

October 11, 2022

Via Email to: kbuckland@wareham.ma.us

Members of the Wareham Zoning Board of Appeals
c/o Kenneth Buckland
Director of Planning and Community Development
Memorial Town Hall
54 Marion Road
Wareham, MA 02571

Re: *Variance Petition, 0 Rt. 25, Parcel ID 115-1000*

Dear Members of the Wareham Zoning Board of Appeals:

We appreciate the Board's continuing its hearing on Wareham PV I, LLC's petition for a variance from the 50' front, side and rear yard setback requirements in Section 594.1 of the Wareham Zoning-By-Laws to its October 12, 2022 meeting, and provide the following information for the Board's consideration in advance of that meeting.

Although we have requested a variance from the above-mentioned 50' setback requirements, Wareham PV I, LLC is not seeking to build the project without any setbacks from the property boundaries. Instead, we propose to build it with the setbacks depicted in the attached figure entitled "Revised Compromise Proposal (REV 10/03/2022), Proposed Solar Array, Wareham, MA." This new proposal, which we offer to address concerns raised at the Board's September 28, 2022 hearing, revises the June 13, 2022 "Compromise Proposal" by providing a 50' setback—rather than the 25' setback depicted in June 13, 2022 figure—along the property boundary adjacent to the Route 25 State Highway Layout to the south.¹ We respectfully request that this Board grant the requested variance with a condition allowing Wareham PV I, LLC to build the project only in accordance with the proposed setbacks depicted in this "Revised Compromise

¹ As we explained in our September 28, 2022 letter, in response to concerns voiced by the Wareham Planning Board and Wareham residents during the Planning Board's hearings on our site plan review application, we proposed to that board to agree voluntarily to incorporate the setbacks depicted in the figure entitled "Compromise Proposal (submitted 6/13/2022), Proposed Solar Array, Wareham, MA" into the project's site plans. We provided you this "Compromise Proposal" figure as an attachment to our September 28, 2022 letter.

Proposal" figure, including the proposed 50' setback along the property boundary adjacent to Route 25.²

Finally, as you know, G.L. c. 40A, § 3, ¶ 9 ("Section 3") forbids towns from adopting zoning bylaws that "prohibit or unreasonably regulate the installation of solar energy systems or the building of structures that facilitate the collection of solar energy, except where necessary to protect the public health, safety or welfare." The Supreme Judicial Court ("SJC") interpreted Section 3 for the first time in its recent decision in Tracer Lane II Realty, LLC v. City of Waltham, holding that "[i]n the absence of a reasonable basis grounded in public health, safety, or welfare," the City of Waltham's effort to restrict large-scale ground-mounted solar energy systems was "impermissible" under Section 3.³

We respectfully suggest that in light of the SJC's Tracer Lane decision, there is no "reasonable basis grounded in public health, safety, or welfare" for imposing the 50' setbacks in question on this project. The project site directly abuts the Wareham Municipal Maintenance Facility and woodlands to the west, woodlands to the north, and wetland resource areas and cranberry bogs to the east, which means that there are already significant existing buffers between the proposed facility and nearby residences. Given this, a court could find, based on Tracer Lane, that the imposition of these setbacks violates Section 3's prohibition against the unreasonable regulation of solar uses and thus is impermissible.

We look forward to the Board's October 12, 2022 meeting. Please let me know if you want any additional information between now and then.

