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Use Special Permit – 16-05
Borrego Solar, 127 Stow Street
April 19, 2016



Planning Board

TOWN OF ACTON
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DECISION

16-05

Borrego Solar, 127 Stow Street

Use Special Permit for
Ground-Mounted Industrial Solar Photovoltaic Installation
April 19, 2016

GRANTED with Conditions

Decision of the Acton Planning Board (hereinafter the Board) on the application of Borrego Solar Systems, Inc. of 55 Technology Drive, Suite 102, Lowell, MA 01851 (hereinafter the Applicant). The property is located at 127 Stow Street and shown on the Acton Town Atlas map H1 parcel 6 (hereinafter the Site), owned by Fletcher Realty Trust, 350 Great Road, Stow, MA 01775.

This Decision is in response to an application for a use special permit, received by the Acton Planning Department on February 29, 2016, 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. The Board held a duly noticed public hearing on April 19, 2016. Board members Mr.

Jeff Clymer (Chair), Mr. Michael Dube (Vice Chair), Mr. Ray Yacouby, Mr. Derrick Chin, and Mr. Mike Mai were present throughout the hearing. The minutes of the hearing and submissions on which this decision is based upon may be referred to in the Town Clerk's office or the office of the Board at the Acton Town Hall.

1 EXHIBITS

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

- 1.1 Items and documentation required by the Rules, consisting of:
 - Special Permit Application form dated 4/1/16 (substituting for application form received on 2/29/16).
 - Cover letter dated 2/29/16 with attachments describing the use (9 pages).
 - Plan entitled "Site Use Plans; 127 Stow Street, Acton, MA 01720 & 0 South Acton Road (Rear), Stow, MA 01775; 2798.82 Kw Dc Stc Rated Solar Electric System", dated 2/29/16 and revised 4/08/16, drawn by David M. Albrecht of Borrego Solar, consisting of eight sheets: T-1 Title Page, C-1.0 Existing Conditions Plan, C-2.0 Tree Clearing Plan, C-3.0 Layout And Materials Plan, C-4.0 Grading And Erosion Control Plan, C-5.0 Civil Details, E-0.0 Electrical Single Line Diagram, and D-2 Post Development Watershed Plan.
 - Completed Development Impact Report, form DIR.
 - Stormwater Management Report, dated 2/29/16.
 - Owner authorization by Bruce Fletcher, Trustee, dated 2/29/16.
 - Certified abutters list.
- 1.2 Interdepartmental communication received from:
 - Acton Water District, dated 3/15/16;
 - Acton Engineering Department, dated 3/17/16; and
 - Acton Planning Department, dated 4/8/16.

Exhibit 1.1 is 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/Stow town line; within the Residence 2 (R-2) zoning district and the Groundwater Protection Overlay District Zone 3; and a portion is in the Flood Plain Overlay District.
- 2.2 The proposed use, a Ground Mounted Industrial Solar Photovoltaic Installation (hereinafter the Solar PV system), is allowed on the Site by special permit in accordance with the Bylaw, including all overlay district requirements.
- 2.3 The Plan shows the proposed Solar PV system on a parcel containing 5.4 acres of land in Acton and 20.6 acres in Stow. The property has adequate legal frontage in Stow.
- 2.4 The Acton portion of the Solar PV system would consist of a fenced-in area measuring approximately two acres, an extended gravel road, and the electrical equipment pad.
- 2.5 The proposed tree clearing is limited to less than 1 acre.

