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Planning Board

**TOWN CLERK
ACTON, MA**

TOWN OF ACTON
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PB21-1

50 Independence Road

Special Permit

Ground-Mounted Industrial Solar Photovoltaic Installation

April 13, 2021

GRANTED with Conditions

Decision of the Acton Planning Board (hereinafter the Board) on the application of Cliff Chapman, Managing Partner of the applicant, Syncarpha Capital, LLC of 250 West 57th Street, Suite 701 New York, NY 10107 (hereinafter the Applicant). The property is located at 50 Independence Road and shown on the Acton Town Atlas Map I4, Parcel 5 (hereinafter the Site), owned by W.R. Grace & Co. – Conn. of 7500 Grace Drive B100 2nd Floor, Columbia, MD 21044.

This Decision is in response to an application for a special permit, received by the Acton Planning Division on January 12, 2021, pursuant to Sections 3.6.6 and 3.11 of the Acton Zoning Bylaw (hereinafter the Bylaw) and the Board's Special Permit Rules and Regulations (hereinafter the Rules) to establish for Ground-Mounted Industrial Solar Photovoltaic Installation.

Lawrence Beals of Beals Associates, Inc. and Brian Kopperl of Renewable Energy Massachusetts, LLC, local co-developer of the project, represented the Applicant in front of the Planning Board. The subject matter of the special permit was discussed at a duly noticed public hearing on February 16, 2021. The

Board continued the meeting to March 16, 2021 and April 13, 2021. The Board closed the public hearing on April 13, 2021. Board members Mr. Derrick Chin (Chair), Mr. Ray Yacoub (Vice-Chair), Mr. Sam Bajwa, and Mr. Cookson, were present throughout all of the public hearings. Mr. Jon Cappetta was present for the March 16, 2021 and April 13, 2021 hearing session, and provided a certification pursuant to Ch. 79 of the Acts of 2006 (Mullin Rule) that he reviewed the video recording of hearing sessions of February 16, 2021. The minutes of the hearing and submissions on which this decision is based upon may be referred to in the Planning Division or the Town Clerk's office at the Acton Town Hall.

1 EXHIBIT

Submitted for the Board's deliberation were the following exhibits:

- 1.1 Items and documentation required by the Rules consisting of:
 - A properly executed Application for a Use Special Permit, received in the Planning Division on January 12, 2021;
 - Certified abutters list;
 - Accompany Site Plans dated January 8, 2021;
 - Stormwater Management Report, dated January 2021;
 - Stormwater Management System Operation and Maintenance Manual, dated January 2021.
- 1.2 Additional information submitted by the Applicant;
 - Revised Stormwater Management Report, dated February 4, 2021;
 - Response Letter, dated February 16, 2021;
 - Vehicle Turning Analysis;
 - February 16, 2021 Presentation Slides;
 - Carbon Offset calculations documenting substantial net carbon reduction of the project as compared to a natural gas-fired electricity generation alternative (source of data US EIA and US EPA);
 - Syncarpha - PFAS-free fire suppression agent Email;
 - Safety Data Sheet;
 - Safety Data Sheet Fm-200;
 - Alta Survey;
 - Sidewalk Analysis;
 - Applicant's draft decision suggestions, dated 04-09-2021;
 - Applicant's draft decision suggestions, dated 04-13-2021.
- 1.3 Interdepartmental communication received from:
 - Acton Health Division, dated January 26, 2021;
 - Acton Engineering Department, dated February 2, 2021;
 - Acton Water District dated February 2, 2021, February 21, 2021, & March 18, 2021;
 - Acton Planning Division, dated February 11, 2021;
 - GCG Associates, dated February 16, 2021;
 - Acton Fire Department, dated February 16, 2021, March 16, 2021, & April 12, 2021;
 - Acton Water District Presentation Slides, dated February 16, 2021;
 - Andrea Becerra, Sustainability Director, dated February 16, 2021.
- 1.4 Public Comments
 - Richard Keleher, dated February 14, 2021 & February 17, 2021;

- Jim Snyder-Grant, dated February 15, 2021
- Alissa Nicol, dated March 15, 2021 & March 17, 2021;
- Terra Friedrichs, dated March 17, 2021 & April 13, 2021;
- Barry Rosen, dated April 8, 2021 & April 13, 2021.

