

# DORCHESTER COUNTY BOARD OF APPEALS

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## October 22, 2020 – BOA Meeting Minutes

The Dorchester County Board of Zoning Appeals conducted a meeting on Thursday October 22, 2020 at 6pm in County Office Building Room 110, at 501 Court Lane, Cambridge MD 21613.

All attendees wore facial coverings and respected the 6 foot distancing regulations.

Present: Elizabeth Hill, Vice Chair; Pam Allen and Charles Dayton Jr, Commissioners  
Absent: Commissioner Cindy Smith and Chairman Lin Spicer

Also in attendance: Walter Gunby, Esq., County Legal Counsel; Herve Hamon, Director of Planning; Susan Webb, Assistant Director of Planning; Brandon Vermillion, GIS Specialist.

Applicants were represented by:

BOA Case #2662, Segar Residence – Variance - Steve Whitten, Surveyor  
BOA Case #2663, Little Residence – Special Exception - Steve Whitten, Surveyor  
BOA Case #2664, Waters Chapel – Special Exception - Steve Whitten, Surveyor  
BOA Case #2656, Hubbard Solar – Special exception & Variance – Nick Leffner, from Convergent and Brendan Mullaney, Attorney

Acting Chair Hill called the meeting to order at 6pm. She conducted a roll call and welcomed the attendants. Brandon Vermillion swore in the applicants' representatives at the time of each of their testimony.

### ❖ Approval of September 24, 2020 - BOA Meeting Minutes:

Commissioner Dayton made a motion to approve the minutes as submitted; Commissioner Allen seconded, all approved.

### ❖ New Business:

- 1- **BOA Case #2662 - Segar Residence, Variance.** Property address: 4403 Egypt Road, Cambridge, MD  
Modification of front yard setback for the construction of an addition to the main structure

#### ○ Background:

A request has been made which would authorize a **Variance** to allow the modification of the front yard setback for the construction of an addition to the main structure. The structure is located in the AC (Agricultural Conservation), Classification Zone "X", and is not in the Critical Area.

On October 7, 2020, the Planning & Zoning Commission met and decided on a favorable recommendation. In addition, the Critical Area Commission responded prior to this meeting, also with a favorable recommendation.

Mr. Whitten presented the specifics of the case, and provided a picture of the premises for clarity.

Ms. Webb presented the staff findings and recommendations:

Because:

- Applicant proposes to extend the front of the house to create a better access and entryway
- The expansion will be in character with the rest of the improvements
- The expansion will not hinder the view corridors for cars entering onto Egypt Road from the property's driveway
- Other portions of the dwelling are not suitable for this extension, or would compromise large mature trees
- Proposed location of enlarged entryway does not impact septic system

Staff recommends considering this application favorably.

There was no opposition, nor any comments from the public.

The Board members each read the qualifying criteria findings and evaluated the application.

○ **Decision:**

Commissioner Dayton made a motion to approve the application for variance as submitted; Commissioner Allen seconded, all approved. The Variance was granted.

2- **BOA Case #2663, Little Residence, Special Exception.** Property address: 1725 Brannocks Neck Road, Cambridge, MD

Request to allow total amount of accessory structure footprints to exceed footprint of principal residence

○ **Background:**

A request has been made which would authorize a **Special Exception** to allow the total amount of accessory structure footprints to exceed footprint of principal residence (in addition to previous Special Exception Case #2629, for the same purpose). The structure is located in the RC Zone, Resource Conservation, and is in the Critical Area RCA, Resource Conservation Area, and also in the Flood Plain Classification Zones AE - EL 4.0 and AE - EL 5.0.

On October 7, 2020, the Planning & Zoning Commission met and decided on a favorable recommendation. In addition, the Critical Area Commission responded prior to this meeting, also with a favorable recommendation.

Mr. Whitten presented the specifics of the case, Commissioner Allen asked for clarification about where the additional square footage was taking place. Mr. Whitten explained that the previously approved special exception for accessory structure was not fully built out, and that the application in front of the Board was for a new building, not an addition to an existing building.

Ms. Webb presented the staff findings and recommendations:

Because:

- Applicant proposes to build an additional 1,800sf structure
- The current amount of accessory structures built (to date) is 4,874 sf (see drawings: 2 structures at 2,420 + 2,454)
- The previous Special Exception (Case #2629) approved a total of 6,054 sf, out of which 6,054-4,874=1,180 sf was not used (buildings were built smaller than anticipated)
- With the proposed 1,800sf building, the applicant would be achieving a total of 2,420+2,454+1,800= 6,674sf (a differential/additional surface of 6,674-6,054=620 sf)

Staff recommends considering this application favorably.