- 2.6 The power feed line into the grid is proposed along a wood road in Acton with the grid connection and metering device on Stow Street, Acton. At the Stow Street connection, the old wood road would be improved with a gravel apron, 16' wide and +/-100' long.
- 2.7 Bylaw 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 Plan shows above ground electrical equipment and an overhead line, 1700-1800 feet long, to Stow Street. The line would run over stretches of wetland and flood plain. Under Bylaw section 3.11.5 the Board, when granting a special permit, may approve a Solar PV System that does not meet the section 3.11.3 standards, including that of 3.11.3.4, provided that:
- a. 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 (3.11.5.1);
 - b. The particular design, mitigation measures, offsets, agreements, or other provisions for the proposed installation address such concerns in an alternative and satisfactory manner (3.11.5.2); and
 - c. It meets the standard required special permit findings under Bylaw section 10.3.
- The proposed facility meets these standards. It is sufficiently buffered through natural vegetation and the power feed line to the Stow Street grid connection runs through woodland and wetland. Burying the electrical equipment and the power line would result in unnecessary wetland disturbance and would not improve public health, safety or welfare. Therefore, the above-ground placement of equipment and power line is adequate and appropriate in this case.
- 2.8 Bylaw section 3.11.3.2 requires landscaping and screening as needed to protect nearby sensitive receptors. The nearest sensitive receptors to the project site in Acton are houses at the end of Billings Street more than 800 feet away and separated by woodland. The Solar PV system modules' tilt angle will be 25° south into Stow. The existing wooded buffer provides ample protection so that no additional landscaping or screening will be necessary.
- 2.9 The property has +/-60 feet of frontage on Stow Street in Acton. Under Bylaw section 10.3.6.9 the Board may require the installation of a sidewalk along the lot frontage on Stow Street. Given the location, the Board would prefer a contribution to the Town of Acton sidewalk fund in the amount of \$3,000.00, based on the established sidewalk contribution formula of \$50.00 per foot of existing street frontage (applies here) plus \$20.00 per foot along new street construction (does not apply).
- 2.10 Chapter J of the Bylaws of the Town of Acton identifies Stow Street at the subject frontage location as a Scenic Road. Chapter J prohibits, within the Stow Street public right-of-way the cutting or removal of trees, or tearing down, or destruction of stone walls, or portions thereof, except with prior written consent of the Planning Board after a public hearing.
- 2.11 The Board has received comments from various Town departments, which are listed in Exhibit 1.2 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.

- 2.12 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 to the applicable requirements of the Bylaw.

3 BOARD ACTION

Therefore, the Board voted at its meeting on April 19, 2016 to GRANT the requested special permit subject to and with the benefit of the following Plan modifications, conditions, and limitations.

3.1 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.

- 3.1.1 Specify that poles for the overhead power feed line to Stow Street shall not exceed 36 feet in height.
- 3.1.2 Certify on the Plan that the proposed construction does not involve any cuts into the terrain elevation, not counting small mounds or piles. Otherwise, provide data and calculations to show compliance with the "distance to the groundwater elevation" requirement pursuant to Bylaw section 4.3.5 and subsections.
- 3.1.3 Reference on the plan two benchmarks on the site that will not be disturbed during construction.
- 3.1.4 Show the installation of a sidewalk along the Site's frontage in Acton. As an alternative, the Applicant may make a \$3,000.00 contribution to the Town Acton sidewalk fund, payable before the issuance of a building permit.
- 3.1.5 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.

- 3.3.1 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.

- 3.3.2 The Applicant shall make every effort to minimize tree removal on the site.
- 3.3.3 All requirements of the Health Director must be met.
- 3.3.4 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.
- 3.3.5 No work on the Site shall begin prior to the issuance of a building permit.
- 3.3.6 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.
- 3.3.7 All water service lines shall be installed in accordance with the specifications of the Acton Water Supply District.
- 3.3.8 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.
- 3.3.9 All construction activity on the property relating to these Special Permits shall be limited to the hours of: Monday – Friday: 7:00am – 5:00pm; Saturday 8:00am – 5:00pm; Sundays & Holidays: No work permitted.
- 3.3.10 Prior to final sign-off by the Acton Building and Planning Departments, 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 decisions have been field inspected by the PE and conform with the approved design. Any non-conforming features shall be clearly noted.
- 3.3.11 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

The authority granted to the Applicant under this special permit is 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.



Roland Bartl, AICP, Planning Director
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 -
certified mail #
Town Clerk
Fire Chief
Owner

Building Department
Engineering Department
Natural Resources Dept.
Police Chief
Historical Commission

Health Department
Municipal Properties Dept.
Town Manager
Acton Water District
Assistant Assessor

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