1.5 Other

- Agreement on time extension to continue the public hearing to March 16, 2021;
- Agreement on time extension to continue the public hearing to April 13, 2021.

Exhibit 1.1-1.2 are referred to herein as the Plan.

2 FINDINGS and CONCLUSIONS

Based upon its review of the exhibits and the record of the proceedings the Board finds and concludes that:

- 2.1 The Site is located at the Acton/Concord town line; within the Technology District (TD) zoning district and the Groundwater Protection Overlay District Zone 3.
- 2.2 Ground Mounted Industrial Solar Photovoltaic Installations that comply with ZBL Sections 3.11.3 are allowed on the Site by right in accordance with the Bylaw, including all overlay district requirements for Solar Photovoltaic panels.
- 2.3 The Plan shows the proposed Solar Photovoltaic (PV) Installation on the lease parcel containing 30.1 acres.
- 2.4 Section 3.11.3.7 Protection of Forest Land, states that not more than 1 acre of land shall be deforested for any one Ground-Mounted Solar Photovoltaic Installation. Due to the intensity of the proposed use resulting in the clearing of approximately 31.32 acres +/- of forested land, a special permit is required under ZBL Section 3.11.5.
- 2.5 The Solar PV system would consist of a fenced-in area measuring approximately 30.1 acres, an extended gravel road, and the electrical equipment pad. An additional adjacent area surrounding the fenced-in area of 10.7 acres is included in the Plan to ensure the Solar PV system's continued solar access. The total area of the Soar PV system and the solar access area are 40.8 acres.
- 2.6 The Applicant did not provide information on federal or state law that requires the signage at the proposed dimensions. The Board can consider the larger than normally allowed signage as part of this special permit application.
- 2.7 The proposed project is located 2,200 feet from the closest public well.
- 2.8 The Applicant is proposing a 7 foot chain link fence that will be located around the proposed solar panels to protect from trespassers. The proposed fence will have a 6 inch pass-through at ground level to accommodate local wildlife. A 7 foot high fence would require a building permit from the Town's Building Division.
- 2.9 There is a proposed 18 foot gravel access road for maintenance with two vehicle turn-around areas.
- 2.10 ZBL Section 3.11.3.2 requires landscaping and screening as needed to protect nearby sensitive receptors. It appears the location of the proposed facility is screened by existing vegetation sufficient to meet the requirements of ZBL Section 3.11.3.2.

2.11 ZBL Section 3.11.3.4 requires that utility connection lines etc. must be placed underground except where Building Code or adverse ground conditions require otherwise, or at the connection point to existing overhead utility lines. The utilities shown on the plan comply with the ZBL Section 3.11.3.4.

2.12 The location of the solar panels, fence, and other equipment appear to meet all the dimensional setbacks requirements of the Technology District.

2.13 There is no night lighting proposed for the Solar PV system. Security lighting will be controlled by motion detectors or infrared sensors. The proposed motion detector lights should be set on a timer. The facility will also feature security cameras to monitor the facility.

2.14 Under Bylaw Section. 10.3.6.9, the Board may require the installation of a sidewalk along the lot frontage on Independence Road. The property has +/-1,208 feet of frontage on Independence Road in Acton. If the Applicant offers a donation in lieu of constructing a sidewalk, a contribution to the Town of Acton sidewalk fund based on the established sidewalk contribution fund of \$50.00 per foot of existing street frontage would be \$131,550.00.

2.15 The Applicant made an offer to provide the Town of Acton mitigation payment to offset the proposed removal of trees. The Applicant proposed to pay an annual sum of \$6,000 per year, beginning on the fifth anniversary of the commercial operation date (COD) of the solar facility and continuing each anniversary of the COD thereafter through the fifteenth anniversary of said COD, yielding an aggregate tree mitigation contribution of \$60,000.00 to the Town of Acton. The funds could be used by the Town for any purpose related to planting new trees or protecting existing trees.

