

BOARD OF APPEALS

October 26, 2022

County Administration Building, 100 W. Washington St., Meeting Room 2000, Hagerstown, at 6:00 p.m.

AGENDA

DOCKET NO. AP2022-045: An appeal was made by Hancock MD #1 Solar LLC for a special exception to establish a solar energy generating system on vacant property north of 13964 Woodmont Road on property owned by Westernport Properties LLC and located at vacant lot Parcel #05022738, Hancock, Zoned Environmental Conservation.

POSTPONED TO THE NOVEMBER 16, 2022 HEARING.

DOCKET NO. AP2022-046: An appeal was made by Field of Dreams Holding Company LLC for a variance from the required 600 ft. setback for a campground use to 100 ft. along the North and East property lines for campground used to be expanded on property owned by the appellant and located at 9550 Jellystone Parkway, Williamsport, Zoned Agricultural Rural with Rural Business Overlay.-**DENIED**

Pursuant to the Maryland Open Meetings Law, notice is hereby given that the deliberations of the Board of Zoning Appeals are open to the public. Furthermore, the Board, at its discretion, may render a decision as to some or all of the cases at the hearing described above or at a subsequent hearing, the date and time of which will be announced prior to the conclusion of the public hearing. Individuals requiring special accommodations are requested to contact Katie Rathvon at 240-313-2464 Voice, 240-313-2130 Voice/TDD no later than October 17, 2022. Any person desiring a stenographic transcript shall be responsible for supplying a competent stenographer.

The Board of Appeals reserves the right to vary the order in which the cases are called. Please take note of the Amended Rules of Procedure (Adopted July 5, 2006), Public Hearing, Section 4(d) which states:

Applicants shall have ten (10) minutes in which to present their request and may, upon request to and permission of the Board, receive an additional twenty (20) minutes for their presentation. Following the Applicant's case in chief, other individuals may receive three (3) minutes to testify, except in the circumstance where an individual is representing a group, in which case said individual shall be given eight (8) minutes to testify.

Those Applicants requesting the additional twenty (20) minutes shall have their case automatically moved to the end of the docket.

For extraordinary cause, the Board may extend any time period set forth herein, or otherwise modify or suspend these Rules, to uphold the spirit of the Ordinance and to do substantial justice.

Jay Miller, Chairman
Board of Zoning Appeals

**BEFORE THE BOARD OF APPEALS
FOR WASHINGTON COUNTY, MARYLAND**

HANCOCK MD #1 SOLAR, LLC
Appellant

Appeal No.: AP2022-045

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OPINION

Hancock MD #1 Solar, LLC (hereinafter “Appellant”) requests a special exception to establish a solar energy generating system at the subject property. The subject property is located at a vacant lot north of 13964 Woodmont Road, Hancock, Maryland and is zoned Environmental Conservation. The Board held a public hearing in this matter on November 16, 2022. Appellant was represented at the hearing by Benjamin S. Wechsler, Esq.

This appeal was heard pursuant to Article 25 of the Zoning Ordinance for Washington County and upon proper notice to the parties and general public as required.

Findings of Fact

Based upon the testimony given, all information and evidence presented, and upon a study of the specific property involved and the neighborhood in which it is located, the Board makes the following findings of fact:

1. The subject property is located at a vacant lot north of 13964 Woodmont Road, Hancock, Maryland and is owned by Westernport Properties, LLC. The subject property is zoned Environmental Conservation.

2. The subject property consists of approximately 21.46 acres of land which contains open space bounded by trees and vegetation. It is situated southwest of the intersection of Route 144 and Woodmont Road, in Hancock, Maryland. The property is

also bounded to the south by the Little Tonoloway Creek and to the north by a small tributary.

3. There are three (3) residential properties adjacent to the northern boundary and two (2) residential properties adjacent to the south boundary, across Little Tonoloway Creek. The adjacent residences are situated at an elevated level above the subject property.

4. Appellant has an agreement with the owner to develop the subject property and lease for solar energy generation. It is anticipated that initial lease term would be twenty-five (25) years with up to three (3) five-year extensions, totaling forty (40) years.

5. Appellant proposes to construct a solar energy generating facility on approximately 11.89 acres of the subject property. Appellant plans to construct approximately 5,400 panels, measuring 30 feet by 48 feet and mounted on driven posts nine (9) feet off of the ground. The area designated for the array would be fenced in as required by electrical codes. Appellant remains willing to install additional trees and vegetation or other landscape buffer elements.

