

The Dorchester County Board of Appeals met in regular session on Thursday, November 16, 2017 in Room 110 of the County Office Building at 7:00 PM. Present were, Catherine McCulley, Chairperson, Elizabeth Hill, Vice Chair, Lin Spicer, Cindy Smith, Mike Starling, Walt Gunby, Attorney, and Steve Dodd, Director of Planning.

An introduction was made by Chairperson McCulley, explaining the procedures of this meeting to the audience. She then asked Mr. Dodd to read the first case.

Case # 2621 - Shawn E. Riley & Chelsea E. Dunnock –Owner
Steve Whitten- Applicant

To request a special exception to allow as a home based occupation, a window tinting business. Also to request a variance to permit an existing accessory building to be located 5.3 feet from side property line. Property is located at 2033 Hudson Road Cambridge, MD 21613. Containing 2.354 acres. Property is zoned RR-C Rural Residential Conservation.

Mr. Dodd read the case and all pertinent information into the record. Mr. Riley noted that the home occupation will be located at 2031 Hudson Rd. The primary residence is located at 2033 Hudson Rd.

Steve Whitten, applicant, Fink, Whitten & Associates, 108 Dorchester Avenue, Cambridge, MD, Shawn Riley owner, 2033 Hudson Rd., Cambridge, MD and any other person who would be testifying in this case, were sworn in.

Ms. McCulley advised the applicant of his two options, to rely on his written responses to the criteria or comment on the responses. Mr. Whitten advised that he would rely on his written responses and further explain the request.

Mr. Whitten spoke about the variance application to allow the building to be within the required 6 ft. setback. Mr. Whitten advised that this was an honest mistake on the part of the owner and builder. The property was staked out by another surveyor and somehow the footer poles were placed within the 6 ft. setback. Mr. Whitten surveyed the parcel, and it was then they realized that the footer had encroached into the 6 ft. setback by approximately 8 inches. Mr. Whitten noted that the building is now in place.

Ms. McCulley asked if there was any way the property line could be adjusted so a variance would not be required. Mr. Whitten stated they would prefer to be granted a variance. Mr. Dodd noted that Ms. McCulley is pointing toward the fact that this variance is a self-created hardship. Mr. Whitten noted that the hardship is that the building is now in place. He also noted that the building is not crossing the property line, just the county setback requirement. Mr. Dodd asked if constructing a building in the setback is not a self-created hardship. Mr. Whitten noted that the line can not easily be adjusted because they don't own both sides of the line. Mr. Dodd asked if they had spoken to the adjoining property owner about making a 1 ft. adjustment to the property line allowing the building to conform. Mr. Whitten advised that they had not and expressed some concern as to whether the neighbor would be willing to adjust the property line. Mr. Gunby advised that it is within the Board's discretion to decide whether they want to grant judgement on a small infraction such as this. Mr. Dodd

pointed out that even though the builder who dug the footer holes made the mistake, the owner is ultimately responsible. Mr. Whitten stated for the record that this is an 8 inch request and the location is within a rural setting.

Mr. Whitten then reviewed the special exception request. He noted that the business is now in another location and the owner would like to move it to the property located at 2031 Hudson Rd., as a home occupation. Mr. Whitten elaborated on the code requirements for a home occupation of this type. Ms. McCulley asked if there would be employees other than Mr. Riley and Ms. Dunnock. Mr. Whitten requested, for the record, that the Board allow two other employees in the future. Mr. Riley now has one-part time employee. Mr. Whitten also advised that much of the business is mobile, traveling to the customer for items such as an RV, boat or garage. Mr. Riley advised that at the most, there would be 3 to 5 cars on the property per day.

Mr. Dodd asked Mr. Riley what his hours of operation would be. Mr. Riley stated 8-5 or 9-5 Monday through Friday. If there was any Saturday work it would be mobile.

Mr. Dodd asked Mr. Riley if he had discussed bathroom facilities with the Health Department. Mr. Dodd noted that the Health Department did not respond to the request for agency comments. Mr. Riley stated he had not. Mr. Dodd suggested as a condition of approval, if the Board approves the special exception, that Mr. Riley speak with the Health Department concerning this issue.

Mr. Dodd read agency comments into the record. Based on the information provided for the special exception, the Planning Commission would ask the Board of Appeals to make sure that the home occupation standards are strictly enforced and based on the information provided for the variance, the Planning Commission would ask the applicant to demonstrate why the setback requirement was violated. The Department of Public Works had no comments regarding this case. The Health Department did not comment. Mr. Dodd read letters of support from four surrounding neighbors, Louis Roath, 2102 Hudson Rd., Holly & Floyd Elzey, 2107 Hudson Rd., Carl Dunnock, III, 2205 Hudson Rd., and Carl Dunnock, IV, 2029 Hudson Rd., Cambridge, MD.

No one spoke in favor of this request and no one was opposed.

