

DORCHESTER COUNTY BOARD OF APPEALS

PO BOX 107
CAMBRIDGE, MD 21613
410-228-3234



December 3, 2020 – BOA Meeting Minutes

The Dorchester County Board of Zoning Appeals conducted a special meeting on Thursday December 3, 2020 at 6pm in East New Market Volunteer Fire Station, East New Market.

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

Option was given to the public to call in remotely.

Roger Harrell, Dorchester County Health Department Director, had given authorization to congregate at the Hall of the Fire Station, granted the maximum of participants not exceed 25% of the capacity of the room (max occupancy of the space is 360, the maximum number of attendants was limited to 90, 48 people were in attendance).

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

Absent: Commissioner Cindy Smith

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 #2666, New Market Solar LLC. – Special Exception – Ryan Showalter, Attorney (and his team)

Chairman Spicer called the meeting to order at 6pm. He conducted a roll call and welcomed the attendants.

Brandon Vermillion swore in all the applicants' representatives and member of the public testifying at the start of the meeting.

1- BOA Case #2666 – New Market Solar LLC – Property address: South of Rhodesdale Road and West of Thompstown Road, East New Market – **Special Exception and Variance**

A request has been made which would authorize a **VARIANCE & SPECIAL EXCEPTION** to allow:

1) Special Exception approval for the establishment of a utility-scale solar energy system on lands leased by applicant south of East New Market Rhodesdale Road and west of Thompstown Road; 2) Special Exception approval for the installation of a substation on one of the parcels proposed for the project on parcel 196 of tax map 22; 3) a variance to permit construction of up to 8' tall security fencing around the project and/or the substation, and 4) a variance to permit the project components to be built within otherwise-prescribed setbacks internal to the project site.

o **Background:**

- On October 7, 2020, the Planning & Zoning Commission met and decided to defer recommendation to the Board of Appeals. Based on the evidence and documents presented, the P&Z Commission agreed with Mr. Drummond on the need to provide additional landscaping, buffer, and irrigation information.
- Mr. Hamon presented an overview of the case, highlighting that the property is not located within the critical or flood plain area.
- The specifics of the projects are:
 - o Applicant proposes to establish a utility scale solar energy system on 4 different but adjacent parcels totaling 624.32 acres
 - o All solar array panels and equipment will be located within a fenced secure area (up to 7 foot chain link, with an additional 1 foot of barbed wire on top at the substation)
 - o Maintenance roads shall be 16 foot wide gravel; a 30 foot wide gravel road will serve the proposed substation
 - o The project is designed to minimize impact on non-tidal wetlands and wetland buffers
 - o The project will be accessed via private lanes from Thompstown Road, East New Market Rhodesdale Road and

Richardson Road.

- All final details of vegetation screening, setbacks and equipment location will be reviewed at time of Site Plan approval; proposed vegetation buffer dimensions are in line with the Zoning Code requirements of 50 feet minimum
- Ryan Showalter and his team testified;
 - Mr. Showalter introduced as evidence;
 - Environemntal Review Document, prpeared by H&B Solutions LLC
 - ECS Project # 47:7437 – Preliminary Waters of the U.S. Determination Report, East New Market Solar Site, by Sunenergy1
 - Mr. Showalter presented slides with overall State approved amount of solar panels, with an expectation of about 22,600 acres of ground mounted panels by the year 2030
 - He explained that the energy produced by the New Market Solar insatllation would go into the grid, but also would have the option to be purchased by private entities/utility companies
 - Out of the 624.32 acres of land, 283 acres would be covered by solar panels
 - All existing dense vegetation would reamain in place, with the layout and design of the panels location being respectful of existing vegetation, as well as waterways (the site is one of the origins of the Transquaking River)
 - The amximum height of the solar panels, for visibility purposes, would be about 10 feet when tilted upwards, while being 6 feet in the horizontal at rest position
 - The project complies with all Design Standards spelled out in the Dorchester Zoning Ordinance (setbacks, screening, decommissioning and electrical underground), as well as all strict rules of MDE reagrding dismantling and decommissioning/returning to agricultural land
 - Mr Showalter explained how the installation would bring a stream of tax revenue to the County (to the magnitude of about 9 million dollars over 30 years)
 - He expressed that his client, despite being exempt of the Forest Conservation Act on this site, would committ to planting 60 acres of forest on an off-site location, under a perpetual easement
 - Mr. Showalter introduced expert witnesses:
 - **Tim Bardell**, Licensed Landscape Architect, gave an expose about the planting requirements, species mix and mainteance of the vegetation; he emphasized the fact that the vegetation buffers were designed beyond the minimum requirements, with an additional 100 foot of saplings planted in visually startegic location, and 8 foot tall evergreen planted on day one at the closest location to roads and right of ways
 - **William McCain**, Certified Appraiser and Licensed Rael Estate Broker, expressed hoas his anlaysis conducted on other solar fileds insatllation brought him to conclude that solar did not genearte any negative impact on property values or marketability
 - **Gordon Krester**, grass seed and soil expert for Chesapeake Valley Seed, Inc. testified that the soil created by the presence of the solar panels, not receiving fertilizers and pesticide chemicals, and featuring grasses that would enrich its composition, would be a high quality top soil at the end of the life expectancy of the solar field (about 30-35 years)
 - **Dane Bauer**, of H& B Solutions, having prepared the Environmental Study Report provided as evidence, re-stated that all environemntal concerns, water quality, natural topography, soil conservation etc. were all respected and in line with the MDE and DNR requirements