Sincerely,



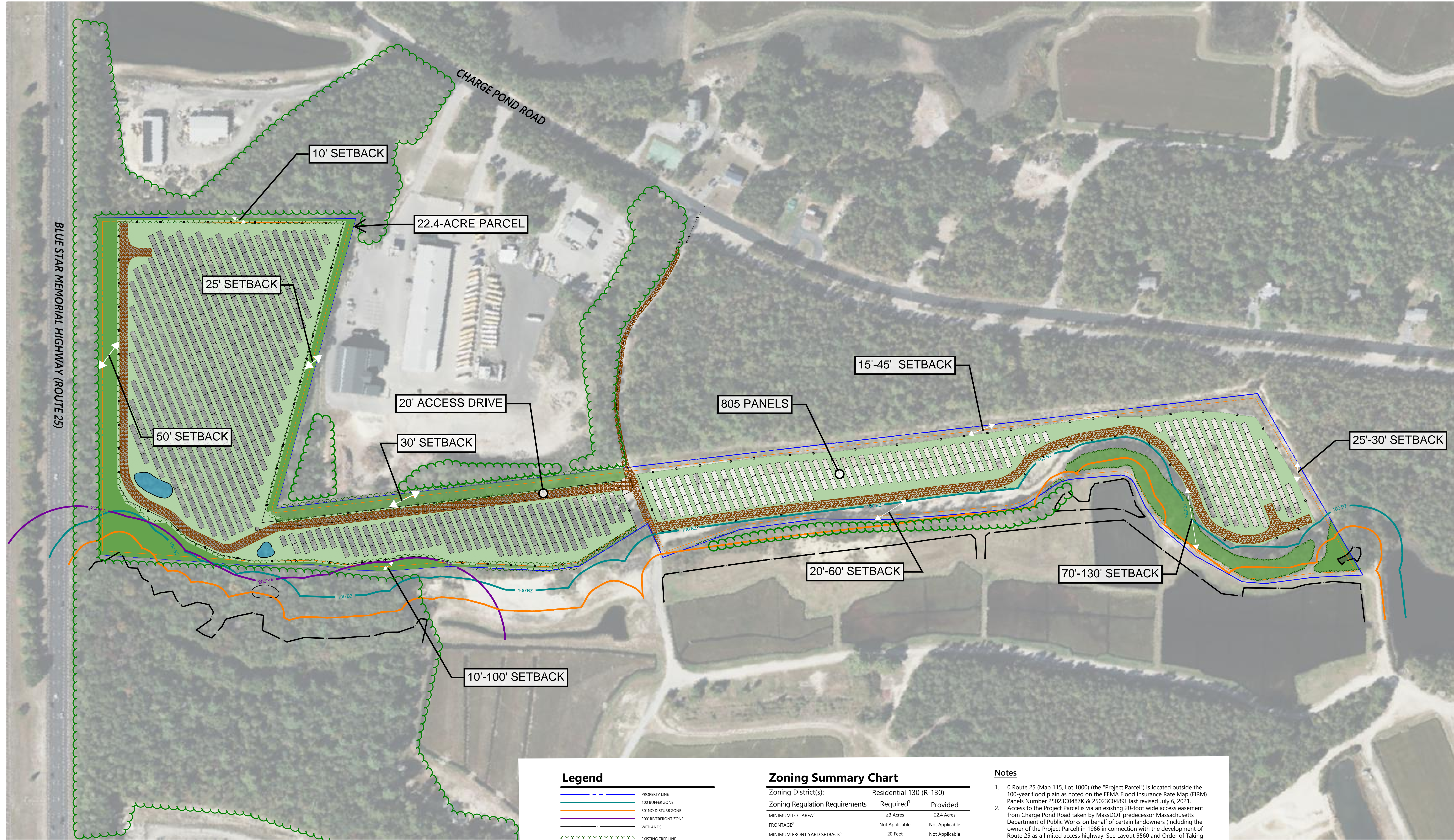
Elizabeth F. Mason

Enclosures

cc: David Fletcher
Haley Ordeval, Longroad Energy
Vanessa Kwong, Esq., Longroad Energy
Richard P. Bowen, Esq., Wareham Town Counsel

² We will also revise our proposal to the Planning Board and request that it condition a site plan approval for the project on the inclusion of this 50' setback along the property boundary adjacent to Route 25 in the project's site plans.

³ 489 Mass. 775, 782 (2022).



Revised Compromise Proposal (REV 10/03/2022)

Proposed Solar Array Wareham, MA

Source: VHB
Prepared for: Planning Board Meeting
Date: 10/5/2021

Legend

- PROPERTY LINE
- 100' BUFFER ZONE
- 50' NO DISTURB ZONE
- 200' RIVERFRONT ZONE
- WETLANDS
- EXISTING TREE LINE
- PROPOSED TREE LINE
- PROPOSED GRAVEL ROAD
- EXISTING GRAVEL ROAD
- MEADOW MIX
- TREES
- WETLANDS
- INFILTRATION BASIN

Zoning Summary Chart

Zoning District(s):	Residential 130 (R-130)	
Zoning Regulation Requirements	Required ¹	Provided
MINIMUM LOT AREA ²	≥3 Acres	22.4 Acres
FRONTAGE ³	Not Applicable	Not Applicable
MINIMUM FRONT YARD SETBACK ⁴	20 Feet	Not Applicable
MINIMUM SIDE YARD SETBACK ⁴	10 Feet	26 Feet
MINIMUM REAR YARD SETBACK ⁴	10 Feet	Not Applicable
MAXIMUM BUILDING HEIGHT ⁴	35 Feet	Not Applicable

(1) Zoning requirements as specified in "Zoning By-Laws Town of Wareham Massachusetts" (revised October 2018) (hereinafter "Zoning By-Laws").
 (2) Per Section 594.1.1 of Zoning By-Laws.
 (3) Per Section 611 of Zoning By-Laws, R-130 district minimum frontage requirement is not applicable because proposed project is not "principal building" or "accessory building" as those terms are defined in Article 16 of Zoning By-Laws.
 (4) Per Section 611 of Zoning By-Laws, R-130 district maximum allowed height requirement is not applicable because proposed project is not "principal building" or "accessory building" as those terms are defined in Article 16 of Zoning By-Laws.
 (5) Parcel on which project is proposed does not abut and is not across the street from any Residential district or residential development (Parcel is only within Residential (i.e., R-130) district).

Notes

- 0 Route 25 (Map 115, Lot 1000) (the "Project Parcel") is located outside the 100-year flood plain as noted on the FEMA Flood Insurance Rate Map (FIRM) Panels Number 25023C0487K & 25023C0489L last revised July 6, 2021.
- Access to the Project Parcel is via an existing 20-foot wide access easement from Charge Pond Road taken by MassDOT predecessor Massachusetts Department of Public Works on behalf of certain landowners (including the owner of the Project Parcel) in 1966 in connection with the development of Route 25 as a limited access highway. See Layout 5560 and Order of Taking dated April 14, 1966, recorded at the Plymouth County Registry of Deeds in Book 3286, Page 413 and Plan Book 12A, Page 66.