6. The solar panels would be oriented towards the south and are designed to limit reflection and glare down to approximately two percent (2%).

7. Once operational, the inverters would emit sound not to exceed 72 decibels at a distance of one (1) meter and 67 decibels at a distance of three (3) meters.

8. The proposed project would take approximately 3 to 5 months to construct and during that time there would be some truck and equipment traffic to the subject property.

9. Once operational, the subject property would only be visited for quarterly inspection and maintenance, repairs as needed and seasonal mowing.

10. In 1991, the subject property was approved for a special exception to establish a wood inventory yard in Case No.

11. According to USDA records, the subject property contains Class 2, prime agricultural soils.

12. The subject property is situated in historic triangle between the Historic Toll House, Flint House, and the Woodmont Lodge.

13. Prior to the hearing, Appellant conducted a “town hall” meeting for residents and local citizens to provide information on the project and to address questions and concerns.

Rationale

The Zoning Ordinance defines a solar energy generating system as a “grid-tie solar facility consisting of multiple solar arrays whose primary purpose is to generate electricity for distribution and/or sale in the public utility grid and not for onsite consumption.” Article 28A of the Zoning Ordinance. Solar Energy Generating Systems are classified as a special exception use in the Environmental Conservation zoning district.

The Board has authority to grant a special exception pursuant to Section 25.2(b) of the Zoning Ordinance for Washington County, Maryland. A special exception is defined as “a grant of a specific use that would not be appropriate generally or without restriction; and shall be based upon a finding that the use conforms to the plan and is compatible with the existing neighborhood.” Article 28A. In addition, Section 25.6 sets forth the limitations, guides, and standards in exercise of the board’s duties and provides:

Where in these regulations certain powers are conferred upon the Board or the approval of the Board is required before a permit may be issued, or the Board is called upon to decide certain issues, the Board shall study the specific property involved, as well as the neighborhood, and consider all testimony and data submitted, and shall hear any person desiring to speak for or against the issuance of the permit. However, the application for a permit shall not be approved where the Board finds the proposed

building, addition, extension of building or use, sign, use or change of use would adversely affect the public health, safety, security, morals, or general welfare, or would result in dangerous traffic conditions, or would jeopardize the lives or property of people living in the neighborhood. In deciding such matters, the Board shall consider any other information germane to the case and shall give consideration to the following, as applicable:

- (a) The number of people residing or working in the immediate area concerned.
- (b) The orderly growth of a community.
- (c) Traffic conditions and facilities
- (d) The effect of such use upon the peaceful enjoyment of people in their homes.
- (e) The conservation of property values.
- (f) The effect of odors, dust, gas, smoke, fumes, vibrations, glare, and noise upon the use of surrounding property values.
- (g) The most appropriate use of the land and structure.
- (h) Decision of the courts.
- (i) The purpose of these regulations as set forth herein.
- (j) Type and kind of structures in the vicinity where public gatherings may be held, such as schools, churches, and the like.

Considering the testimony and evidence presented and the aforementioned criteria, the Board must determine whether the proposed solar energy generating system at the subject property will have greater “adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.”

Schultz v. Pritts, 291 Md. 1, 15 (1981).

The subject property is in the Environmental Conservation zoning district for which the stated purpose is as follows:

The purpose of this district is to prescribe a zoning category for those areas where, because of natural geographic factors and existing land uses, it is considered feasible and desirable to conserve open spaces, water supply sources, woodland areas, wildlife, and other natural resources. This district may include extensive steeply sloped areas, stream valleys, water supply sources, and wooded areas adjacent thereto.

Section 5B.0 of the Zoning Ordinance. Given the description of the subject property and its characteristics, it appears to exemplify the type of property envisioned by the Ordinance. The Board heard testimony from several nearby residents and citizens who opposed the project, citing the existing natural resources and wildlife

on the subject property. The opposition witnesses raised serious concerns about the disruption to existing open spaces, water sources such as Little Tonoloway Creek and prime agricultural soils at the subject property. The surrounding area is extremely rural in nature, with little growth and development. It is difficult to comprehend how constructing a solar array would be consistent with the orderly growth of the community, especially when the purpose of the zoning district is to preserve properties just like the subject property. The Board finds that the proposed use is not consistent with the purpose of the zoning district and it is not the most appropriate use of the land.