There was no opposition, nor any comments from the public.

The Board members each read the qualifying criteria findings and evaluated the application.

○ **Decision:**

Commissioner Allen made a motion to approve the application for special exception as submitted; Commissioner Dayton seconded, all approved. The Special Exception was granted.

**3- BOA Case #2664 - Waters Chapel, Special Exception.** Property Address: 4561 Fork Neck Road, Vienna, MD  
Expansion of an existing church

o **Background:**

A request has been made which would authorize a **Special Exception** to allow for an expansion of a church. The structure is located in the AC (Agricultural Conservation), Classification Zone "X", and is not in the Critical Area.

On October 7, 2020, the Planning & Zoning Commission met and decided on a favorable recommendation.

Mr. Whitten presented the specifics of the case, and provided a picture of the premises for clarity. He also presented an architectural rendering of the proposed facades and volume of the church once the expansion would be built.

Ms. Webb presented the staff findings and recommendations:

Because:

- Applicant proposes to build a total of 614 sf addition (557 sf enclosed-conditioned area + 57 sf entry porch) to an existing church
- Churches are allowed in the AC zone with Special Exception
- The extension will be in character with the rest of the existing structure
- Impact on neighboring properties of church addition is visually minimal: new volume is located in the inner corner of the existing building

Staff recommends considering this application favorably.

Mr. Hamon added that the architectural renderings did provide confirmation that the church addition would be in character with the existing building. He also clarified that the existing entrance stoop would be enlarged.

Commissioner Allen requested clarification on the inclusion of the current hallway between the church and the volume that used to serve as a small school. The new addition roof will come over the hallway.

There was no opposition, nor any comments from the public.

The Board members each read the qualifying criteria findings and evaluated the application.

o **Decision:**

Commissioner Dayton made a motion to approve the application for special exception as submitted; Commissioner Allen seconded, all approved. The Special Exception was granted.

**4- BOA Case #2656 - Hubbard Solar, Special Exception and Variance.** Property address: Map 22, Grid 14, Parcel 22, West side of Osbourne Road, East side of Maryland Route 392, North side of Route 14 in East New Market, MD

A request for a special exception to allow installation of solar electric generating panels, and a request for a variance to allow a 7 foot security fence around the perimeter.

o **Background:**

Mr. Hamon presented the background and staff report.

A request has been made for a **special exception** which would allow to install a solar energy system, utility scale on two (2) locations of about 25 acres each within a 74 acre parcel. The remaining 23 acres will remain agricultural use.

The request also includes a **variance** to the maximum fence height of 6 feet to allow for a 7 foot high fence surrounding the 2 project sites.

The property is located in an AC, Agricultural Conservation Zoning, and the request requires a Board of Appeal approval. Applicable Sections of the Code are: 155-50.LL and Use Table 155-1

The property is not located within a designated Critical Area; it does not feature any wetlands; it does not

have any designated critical habitat for threatened or endangered species; it is not located within a Flood Plain; and it does not feature hydric soils.

The property's northern edge does border the tracks of the Dorchester and Delaware Railroad, a designated historic feature (note: the solar fields are away from that location).

The proposal asks for a subdivision of a single parcel of 74 acres into 3 separate lots, 2 of which will be 25 acres, each with one solar field installation of about 4 acres; the remaining lot being about 23-24 acres will continue to be agricultural use (note: for each lot of 25 acres with solar installation, the disturbance will be in the range of 4 acres, while the rest of the land will continue to feature an agricultural use).

- The zoning of the property allows for a special exception to provide solar energy systems.
- The site plan review and approval includes the design of appropriate vegetation buffers and compliance with all forest conservation requirements.
- The proposed project does not require a Certificate of Public Convenience and Necessity (CPCN) from the Public Service Commission because it is under the required size for such

A variance is also requested for a 1 foot of additional height to the perimeter fence, for safety and security, making the chain link fence 7 feet tall (instead of 6 ft allowed)

In compliance with Zoning Ordinance Section 155.24, the Planning & Zoning Commission reviewed the attached application on May 6, 2020.

They suggested that the Board of Appeals consider requiring irrigation for the landscape buffer to ensure longevity of the vegetation, and recommended the approval of the 7 ft tall fence.

The applicant may also be required to meet other site plan design and forest conservation requirements at the time of site plan review.

