

IN THE MATTER OF	*	BEFORE THE CECIL COUNTY
THE APPLICATION OF	*	BOARD OF APPEALS
SOLHARVEST ENGERY	*	CASE NO.: 4151
c/o JOHN FORGASH	*	
(Special Exception – SAR)	*	

\* \* \* \* \*

**OPINION**

The Cecil County Board of Appeals (the “Board”) is now asked to consider the application of SolHarvest Energy c/o John Forgash (the “Applicant”). The Applicant seeks a special exception in accordance with Article XVII, Part II, Section 311 of the Cecil County Zoning Ordinance (“Ordinance”) to a operate a power generation facility at the property located at 2750 Augustine Herman Hwy, Chesapeake City, MD 21915, consisting of 69.04 acres and designated as Parcel 393, on Tax Map 43H in the Second Election District of Cecil County (the “Property”), in an area zoned Southern Agricultural Residential (“SAR”) in accordance with Article V, Part XII, Section 156 of the Ordinance. The Property is owned by Geraldine McCoy.

Article XVII, Part II, Section 311 of the Ordinance specifies that no special exception shall be approved by the Board of Appeals after considering all facts in the case unless the following findings are made:

1. Such use or any operations thereto will not be detrimental to or endanger the public health, safety, or general welfare.
2. The use will not be unduly injurious to the peaceful use and enjoyment of other property in the neighborhood, nor substantially diminish or impair property values in the neighborhood.

3. The establishment of the use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the zone.

4. The use will not, with respect to existing development in the area and development permitted under existing zoning, overburden existing public facilities, including schools, police and fire protection, water and sewer, public road, storm drainage, and other public improvements.

5. The use shall not adversely affect critical natural areas or areas of ecological importance.

6. The use shall, in all other respects, conform to the applicable regulations of the zone in which it is located.

7. That the particular use proposed at the particular location proposed, would not have any adverse effect above and beyond those inherently associated with such special exception use irrespective of its location in the zone. (*Schultz v. Pritts*, 291 MD. 1)

8. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.

9. That the proposed special exception is not contrary to the objectives of the current Comprehensive Plan for the County.

Article V, Part XII, Section 162 of the Ordinance governs Solar, Community Based and provides:.

A community based solar power generation facility may be permitted as a Special Exception in the SAR zone provided:

- a. A Major Site Plan shall be approved by the Department of Land Use & Development Services.

- b. Solar facilities shall be located at least three hundred (300) feet from the edge of pavement or road right of way, whichever is greater, and one hundred (100) feet from all other property lines.
- c. Solar facilities shall be located three hundred (300) feet from dwellings on adjoining properties.
- d. Panels shall not exceed fifteen (15) feet in height.
- e. A Bufferyard meeting the Bufferyard E standard shall be required around the solar facility.
- f. The only signage permitted shall be no larger than six (6) square feet, which shall identify the solar facility operator, the contact phone numbers. Signage shall be posted at each entrance and exit of the property at no less than two locations.
- g. Designs for hookup to the power grid, transformers, and inverters should be in proximity to utility pole and located near the center of facility to minimize noise.
- h. Community based solar facilities shall have a generating capacity that does not exceed two megawatts (2MW), as measured by the alternating current rating of the system's inverter.
- i. Decommissioning Plan required:
  - i. The applicant, operator, and landowner shall submit and have approved, a plan for decommissioning and removal of non-functioning systems and to restore the site to its previous condition.

- ii. A solar facility is presumed to be discontinued or abandoned if no electricity is generated by such solar facility for a period of twelve (12) continuous months.
  - iii. The owner and/or operator agree to allow entry to remove an abandoned, discontinued, or decommissioned community based or utility solar facility.
- j. Bonding & Financial Surety
- i. The Decommissioning Plan shall be accompanied by a cost estimate prepared by a licensed professional engineer, preferably with solar development experience, for the implementation of the Decommissioning Plan. The Department of Land Use and Development Services may request an update to this cost estimate yearly.
  - ii. Upon approval of the plan and cost estimate, the developer or owner shall enter into an agreement with the County to implement the Decommissioning Plan as required. The agreement shall be in a form and substance as approved by the Department of Land Use and Development Services and shall be accompanied by a performance bond or other approved surety executed by the owner or developer in the amount of two hundred (200) percent of the cost estimate. The surety shall:
    - 1. Assure that the removal of non-functioning systems and restoration of the site is completed in accordance with the approved Decommissioning Plan;

2. Be payable to Cecil County;
  3. Be issued by a financial institution authorized to do business in Maryland;
  4. Executed prior to Major Site Plan approval; and
  5. May not be canceled by the surety, bank, or other issuing entity unless both of the following conditions are satisfied:
    - a. The Department of Land Use and Development Services and the obligee are notified in writing by registered mail of the intent to cancel not less than ninety (90) days prior to the cancellation; and
    - b. At least forty-five (45) days prior to the cancellation date indicated in the notice, the obligee files a commitment for a surety, bank, or other issuing entity to provide a substitute security which will be effective on the cancellation date indicated in the notice.
  6. Any surety, bank, or other issuing entity that cancels the financial security without meeting the requirements of the previous section shall be subject to penalties outlined in Article XIX of this Ordinance.
- iii. Community based or utility solar facilities should be reassessed for taxation purposes every three years.