The undisputed testimony is that the subject property is bounded to the north and south by several residential properties. The residents of those properties testified that the construction of a solar array would pollute the viewshed because they would be forced to look upon it from their homes. Moreover, the Board heard testimony that the open space designated for development by Appellant, can be seen from their respective homes despite vegetative screening. The opposition witnesses raised legitimate concerns about disruption to the peace and enjoyment of their homes as well as the detrimental effect on property values.

Appellant's presentation was thorough and attempted to address the concerns of those in opposition. There was no dispute that once operational, the proposed use would have minimal impact on traffic and thus did not create any traffic concerns. The Board heard testimony that the use would not create any odors, dust, smoke or gas other than during construction, and that the noise would not exceed that which is produced in conversation between two individuals. Design elements have evolved to limit reflection and glare to an almost nonexistent level and the panels will be situated so that they are not directly facing

any of the existing residences.

However, the Board finds that the evidence presented is lacking in terms of compatibility. Appellant's proposed plan is to construct 5,400 solar panels on approximately 11 acres of open space in the middle of the subject property. Said open space is situated below the elevation of the surrounding homes and even with vegetative screening, can be seen at all times during the year. The project would disrupt prime agricultural soils and would be located between an existing creek and one of its tributaries. Despite the general low intensity nature of the use, its impact could be significant to the subject property, and it does not seem compatible with the surrounding properties. The Board finds that the proposed use at the subject property will have greater "adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone." *Schultz v. Pritts*, 291 Md. 1, 15 (1981). For all these reasons, we conclude that this appeal fails to meet the criteria for a special exception and should be denied.

Accordingly, the request for a special exception to establish a Solar Energy Generation System at the subject property is DENIED, by a vote of 5-0.

BOARD OF APPEALS

By: Jay Miller, Chair

Date Issued: December 15, 2022

Notice of Appeal Rights

Any party aggrieved by a final order of the Authority in a contested case, whether such decision is affirmative or negative in form, is entitled to file a petition for judicial review of that order to the Circuit Court for Washington County within thirty (30) days of the date of the order.

**BEFORE THE BOARD OF APPEALS
FOR WASHINGTON COUNTY, MARYLAND**

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FIELD OF DREAMS HOLDING, LLC * **Appeal No.: AP2022-046**
Appellant *

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OPINION

Field of Dreams Holding, LLC (hereinafter “Appellant”) requests a variance from the required 600-foot setback for a campground use to 100 feet along the north and east property lines for expansion of the campground use at the subject property. The subject property is located at 9550 Jellystone Parkway, Williamsport, Maryland and is zoned Agricultural, Rural. The Board held a public hearing in this matter on October 26, 2022.

This appeal was heard pursuant to Article 25 of the Zoning Ordinance for Washington County and upon proper notice to the parties and general public as required.

Findings of Fact

Based upon the testimony given, all information and evidence presented, and upon a study of the specific property involved and the neighborhood in which it is located, the Board makes the following findings of fact:

1. The subject property is located at 9950 Jellystone Parkway, Williamsport, Maryland and is owned by Field of Dreams Holding Company, LLC. The subject property is zoned Agricultural, Rural.
2. The subject property consists of approximately 89 acres which has long been used as a campground. It is currently the home of Yogi Bear’s Jellystone Park. The park is owned and operated by Appellant.
3. The subject property is bordered to the east by the Halterman property

which is an active farm. The residence on that property is approximately 689 feet from the subject property line.

4. The subject property is bordered to the north by the Lennon property. The residence on that property is approximately 655 feet from the subject property line.

5. Appellant currently operates the campground with a total of 230 sites, which includes 80 cabins or park model RV sites, and 150 open tent/RV sites. The campground is open from April to November each year.

6. In 1994, the subject property or part thereof, was granted variance relief from the required 25-foot setback for construction of a pump house building and handicapped accessible cabin in Case No. AP94-052.

7. In 2000, the subject property or part thereof, was granted variance relief to reduce the required 600-foot setback to 50 feet for the purpose of expanding the campground to construct twenty (20) additional cabin sites in Case No. AP2000-048.

8. In 2007, the subject property or part thereof, was granted variance relief from the required 25-foot setback to allow for a sanitary sewerage pumping facility and subdivision for the Department of Water Quality in Case No. AP2007-006.

