BOARD OF APPEALS
September 19, 2018

County Administration Building, 100 W. Washington St., Meeting Room 2000, Hagerstown, at 7:00 p.m.

AGENDA

DOCKET NO. AP2018-024: An appeal made by SGC Power LLC to establish a solar energy generating system (SEGS) on property owned by the 7900 Millstone Road LLC and located at 7900 Millstone Road, Hancock, zoned Environmental Conservation – **GRANTED WITH CONDITION**

DOCKET NO. AP2018-025: An appeal made by Chester Willard for a variance to reduce front yard setback when located along a Major Collector from 10ft to 7ft and variance to reduce minimum lot area of 20,000 sq. ft. for each lot to: Lot 1- 10,890 sq. ft. & Lot 2- 9,583 sq. ft. on proposed subdivided lot on property owned by the Appellant and located at 25224/25226 Military Road, Cascade, zoned Rural Village – **GRANTED**

DOCKET NO. AP2018-026: An appeal made by Julie Cook for a variance from required 100 ft. left side setback to 30 ft. for placement of a detached structure to house animals on property owned by the Appellant and located at 3120 Valley View Court, Rohrersville, zoned Rural Village – **DENIED**

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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 Kathy Kroboth at 240-313-2469 Voice, 240-313-2130 Voice/TDD to make arrangements no later than September 10, 2018. 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.

Paul Fulk, Chairman
Board of Zoning Appeals

BEFORE THE BOARD OF APPEALS

FOR WASHINGTON COUNTY, MARYLAND

SGC POWER, LLC **Appeal No. AP2018-024**

Appellant

OPINION

This appeal is a request for a special exception to establish a solar energy generating system (SEGS) at the subject property. The subject property is located at 7900 Millstone Road, Hancock, Maryland 21750; is owned by 7900 Millstone Road, LLC; and is zoned Environmental Conservation. The Board held a public hearing on the matter on September 19, 2018.

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. Appellant is the prospective lessee of the subject property, located at 7900 Millstone Road, Hancock, Maryland.

2. Appellant proposes the construct a 2-megawatt solar energy generating system which would occupy approximately 11 acres of the total 61.68-acre subject property. The system will consist of approximately 7,904 solar modules on a ground mounted system that will be under ten (10) feet. The entire system will be surrounded

with a minimum six (6) foot fence. There will be no employees or customers, and the only visits will consist of repair and maintenance twice per year and mowing on a periodic and as-needed basis.

3. Appellant has renewable lease terms with the owner of the subject property, but upon termination of the lease, all system equipment will be removed, and the property will be returned to something consistent with its current composition.

4. There is abundant vegetation and trees on multiple sides of the subject property.

5. The solar power collected from the system will be transmitted via underground lines to Potomac Edison for distribution and sale. The proposed system will collect solar energy for the Community Solar Program to provide low to moderate income homes with affordable energy.

6. The subject property is located within the Heart of the Civil War Heritage area.

Rationale

Section 28A of the Zoning Ordinance defines a solar energy generating system (SEGS) as "a grid tie solar facility consisting of multiple solar arrays whose primary purpose is to generate electricity for distribution and/or sale into the public utility grid and not for onsite consumption. The testimony and evidence presented by Appellant clearly demonstrate that the proposed use meets the definition of a solar energy generating system pursuant to the Zoning Ordinance. Solar energy generating systems are permitted as a special exception in the Environmental Conservation zoning district,

wherein the subject property is located.

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 the instant case, the Board is called upon to consider a request to establish a solar energy generating system (SEGS) on vacant farm property in the Environmental Conservation zoning district.

An initial concern was raised by planning staff on the day of the hearing and without the opportunity to reduce it to formal writing for the record. Planning staff discovered that the subject property was located in the "Heart of the Civil War Heritage" designated area. This an area that encompasses many points of interest relating to the Civil War and surrounding historic events. The area designated encompasses all of Frederick and Washington Counties and most of Carroll County. While we acknowledge the existence of this designation, we disregard the notion that such a designation prevents the proposed project. Appellants entered the designation area map into evidence, detailing points where a historic marker could be found in the area. The map specifically highlighted these "points of interest" as part of the promotion of the heritage area. It defies logic to conclude that property located in the designation area cannot be developed in accordance with the Zoning Ordinance. To hold otherwise would be to declare all of Washington and Frederick Counties off limits when it comes to development. We reject any acceptance of this premise and instead turn our attention to the special exception request herein.