2.16 In the February 16, 2021 memo, the Fire Chief recommended that the Applicant extend the existing water line from the existing fire hydrant on site to mitigate any potential incident given the quantity and size of the battery array.

2.17 The Acton Water District later confirmed that the existing fire hydrant is not presently connected to Acton Water District water, rather it was previously connected to an independent well on site, which has potential contamination concerns.

2.18 An extension of the existing Acton Water District line from abutting properties would be financially unfeasible. In lieu of extending the water line, the Applicant offered to provide a \$40,000 payment to the Acton Fire Department for fire safety equipment or training that would help mitigate any potential incident at the solar facility.

2.19 The Applicant has documented that the fire suppression system associated with the battery storage units does not contain a PFAS substance. The Acton Water District appreciates the issues that the Applicant faces with the fire suppression system and will not object to its installation provided that:

- a) The fire suppression system is fully enclosed within a structure and uses a PFAS-free fire suppressant.
- b) The Applicant will submit and obtain from the Town of Acton, Department of Health, an approved hazardous waste clean-up and disposal plan that will contain the plan of action should the fire suppression system be discharged.

- 2.20 The Board has received comments from various Town departments, which are listed in Exhibit 1.3 above. The Board considered these comments in its deliberations, made them available to the Applicant, and incorporated them into this decision as it deemed appropriate.
- 2.21 The benefit of installing solar photovoltaic power at the installation site as proposed by the application substantially outweighs the public health, safety, and welfare concerns that Section 3.11.3 requirements are intended to protect; or
- 2.22 That the particular design, mitigation measures, offsets, agreements, or other provisions for the proposed installation address such concerns in an alternative and satisfactory manner.
- 2.23 The Acton Conservation Commission reviewed and considered a Request for a Determination of Applicability and the Commission voted unanimously to issue a negative determination finding that the Wetlands Protection Act is not applicable to this project as proposed.
- 2.24 The proposed use and the Plan as conditioned and amended herein is consistent with the Master Plan, in harmony with the purpose and intent of the Bylaw, will not be detrimental or injurious to the neighborhood in which the use is to take place, are appropriate for the Site; and comply in all respects with the applicable requirements of the Bylaw.

3 BOARD ACTION

Therefore, the Board voted unanimously to GRANT the requested use special permit, subject to and with the benefit of the following conditions and limitations.

3.1 WAIVERS

The Applicant has requested the following waivers from the MISC Rules & Regulations.

- 3.1.1 Section 3.14.10 (Architectural Floor and Elevation Plan). Three-dimensional architectural rendering for three dimensional proposed buildings or building renovations shall be submitted. The waiver is granted.
- 3.1.2 Section 10.3.6.9 Installation of sidewalks along the entire FRONTAGE of a LOT and of other walkways and paths as it deems necessary to accommodate the safe movement of pedestrians and bicyclists. Such a sidewalk or other walkways or paths may be located on the LOT or within the layout of the STREET and shall be designed to connect with existing sidewalks on adjacent LOTS, if any. Sidewalks, walkways or paths shall be designed and constructed according to standards established in the Town of Acton Subdivision Rules and Regulations, except when otherwise approved by the Special Permit Granting Authority. The waiver is granted.

3.2 PLAN MODIFICATIONS

The Building Commissioner shall not issue a building permit for this Project or any portion thereof, nor shall any construction activity approved hereunder begin on the Site, until and unless the Zoning Enforcement Officer (ZEO) confirms that the Plan is revised to include the following additional, corrected, or modified information. Except where otherwise provided, all such information shall be subject to the approval of the ZEO. Where approvals are required from persons, boards, commissions, or agencies other than the ZEO, the Applicant shall be responsible for providing evidence of such approvals to the ZEO.

- 3.2.1 Any outstanding comments from GCG Associates shall be addressed and resolved.

3.2.2 The Plan shall be modified to comply in all respects with the Bylaw. Unless directed otherwise by this decision, the Plan shall also be modified to comply with all requirements of the Rules, and to address all departmental comments received by the Board in a manner that resolves any concerns raised therein to the satisfaction of the Board.

