

IN THE MATTER OF : BEFORE THE
Community Power Group, LLC : HOWARD COUNTY
Petitioner : BOARD OF APPEALS
 : HEARING EXAMINER
 : BA Case No. BA-21-006C

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DECISION AND ORDER

On July 8, 2021, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure (“Rules”), heard the petition (“Petition”) of Community Power Group, LLC, Petitioner, for Conditional Use approval for a Commercial Ground Mount Solar Collector Facility (Section 131.0.N.52) 3950 Ten Oaks Road, Glenelg, Maryland, Tax Map 22, Grid 14, Parcel 201 (the "Property").

The Petitioner provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Rules.

The Petitioner was represented by Christopher DeCarlo, Esq. Robert Vogel, PE, Vogel Engineering, and Amberli Young of Community Power Group, LLC, testified in support of the petition. John Forgash was present to observe but did not oppose or support the Petition.

FINDINGS OF FACT

Based upon the preponderance of the evidence presented at the hearing, I find the following facts:

A. Property. The property, which is known as 3950 Ten Oaks Road, Glenelg, Maryland, Tax Map 22, Grid 14, Parcel 201 (the "Property"), comprises 33.21 acres (the Conditional Use Area or “Site” is 10.2 acres) and is located in the RR-DEO (Rural Residential -

Density Exchange Option) Overlay zoning district. The site rises from an elevation of 580 feet along the west property line to 622 feet in the center of the Property and descends to 608 feet along the east property line. On the western portion of the property, there is a stream and wetlands that are outside of the conditional use area.

B. Vicinal properties. To the north of the Property lies Triadelphia Road and B-2 and RR-DEO zoned parcels used as Single-Family Residential and Commercial. To the south is Wye River Drive and RR-DEO zoned parcels used as Single-Family Residential. To the east is Ten Oaks Road and US Rt 32 and B-2 and RR-DEO parcels used for Commercial. To the west are RR-DEO parcels used as Single-Family Residential and Farm.

C. Roads. Ten Oaks Road has two lanes and a 20-foot pavement width. The speed limit is 35 miles per hour. Annual Average Daily Traffic data is not available for this portion of Ten Oaks Road.

D. Water and Sewer Service. The Property is not within the Metropolitan District or Planned Service Area for water and sewer.

E. General Plan. The Property is designated Low Density on the Designated Place Types Map of PlanHoward 2030. Ten Oaks Road is a Major Collector.

F. Zoning History. In Case No. BA-07-018C, a Conditional Use request was approved on October 29, 2007, for Landscape Contractors or Retail Nurseries.

G. Current Use. The Property consists of a farm with multiple agricultural buildings, a tree farm, and a storm water management facility.

H. Proposal. The Petitioner proposes a commercial ground mount solar collector facility with a 10.2-acre operational area. The facility will utilize a fixed panel system. The Petitioner estimates that there will be one or two visits to the Site for annual maintenance. A 'Type D' landscaping buffer (or a comparable buffer containing existing vegetation) and seven-

foot tall chain-link fence are proposed along the perimeter of the Property and/or Site.

I. Testimony.

Robert H. Vogel, PE, Vogel Engineering. Mr. Vogel reviewed in detail the Conditional Use Plan dated April 2021 (“Plan”) for the Property. He described in detail how the Site would be screened from view by the topography, existing landscaping, and additional landscaping to be installed as part of the plan.

He also explained in detail how the proposal meets the specific and general criteria for a solar facility in the Howard County Zoning Regulations.

Mr. Vogel stated that the land is not held in Agricultural Preservation and that the homes south of the Site are 400 to 500 feet from the solar panels.

He stated that the tree farm use will continue on the Site. The solar panels are proposed to be fixed tilt panels. There are no motors and the Site will be visited a few times per year for maintenance. The Petitioner is requesting no variances and no waivers.

Mr. Vogel testified that there will be no adverse impacts of noise, dust, fumes, etc., and that the only potential adverse impact is glare. A glare study was performed that shows glare will not be an impact.

He stated that the setbacks on all sides of the Site will be met.

He showed pictures that indicate the view of the Site from various viewpoints and explained the status of required Landscape Buffers. He stated that Landscape Type “D” Buffers will be installed in all places where a buffer is required but where the existing vegetation is not sufficient to warrant relief from the buffer requirements. In the following areas, relief from the Type “D” Landscape Buffer requirements are requested:

Area 1 – Existing tree buffer located south of the Site and on the border between the Property and the homes on Wye River Drive.

