs (Dec. 2014). Massachusetts' less restrictive regulation for solar projects was born out of an interest in alternate energy sources resulting from sharp increases in the price of petroleum in the 1970s. *Solar Skyspace B*, 15 Minn. J.L. Sci. & Tech. 389, 396-397 (2014). New solar installations in the 1970s and 1980s resulted in a corresponding awareness that the law needed to recognize the sun's potential as a new energy source. *Id.* According to law review articles dealing with solar energy and solar energy systems in the late 1970s and early 1980s, twenty-nine states had adopted some sort of rule or regulation relating to solar energy access by that time period, including Massachusetts, which revised MGL Ch. 40A, a statute prohibiting zoning that impedes solar energy systems. *Id.* at 398 and Footnote 44.

Because this particular Application relates to a Solar Project, the standards for approval are governed by the provisions of MGL Ch. 40A, Section 3, which provides: "[n]o zoning ordinance or bylaw 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.*" Under the statutory language of MGL Ch. 40A, Section 3, a municipality may reasonably regulate solar energy systems, but cannot prohibit them outright. *Duseau v. Szawlowski Realty, Inc.*, 23 LCR 5, 9 (Mass. Land Ct. 2015). The reasonableness of a regulation depends on the particular facts of each case, and factors that may be considered include whether a regulation substantially diminishes or detracts from a proposed project's usefulness or imposes an excessive cost that outweighs legitimate municipal concerns. *Id.* at 9, *quoting Trustees of Tufts College v. Medford*, 415 Mass. 753, 757 (1993). To that extent, analysis of a solar project must be made on a "micro (site specific) level rather than on a macro (town-wide) level." *Northbridge McQuade, LLC v. Northbridge Zoning Bd. of Appeals et al.*, Mass. Land Ct., No. 18 MISC 0000519, at 3 n.1 (Piper, C.J.) (2021).

While local boards are generally granted the utmost of discretion with regard to zoning powers, there are occasions where state or federal law supersede those powers. As it relates to solar projects, Massachusetts courts have regularly held that the legislative override found in MGL Ch. 40A, Section 3, "applies equally to a municipality's dimensional regulations as it does to use restrictions, see *Rogers v. Town of Norfolk*, 432 Mass. 374, 383-384 (2000), and there is no need to satisfy the standard for a dimensional variance where, as viewed through the lens of § 3, application of the regulation in question would be unreasonable when applied to the protected solar use project in question." *Northbridge*, at 4 n.2. Where there is imposition of a requirement, either dimensional or otherwise, on the installation of solar energy facilities, the permit granting authority shall consider whether the imposition of said requirement is necessary to protect the public health, safety, or welfare, as required under MGL Ch. 40A, Section 3. *Id.*

Perhaps this concept is best illustrated in the often cited case of *Tracer Lane II Realty, LLC v. City of Waltham et al.*, in which the Massachusetts Supreme Judicial Court explained "[w]hen evaluating an ordinance or bylaw's facial validity under other sections of G. L. c. 40A, § 3, we have balanced the interest that the ordinance or bylaw advances and the impact on the

protected use.” *Tracer Lane II Realty, LLC v. City of Waltham et al.*, 489 Mass. 775, 781 (2022) (citing *Rogers*, 432 Mass. at 379 (“The proper test for determining whether the provision in issue contradicts the purpose of G. L. c. 40A, § 3, third par., is to ask whether the footprint restriction furthers a legitimate municipal interest, and its application rationally relates to that interest, or whether it acts impermissibly to restrict the establishment of child care facilities in the town, and so is unreasonable”))).

The facts in *Tracer Lane II Realty* are straightforward. The City of Waltham informally told a developer that it could not construct an access road to the developer’s solar project across a portion of land in Waltham’s residential district because solar projects were only permitted in industrial zones comprising approximately one to two percent of Waltham’s total area. *Id.* at 776-78. The plaintiff developer subsequently brought a complaint against the City of Waltham in the Land Court seeking a declaration that Waltham could not prohibit the plaintiff from constructing the access road. *Id.* Although the Supreme Judicial Court recognized that the City of Waltham’s zoning code “presumably advances” a legitimate interest in preserving each zoning district’s character, not only did the Court find that “Waltham’s zoning code unduly restricts solar energy systems,” but that “[n]othing in the record suggests that this stringent limitation is ‘necessary to protect the public health, safety or welfare.’” *Id.* at 781. After weighing the arguments made by Waltham in favor of the ordinance against the statutory language, the Supreme Judicial Court found the restrictions in Waltham’s zoning ordinance to be contrary to MGL Ch. 40A, Section 3, holding: “[i]n the absence of a reasonable basis grounded in public health, safety, or welfare, such a prohibition is impermissible under the provision.” *Id.* at 782.

Solar energy is a universal technological advance that our State has chosen to promote. In short, although local zoning powers are preserved, they are subject to certain limits, and the Town of Millis’ Zoning Bylaws, as well as the Massachusetts Zoning Act, MGL Ch. 40A, must be interpreted in such a way that they do not violate the specific language adopted in MGL Ch. 40A, Section 3.

D. Conclusion

The Application complies with the applicable provisions of the Zoning By-Law and, as such, should be granted site plan approval by the Planning Board. In addition, the Application is afforded the protections of MGL Ch. 40A, Section 3 and, which in this instance supersede and preempt the Zoning Bylaws, the approval for this Application is warranted in conformance therewith. There has been no showing that the requirements that such a site be at least 15 acres in size are reasonably related to a public health, safety or welfare issue that requires protection, nor has there been any showing of extraordinary or significant adverse impacts to nearby properties.

Based upon the plans and materials submitted, the statements made at the public hearing, and the legal standards contained in this letter, we respectfully believe that Applicant’s site plan

be approved by the Planning Board and that a variance (or finding) be issued by the Zoning Board of Appeals, and the building permit should issue forthwith.

Please be advised that nothing contained in this correspondence shall be deemed a waiver of any of the Applicant's rights under all applicable state and/or local laws, and the Applicant hereby further preserves all legal rights.

Thank you for your consideration with respect to this matter.

Respectfully yours,

DOVER ROAD SOLAR, LLC

By its Attorneys,

Ruberto, Israel & Weiner, P.C.

By: /s/ Michael D. Rosen

Michael D. Rosen, Esq.