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***Town Planner's Review***  
**Wednesday, September 13, 2017**

- X. **Solar Arrays as an Accessory Use.** Discussion about preparation of a new ordinance to address installation of solar arrays as an accessory use.
- I recommend that the Planning Board discuss the situation with solar arrays as an accessory use and provide me with guidance about what kind of zoning amendment may be appropriate to prepare now.

**Background**

As Planning Board members may be aware, a solar array was recently installed on a single family site on Packers Falls Road. It is a freestanding structure (in contrast to the more typical roof-mounted solar panels) situated in front of the house. The array is fairly large with a panel that rotates throughout the day, tracking the sun for optimal energy collection.

A number of residents along Packers Falls Road are upset about the visual impact of the solar array, particularly as Packers Falls Road is deemed a scenic road (This designation deals mainly with tree cutting and stone walls). Todd Selig and I discussed the solar array and thought that it would be beneficial for me to raise the issue with the Planning Board to propose a zoning amendment.

The current zoning ordinance does not address solar arrays. The ordinance simply allows accessory structures by right, as is standard in most zoning ordinances. Audrey Cline, the building official, issued a building permit for its construction as an accessory structure. All "structures," including accessory structure, must meet building setbacks. The front setback in the Rural zoning district is 30 feet. The installer actually placed the array within the front setback so they will need to move it further back. Single-family and two-family dwellings are exempt from site plan review under state law.

On a separate but related matter, Charlie Forcey, chair of the Durham Energy Committee, met with Audrey and me recently to discuss the parameters for larger solar installations. The zoning ordinance provides little direction so Charlie and the committee are working on an amendment to allow for larger installations under certain conditions. When the committee finishes its work it will present a draft to the Planning Board (or Town Council). The board can then determine whether it wishes to initiate a zoning amendment or not.

I think it makes sense to craft an ordinance now for accessory freestanding solar arrays since we may receive more applications for these structures and the Energy Committee will probably not have a draft for a little while. I recommend that the staff and Planning Board prepare an ordinance now addressing freestanding accessory solar arrays. Once the Energy

Committee brings forward their document, it may be appropriate to modify the ordinance for accessory structures.

### **Starting point for discussion**

As a starting point for discussion, I think a basic ordinance could include the following elements:

- A freestanding solar array is allowed by special exception (requiring review and approval by the Zoning Board of Adjustment). I think that the special exception process is the right process generally for single and two family uses where there is this kind of concern. (Alternatively, it could be allowed by conditional use which goes to the Planning Board.)
- This could be for single-family and two-family houses only or include all uses.
- Arrays could be restricted to placement beyond/behind the front face of the house/building (extending that line across the lot parallel to the street right of way).
- Appropriate screening/buffering through landscaping, fences/walls, and berms would be provided to minimize visibility from the street and from neighbors.

### **Questions to consider**

There are a number of questions for the board to consider in crafting an ordinance:

- Should this ordinance cover only single-family and two-family houses or is an amendment needed now to cover other uses? Site Plan review is required for all uses other than single and two family uses so the question arises whether sufficient review would occur through the site plan process (See excerpts from the regulations below). If additional safeguards are in order, I recommend we include other language in the Zoning Ordinance or Site Plan Regulations, rather than requiring a special exception review in addition to site plan review (However, if the use is considered questionable it could be allowed as a conditional use). .
- Should the amendment for single- and two-family dwellings prohibit location forward of the front face of the house completely or should it allow placement there if placement beyond the front face is not workable?
- What is the extent of screening/buffering that should be expected? Should the ZBA approve a plan as part of a special exception review?
- Should we include installations of wind arrays as accessory structures as part of this amendment?
- Should we address a broader question of accessory uses? Audrey Cline questioned whether an amendment should also address other accessory uses that would be permitted in the front yard, such as *“a paved basketball or tennis court, a swimming pool, art structures, parking spot for an RV, or any number of accessory structures that we cannot imagine at this pivotal moment.*

*In thinking this over I suspect the need is for a more general restriction on setbacks or some other guiding restrictions on accessory structures in the “scenic” and gateway areas, for residential properties.*

*This would appear to be a huge undertaking...”*

### **Beth Olshansky’s comments**

Beth Olshansky, a neighbor of the project on Packers Falls Road sent this note to me. A separate note from Beth Olshansky was emailed to the Planning Board and will be posted on the website under this agenda item (above).

*Hi Michael and Todd,*

*I appreciate your speed in addressing the lapse in our ZO regarding freestanding solar arrays. I see Michael you are favoring limiting the SE to single family and two-family homes. I fear this is shortsighted. I would hate the town to end up with another “surprise.”*

*Will your version of the amendment protect places such as Thompson Inn on Bennett Road, the rambling student housing/ farmhouse along a remaining portion of Rt 155A formerly owned by the McNeill’s, fraternities along Madbury Road, the open space along Rt. 4 owned by Harmony Homes (don’t recall what the covenants specifically stated about accessory structures), the remainder of Stone Quarry Drive land along Rt. 108? My point is, I believe your version of the stopgap measure (until DEC has a more comprehensive version in place) is too limited. The goal is to protect roadways all over town, not just property in front of single family homes and duplexes....*

*Since these amendments get the foot in the door only if accepted as is and approved, I would also request your sharing the proposed amendment with me prior to your submitting it to the PB (should they agree to review one). My neighborhood is truly devastated by what has happened (with no good solution in sight), and while an amendment won’t resolve our problem, let’s be proactive from here on out.*

*Thanks.*

*Beth*

### **Zoning and Site Plan Excerpts**

Here are some pertinent excerpts and notes from the Zoning Ordinance and Site Plan Regulations. The Site Plan excerpts will give a sense of how much discretion the Planning Board would have in reviewing a proposed solar installation as an accessory use for a business or apartment building.