Public Comments:

- **Brett Travers** asked about the visual measures along Thompstown Road and if the open field would remain an agricultural use; Mr. Showalter re-explained the 50 foot buffer + 100 ft of saplings and confirmed the agricultural use to remain along Thompstown Road
- **Tyler Lewis**, young homeowner in a nearby subdivision (400 yards away), expressed his deep concerns about the loss of property value due to the proximity of the solar fields; he did not think this was the right move for East New Market as a whole
- **Carline Clyne**, Mayor of East New Market, wanted to get confirmation that the power rate for East New Market residents would be positively impacted by the installation; she considers Dorchester County as a “Garden of Eden” and wants to maintain its pristine rural quality; she also stressed that the closest point of the Historic District would be located only 2000 feet away, and was concerned about the impact of that distance on the character of the neighborhood. Ms Clyne added a few comments about the preservation of wildlife, and the potential impact of long term chemical leaks from the panels
- **George Legg**, the owner of the farm leasing the land for the development, explained how enthousistic he was in seing this project contribute to the production of renewable energy, and the fact that for the next 25 to 40 years, the soil would be at rest, able to become even more productive for farming in the future. He expressed how well aware he was that the ditches and small waterways on the site were the origin of the Transquaking River, and happy that no chemicals or pesticide would mix in at the source. Mr Legg also confirme that several acres of the site have been placed in an agricultural easement
- **Mary Dwyer** of Richardson Road welcomed the idea of not having large farm equipemnt go down her street and damage her front yard with tractor tire tracks
- **Donald Cheeseman**, adjacent neighbor (100 yards away from the edge of the project), testified that he was sad this

good soil and farming land would not be maintained as agricultural, with it loosing acreage to solar every day; he was concerned about the noise during construction as well as once operational; he requested that the applicant install more (and taller) trees in the buffer, and provide blackout fence panels to hide the project. Mr. Cheeseman brought up the issue of the 2 easemnst on the site; one ging North to the wood lot in the center, and one coming of Railroad Avenue to go to the old cemetary in the heart of the site. Mr. Showaletr responded that the fence would be built along the roadway to the cemetary, and a gate would be provided at the base of the easement to the wooded area

- o **Bill Legg** testified that "it was time to get clean air anmd clean energy", and that "we all neded to get better about the environment"
- o Tracy Whitby-Fairall added that people in general were not opposed to solar, but when she bought into the community, she chose it for its rural character and not to live surrounde by utility fields; to her the utility scale of the project was the main issue
- o **Mark Lewis** asked how many solar projects were already in the general vicinity of East New Market (the applicant and the Dept of Planning were able to account for 4); he asked why all the solar projects were concentrarted in the same area, and stated that it was "killing the community"

Mr. Hamon explained that with half the County land being either in a Critical Area or in a Flood Plain zone, the parcels in the Nortjheast corridor were at a premium for installation, and benefitted from already existing substations in place

Vice Chair Hill made a motion to close the meeting to the public, Commissioner Dayton seconded, all approved. The Board members retired briefly to receive legal counsel. Upon completion, the public session reopened.

- **Decision:**

Chairman Spicer made a motion to defer the decision until further information was provided, as a special chapter about solar installation is being developed in the 2020 Comprehensive Plan, and language about solar will be further defined; Vice Chair Hill seconded, all approved. Mr. Hamon explained that a resolution of the Comprehensive Plan, with latest input and comments, would be reviewed by the Planning and Zoning Commission on January 6, or February 3, 2021, and later reviewed for adoption by County Council.

- **Reaction:**

Mr. Showalter objected to the decision. He stated that the Board did not respect their "marching orders to implement the law", and the project in place did comply with all the Zoning Ordinance requirements regarding solar field's installation as a special exception. Those requirements establish the legal presumption that solar array installation is a legal use in the agricultural conservation zone under a special exception.

Mr. Showalter also objected to the close session proceedings, where he believed deliberations took place, something strictly prohibited under the Open Meeting Act.

Chairman Spicer asked for a motion to adjourn the meeting.

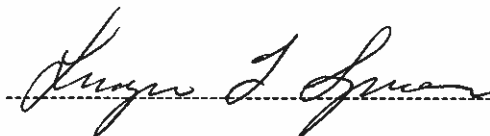
Vice Chair Hill made a motion to adjourn the meeting; it was seconded by Commissioner Dayton; all approved.

The meeting adjourned at 9:50pm.

Respectfully submitted.

Herve O. Hamon

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

-----Approved by the Chair 10/17/20-----Date