The subject property appears to be ideal for the proposed solar energy generating system. The property is isolated by significant forest and vegetation, slopes from north to south and enjoys further obscuring from vegetation along Interstate 70 which runs parallel to Millstone Road. The nature of the system is that it does not emit any odors, gas, dust or noise, and does not produce any by-products that could be offensive to neighboring properties. The construction is only temporary, for the term of the lease, and will not disturb the existing vegetation or result in the cutting of any trees. Appellant explained in detail that the size of the use will not expand because doing so would require obtaining approval from the Public Service Commission. Maintaining a system that produces 2 megawatts or less ensure that such a review and approval are not necessary.

There is nothing unique about the subject property or the surrounding properties that would produce more adverse effects at this location as opposed to somewhere else in the zone. The subject property is located near a major interstate highway, yet not easily seen by passing traffic. The property has a forest conservation buffer does not produce any inherent adverse effects. The construction of a solar energy generating system (SEGS) at the subject property will have no 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 meets the criteria for a special exception and is secures public safety and welfare and upholds the spirit of the Ordinance.

Accordingly, the request for a special exception to establish a solar energy generating system (SEGS) at the subject property is hereby GRANTED, by a vote of 5–0, subject to the condition that the use is limited to an area of fifteen (15) acres.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: October 18, 2018

BEFORE THE BOARD OF APPEALS

FOR WASHINGTON COUNTY, MARYLAND

CHESTER WILLARD **Appeal No. AP2018-025**

Appellant

OPINION

This appeal is a request for a variance to reduce the front yard setback from ten (10) feet to seven (7) feet and a variance to reduce the minimum lot area of 20,000 square feet for each lot to 10,890 square feet for Lot 1 and 9,583 square feet for Lot 2 on a proposed subdivided lot resulting from the subject property. The subject property is located at 25224 Military Road, Cascade, Maryland 21719; is owned by Chester and Eileen Willard; and is zoned Rural Village. The Board held a public hearing on the matter on September 19, 2018.

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. Appellant is the owner of the subject property, located at 25224 Military Road, Cascade, Maryland. The subject property currently has two (2) dwellings on approximately 22,540 square feet of lot area. The homes were constructed in the 1940s and predate the existence of the Zoning Ordinance.

2. Appellant proposes to subdivide the existing parcel to create two separate lots, one for each of the homes on the property.

3. The subject property was acquired for investment purposes. Appellant has not made any changes to the boundaries or location of the dwellings. Appellant did not construct either of the dwellings on the property.

5. There was no opposition presented to this request.

Rationale

This Board has authority to grant a variance upon a showing of practical difficulty or undue hardship. §§ 25.2(c) and 25.56. [*] "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). In the instant case, the applicable front yard setback requirement is 10′ from a Major Collector such as Military Road, and the minimum lot area is 20,000 square feet. Appellant seeks to reduce both given the location of the dwellings and the need to create an interior lot line dividing the properties.

"'Uniqueness' of a property for zoning purposes requires that the subject property

[*] "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).

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).) In this case, the subject property constitutes one parcel which meets minimum lot area requirements, but which has been treated as two (2) lots for decades. There are two (2) homes constructed on the property, sharing what would otherwise be minimum space for one (1) dwelling. The property is inherently restricted in that both homes can be considered principal dwellings, but without the traditional notions of boundary lines separating them. The proposed subdivision is the only practical way to maintain the value and integrity of each dwelling and to resolve the real issue of one property having two (2) principal dwellings.

