

**BOARD OF APPEALS**

**December 12, 2018**

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

**AGENDA**

**DOCKET NO. AP2018-032:** An appeal made by SGC Power LLC for a special exception to establish a solar energy generating system on property owned by David M. Hostetter and located on the south side of Leitersburg Pike behind 20927 Leitersburg Pike (Antietam Ford Tractor), Hagerstown, zoned Agricultural (Rural) - **GRANTED**

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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 December 3, 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. AP2018-032**

**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 20927 Leitersburg Pike, Hagerstown, Maryland; is owned by David M. Hostetter; and is zoned Agricultural (Rural). The Board held a public hearing on the matter on December 12, 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 20927 Leitersburg Pike, Hagerstown, Maryland.
2. Appellant proposes the construct a 2-megawatt solar energy generating system which would occupy approximately 15 acres of the total 60-acre subject property. The system will consist of approximately 7,900 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 security 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 along property lines adjacent to the subject property.

5. The solar power collected from the system will be transmitted via above ground lines to Potomac Edison for distribution and sale.

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 Agricultural (Rural) 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 farm property in the Agricultural (Rural) zoning district.

The Board acknowledges that the subject property is 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 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. 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.

The subject property appears to be ideal for the proposed solar energy generating system. The property is located behind the Antietam Ford Tractor facility on Leitersburg Pike and is obscured by sloping and rolling hills. It is difficult to see the subject property from Leitersburg Pike and Clopper Road, given the rolling terrain and trees that exist there. 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 noted that all reasonable efforts

are made to avoid disruption of the existing ecosystem, farming operations, soil and groundwater. 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 ensures 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 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.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: December 18, 2018