- k. Solar facilities shall be enclosed by a security fence that is located between the landscape buffer and the facility. The fence must be a minimum height of six feet and suitable to prevent unauthorized access.
  - i. The fence shall be constructed to meet any applicable State or Federal regulations and address the physical security of power system facilities.
  - ii. Fencing shall be designed and installed to allow for the passage of small wildlife.
  - iii. The fence shall not be used to display any signage except as required by law.
- l. The conservation of agriculture is very important to maintain a more rural lifestyle and the preservation of scenic views as a quality of life issue.
- m. Additional requirements in the NAR & SAR zones:
  - i. The minimum parcel size shall be 50 acres. Two (2) or more contiguous parcels may be used in cases where the parcels are in same ownership under one deed.
  - ii. Solar facilities, including but not limited to solar panels, fenced area, access drives, power conversion, etc. shall not encompass more than 25% of the site.
- n. Soil Requirements
  - i. All Community Based and Utility solar facilities shall not be permitted on class one soils in order to prevent the loss of prime agricultural soils.
  - ii. The landowner or operator shall provide yearly certified soil test results prior to construction of the solar facility by December 31 every year

thereafter to the Division of Planning and Zoning at the expense of the operator or landowner. It will be presumed that the solar facility is discontinued or abandoned if the test results are not submitted.

- iii. Prior to the release of any bonding and financial surety, a certification must be submitted verifying that the soil conditions have been returned to their pre-construction condition.

Applicant appeared on September 26, 2022 represented by attorney, Cameron Brown, to testify that they are seeking a special exception to operate a solar power generation facility at the Property. With the Applicant, appeared the property owner, Geraldine McCoy, engineer Dan Speakman, and electrical engineer Steve Hazel. Applicant provided the following material details:

- a. This is a Community Solar Project which will serve the Mid-Atlantic market and provide financial benefits to customers without requiring them to install panels on their roof or in their yard.
- b. Construction at the proposed site would begin in the second quarter of 2023 and is estimated to take about a year, stating the facility would be online in the second quarter of 2024.
- c. The proposed location was selected because of the acreage and natural buffers that would surround and hide it from plain sight. Further the Property is mostly agricultural in nature which will continue to be farmed once the facility has been constructed and is online.
- d. The size of the facility will only take up 17.2 acres of the Property, and there is no plan to ever expand the facility.
- e. Delmarva Power and Light will be the utility provider to 550 subscribers minimum.
- f. The lifespan of the facility is expected to be between 30-35 years.

- g. The Applicant testified the harvesting of the energy would not impact any neighboring property. No audible sound emits from the system.
- h. The facility will be secured by a seven foot chain link fence, and access will be limited to the occasional maintenance vehicle.

No witnesses spoke in favor of the application.

County Department of Land Use and Development Division of Planning and Zoning (the "Department") received written opposition from Robin Garrett of Colora, Maryland. Garrett's concerns related to food insecurity because of the impact to local wildlife and birds, decreased property values and the preservation of agricultural land.

Aaron Harding, chief of the Division of Planning and Zoning stated Departments staff and the Planning Commission both recommend approval conditioned on all conditions of Section 162 of the Zoning Ordinance are completed and the site is properly permitted and under construction within three years of approval.

From the evidence, the Board makes the following findings of facts pursuant to the requirements of Section 311:

1. That granting the special exception will not be detrimental to or endanger the public health, safety, or general welfare. No evidence or testimony was presented to support any dangerous impact to the general public resulting from the proposed use. Applicants provided testimony that the facility would be secured with a fence and set back from the road, no noise emits from the facility, and there is no evidence the harvesting of solar power is harmful.

2. There was no evidence indicating that the use will be unduly injurious to the peaceful use and enjoyment of other property in the neighborhood, nor was there any evidence to demonstrate that such use will substantially diminish or impair property values in the



neighborhood, nor will the proposed use materially increase traffic to or from the Property. As stated by the Applicant in oral testimony, after construction of the facility is completed, there will be little to no traffic to/from the Property. The location was selected because of its ideal size and location which includes natural buffers which shield it from sight. The facility will be surrounded by agricultural land that will continue to be farmed, thereby preserving the existing use of the property.

3. There was no evidence indicating that normal and orderly development and improvement of the surrounding properties will be impeded by the proposed use. The size of the facility will remain contained to the proposed area and, for the reasons already stated in the previous paragraphs herein, the Board finds there will be no negative impact to the orderly development, improvement and use of any nearby property.

