

March 27, 2019

Re: Feedback on Solar Ordinance

Dear Members of the Durham Planning Board,

I want to thank you for the endless hours you have put into reworking the proposed Solar Ordinance. While I may not agree with everything in the document, I do appreciate the thought and effort that went into painstakingly slogging through this tough document.

I also think there is much to be commended. This current draft is cleaner, simpler, clearer. Regarding the issue of placement of freestanding systems in single-family neighborhoods, I think this draft works well for Durham's traditional neighborhood subdivisions. It sets out reasonable placement parameters relative the height of the array and the location of the house on the lot. If those parameters don't work for that particular lot, residents can seek relief at the ZBA. This is a reasonable and balanced approach given the competing interests in our community.

Protecting Durham's rural character and scenic landscapes

The Purpose Statement of the Solar Ordinance states in part 2b: "promote environmental sustainability, while respecting aesthetics and the rural character and scenic landscape of Durham, and the use of productive agricultural lands." Yet ironically, where this draft falls short is precisely in those areas of town where we have do have rural character and scenic landscapes we wish to preserve.

Side note: the sentence structure of 2b is awkward. Try: "promote environmental sustainability, while respecting aesthetics, ~~and~~ the rural character, and scenic landscapes of Durham, and **encouraging** the use of productive agricultural lands."

So what do we mean by "rural character" or "scenic landscapes" and why it is important? I think we all experience that uplifting of spirit when we drive by Wagon Hill Farm and Emery Farm on Rt. 4, the newly preserved viewsheds along Rt. 108 in front of the Mill Pond Center or the Bedard Farm, the pastoral view of the Moore property along 155, or the open fields along Packers Falls Road, Bennett Road, Durham Point Road and Mast Road. These open fields provide scenic viewsheds and reminders of our agricultural heritage. They also nourish the soul. Our community has for years, through multiple Master Plans, made clear that rural character and scenic vistas are highly valued. Many people are drawn to buy homes in Durham for this very reason. What remains of our rural character is an important part of our quality of life and community identity.

Several of our historic/scenic roads are unique in that many of the older homes were built close to the road. Within a 2-mile radius of my house on Packers Falls Road, for instance, there are approximately 2 dozen houses that were built within our current front yard setback—some 0-, 5-, 10-, 15 feet from the front property line. My own house is 12 feet from our front property

line. Originally part of working farms, some of these properties have extensive side yards, i.e. fields that create scenic vistas that serve to define our rural character. This is also true for properties along other Designated Scenic Roads: Bennett Road, Durham Point/Bay Road, and Mast Road. The proposed regulations currently allow for freestanding solar systems to be positioned as close to the road as the front face of the house. With the required 30-foot setback along these roadways, this means each of over 40 houses in our rural/scenic parts of town would be able to place a freestanding solar system just 30 feet from our Designated Scenic Roads. That is extremely close to the road and flies in the face of the Purpose Statement of this ordinance. These regulations would apply whether or not the freestanding solar system is placed close to the house or set out in the middle of a pastoral field that stretches along the scenic roadway.

Permitting freestanding solar systems as close to 30-feet from the front property line along our scenic roads is not in keeping with the Purpose Statement of the Solar Ordinance. This draft of the Solar Ordinance ignores the not-so-unique features of our historically rural areas, and thus does not live up to the Purpose Statement regarding respecting rural character and scenic landscapes. This lack of applicability to our historic homes built close to the road, especially where there are extensive side yards, promises to compromise the very rural character that the ordinance claims to want to protect.

In order to align policy with the Purpose Statement, I suggest the PB make the following changes under **4. Single-Family or Duplex Residential Solar Energy System**:

Rename the current 2c to 2d and insert the following paragraph as 4c: Placement along Designated Scenic Roads. In instances where any portion of a house is within the front yard setback along a Designated Scenic Road (Bay Road, Durham Point Road, Mast Road, Bennett Road, and Packers Falls Road), no part of a freestanding solar system (of any height) shall be placed closer to the front property line than the fully enclosed part of the house furthest from the street. In instances where a freestanding solar system is to be placed in a side yard more than 30 feet from the house and is visible from the road, the freestanding solar system shall meet the 100-foot setback established in Section 5c for fields.

2d would include the existing language for special exceptions.

How many properties would this revision effect? In reality of the 40 or so houses along the Designated Scenic Roads that are built within the font yard setback, I would guess only about half are well positioned for solar. And of those, I guess a quarter (or perhaps less than 10) have extensive side yards. If you ask, "why bother for so few?" I would respond that it is these few open fields that remain that do comprise our scenic vistas. Those vistas are worth giving a little extra thought to preserve.

[Note: I checked with our Code Enforcement Officer regarding the specific language I propose above for 2c, and she has confirmed that as the person administering the regulations for single family homes, this language is clear and workable for her.

Should this placement be extended to houses built within the front yard setback along our Gateways (i.e. main roads into town)? It would make sense, especially if we take into consideration that Durham's gateways separate us from other communities whose gateways are cluttered with sprawl.

