

ALLEGANY COUNTY BOARD OF ZONING APPEALS

IN RE: APPLICATION OF * **Case No.: 947**
EARTH AND AIR TECHNOLOGIES
FOR A SPECIAL EXCEPTION * **Hearing Date: 01/04/17**

* * * * *

FINDINGS

This case came before the Allegany County Board of Zoning Appeals (the “Board”) upon Earth and Air Technologies request for a special exception to operate a Solar PV Farm in an Agricultural Zoning District. A field inspection of the subject property was conducted by the members of the Board on December 30, 2016. The purpose of the field inspection was to familiarize the Board members with the site layout in order for them to develop an understanding as to where the proposed use would be located and as to whether the proposed use would be in compliance with the terms of the Zoning Ordinance.

At the hearing on January 4, 2017, the Board considered the attached list of exhibits which consisted of information gathered by the Division Chief and information provided by other agencies and individuals.

The proposed use is a solar energy system located on the south east side of Williams Road; west side of Cresap Mill Road; and north of Oliver Beltz Road, Flintstone, Allegany County, Maryland. This property is owned by Mr. Gary Browning and currently under lease to the applicant, Earth and Air Technologies.

The Board considered testimony presented at the hearing in order to ascertain whether the proposed use would meet the standards and criteria of the Zoning Ordinance. The Board’s findings are as follows:

1. A solar energy system is a special exception use in the “A” Agricultural District in accordance with Section 360-92.5.(D).2.(b). of the Ordinance.
2. The affected property area consists of approximately 40.759 acres as found in Deeds Liber 2167, Folio 265, among the land records of Allegany County, Maryland. The applicant intends to use approximately 10 acres for the solar array and the remaining may be returned back to

agricultural use.

3. That the solar array shall consist of 8,000 solar panels over an approximate 10 acre area.
4. That this solar array shall be a photovoltaic system and not a thermal energy system and as a result will have little to no noise, vibration, glare, fumes odors, electrical interference or increased traffic inappropriate for the neighborhood.
5. That all solar panels shall utilize glare mitigating technology as required under the code.
6. That appropriate screening and fencing will be placed around the property as required by the code.
7. That all interconnections and power lines shall be placed underground at a depth of two to three feet depending upon condition of underlying soil.
8. That the project meets all special setback and height requirements found in the Code in Section 360-88 (Industrial structure).

Based upon the foregoing findings, the Board found that the Applicant will comply with the criteria of the Zoning Ordinance. Having made that determination, the Board next considered whether "the facts and circumstances indicate that the particular special exception use and location proposed would cause an adverse effect upon adjoining and surrounding properties unique and different, in kind or degree, than that inherently associated with such a use, regardless of its location within the zone ...". Brandywine Enterprises v. County Council for Prince Georges County, 117 Md. App. 525 (1997).

At the hearing, several citizens raised concerns regarding this project. These concerns included those upset about potential glare; appropriate fencing; aesthetics, ground exposure to toxic chemicals; and potential decreases in property value. The Board indicated they understood these concerns and were satisfied they had been addressed adequately by the applicant. They further agreed that while these issues were significant, they were not necessarily site specific as these concerns could also be raised regarding this type of project in any agricultural zone in the county.

One citizen, Mr. Michael Twigg, did raise a site specific issue that the Board addressed. Mr. Twigg pointed out that the proposed project would be wedged in between two historical areas in the county and this could hurt potential tourism as the array would be completely out of place in the surrounding farming community. He further argued that this proposed placement in this specific area was contrary to the County Comprehensive Plan as the plan's goals are protection of agricultural

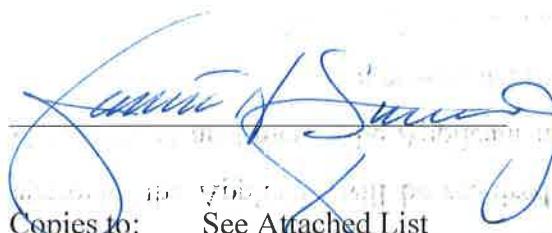
uses and not allowing loss of such resources. The Board's position is that the proposed use is specifically set out as a permitted use in the Agricultural zone with the Board's approval. The County would have had to take the Comprehensive Plan into consideration when Code Section 360-92.5 was implemented and, as such, the Board does not believe that the language in the Comprehensive Plan takes precedent over the specific language of the County Code. That Board further indicated that any impact on the historical areas as a result of the granting of the requested exception would be minimal at best and did not rise to the level necessary to warrant a denial of the requested special exception.

CONCLUSIONS

Based upon the findings set forth above, the Board voted at the conclusion of the hearing of January 4, 2017, 3-0 in favor of granting the Applicant's request for a special exception to operate a Solar PV Farm in an Agricultural Zoning District. As a condition to the granting of the Board's approval, the Applicant will be required to comply with the terms and criteria of the Zoning Ordinance at all times. The Applicant must also obtain the approval of all State, County, and municipal agencies whose approvals are required for the conduct of the proposed use, including, but not limited to, Soil Conservation District, Allegany County Health Department, ACDPW Roads Division, Zoning Certification, Building Codes Compliance, House Numbering, Floodplain Management, Subdivision Review and Structural/Electrical Inspection Agency.

