

BOARD OF APPEALS

December 2, 2020

AGENDA

DOCKET NO. AP2020-034: An appeal was made by SGC Power LLC for a special exception to establish a solar energy generating systems (SEGS) on property owned by Austin Douglas McKee III and located at 14455 Weller Road, Hancock, zoned Environmental Conservation. 6:00 pm - **Granted**

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 Kathryn Rathvon at 240-313-2464 Voice, 240-313-2130 Voice/TDD no later than November 23, 2020. Any person desiring a stenographic transcript shall be responsible for supplying a competent stenographer.

Due to government regulations during the COVID-19 restriction, all hearing will take place virtually. Only the board members and the appellant(s) can appear in-person for the hearing. The general public will not be allowed to attend hearings until further notice. The general public who wish to give testimony towards a case is **strongly encouraged to do so by writing a letter or by sending an email to the following:**

Katie Rathvon, Zoning Coordinator
80 W Baltimore St
Hagerstown, MD 21740
krathvon@washco-md.net

All letters and emails will be read during the hearing and placed on file as an official record of the case. If you would rather give a voice testimony and/or listen to the hearing, you can do so by teleconferencing. Using a phone, you can dial in at the scheduled time of the hearing to (301) 715-8592. When prompted use meeting ID code **936-5340-6468** and meeting password **185254**. You also have the option to participate via live video or watch the hearing live. Using a computer or smart phone, go online to www.zoom.us and use the same meeting ID number and meeting password to access the hearing. Again, you are strongly encouraged to submit your testimony by letter or email.

The Board of Zoning Appeals reserves the right to vary the order in which the cases are called. 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.

Paul Fulk, Chairman
Board of Zoning Appeals

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

SGC POWER, LLC
Appellant

Appeal No.: AP2020-034

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OPINION

SGC Power, LLC (hereinafter “Appellant”) requests a special exception to establish a solar energy generating system (SEGS) at the subject property. The subject property is located at 14455 Weller Road, Hancock, Maryland 21750; is owned by Austin Douglas McKee, III; and is zoned Environmental Conservation. The Board held a public hearing on the matter on December 2, 2020.¹

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 owned by Austin Douglas McKee, III, and is located at 14455 Weller Road, Hancock, Maryland 21750. The subject property is zoned Environmental Conservation.

2. Appellant presents this special exception request with the authority of Mr.

¹ Due to the COVID-19 pandemic, in-person access and contact for public hearings has been limited, especially in County buildings. The members of the Board of Appeals, counsel, staff, and the Appellant were the only persons physically in attendance for the hearing. All other witnesses and the public at large were permitted to participate by telephone/video. All notices for the hearing provided the information necessary to call in and/or participate remotely and those who wished to participate were encouraged to make written submissions as well.

McKee and as the contract lessor of the subject property.

3. The subject property is located approximately three (3) miles from the Hancock town limits and consists of approximately 202 acres of farmland and wooded lands. The subject property contains an existing dwelling and is actively farmed.

4. Appellant proposes to construct a two (2) megawatt Solar Energy Generating System (SEGS) on a ten (10) acre portion of the subject property.

5. The SEGS system would consist of 6,240 440-watt solar modules mounted to ground and no more than nine (9) feet in height. The area will be surrounded by an agricultural fence and utilize a lockable gate for access.

6. The proposed use does not require water or sewer service, septic, or lighting. It does not emit fumes or noise and does not leach chemicals or other byproducts into the ground.

7. Appellant has a lease agreement with the owner for twenty (20) years with two (2) 10-year extensions for a possible forty (40) years total. The site is designed so that everything can be removed upon lease termination and the ground can be restored to its original condition.

8. Appellant anticipates approximately two (2) visits to the subject property per year for maintenance and inspection, and four (4) to five (5) visits per year for mowing.

9. The closest home to the subject property is approximately 1,020 feet away.

10. There was no opposition presented to this appeal.

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 farm property in the Environmental Conservation zoning district.

The subject property appears to be ideal for the proposed solar energy generating system. The property is isolated with considerable forest and vegetation and is significant distance from any neighboring homes or residents. 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. 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. Although minimal, any impact on surrounding properties is mitigated by the isolated location and natural characteristics of the property. 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 GRANTED, by a vote of 5-0.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: December 30, 2020

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.