

Memorandum

To	Chairman DiOrio, Members of the Hopkinton Planning Board, Board Liaisons, James M. Lamphere, Planner, and Town Solicitors
From	Margaret L. Hogan, Planning Solicitor
Date	January 24, 2021
Re:	Comolli Solar Pre-Application - Proposed 3.46± MW Solar Array 0 Chase Hill Road #2 Assessor's Plat 2 Lot 73 ESS Project No. C640-000

At the January 6th meeting of the Board, Ms. Light inquired as to whether or not the existing access across the front condo unit could legally be used as access into the proposed solar project on the middle condominium unit of the Comolli Solar project on Chase Hill Road. She noted that the front condo was not included in the recent zone change application.

The narrative submitted with the plans indicates that an existing gravel road passing through the front condo unit (# 1):

1. Is intended to service the new use of a utility scale solar array.
2. Will be widened and improved, as necessary.
3. Will be used as a gated emergency access.

The plans indicate that there will be a National Grid utility Interconnection installed on the front condominium unit as well.

The questions here are:

1. Whether a utility Interconnection for a utility scale solar project may be constructed and installed on a residential property? (This may depend upon the components of the Interconnection.)
2. Whether an existing gravel driveway that has serviced a prior commercial use may now be used to service an entirely different commercial use, absent a zone change permitting the same?
3. Whether a utility utility scale solar Interconnection and associated electric distribution lines may be installed on a residential property to service a new commercial use on an adjacent land condominium unit?
4. Whether a gated emergency access for a commercial use may be installed on a residential condo unit (if the gate is actually proposed for the front residential condo unit, which is not entirely clear from the proposed plan)?

Legal Issues

1. Gravel Road

The overarching question here is whether or not the gravel road that travels over the existing front condo unit (zoned residential) is or was a legal non-conforming use, independent of the pending application? If so, then the question becomes whether or not the change in the use in the adjacent condo unit necessarily triggers a corresponding change in use of the gravel road over the front residential condo unit. If so, then, such a change would likely implicate the non-conforming use provisions of the Town's Zoning Ordinance.

The Planning Board has no subject matter jurisdiction to answer these questions. These are questions to be answered by the Town's Zoning Official. My recommendation is that the Planner refer these questions to the Zoning Official for a determination. The Zoning Official is able to confer with the Town Solicitor on the disposition of these questions. (It is recognized that the Zoning Official has issued a zoning certificate for condo unit #2 which indicates that no special use permit or variance is needed for that unit.) The question outlined above pertains to unit #1 which was not the subject of the zone change application.

2. Zoning Setback

The second issue that I see is the issue of the proper zoning setback. (I am particularly aware of this issue, having just written the memo defending the PB's decision on the Revity Frontier Road matter.) The General Requirements Section (A)(1) of the PSES provides that the minimum front, side, and rear yard depth and maximum building height applicable to permitted uses in the applicable zoning district shall apply to the photovoltaic voltaic energy systems.

In reviewing the Table of Dimensional Regulations in the Zoning Ordinance, the side setback for commercial zones is 25 feet, **except** that no building or structure shall be located closer than one hundred (100) feet to a residential district boundary line. The PSES defines the solar panels as structures. The plans indicate that there is a side yard setback of twenty five (25) feet from panels to the lot line on the north east side of the project. Therefore, this represents a conflict with the plain language of the ordinance.

However, as stated above, making zoning determinations is not within the subject matter jurisdiction of the Planning Board. Again, this issue must be deferred to the to the Building Official for a determination of zoning compliance on this critical component of the plan.