Nick Leffner, for Convergent (the developer) presented the application and provided additional drawings and updated documents to the Board (Site Plan, Details and Construction Notes).

- When asked why the land was subdivided into 3 different parcels, he explained that it would allow the sale of the energy to be under different ownerships.
- When asked if there was any intent to develop additional vegetation screening on the Northeast corner of the property (next to the Humphries farm), Becky Koze responded that an additional planted buffer area was possible to consider, to complement the existing edge row of mature trees located along the property line and not on the project site
- When asked about the shared use of the existing farm dirt road, Mr. Leffner explained that the title search did not show any easement (the road leads to the agricultural buildings of the Humphries farm, but is located on the subject property – it may however possess an easement by prescription status). Mr. Hamon stated that it was the burden of the applicant to prove there was no easement encumbering the use of the dirt road
- Commissioner Dayton asked questions about the maintenance of the vegetation; Mr. Mullaney responded that the bond signed with the County would stipulate maintenance of the vegetation until established, and that watering trucks would be part of a maintenance plan agreed to by Convergent; he expressed that irrigation of the buffer (as per Planning & Zoning recommendation) was however not an economically feasible approach, hence the watering truck solution proposed.
- Mr. Leffner explained the vegetation planting strategy, with lower and more densely planted shrubs near the road, taller evergreens and shade trees further in, and the 7 foot fence at the perimeter of the field being the furthest away from view.
- Commissioner Dayton asked who would maintain the vegetation; the answer was that Convergent would be under contract for the entire life of the project/installation (20 to 25 years)
- Questions were brought up by the Board about the noise generated by the transformers and solar panel motors; Mario Titolo, Engineer for Convergent explained that both are designed to be quiet, and less audible than the nearby existing electric substation

Acting Chair Beth Hill asked for comments from the public:

- Mr. Roscoe Handy, of East New Market, testified that he was not sure about the impact of the solar field onto the neighboring properties, namely the Methodist Church parcel where a community center is being

- proposed. He also had concerns about how good the land would be after 25 years of solar energy harvesting.
- Tracy Fairall requested some clarification about the decommissioning of the fields, at the end of the life cycle of the installation. Mr. Leffner explained that all would be described in a binding contract, with a bond only released if decommissioning was performed according to the agreement with the Planning and Zoning Commission.
  - Donald Cheeseman testified. He asked if either of the 4 acres solar fields could be extended in the future; the answer was no, the agreement and special exception are binding to the conditions presented. Mr. Cheeseman expressed that in his opinion trickle irrigation was a more cost efficient and fail proof solution for the watering of the trees in the buffer; better than watering trucks (the point was addressed by Mr. Mullaney earlier on, when talking about maintenance) Mr. Cheeseman respectfully requested that the Board demands the tallest possible trees to be planted. He also asked that the width of the road which may be subject of an easement be confirmed to be wide enough for agricultural equipment (Brandon Vermillion confirmed that the aerial view indicates about 15ft)
  - Cathy Collins expressed her general opposition to having more solar energy systems installations in Dorchester County ("enough is enough!")

The Board of Appeals Commissioners retired into a closed session to receive advice from Attorney Walter Gunby.

After re-convening into public hearing, each commissioner read their responses to the qualifying criteria and evaluated the application for the special exception request.

Commissioner Pam Allen made a motion to approve the special exception application subject to the following conditions:

- That the dirt lane would never be blocked to traffic (except occasionally during project construction)
- That the vegetation buffer be maintained with irrigation by Convergent for a period not less than 3 years
- That the evergreen trees to be planted would be a minimum of 6 foot tall

Commissioner Dayton seconded that motion, all approved. The request for Special Exception was granted.

The Commissioners then read into the record their responses to the variance criteria, regarding the fence height.

Commissioner Pam Allen made a motion to approve the request for the variance on the height of the fence, as submitted. It was seconded by Commissioner Dayton, all approved.

Acting Chair Beth Hill asked for a motion to adjourn the meeting.

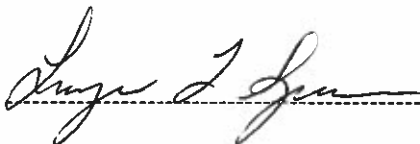
Commissioner Dayton made a motion to adjourn the meeting; it was seconded by Commissioner Allen; all approved.

The meeting adjourned at 9:30pm.

Respectfully submitted.

*Herve O. Hamon*

Herve O. Hamon, AICP, Director of Planning & Zoning



-----Approved by the Chair

*11/5/20* Date