3.3 **CONDITIONS**

The following conditions shall be binding on the Applicant and its successors and assigns. Failure to adhere to these conditions shall render this special permit null and void, without force and effect, and shall constitute grounds for the revocation of this special permit, and of any building or occupancy permit issued hereunder. The Town of Acton may elect to enforce compliance with this special permit using any and all powers available to it under the law. The Applicant shall be diligent in complying with the erosion and sediment control plan. The Applicant shall not cause or permit the runoff of water, or erosion that result in the flooding or siltation of any street, way or drainage facility owned or maintained by the Town. If such runoff or erosion occurs, the Building Commissioner may order the immediate cessation of any excavation, construction and building activities until the conditions that caused the runoff or erosion have been corrected.

- 3.3.1 The solar panels shall be certified by their manufacturer(s) to be PFAS free prior to issuance of a building permit.
- 3.3.2 In lieu of extending the water line, the Applicant shall, prior to issuance of a building permit, make a one-time \$40,000 payment to the Acton Fire Department for fire safety equipment or training that would help mitigate any potential incident at the solar facility.
- 3.3.3 The fire suppression system shall be fully enclosed within a structure and only use PFAS-free fire suppressant.
 - a) Prior to the issuance of a building permit, the Applicant shall submit and obtain from the Town of Acton, Department of Health, an approved hazardous waste clean-up and disposal plan that will contain the plan of action should the fire suppression system be discharged. The hazardous waste clean-up and disposal plan shall include spill prevention, containment, and clean-up procedures in the event that the Fire Suppression System (FSS) discharges in a fire event.
- 3.3.4 No chemical fertilizers, pesticides, or herbicides shall be used or stored on this parcel. Any vegetation management shall be performed solely by mechanical means
- 3.3.5 The plans will be revised to include a note specifying that any soils that are exported from the site during the construction shall be tested as necessary to dispose of the soil in accordance with the applicable regulations and/ any soils, loams, or compost materials imported onto the site shall be tested for any potential contaminants and the results of the tests must be reported to the Environmental Compliance Manager of the Acton Water District and to the Director of the Health Department of the Town of Acton within 10 days of the receipt of the test results.
- 3.3.6 The Applicant shall submit a detailed plan on how they will include solar seed mix preferences that are native to New England. The Applicant shall seek support from certification programs such as UMass CEE to effectively implement, maintain, and promote native meadow habitats under and around solar panels.
- 3.3.7 No cleaning agents shall be permitted to clean the surfaces of the solar panels. Only rainwater or potable water containing no cleaners or surfactants shall be used.

- 3.3.8 The existing monitoring wells shall be protected by establishing a minimum 5-foot radius around each monitoring well any other comparable means of ensuring monitoring well access as determined by W. R. Grace. This area shall not be disturbed, during or after construction.
- 3.3.9 The owner of the Solar Facility shall work with the Town of Acton Fire Chief and other appropriate emergency personnel to develop a satisfactory Emergency Response Plan prior to the final building permit approval. Once the construction of the facility is complete and prior to the commencement of operations, the owner shall perform a comprehensive orientation at the facility with the appropriate emergency personnel to discuss the design and operation of the facility and to review the Emergency Response Plan at the facility. The Emergency Response Plan shall include spill prevention, containment, and clean-up procedures in the event that the Fire Suppression System (FSS) discharges in a fire event.
- 3.3.10 Carbon Mitigation-
Prior to the issuance of a building permit, the Applicant shall sign an agreement with the Town of Acton to mitigate the loss of trees as follows: The Applicant shall pay an annual sum of \$6,000 per year, beginning on the fifth anniversary of the commercial operation date (COD) of the solar facility and continuing each anniversary of the COD thereafter through the fifteenth anniversary of said COD, yielding an aggregate tree mitigation contribution of \$60,000.00 to the Town of Acton. The funds will be used by the Town for any purpose related to planting new trees or protecting existing trees.
- 3.3.11 The battery storage system's fire-suppression system will comply with all local, state, and federal regulations. As a condition of this Special Permit, prior to closing out the building permit, (a) the owner shall make good-faith efforts to explore with utility-scale battery storage vendors whether they can deliver effective, HFC-free fire-suppression systems, provided such alternatives are equally effective, provide adequate fire suppression capacity and are economically reasonable to procure, and (b) as evidence of the foregoing required efforts, the owner shall provide to the Building Inspector, prior to closing out the building permit, either (i) a spec sheet or other correspondence from the chosen vendor confirming that the battery storage system uses an HFC-free fire suppression system or (ii) correspondence from the competing battery storage vendors providing their explanation of their inability to deliver a battery system with HFC-free fire suppression components.
- 3.3.12 A building permit for the 7-foot-high chain fence is required prior to installation.
- 3.3.13 A Hazardous Materials Permit shall be filed with the Health Division for battery storage.
- 3.3.14 The Applicant shall make every effort to minimize tree removal on the site beyond what is proposed in the special permit application/plans.
- 3.3.15 All requirements of the Health Director shall be met.
- 3.3.16 All taxes, and penalties and back charges resulting from the non-payment of taxes, if any, shall be paid in full prior to the issuance of a building permit.
- 3.3.17 No work on the Site shall begin prior to the issuance of a building permit.
- 3.3.18 All work on the Site shall be conducted in accordance with the terms of this special permit and shall conform with and be limited to the improvements shown on the Plan as modified herein.
- 3.3.19 All necessary water service lines shall be installed in accordance with the specifications of the Acton Water Supply District if installed in the future.