Ms. McCulley announced the end of testimony and the Board began their deliberations for the variance and the special exception.

At this time, each Board member explained his decisions regarding the criteria.

After all testimony, Ms. McCulley called for a motion regarding this case. Ms. Hill made a motion to approve the case as presented with the stipulation that the hours of operation will be from 8:00 am to 5:00 pm, Mon.-Fri., the maximum number of employees allowed will be two (2) and the owner check with the Health Department before any non-residents are hired. Seconded by Mr. Starling and unanimously carried.

Case # 2617- Continued

D. Lee Hagadorn, LLC - Owner
Richfield Farms, LLC - Owner
Invenergy, LLC, One South Wacker - Applicant
Ryan Showalter - Applicant

To request the following Board of Appeals approvals: (1) special exception approval for the establishment of a utility scale solar energy system on lands leased by applicant along Osborne Road and Shiloh Camp Road ("Project"), (2) special exception approval for the installation of a substation on one of two proposed sites to deliver the renewable energy to the electrical grid, and (3) a variance to permit construction of 8' tall security fencing around the project and the substation. Property is located at 4320 Osborne Road Hurlock, MD 21643, Map 22 Parcel 19 Containing 76.09 acres, Shiloh Camp Road Map 22 Parcel 23 Lot 2, Containing 111.91 acres, and Shiloh Camp Road Map 22 Parcel 24 containing 102.31. 4279 Osborne Road Hurlock, MD 21643 Map 22 Parcel 23 lot 1, Containing 88.42 acres, all properties zoned AC - Agricultural Conservation.

Ms. McCulley asked all those who wish to testify in this case, either for or against, be sworn in.

Ed Powell, 3239 Sunnyside Rd., Secretary, MD and relative to the owners, spoke in favor of the request. He spoke about the electricity needed to irrigate farmland and believes this project will benefit everyone in Dorchester County.

Bruce Twilley, farm manager, also related to the owners, spoke in favor of the project. He noted that this land is the least productive of all the farmland they own. He also stated that he believes the land owner should have the right to use their land as they see fit within the confines of the law.

Tinsley Meekins, 29669 Porpoise Rd., Trappe, MD spoke in favor of the request. He advised that he was before this Board of Appeals for a cell tower when they first began and his request to place the tower on his property was denied because people were fearful of them. He spoke about how the cell towers have benefited the Eastern Shore and related this solar project with his cell tower request.

Jeff Twilley, 7201 Burr St., Easton, MD, a financial analyst and family member, spoke in favor of the request. He spoke about food supply and referenced an article from the July 20th Wall Street Journal, concerning shrinking farmlands. He noted the article was written 46 years ago. He highlighted several of the points made in the article that are wrong, noting particularly that production of crops has risen over the past 50 years.

Lee Hagadorn, 3932 Baker Rd., East New Market, MD, owner of the property on Osborne Rd. spoke in favor of the project. He believes that it is his right as a property owner to do with his land what he wants as long as it is within the law.

R. J. Helmer, 6243 Corkran St., Hurlock MD spoke about the safety of the solar panels from a fireman's perspective. He advised that he and several other members of the fire department have taken training on solar panels and their facilities. He stated

that the panels and generating facilities have not been a direct cause of any incident in the county.

Neil D'Adamo, 6425 Suicide Bridge Rd., Hurlock, MD a sod farmer in the county spoke in favor of the solar project, stating that each land owner has a right to do with their property what they want as long as it is within the law.

Jana Wheatley, co-owner of Richland Farms stated that her family tills approximately 2,400 acres each year. They have over \$2 million invested in the land projected for use as a solar farm. She pointed out that her family also has other careers and projects to sustain farming. She reviewed some of the projects they are involved with to provide extra income. She noted that several of the projects also came before the Board of Appeals for approval and there was much opposition towards them, she used as examples, Warwick Manor, a drug/alcohol rehab facility, a cell tower and the mobile home project in East New Market. She noted that each of these projects has been an asset to the community. She noted that Jeff Twilley researched Invenergy and decided that this company would be the best suited for their project.

Emily Wise, Attorney, Hoon, Blitzer, 104 South Cross St., Chestertown, MD, advised she has been retained by many of the contiguous property owners to speak against this project on their behalf. Mr. Showalter asked Ms. Wise to identify her clients, (see attached list "clients"). She advised that she would speak after several of her clients spoke.

Dorothy Bradford Samonisky, 5426 White Hall Rd., Cambridge, MD spoke against the request. Ms. Samonisky advised that there is a burial site containing at least four graves, referred to as the Shiloh Road Cemetery, on one of the parcels being considered for this project. She noted that the site plan does not show this cemetery. She submitted pictures of the cemetery as exhibits. She would like to see the grave site maintained and protected, no matter the outcome of these proceedings. She noted that DorchesterGraves.com has information pertaining to the cemetery.

