

Lancaster Planning Board  
April 13, 2020  
Public Meeting Remarks by Larry Shoer

#### Application of Town of Lancaster "Use Regulation Schedule" §220-8.4

As a result of a Freedom of Information Act request, we were provided with information about all Special Permits that were considered under "Use Regulation Schedule" §220-8.4. A total of six Special Permits were requested, all directed to the Lancaster Board of Appeals.

Four Special Permit applications were submitted for solar projects on George Hill Orchards. One Special Permit was submitted for a solar project at Manny's Dairy Farm on Brockelman Road. One Special Permit was submitted for a solar project on the former Shirley Airport. All of these larger-scale projects were privately funded, on private land, and proposed the installation of solar panels that would be connected to the public electric utility in the street.

It is representative to cite the letter from Valerie Harper, Natural Resources Division Manager, New England Environmental, Inc, on behalf of UGT10 LLC. Ms. Harper submitted her letter and Special Permit to the Lancaster Board of Appeals for the solar project at the former Shirley Airport. In her letter dated July 9, 2012, Ms. Miller stated:

"This special permit application is being submitted in accordance with Section 220-8.4A of the Lancaster Zoning By-laws. Specifically, this By-law applies to underground or overhead communications, gas, electrical, sewerage, drainage, water, traffic, fire and police system services, appurtenant equipment and installations. Filing of a special permit is mandated under this By-law if it is not regulated under Article XI, and provided by other than a public service corporation or governmental agency. UGT10 is requesting approval to install this renewable energy system in this residentially zoned property, under this By-Law."

We note that Ms. Miller's letter describes a Special Permit issued by the Board of Appeals as required for electrical or water projects, as described in "Use Regulation Schedule" §220-8.4. Every one of these projects submitted a Special Permit application to the Board of Appeals, as required by "Use Regulation Schedule" §220-8.4.

The water booster station installed on George Hill Road is a privately funded project on privately owned land, to serve private residences. As a water project (connected to the public water utility in the street), this project required a Special Permit from the Board of Appeals.

It should be noted that the Planning Department maintains a document titled "Important Information on Special Permits." This is posted on the town website and is part of the Board of Appeals Application for Special Permit. In this document it states:

"[T]he authority for granting special permits is, in most cases, assigned to the Board of Appeals (designated by "SP") and, in other cases, to the Planning Board (designated by "PB"). You must initially determine the appropriate Board with which to file your special permit application and the application and materials filed with it must comply with the rules of that Board."

This document includes an example that is directly relevant for the water booster station on George Hill Road.

'For example, the Board of Appeals may grant a special permit which allows poultry to be kept on a residential parcel of less than 5 acres (Section 220-8.2(B)); provided that "no building housing poultry shall be within 150 feet of a property line". This requirement would prevent the Board from granting a special permit if the proposed building housing poultry was only 130 feet from a property line.'

In other words, the Special Permit is not allowed to alter setbacks from the property line. The water booster station is set back 20.7 feet from George Hill Road when the legally required setback is at least 30 feet.

**The location of the water booster station also directly violates the open space requirements of the Town of Lancaster Flexible Development Bylaw Section 220-15 C and Subsection C(3) and Massachusetts General Law Chapter 40A Zoning, Section 9 Special Permits.** Just as a Special Permit cannot be issued which allows construction that does not meet mandated setbacks, a Special Permit cannot be issued which directly violates a mandated perpetual recorded restriction and/or conservation easement or a Massachusetts General Law.

The points I raise are not mere technicalities. By not requiring a Special Permit to be issued by the Board of Appeals, the required public meeting was not held. Abutters and other members of the community were not made aware of the plans for the water booster station and, thereby, provided an opportunity to comment on them. Unfortunately, without the better scrutiny that a public meeting might have provided, the project as built is deficient. Lancaster Subdivision Rules and Regulations Bylaw Section 301-12 Utilities. B. Water (4) states:

"Permanent dead-end water mains shall not normally be allowed. Easements shall be provided where necessary to allow for extension or looping of mains through subsequent development."