#### **ZONING ORDINANCE**

*ACCESSORY STRUCTURE – A structure detached from a principal building on the same lot and incidental and subordinate to the principal building. (See Section 175-109(G)).*

There is no definition for “incidental” nor “subordinate” in the ordinance.

*ACCESSORY USE – A use of land or a building or a portion thereof which is incidental and subordinate to the principal use of the land or building and located on the same lot with such principal use.*

*PRINCIPAL USE – The primary or predominant use to which the property is or may be devoted and to which all other uses on the premises are accessory.*

*PUBLIC UTILITY – A public service corporation performing some public service and subject to special governmental regulations, or a governmental agency performing similar public services, the services by either of which are paid for directly by the recipients thereof. Such services shall include, but are not limited to, water supply, electric power, telephone, television cable, gas and transportation for persons and freight.*

*SETBACK – The required horizontal distance, in feet, from a lot line or shoreline to any structure.*

*STRUCTURE – That which is built or constructed with a fixed location on the ground or attached to something having a fixed location on the ground. "Structures" include but are not limited to a building, swimming pool, mobile home, billboard, pier, wharf, septic system, parking space/parking lot and deck. It shall not include a minor installation such as a fence under six (6) feet high, a mailbox, a flagpole, or an accessory shed.*

An accessory structure to any residential use is permitted by right in every zoning district except for the Central Business District.

Accessory buildings and structures to any nonresidential use are permitted by right in every zoning district.

The only reference to utility-type uses in the Table of Uses is for a “Public Utility Facility” which is allowed by conditional use in the Rural and Residence C zones and by right in the four Research/Industry zones – OR, MUDOR, ORLI, and DBP.

## SITE PLAN REGULATIONS

### **PART I**

#### **Article 1. Authority**

*... the Durham Planning Board is empowered under RSA 674:43 to review and approve or disapprove site plans. This review authority shall be applied to the development of parcels of tracts for non-residential uses and for residential multi-family dwelling units which are defined as any structure containing more than two (2) dwelling units per structure...*

**Development.** *Any man-made change to improved or unimproved land, including but not limited to changes to buildings or other structures, paving, adding or eliminating parking spaces or driveways, excavation or mining, dredging, significant filling or grading, drilling operations, storage of materials or equipment, or significant change of use.*

### **Article 3. Purpose**

*The purposes of these Regulations are to:*

- 1) Further the safe and orderly development of the Town;*
- 3) Achieve high-quality site appearance that conserves and protects natural resource systems, helps to reduce infrastructure costs, conserves energy, and provides for a pleasant, walkable environment for the future users and residents;*
- 5) Protect abutters against hazards, unsightliness, and nuisances detrimental to property values;*
- 6) Ensure that development of land is appropriate for the public and private services and facilities available;*
- 8) Preserve and enhance the historic and cultural character of the community;*
- 9) Encourage attractive, harmonious, and high-quality design that is compatible with the architectural heritage of the town of Durham, the state of New Hampshire, and New England;*
- 11) Include such provisions as will tend to create conditions favorable for health, safety, convenience, prosperity, and general welfare; and*

### **PART III**

- 1.1.1 The standards contained in these regulations apply to all site plans. These standards shall be construed as minimum standards. The Planning Board, at its discretion, may require higher standards in individual cases or may waive certain requirements for good cause in accordance with the procedures outlined in these regulations.*
- 1.1.2 In addition to these standards, the Planning Board may stipulate any appropriate special measures to eliminate or mitigate potential adverse impacts upon abutters, neighbors, or the general public that might result from a proposed project.*
- 5.9.5 All mechanical installations and equipment, solid waste collection equipment, pump stations, outdoor storage, and similar items shall be screened or softened with landscaping that is appropriate for the location.*
- 5.9.6 The Planning Board may stipulate additional buffers due to unusual impacts generated, including odor, noise, glare, dirt, dust, vibration, etc.*
- 17.1.9 Solar systems. Should the property owner seek to add any building-mounted solar photovoltaic or solar thermal system at any time, then such installation shall be exempt from Planning Board site plan review.*

17.4.4 *All electrical and mechanical devices (including but not limited to transformers, telecommunications devices, equipment switching boxes, generators, and other utility cabinets) shall be located within buildings when possible or, when located outside, be hidden from street and pedestrian areas by landscaping or architectural screens, according to the requirements of Article 5 – Landscaping and Screening.*

**Photographs**

Photographs of the installation on Packers Falls Road. Provided by Beth Olshansky.