Christy Brohawn, 6113 Wanda Rd., Hurlock, MD spoke against the request. She advised that she is a certified x-ray technician and is trained to protect herself and patients from radiation exposure. She questioned the amount of EMR (electromagnetic radiation) that would be emitted by the invertors and suggested that 150 ft. is too close. She also asked if there would be testing of the EMR at the invertors and if so, who would do it. She handed out information from EMWatch.com, Elwellspring.com, ICNIRP (International Commission on Non-ionizing Radiation Protection) Guidelines, information concerning electromagnetic fields from WHO (World Health Organization), the EPA, and an article about a \$40 million lawsuit against Invenergy over a wind farm. Ms. Brohawn asked the Board of Appeals to research the electromagnetic field studies, to include safe distances and emission of electromagnetic radiation before making a decision. She pointed out that it is up to local authorities to assure that current guidelines are met. She also contacted the ASRT (American Society of Radiological Technologists) regarding this project and they referred her to Federal Regulation 40 CFR, part 61, subpart A, General Provisions, and would ask that the Board ensure that this project meets these guidelines as well. She also spoke about fire safety concerning the panels to include health risks and training of

fire fighters. She submitted information from OSHA, the Agency for Toxic Substances, CDC and a picture of her 14-year old daughter, noting the her daughter could potentially be subjected to harmful chemicals emitted from the panels if there was a fire. She requested that the Board wait on making a decision until standards for utility scale solar projects are in place.

Steven Brohawn, 6113 Wanda Rd., Hurlock, MD spoke against the request. He purchased the property because of the farm views and believes this project will decrease the value of his property. He also has concerns that his wife will be exposed to further radiation through this project.

Bonnie Abey, 6016 Shiloh Camp Rd., Hurlock, MD submitted a copy of a PowerPoint presentation she was unable to present. She spoke about the 40 acres of land on the Richfield property that ponds and advised that this is a "Delmarva Bay" similar to a Carolina Bay except smaller. She noted from Google Earth the depression on the Richfield Farm area with a sandy edge. She submitted an article concerning the bays. She spoke about a photo dated 1997 that shows the property directly in front of her house that was completely flooded. Most of the bays have been drained, but the USDA (US Department of Agriculture) is trying to restore and save them because they are important to the eco system. Ms. Abey would like to see a buffer/berm so the community would not see the solar panels.

Sharon Collins, 4313 Osbourne Rd., Hurlock, MD, stated that the proximity of the solar panels to the residences will not only take away the use and enjoyment of the properties, but pose a health risk. She presented testimony from Zachary Nelson, Invenergy, LLC before the Maryland Public Service Commission on behalf of the applicant, Richfield Farms, LLC on November 2, 2017. She referenced page 3 of the testimony that describes Invenergy's outreach efforts to the surrounding communities. In this testimony, Mr. Nelson advised that they had reached out to surrounding neighbors three times. An informational flyer was left at the door if no one responded. Ms. Collins advised that she did not speak with a representative of Invenergy until September and that discussion concerned fire hazards posed by the panels. She handed out a brochure from the North Carolina State University concerning fire hazards in solar panels, given to her by Invenergy. She read excerpts from the brochure concerning potential fire hazards of the panels. Ms. Collins handed out and referenced information from the "Firefighters Safety and Emergency Response", "Solar Power Systems Project". She reviewed findings from this project. She then handed out an environmental review document, "Richfield Solar Energy, LLC, Osbourne Rd., dated September 6, 2017, and read from section 5.2, "Design Features of the Project" noting that the local fire departments are not equipped to handle a fire of this project size. She then read from the "Firefighters Safety and Emergency Response", pg. 55, "Overhaul and Post Fire Concerns", information about respiratory and dermal concerns from a fire of this type. She also read excerpts from an article from the Carolina Journal entitled "Big Solar Farms may be stressing Agricultural Eco Systems" by Ron Heiniger. Ms. McCulley suggested that this article pertains mainly to North Carolina and the information needs to specifically address Dorchester County.

Ms. McCulley advised that due to the time, the meeting will be continued to Thursday, December 21, 2017, 7:00 pm. She asked that anyone present who has not yet spoken, sign the sheet provided so they would be able to speak at the next meeting.

Helen Wright, 5554 Rutherford Dr., Springfield PA, asked if she could be heard this evening since the commute for her to the meeting is 150 miles. Ms. McCulley asked Ms. Wright to come forward and read her statement. Ms. Wright is opposing the special exception and the variance. She owns property adjacent to the Richfield project on Osborne Rd. Her lane will be very near to the invertors and she fears radiation exposure. She believes this type of project should be in a secluded area away from residences. She noted that the Comprehensive Plan addresses North Dorchester as prime farmland.

With no further business, a motion was made by Mr. Spicer to adjourn. Seconded by Ms. Hill and unanimously carried. Time of adjournment: 10:06 PM.

Respectfully submitted,



Steve Dodd
Executive Secretary