All Freestanding Enterprise Systems should be CU where allowed

My second concern is about the change for Freestanding Enterprise Systems from CU to P in the R and RC zones for commercial agriculture. While I understand that the intent was to support the local farmer and help preserve farmland, this change in policy could have serious unintended consequences. Case in point: Within the last month, a Durham resident who own a large field off of Durham Point Road was approached by a solar developer from Florida interested in installing an Enterprise Solar System on the property. From the contents of the glossy package, it was apparent that the company had researched that particular parcel and had included an image of what a large Enterprise System would look like on a very similar parcel.

Several points are important here: 1) Durham has not even approved the "by right" regulations yet specific to R and RC and solar speculators are already swooping in to take advantage of relaxed regulations for farmland. That should serve as a strong warning. 2) If an out-of-state solar developer is prospecting in Durham, it is unlikely that only one resident received such a packet. How many other households were approached? 3) While the intention to help local farmers is admirable, "by right" policies for Enterprise Systems could have the devastating effect of loss of critical farmlands. The Agricultural Commission should consider the ramifications of such a regulation and be allowed to weigh in. 4) I recall that when the former Chair of the Energy Committee Charlie Forcey first initiated creating a Solar Ordinance, his motivation was to protect Durham from outside solar companies coming in and taking advantage of unregulated lands. He had seen negative impacts occur in other states and wanted to protect Durham from unintended consequences. Let's be prudent as we test this new ordinance.

If we do not want to lose our remaining farmland, I believe all Freestanding Enterprise Systems should be CU, where they are allowed at all. It would be foolhardy to do otherwise given the early indication of interest by large out-of-state companies. I personally question whether we should even allow a commercial Enterprise Systems in our residential zones at all. Just read the Purpose Statements for R and RC (below).

175-38. Rural District (R).

A. Purpose of the Rural District.

The purpose of the Rural District is to **preserve the rural character of the areas of Durham that have historically been rural**, that are low density, that are not served or intended to be served by public water and public sewerage, and that the Master Plan identifies as areas that should remain rural and their agricultural heritage preserved. In this district,

customary rural land uses will be preserved and all development will be carried out **with the objective of preserving the natural and scenic environment of the district. Residential development will be limited to housing that is designed so that the character of the district is maintained, the scenic quality is protected, and a significant amount of open space is permanently preserved.**

175-41. Residence Coastal District (RC).

A. Purpose of the Residence Coastal District.

The purpose of the Residence Coastal District is to protect the water quality of the community's principal surface waters and **to preserve the rural character and scenic beauty of these coastal areas including the view of the shore as seen from the water. In this district, all development will be carried out in a manner that preserves the natural and scenic environment of the district. Residential development shall be limited to housing that is designed so that the character of the district is maintained, the scenic quality of coastal areas is protected, and a significant amount of open space is permanently preserved.**

Buffering needs to be better defined within the Solar Ordinance

Within the Solar Ordinance, there is promise of buffering Multi-Residential and Enterprise Systems, but nowhere is there a definition within the draft ordinance. Within our ZO, the definition of buffering is weak:

BUFFERING – The use of landscaping (other than grass on flat terrain), or the use of landscaping along with berms, walls or fences that at least partially and periodically obstructs the view.

I suggest the following definition be added to the definitions section of the Solar Ordinance:

BUFFERING -The use of landscaping to create a natural-looking vegetative buffer to screen or mitigate the visual impact of freestanding solar systems from the roadway and neighboring properties.

100-ft setback should be revisited for Freestanding Systems in Open Fields

While numerically, 100 feet sounds like a lot, in actual space and perception of space, it is a very short distance. When we are talking about potentially huge systems stretching over acres, this would have to be on a large parcel. A larger setback, say 200 feet, would allow for less of an "in-your face" visual impact. If the particular parcel does not allow such a setback, relief may be obtained at the ZBA. (I do not buy the argument that going to the ZBA is too expensive. Particularly if we are looking at commercial uses--Multiunit or Enterprise systems that cost tens of thousands of dollars, the \$300 is a drop in the bucket.)

Carports

I listened to the PB discussion on carports. To believe no one will try to find loopholes in the regulations is naïve. Some on the Board may not have lived in Durham when a Lee resident, perturbed with his neighbor who lived across the street. To block her view of his scenic field, he

placed a huge pile of junk on his land by the road right in front of her house. He topped the junk pile off with an antenna on which he hung his dirty underwear. He called it a junk sculpture and the town had no way to regulate it. I believe it remains there to this day, now overgrown by shrubs.

I would like to see Carport renamed **Solar Carport** and broken down into two categories: 1) building-mounted for those solar carports attached to the house and 2) freestanding for those that are unattached. Each would follow the regulations set out for building-mounted and freestanding that exist for other solar systems (of which this is one). While most homes already have garages, it will be those one or two Solar Carports that pop up in someone's front yard or or close to the road which this Board may one day come to regret as more and more of our rural character is threatened.

Error in Table 175-109R

Under **5. Multiunit or Nonresidential Solar Energy System** item d, it states that those systems that do not conform with b and c above may be approved by special exception. Yet in Table 175-109R, under Multiunit residential or nonresidential system, under Freestanding it neglects to include the following language: "Special exception if system does not meet placement requirements." I believe this was an oversight and should be added to the table.

Thank you for your time and consideration as you strive to meet the Purpose Statement of the Solar Ordinance.

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