ATTEST

BOARD OF ZONING APPEALS

By: 
Julia Williams, Chairperson

Copies to: See Attached List
Attachment: Exhibits List

File: WFOF 947_Final 170125.doc
Ver 1/17 [T7400A]

BOARD OF ZONING APPEALS

FOR ALLEGANY COUNTY, MARYLAND

CASE# 947

EARTH AND AIR TECHNOLOGIES

JANUARY 4TH, 2017

EXHIBITS LIST FINAL

- A. An Allegany County *Land Use Permit Summary* covering a *Land Use Permit Application, Permit Review and Approval Checklist*
- B. Site Plan (one page, 24"x36").
- C. Completed *Petition for a Special Exception*
- D. Portion of an Allegany County Tax Map for property identification.
- E. An *Adjoining Property Owners List* completed and signed by the Applicant.
- F. A *Notification of the Hearing*, with attached distribution list, dispatched to adjoining and adjacent property owners by the Secretary of the Board.
- G. *Notification of Hearing* dispatched to the Applicant by Secretary of the Board
- H. *Inter Office Memo*, prepared by the LDS office, that was distributed to the necessary review agents notifying them of this Case, date, time and requesting comment.
- I. *Public Notification*, dispatched to the Cumberland Times/News, for the purposes of notifying the general public of the hearing date, time and location.
- J. *Certification of Public Notice*, received from the Cumberland Times/News, certifying that the *Public Notification* was published December 17th, 2016.
- K. Hearing Notification returned by USPS (*Not Deliverable as Addressed*). Correspondence addressed to Mr. John Baker, Cumberland.
- L. Memorandum dated December 30th, 2016, from James A. Squires Jr., Division Chief, Land Development Services, regarding site development plan requirements.
- M. Specifications for PV panels and mounts; includes email from Ken Donithan, E&A Tech, dated January 1st, 2017

Hearing

- N. Historic District Map, 8x11, B&W (source not noted)
- O. Photograph: Screening/security Fence (8x11 bond paper)
- P. Tabulated Report: Inventory, "Century Farms" (Source: Maryland Department of Agriculture Website [no date])
- Q. Soil Classification Map (Farmland Classification), 8x11, color. (Source: NRCS, Web Soil Survey [Date: 12/21/2016])
- R. Document entitled " Maryland's National Register Properties ", regarding Inventory No. AL-II-A-140. Listed date: 05/29/1980. Includes color map.
- S. Color ortho photo of subject area (8x11). "Breakneck Road Historic District" delineated and labeled.
- T. Document entitled "Twigg Feud Excerpt...", single page, 8x11.
- U. Document entitled "Twigg Cave, Allegany County...", three pages, 8x11.
- V. Color ortho photo (Google Earth) of subject area (8x11). Subject site depicted and labeled.

Mr. John Baker
209 Fairfax Street
Cumberland, MD 21502

Mr. Ken Donithan
60 Aileron Court
Westminster, MD 21157

Mr. Paul Felker
11400 Cresap Mill Road, SE
Flintstone, MD 21530

Mrs. Valerie Felker
11400 Cresap Mill Road, SE
Flintstone, MD 21530

Mr. William Fuller
17710 Stone Hill Lane SE
Flintstone, MD 21530

Mr. Lee P. Heavner
17605 Williams Road, SE
Flintstone, MD 21530

Mr. Craig Humbertson
17501 Williams Road, SE
Flintstone, MD 21530

Mr. John Lemmerman
102 E. Main Street
Westminster, MD 21157

Mrs. Krista Llewellyn
18010 Williams Road SE
Flintstone, MD 21530

Mr. Ronald Lohr
11210 Cresap Mill Road, SE
Flintstone, MD 21530

Mr. Ronald Lohr Jr
11300 Cresap Mill Road, SE
Flintstone, MD 21530

Mr. Michael Miller
820 Ritchie Highway
Severn Park, MD 21146

Mr. RW Mullenax
11104 Cresap Mill Road, SE
Flintstone, MD 21530

Mr. William Rice
11410 Cresap Mill Road, SE
Flintstone, MD 21530

Ms. Jeanette Rinehart
10901 Bones Lane SE
Flintstone, MD 21530

Mr. Mark E. Rinehart
17515 Williams Road, SE
Flintstone, MD 21530

Mr. Carl Robinette
21201 Hout Lane NE
Flintstone, MD 21530

Mr. Alford Scardina
17101 Williams Road, SE
Flintstone, MD 21530

Mr. Homer Twigg
11700 Glenrose Lane, SE
Flintstone, MD 21530

Mr. Michael Twigg
30 Washington Street*
Cumberland, MD 21502*

Ms. Shelly Welsh
(no address provided)

Mr. Ronald Wharton
17406 Oliver Beltz Road
Oldtown, MD 21555

Mr. Louis Windemuth Jr.
425 Chestnut Street
Cumberland, MD 21502

Honorable Jacob Schade
Allegany County Commissioners
701 Kelly Road - Suite 408
Cumberland, MD 21502

Maildata BOZA Case 947 Last Update: 170123

*Post Hearing Amendments 231027