The Hawthorne Lane Flexible Development subdivision creates a new dead-end main, where one did not exist previously. This leads to the potential for water quality issues for occupants of the subdivision and higher operating costs, since more frequent flushing and accelerated deterioration of infrastructure is expected. The irony is that there are better locations for this water booster station which will not only eliminate the dead-end main on the Hawthorne Lane subdivision, but can also eliminate the same problem in Eagle Ridge, where another dead-end water main exists. The Planning Board explicitly required the developer provide an easement between the Flexible Development subdivision and Eagle Ridge, but it was not used.

If "Use Regulation Schedule" §220-8.4 had been applied to water, as it had been for electrical services, many if not all of these deficiencies would have come to light during the public discussion.

## ***Supporting Materials***

**Lancaster Flexible Development Bylaw Section 220-15 C** establishes conditions for the use of open space which are inconsistent with a building or permanent structure:

- C. Open space requirements... Any proposed open space land, unless conveyed to the Town or its Conservation Commission, **shall be subject to a recorded restriction and/or conservation easement** enforceable by the Town. Such restriction or easement shall be in a form satisfactory to the Planning Board, and **shall provide that such land shall be perpetually kept in an open state**, that it **shall be preserved exclusively for one or more of the purposes set forth in Subsection C(3)** below, and that it **shall be maintained in a manner which will ensure its suitability for its intended purposes**.

...

...

(3) **The open space shall be used for wildlife habitat and conservation and one or more of the following additional purposes: historic preservation, education, outdoor education, recreation, park purposes, agriculture, horticulture, forestry, visual amenity**, and shall be served by suitable access for such purposes. The Planning Board may permit up to 5% of the open space to be paved or built upon for structures accessory to the dedicated use or uses of such open space (i.e., pedestrian walks and bike paths).

**Massachusetts General Law Chapter 40A Zoning, Section 9 Special Permits** states:

"Cluster development" means a residential development in which the buildings and accessory uses are clustered together into one or more groups separated from adjacent property and other groups within the development by intervening open land....[A] restriction enforceable by the city or town shall be recorded providing that **such land shall be kept in an open or natural state and not be built for residential use or developed for accessory uses such as parking or roadway**.

July 9, 2012

Town of Lancaster  
Zoning Board of Appeals  
695 Main Street  
Suite 4  
Lancaster, MA 01523

RE: Special Permit Application  
Solar Array Project at Shirley Airport, Lancaster, MA  
NEE File 12-4110

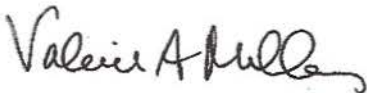
Dear Board Members:

New England Environmental Inc., (NEE), on behalf of UGT Renewable Energy 10 LLC (UGT10), is pleased to submit this application for a solar energy project located at the former Shirley Airport in Lancaster, Massachusetts. This project proposes the installation and operation of a 5.86 Megawatt (DC) solar array requiring approximately 25 acres to be located on a property consisting of approximately 46 acres. The site includes the existing development at the Shirley Airport. Approximately 8.5 acres of land are proposed to be converted from non-developed to developed land. The site is zoned as "Residential," and is not listed as a "Priority Development Site." The site is also not located in a water resource district.

This special permit application is being submitted in accordance with Section 220-8 4A of the Lancaster Zoning By-laws. Specifically, this By-law applies to underground or overhead communications, gas, electrical, sewerage, drainage, water, traffic, fire and police system services, appurtenant equipment and installations. Filing of a special permit is mandated under this By-law if it is not regulated under Article XI, and provided by other than a public service corporation or governmental agency. UGT 10 is requesting approval to install this renewable energy system in this residentially zoned property, under this By-Law.

If you have any questions or comments, please do not hesitate to contact me.

Sincerely,  
NEW ENGLAND ENVIRONMENTAL, INC.