4. There was no evidence indicating that the use will, with respect to existing development in the area and development permitted under existing zoning, overburden existing public facilities, including schools, police and fire protection, water and sewer, public road, storm drainage, and other public improvements. Applicant testified the solar generating facility will add to the power available to the surrounding area and provide financial benefits to subscribers. A designated access road will be used during construction and for infrequent maintenance once construction is complete. Based on the foregoing, the Board finds that the proposed use will be consistent with the current use of the Property, creating little to no change in use of public facilities and resources.

5. The proposed use will not adversely affect critical natural areas or areas of ecological importance. The Property is not situated in the Critical Area or the Critical Area Buffer, or the 100-year floodplain.

6. The proposed use will, in all other respects, conform to the applicable regulations of the zone in which it is located. Section 162 of the Ordinance permits the proposed use.

7. The particular use proposed at the particular location proposed, will not have any adverse effect above and beyond those inherently associated with such special exception use irrespective of its location in the zone. (*Schultz v. Pritts*, 291 Md. 1)

8. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets. Once installation of the solar facility is completed, there would be no congestion in area resulting from the facility. During installation, traffic will be minimal and would not impede upon normal activity. Applicant projects one to two visits to the site per quarter after construction completion. These visits would be routine maintenance assessments.

9. That the proposed special exception is not contrary to the objectives of the current Comprehensive Plan for the County. The proposed project would serve a minimum of 550 houses in the area with low to mid-range income levels, a service consistent with the Comprehensive Plan for the County.

Further, the Board makes the following findings pursuant to Section 162.

1. A Major Site Plan has been submitted and approved by the Department of Land Use & Development Services. Staff of the Department testified that the submitted plan was satisfactory and met all requirements.
2. The solar facilities shall be located at least three hundred (300) feet from the edge of pavement or road right of way and one hundred (100) feet from all other property lines.

3. Solar facilities will be located three hundred (300) feet from dwellings on adjoining properties. Applicants submitted site plan to support the location meeting this requirement.
4. The solar panels will not exceed fifteen (15) feet in height. Applicant provided specifications to support this requirement.
5. A Bufferyard meeting the Bufferyard E standard will exist around the solar facility. Applicant testified to the nature of the size, location and natural buffer surrounding the proposed facility location in their exhibits and site plan.
6. The only signage on the Property will be as required to warn of any dangers and to mark access to the facility. The Board is satisfied that the Applicant has no intention of planning any signage larger than six (6) square feet.
7. Designs for hookup to the power grid, transformers, and inverters should be in proximity to utility pole and located near the center of facility to minimize noise. Applicant's site plan supports the existence and location of the hookups to meet this requirement.
8. Applicant testified that the solar facilities shall have a generating capacity that does not exceed two megawatts (2MW), as measured by the alternating current rating of the system's inverter; and therefore the Board is satisfied that this requirement is met.
9. The Board asked how the decommissioning of the facility would take place, and the Applicant testified that a Decommissioning Plan will be put in place to ensure that the property would be returned to its original state after panels are removed. Applicant further testified that the life to the facility is typically 30-35 years.

10. Applicant testified that all required and adequate financial sureties will be put in place prior to the start of construction to the benefit of the County for all aspects of default on the part of the Applicant or its affiliates, associates, lessor, successors, and/or assigns.
11. Applicant testified the solar facility will be enclosed by a seven foot, chain link security fence located between the landscape buffer and the facility to restrict unauthorized access to the facility; therefore, the Board finds all requirements under this section will be met during construction.
12. Applicant testified the property will continue to be used for farming as it has been historically, thereby preserving the agricultural nature of the Property.
13. The Board finds the additional requirements for the SAR zone have been met as follows:
  - iv. The minimum parcel size shall be 50 acres, and this parcel is over 69 acres in size.
  - v. The solar facility will not encompass more than 25% of the site as the entire project will only be 17.20 acres of the total parcel acreage. Soil Requirements
  - vi. The proposed solar facility is not located on class one soil; and,
  - vii. The landowner or operator will provide yearly certified soil test results prior to construction of the solar facility by December 31 every year thereafter to the Division of Planning and Zoning at the expense of the operator or landowner.

For the reasons stated above, by unanimous vote, the Board is satisfied that the requirements of relevant articles of the Ordinance have been met, and the application for the special exception to operate solar power generation facility the Property is therefore **APPROVED** **CONDITIONED UPON ALL CONDITIONS OF SECTION 162 OF THE ZONING ORDINANCE ARE COMPLETED AND THE SITE IS PROPERLY PERMITTED AND UNDER OBVIOUS CONSTRUCTION WITHIN THREE YEARS OF APPROVAL.**

Applicants are hereby notified that they are required to obtain any and all necessary licenses and permits required for the use described herein.

10/24/22  
Date

  
Mark Saunders, Chairperson