

# Article 19 – Commercial Solar Overlay

## Executive Summary

**Objective:** Provide more control over commercial solar development within Hopkinton, allowing more careful consideration for preservation of both neighborhoods and our natural resources.

### **Today**

Commercial, ground-mounted solar installations are allowed in all zoning districts



### **Proposed**

Only allowed in parcels including in the solar overlay (map on next page) – Other parcels require ATM approval

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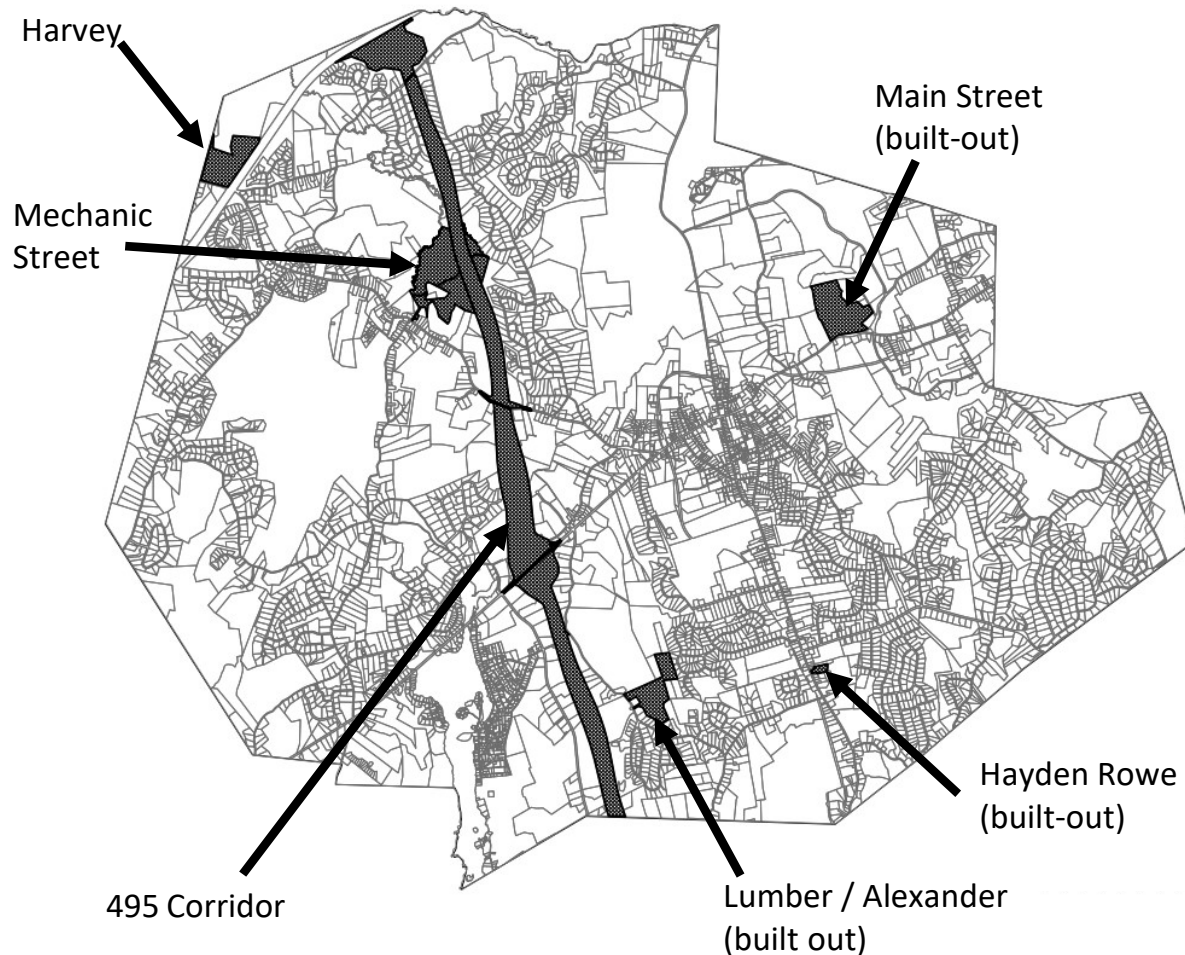
### **Unchanged**

- Subject to Planning Board and Conservation Committee review, with screening and set-back restrictions as well as wetlands protection
- Numerous additional requirements, including three-acre minimum lot size, screening, underground utilities, etc.
- Solar as an accessory use (e.g. on a roof top or over a parking lot) is allowed in all zoning districts

NOTE: If a project meets the special permit criteria and is not requesting any waivers the Planning Board cannot legally deny the application

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## Map of Proposed Commercial Solar Overlay



### Considerations for inclusion

- ✓ distance from residential neighborhoods
- ✓ minimal wooded area, limit clear-cutting
- ✓ ample space on lot for visual screening
- ✓ previously approved for commercial solar

### Additional Info

- Preference to start with relatively few properties
- Numerous other properties considered at the request of land-owners (e.g. Nancy Lane, Whisper Way / Valleywood)
- Wilson Street & Frankland Road not included – despite having special permits they are both heavily wooded & in residential neighborhoods

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### What process did ZAC and the Planning Board use to create this overlay?

#### Zoning Advisory Committee

- Goal: update zoning bylaws to limit negative implications of future commercial solar projects, specifically on established residential neighborhoods and on natural resources
- Researched options for solar bylaws that comply with MA State law
- Reviewed use of overlay districts used in other towns (Weston and Wellesley)
- Discussed at five public meetings between Oct 2019 and Jan 2020, including considerations for selection of parcels
- Created overlay map with limited parcels for initial Planning Board review

#### Planning Board

- Opened public hearing (with notice to all impacted abutters) in March 2020
- Expanding hearing to consider additional parcels at the request of landowners (required additional notice to abutters)
- Discussed at six public meetings between March and August 2020 (well attended by residents in support and opposed)
- Town Counsel advised that this approach is feasible and unlikely to be rejected by State AG on its face
- Determined as a Board to recommend the overlay with a relatively small number of parcels
- Removed Wilson Street parcel (previously approved) and Frankland Road parcel (recently approved)
- Recommended the overlay (with map shown on page 2) on June 1, 2020 by a vote of 7 to 1

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## Legal Considerations

Letter from Town Counsel to the Planning Board – March 4, 2020

*“Pursuant to M.G.L. c.40A, §3, Towns may not 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. If challenged, the Town will need to be able to offer a justification for the proposed overlay district that explains how it protects public health, safety or welfare. In this regard, the relatively small part of the Town that is included within the overlay district may weigh against the provision’s validity.*

"Because the issue of whether the proposed overlay district protects public health, safety or welfare is largely a question of fact, we believe that the Attorney General’s Office, which typically examines only whether a new bylaw amendment is invalid “on its face” (i.e., without considering evidence of the practical impact of the amendment), we think that it is likely that the proposed amendment, if adopted, will be approved and allowed to go into effect, but with the caution that the Town cannot apply the provisions of this amendment in a way that contravenes Section 3. The Board may want to consider whether there is another way to apply these provisions.