

From: [Jeffrey T. Blake](#)
To: [Watchilla, Robert](#)
Cc: [Beckley, Stuart](#); [Nicole J. Costanzo](#)
Subject: RE: Planning Question
Date: Wednesday, March 30, 2022 4:52:34 PM

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Robert,

You have requested an opinion regarding a preliminary subdivision plan currently before the Planning Board. Specifically you have asked whether a recorded special permit allowing a solar array must be amended because the lot description on the special permit has changed. This is so because the land owner now wishes to take what was once two lots, an approximately two acre parcel with a dwelling and a 78 acre vacant parcel, and change the lot lines to provide two lots with different lot areas, one where the solar array will be located and one with the dwelling. The dwelling lot would be approximately 30 acres and the solar array lot would be approximately 50 acres. The special permit allowing the solar array specifically references the old lot and parcel numbers and provides a lot description of "Total Acreage: 80.56 total; 19 acres to be developed." You have indicated that the array is not proposed to be moved or expanded or reduced. In my opinion, if the solar array is to be located in the same place and subject to the same conditions and the only difference is the lot reference and referenced acreage, a modification of the special permit should be requested by the permit holder. I note, general condition #8 states that "[a]ny changes to the plans approved by this permit must be reviewed by the Director of Planning & Community Development (PCD), prior to implementation, to determine if they constitute a significant change and require additional Planning Board approvals."

Based on the above, in my opinion, the special permit does not need to be amended prior to a determination on the preliminary subdivision plan. However, prior to construction of the solar array, the applicant must submit for your determination as to whether the change is significant and requires additional approvals. If not, in my opinion, you are authorized to approve the change. If you determine it does, then the applicant will need to request modification before the Planning Board. Any change, as required by condition #8 must be approved prior to the build out of the solar array. Additionally, in the event that the applicant does not agree that modification is necessary, the building official will need to make a determination, prior to issuance of any building permit, if the applicant is in compliance with the special permit. Presumably at that time, the building official will recognize that the description of the property has changed, which is a basis for withholding the permit until such time as compliance has been achieved (modification of the special permit).

The second question you have asked (see below) about G.L. c. 41, s81R is no longer an issue since the proposed subdivision has been reduced to two lots and the access road no longer creates a zoning non-conformity.

If you have any further questions or need further assistance in this matter, please do not hesitate to contact me.

Very truly yours,

Jeffrey T. Blake, Esq.

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