9. In 2015, the subject property or part thereof, was granted variance relief from the required 100-foot side setback to 8 feet for a laser tag field and from the required 25-foot setback for a sign in Case No. AP2015-027.

10. Appellant proposes to expand the campground by constructing 118 new cabin or park model RV sites.

11. Appellant proposes to extend the existing access road to serve its proposed expansion. The location of the road is dictated by the existing road, connection points, boundary lines and has also affected the proposed location for new cabin and park model RV sites.

12. There was no opposition presented to this appeal.

Rationale

The Board has authority to grant a variance upon a showing of practical difficulty or undue hardship. §§ 25.2(c) and 25.56.¹ “Practical Difficulty” may be found by the Board when: (1) strict compliance would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome; and (2) denying the variance would do substantial injustice to the applicant and a lesser relaxation than that applied for would not give substantial relief; and (3) granting the variance would observe the spirit of the Ordinance and secure public safety and welfare. § 25.56(A). “Undue hardship” may be found by the Board when: (1) strict compliance with the Ordinance would prevent the applicant from securing a reasonable return from or to make reasonable use of the property; and (2) the difficulties or hardships are peculiar to the property and contrast with those of other property owners in the same district; and (3) the hardship is not the result of the applicant’s own actions. § 25.56(B).

Practical difficulty and undue hardship are the result of a property being unique. “‘Uniqueness’ of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions.” *North v. St. Mary’s Cnty.*, 99 Md. App. 502, 514 (1994).

¹ “When the terms unnecessary hardship (or one of its synonyms) and practical difficulties are framed in the disjunctive (“or”), Maryland courts generally have applied the more restrictive hardship standard to use variances, while applying the less restrictive practical difficulties standard to area variances because use variances are viewed as more drastic departures from zoning requirements.” *Belvoir Farms Homeowners Ass’n, Inc. v. North*, 355 Md. 259, 276 n.10 (1999) (citations omitted).

In the instant case, Appellant is seeking a 500-foot reduction in the required setback for a campground use so that they can construct additional cabin or park model RV sites for customers. The expansion would include community amenities and additional infrastructure to serve the new sites. Appellant presented testimony that the portion of the subject property designated for this expansion had been unusable until water and sewer service were extended to the property. Their proposal would place some of the new sites within 100 feet of the property line on the northern and eastern boundaries of the subject property. Appellant claims that they are unable to make reasonable use or secure a reasonable return from the property as a result of the 600-foot setback requirement set forth in the Zoning Ordinance. As a result, Appellant is seeking variance relief based on undue hardship.

Appellant's presentation appears to be based on the false premise that they are entitled to develop their property as desired without limitation. The setback and dimensional requirements are designed to ensure the most appropriate and orderly development of property. More particularly, the nature and intensity of a campground has necessarily required larger setbacks from surrounding residential properties to alleviate those inherent issues that may arise from their juxtaposition. Viewing the subject property, there are certainly other ways to expand the campground operation without requiring such a drastic reduction of the setback requirements along two boundaries. Despite this, Appellant remain committed to the full expansion. The Board finds that the claimed hardship is self-imposed because there appears to be a way to design the expansion which will better fit the available property and lessen the need for variance relief. Moreover, imposing the 600-foot setback does not prevent Appellant from constructing new sites, although it may limit the number of sites possible. Appellant is only entitled to a reasonable use and return on the property, not the fullest and most profitable use.

Based on the foregoing, the Board finds that requiring strict compliance with the Ordinance would not prevent Appellant from making reasonable use of the property, and a lesser relaxation of the setback requirements can be achieved and support Appellant's plan to expand. Furthermore, the hardship claimed is self-created in that the design plan is predicated upon Appellant's desire to maximize its return. The Board finds that Appellant has failed to satisfy the criteria for a variance and the request should be denied. Accordingly, the request for a variance from the required 600-foot setback for a campground use to 100 feet along the north and east property lines for expansion of the campground use at the subject property is DENIED, by a vote of 3-2.

BOARD OF APPEALS

By: Jay Miller, Chair

Date Issued: November 23, 2022

Notice of Appeal Rights

Any party aggrieved by a final order of the Authority in a contested case, whether such decision is affirmative or negative in form, is entitled to file a petition for judicial review of that order to the Circuit Court for Washington County within thirty (30) days of the date of the order.