- 3.3.20 All work on the Site shall be performed in compliance with the applicable law and regulations protecting wetlands and wildlife habitat in the Town of Acton.
- 3.3.21 All construction activity on the Site relating to this Special Permit shall be limited to the hours of: Monday — Friday: 7:00am — 5:00pm; Saturday 8:00am — 5:00pm; Sundays & Holidays: No work permitted.
- 3.3.22 Prior to final sign-off by the Acton Building and Planning Divisions, the Applicant shall submit an as-built plan certified by a Massachusetts Licensed Surveyor and Professional Engineer at the conclusion of construction certifying that the project has been completed in accordance with the approved Plan and that all features required on the site by the approved Plans and this decision have been field inspected by the PE and conform with the approved design. Any non-conforming features shall be clearly noted.
- 3.3.23 This Decision shall be recorded at the Middlesex South District Registry of Deeds or the Land Court prior to the issuance of a building permit on the Site.

3.4 LIMITATIONS

This special permit shall be limited as follows:

- 3.4.1 The foregoing required modifications and conditions have been stated for the purpose of emphasizing their importance, but are not intended to be all inclusive or to negate the remainder of the Bylaw and the Rules.
- 3.4.2 This special permit applies only to the Site identified in this decision and to the proposed use and activity as shown on the Plan.
- 3.4.3 Other approvals or permits required by the Bylaw, other governmental boards, agencies or bodies having jurisdiction shall not be assumed or implied by this decision.
- 3.4.4 This special permit shall lapse if substantial use thereof has not commenced within two years of the filing date of this decision with the Town Clerk, except for good cause, or if construction under this special permit is not continued through to completion as continuously and expeditiously as is reasonable. For construction to continue towards completion as continuously and expeditiously as is reasonable, construction activity shall not rest for more than 1 year. A request to extend said time limits must be made in writing to the Board at least 30 days prior to said expiration dates, and the Board herewith reserves its rights and powers to grant or deny such extension, to issue any appropriate changes to the special permit and to require any appropriate modifications of the Plan.
- 3.4.5 The Board hereby reserves its right and power to modify or amend the Plan and the terms and conditions of this special permit with or without a public hearing upon the request of the Applicant, his designees or assigns, or upon its own motion.

4 APPEALS

Appeals, if any, shall be made pursuant to MGL, ch. 40A, s. 17 and shall be filed within 20 days after the date of filing this decision with the Town Clerk.

Signed on behalf of the Acton Planning Board



Kristen Guichard, AICP, Planning Director and Zoning Enforcement Officer
for the Town of Acton Planning Board

This is to certify that the 20-day appeal period on this decision has passed and there have been no appeals made to this office.

Eva Szkaradek, Town Clerk

Date

Copies furnished:

Applicant Owner Town Clerk LUD Project Review