Valerie Miller  
Division Manager, Natural Resources

cc:  
Robert Berman, Urban Green Technologies, LLC  
Rayo Bhungara, Sustainable Strategies 2050, LLC  
Zachary Schulman, Urban Green Technologies, LLC

## ***IMPORTANT INFORMATION ON SPECIAL PERMITS***

A special permit is generally a permit from a Town Board which allows the use of land or buildings for a specifically identified purpose upon satisfaction of provisions set forth in the zoning bylaw. With respect to the Use Regulations set forth in Article 3 of the Lancaster Zoning Bylaw, the authority for granting special permits is, in most cases, assigned to the Board of Appeals (designated by "SP") and, in other cases, to the Planning Board (designated by "PB"). You must initially determine the appropriate Board with which to file your special permit application and the application and materials filed with it must comply with the rules of that Board.

The special permits authorized in Article 3 of the zoning bylaw are limited to those specific uses that are so identified in the Use Regulation Schedule (Section 220-8), and special permits cannot vary from the requirements of the bylaw. For example, the Board of Appeals may grant a special permit which allows poultry to be kept on a residential parcel of less than 5 acres (Section 220-8.2(B)); provided that "no building housing poultry shall be within 150 feet of a property line". This requirement would prevent the Board from granting a special permit if the proposed building housing poultry was only 130 feet from a property line. The standards for special permits are consequently quite different than the standards applicable to variances.

Special permits may be issued "only for uses which are in harmony with the general purpose and intent of the bylaw and shall also be subject to the general or specific provisions set forth in the bylaw", as noted in the above example. The permit granting authority may also impose additional conditions, safeguards and limitations on time or use. Such additional conditions must be within the applicant's power to perform, however. Examples of permissible conditions include conditions relating to the design and siting of structures, and a limitation on the transferability of a special permit. A special permit may run with the land or may be limited to a particular applicant. A special permit may also be limited in duration.

As long as the above requirements are satisfied, the standards applicable to a special permit granting authority in evaluating a special permit application are more lenient than the standards applicable to variances. However, special permits and variances are certainly not interchangeable forms of zoning relief.

# ZONING

## 220 Attachment 1

### Town of Lancaster

#### Use Regulation Schedule

#### § 220-8

#### KEY:

P = A use permitted as a matter of right in the district, subject to all applicable dimensional and special regulations.

SP = A use permitted only upon granting of a special permit by the Board of Appeals, subject to any additional limitations which may be required by the Board.

PB = A use permitted only upon granting of a special permit by the Planning Board, subject to any additional limitations which may be required by the Board.

N = A use prohibited in the district.

		Zoning Districts						Notes
Item	Use	R	NB	LI	LI2	GI	EZ	
<b>§ 220-8.1. RESIDENTIAL USES.</b>								
<b>Principal uses</b>								
A.	Single-family detached dwelling	P	P	N	N	N	N	One per lot.
B.	Two-family dwelling	P	N	N	N	N	N	Only by conversion of single-family dwelling existing 2-13-1950, without exterior building change except for required exits and ventilation, and the total habitable floor area of at least 1,536 square feet.
C.	Living facility for seniors	SP	SP	N	N	N	PB	See § 220.9A

EE.	Day camp accessory to a permitted use	SP	SP	N	N	N	P	
<b>§ 220-8.4. PUBLIC, HEALTH, EDUCATIONAL AND INSTITUTIONAL USES.</b>								
<b>Principal uses</b>								
A.	Underground or overhead communications, gas, electrical, sewerage, drainage, water, traffic, fire, and police system services, appurtenant equipment, and installations	SP	SP	SP	SP	SP	PB	If personal wireless service facilities regulated under Article XI of Ch. 220.
		P	P	P	P	P	P	If not regulated under Article XI, and provided by a public service corporation or governmental agencies.

#### Article XI

#### Personal Wireless Service Facility Regulations

<sup>1</sup> Editor's Note: As regulated under Article XII of Chapter 220, Zoning.