

**BOARD OF APPEALS**

**August 4, 2021**

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

**AGENDA**

**DOCKET NO. AP2021-020:** An appeal was made by Downsville Solar II LLC for a special exception for the installation of solar energy generating system "SEGS" on property currently improved with dwelling and agricultural use. The property is owned by the Michael D. Vaters Sr. and located at 17137 Black Stallion Lane, Hagerstown, Zoned Agricultural Rural.-**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 Katie Rathvon at 240-313-2464 Voice, 240-313-2130 Voice/TDD no later than July 26, 2021. 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**

**DOWNSVILLE SOLAR II LLC**

**APPELLANT**

**APPEAL No. AP2021-020**

**OPINION**

Downsville Solar II LLC, a Delaware limited liability company, authorized to do business in the State of Maryland (hereinafter, "Appellant"), requests a special exception to allow the installation and operation of a solar energy generating system on the subject property. The subject property is owned by Michael D. Vaters, Sr., and is comprised of 96.83 acres located at 17137 Black Stallion Lane, Hagerstown, Maryland 21740 (Tax ID #02-024004), and is zoned Agricultural (Rural). The Board held a public hearing on the matter on August 4, 2021.

The appeal was heard pursuant to Article 25 of the Zoning Ordinance for Washington County, Maryland (hereinafter, the "Ordinance") 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. Appellant is the lessee of approximately 35.22 acres of the subject property, located at 17137 Black Stallion Lane, Hagerstown, Maryland. The owner of the subject property, Michael D. Vaters, Sr., has authorized Appellant to seek a special exception. The subject property is zoned Agricultural (Rural) (A(R)).
2. The subject property is comprised of approximately 96.83 acres, currently improved by a dwelling and agricultural use.
3. Appellant desires to install and operate a solar energy generating system (hereinafter, "SEGS") on the subject property, within the leased area.

4. A special exception is required to install and operate a SEGS in the A(R) zoning district (Ordinance §3.3(1)(R)).

5. Appellant currently operates about 10 other SEGS projects in Maryland, including one in Clear Spring, Maryland.

6. Appellant intends to install approximately 5,200 500-watt solar panels not exceeding 10 feet in height covering approximately 25 acres in the Northwest corner of the leased area of the subject property as depicted on a project layout drawing provided by Appellant, subject to some slight variations as necessitated by conditions encountered during installation (e.g., topography, subsurface rock). Installation will take approximately 4 months and will include building of an access road, installation of the solar panels and equipment pad, and connection to the distribution lines.

7. Appellant indicated that no blasting will be done to install the SEGS, and that a drill and pin method is used to set pilings 10 feet deep for attachment of the solar panels.

8. Appellant intends to surround the SEGS with an 8-foot tall chain link or other suitable agricultural fencing, including a locking gate that will enable emergency access. In addition, an equipment pad for controlling the continuous operation of the SEGS will be installed within the SEGS, including a small roofed structure to protect the equipment, and down-directed lighting to allow a technician to see the equipment in low-light situations. There is no dust or audible noise from operation beyond the array.

9. The need for maintenance of the SEGS is rare, with infrequent visits by technicians to check operation of the SEGS and associated equipment. Mowing throughout and around the SEGS' solar panel array occurs about 2-3 times/year and more often if needed. A pollinator seed mix is used to keep weeds to a minimum.

10. The SEGS is part of the Maryland Community Solar Energy Generating System pilot program and will interconnect into Potomac Edison's existing distribution lines for use by Potomac Edison customers in the region.

11. The subject property currently is being farmed, but that use would cease in the leased area upon installation of the SEGS.

12. The lease for the SEGS' area of the subject property has the potential (with lease extensions) for a total of 40 years of SEGS operation. In any event, upon



cessation of SEGS operation, the lease calls for removal of the SEGS and a return of the leased area of the subject property to an arable condition, with funds set aside and bonded to accomplish this decommissioning. The “prime” aspect of the soils will be maintained.

13. The SEGS will be approximately 2,000 feet distant from Downsville Pike and 1,200 feet distant from the nearest dwellings.

14. The subject property is bounded on all sides by other agricultural fields or forest stands, which together with the topography of the land and the distance from dwellings and Downsville Pike help to minimize any adverse effects and disturbance to adjacent and surrounding properties.

15. The existing agricultural preservation easement located on the property immediately to the North of the subject property will not be adversely impacted or interfered with by the SEGS.

16. No persons other than Appellant’s attorney and technical representatives testified in support of the application. One person in opposition to the application (owner of the property immediately to the North) testified to his concern about blasting and potential impact on his well, control of “Johnson Grass” within the SEGS area, and impact on the natural beauty of the viewshed.