The Appellant has demonstrated a practical difficulty if variance relief is not granted. Appellant purchased the property as an investment and regardless of whether it is retained for rental value or ultimately sold, the value is frustrated by the absence of interior lot lines. Moreover, if Appellant were to comply with the setback requirements, he would have to move the dwellings which have existed for over 70 years. There are several other properties in the immediate vicinity that also violate the minimum setback requirements, largely because such requirements did not exist when the homes were constructed. The slight relaxation of the setback requirements affords Appellant the necessary relief without requiring drastic changes to the existing structures on the property. It avoids an unfair and unproductive imposition of the strict setback requirements in the Ordinance. For all these reasons, we conclude that the grant of

variance relief secures public safety and welfare and upholds the spirit of the Ordinance.

Accordingly, this request for variances to reduce the front yard setback to seven (7) feet and the minimum lot area to 10,890 square feet for Lot 1 and 9,583 square feet for Lot 2 are hereby GRANTED by a vote of 5–0.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: October 17, 2018

BEFORE THE BOARD OF APPEALS

FOR WASHINGTON COUNTY, MARYLAND

JULIE COOK **Appeal No. AP2018-026**

Appellant

OPINION

This appeal is a request for a variance to reduce the left side setback from 100 feet to 30 feet for placement of a detached structure to house animals at the subject property. The subject property is located at 3120 Valley View Court, Rohrersville, Maryland 21779; is owned by Gordon and Julie Cook; and is zoned Rural Village. The Board held a public hearing on the matter on September 19, 2018.

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. Appellant is the owner of the subject property, located at 3120 Valley View Court, Rohrersville, Maryland. Appellant constructed a modular/pre-fabricated barn structure on top of knoll located in the corner of the 3.4-acre parcel of land. There is a gravel road/path which winds back to the barn structure from the homestead area located on the other side of the property.

2. Appellant intends for the barn structure to house three (3) horses which she

trains for competitive showing.

3. Appellant also cleared and constructed a large outdoor riding ring on the lower portion of the field on the subject property.

4. The barn structure was constructed first, and then the ring was constructed. Appellant utilized the services of an excavator to both locate and prepare the ground for said improvements.

5. Appellant was prompted to request variance relief only after inquiry was made for plumbing and electrical work to be installed for the barn.

Rationale

This Board has authority to grant a variance upon a showing of practical difficulty or undue hardship. §§ 25.2(c) and 25.56. [*] "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). In the instant case, Appellant is subject to a 100' setback pursuant to the Zoning Ordinance

"'Uniqueness' of a property for zoning purposes requires that the subject property

[*] "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).

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).) In this case, the subject property has a low area where the riding ring was constructed, and an elevated knoll area where the barn structure was located due to concerns for water runoff. While the topography is unique vis-à-vis the juxtaposition of the low flat area and the flat area upon the knoll, the property is similar to other neighboring properties.

The practical difficulty in this case lies in Appellant's decision to construct the barn structure without consultation with the County. It was only after inquiry was made for plumbing and electrical permits that the County became aware of the structure. Appellant claims that it will be an extreme hardship to move the structure and asks the Board to bless her unilateral actions to determine its location. Appellant's claim misses the mark with respect to hardship; for purposes of a variance request, the hardship must be created from the imposition of the zoning restrictions upon the inherent characteristics of the property and cannot be self-created. Appellant's construction of the barn is the very definition of self-created hardship and one not related to any characteristics of the property itself.

While Appellant's impulsive construction is not necessarily dispositive of the case before us, her failure to demonstrate that the relief requested was minimum necessary to alleviate the practical difficulty and/or undue hardship certainly is. Appellant readily admitted that she could have located the barn structure on the lower portion of the

property which would have likely necessitated less variance relief. She testified that she needed a ring and the lower area was the only place it could be constructed. It appears that Appellant was more concerned with her training facility than shelter for her animals.

Appellant also testified that the barn structure was in the best location without having to disrupt a lot of dirt or do substantial excavating. She had a stated desire for her horses to be close to the neighbor's horses, so they could "talk to each other." We find no provisions in the Zoning Ordinance which allow for a variance to be granted based on convenience, which is what Appellant has argued. For all these reasons, we find that the variance request does not meet the criteria as set forth in the Zoning Ordinance and conclude that the grant of variance relief does not secure public safety and welfare and is not consistent with the spirit of the Ordinance.

The request for a variance to reduce the left side setback from 100 feet to 30 feet is hereby DENIED, by a vote of 5–0.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: October 18, 2018