Another person in opposition to the application (owner of the property immediately to the East of the subject property across Downsville Pike) testified to her concern regarding visibility of the SEGS from her property, the type of fencing to be used, what type of traffic to expect to and from the SEGS, and how long installation of the SEGS would take.

17. A letter was received and read into the record from the Historic District Commission of Washington County, Maryland. Said letter states that staff determined the proposed placement of the SEGS minimizes impact to the subject property and the viewshed from the road, consistent with National Park Service guidance with regards to such systems on historic properties. The letter also states a recommendation to retain existing trees for site screening to further reduce impacts to the historic landscape.

18. A letter was received and read into the record from the Washington

County Department of Planning & Zoning. Said letter states that the Comprehensive Plan for the County “is generally silent on the issue of renewable energy facilities such as...(SEGS)...[thus] the application is neither consistent nor inconsistent with the Comprehensive Plan.” The letter further states that the Washington County Planning Commission “has been extremely vocal in their opposition to SEGS being permitted on lands that contain prime agricultural soils...the majority of this SEGS project will be placed on prime agricultural soils.” The letter continues to note that a text amendment to the Ordinance is being processed “to specifically deter these uses from being placed on prime agricultural soils.”

#### **RATIONALE**

The Board has authority to grant a special exception pursuant to Section 25.2(b) of the Ordinance. 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” (Ordinance, Article 28A).

As noted in the Findings of Fact hereinabove, in the instant case, Appellant’s technical representatives testified as to the location, installation, operation, maintenance, and decommissioning of the SEGS upon the leased area of the subject property. Further testimony was given by Appellant’s technical representatives to address any adverse impacts from the above activities and in response to the concerns raised by the two persons in opposition to the application. This testimony also indicated that Appellant does not use blasting for installation of the SEGS and is not aware of any disruption of wells caused by its other SEGS installations, that it will undertake necessary and appropriate maintenance of the SEGS with proper mowing and use of seed mix to address Johnson Grass, that it will use appropriate fencing for the SEGS perimeter, that lighting for the SEGS will be minimal (located only at the equipment pad) and down-directed, and the location of the SEGS on the leased area of the subject property, together the existing topography, retention of natural tree stands, and distance from roads and dwellings will all minimize any aesthetic and viewshed impacts on surrounding property owners.

In its consideration of the testimony and evidence, the Board notes with favor Appellant’s significant and prudent planned efforts taken to minimize any negative effects of the SEGS on surrounding properties, and believes its will be a good steward of the land and a good neighbor by addressing the issues raised by the neighbors in opposition.



The Board also notes that moving the location of the SEGS anywhere else on the subject property would increase the “viewability” of the SEGS, thereby adversely increasing impact upon the viewshed of the area, and this seems to be the best location for the SEGS on this property, as noted by the County’s Historic District Commission.

The Board expresses a concern that adjacent property to the immediate West of the subject property is zoned Residential Suburban and the adjacent property to the immediate North of the subject property has an agricultural preservation easement.

The Board further notes the concerns raised by the County’s Department of Planning & Zoning, and the proposed text amendment to the Ordinance to address those concerns by deterring the installation of SEGS on prime agricultural soils, such as exist where the SEGS will be located. However, the Board also notes that the proposed text amendment has not been approved as of the date of the hearing, and there remains the possibility that the text amendment ultimately is not approved; therefore, the Board believes it would be unfair to apply it to this particular application.

The Board also finds that the Appellant’s testimony and evidence satisfactorily addressed the concerns of the two neighbors who testified in opposition to the application. Moreover, the Board finds that the current use at the subject property currently has 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, the Board concludes that this appeal meets the criteria for a special exception, secures public safety and welfare, otherwise conforms to and upholds the spirit of the Ordinance, and is compatible with the existing neighborhood.

Therefore, Appellants’ request for a special exception to install and operate a SEGS in the leased area of the subject property is GRANTED, by a vote of 4-1. Said variance is granted upon the condition that installation and operation of the SEGS shall be: (1) in compliance with the design standards for SEGS as set forth in Section 4.26 of the Ordinance; (2) to the extent practicable, with retention of existing trees within the leased area to provide site screening; and (3) in a manner consistent with the testimony and evidence presented herein and in compliance with all other applicable governmental requirements.

BOARD OF APPEALS

By: Paul Fulk, Chair

**Date Issued: September 3, 2021**

#### Notice of Appeal Rights

Any person or persons, jointly or severally, aggrieved by any decision of the Board of Appeals, or any taxpayer, or any officer, department, board, or bureau of the jurisdiction, may appeal the same to the Circuit Court for Washington County within thirty (30) days, in a manner set forth in Md. Code Ann., Land Use, § 4-401.