Area 2 – This is an extensive vegetative area on the southwest part of the Property and there are no homes between the Property and the adjoining parcels.

Areas 3/4 – there is an existing hedgerow along the southwest part of the Site and that hedgerow along with the trees in Buffer Area 1 are sufficient to warrant relief from the buffer requirements along much of the southern part of the Site.

Area 5 – existing tree buffer between the northern boundary of the Site and the parcel to the north (which is used as the landscape business).

Amberli Young, Community Power Group, LLC. Ms. Young is a Senior Project Manager for Community Power Group, LLC. She stated that the company is in the process of entering an agreement with a community institution which would use the power generated from the Site. She stated that the location is prime for the solar facility because it is adjacent to 3 phase electrical wires and has existing topography and screening that is optimal ensuring that the viewshed of nearby homes and from Ten Oaks Road are not negatively impacted.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:

- A. General Criteria for Conditional Uses (Section 131.0.B of the Howard County Zoning Regulations).**
- 1. The proposed Conditional Use plan will be in harmony with the land uses and policies in the Howard County General Plan which can be related to the proposed use.**

Policy 4.12 of the Howard County General Plan encourages energy sustainability and renewable energy sources. That policy states: Develop an energy plan that prepares for different

future energy scenarios, examines options for various kinds of future energy sustainability, promotes conservation and renewable resources, and sets targets to reduce greenhouse gases. Ms. Young described how this project will be a solar project that creates enough power for 340 households per year.

I find that the proposed use will be in harmony with the Howard County General Plan and PlanHoward 2030.

2. The nature and intensity of the use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the site are such that the overall intensity and scale of the use(s) are appropriate for the site.

The proposed 10.2-acres solar facility comprises approximately 30.7% of the 33.21-acre property and the property exceeds the ten-acre lot size requirement. Additionally, the facility complies with all required bulk regulations and dimensional conditional use criteria. Ten Oaks Road is a Major Collector and appropriate for the type and number of vehicles associated with the proposed use.

Therefore, I find that the nature and intensity of the use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the site are such that the overall intensity and scale of the use is appropriate for the site.

3. The impact of adverse effects such as, but not limited to, noise, dust, fumes, odors, intensity of lighting, vibrations, hazards or other physical conditions will not be greater at the proposed site than it would generally be elsewhere in the same zoning district or other similar zoning district.

Mr. Vogel explained the effect the project would have on adjoining properties and roads. He generally stated that adverse impacts that would typically include things like noise, dust fumes, odors, light pollution or vibrations are not an issue. He stated that the only potential impact would be glare but pointed to a glare study submitted with the Petition which concluded

that there will be no glare-related impacts to residential properties and motorists.

I find that the impact of adverse effects will not be greater at the proposed site than it would generally be elsewhere in the zoning district.

- 4. The location, nature and height of structures, walls or fences, and the nature and extent of the existing and/or proposed landscaping on the site are such that the use will not hinder or discourage the development and/or use of adjacent land and structures more at the subject site than it would generally elsewhere in the same zoning district or other similar zoning districts.**

Mr. Vogel explained that the existing vegetative buffers along with newly installed screening will adequately screen the project. The Petitioner is seeking credit for existing vegetation in the areas identified as Areas 1-5 on the Plan. I find, based on the photos presented and the Plan, that the credit requested should be granted. Mr. Vogel stated the existing and proposed vegetation will screen the facility from the public rights-of-way and adjacent properties.

All solar panels, equipment, and fences comply with the 20-foot height limit and 50-foot setback requirement in Sec 131.0.N.52.

The Technical Staff Report dated June 24, 2021, states that the “Development Engineering Division commented that the Plan does not appear to address stormwater management and the grades appear to exceed 5-10%. If stormwater management is required, the location of solar panels may need to shift to accommodate structural practices. DPZ [sic] request flexibility to allow minor shifts in the location of solar panel to accommodate any future stormwater management.”

Therefore, the location, nature and height of structures, walls or fences, and the nature and extent of the existing and/or proposed landscaping on the site will not hinder or discourage

the development and/or use of adjacent land and structures more at the subject site than it would generally elsewhere in the same zoning district or other similar zoning districts.

- 5. The number of parking spaces will be appropriate to serve the particular use. Parking areas, loading areas, driveways and refuse areas will be appropriately located and buffered or screened from public roads and residential uses to minimize adverse impacts on adjacent properties.**

There is no specific parking requirement for a Commercial Solar Facility. However, the Petitioner proposes a 20-foot by 50-foot paved area to accommodate maintenance vehicles. The 'Type D' landscape buffer will screen parking areas and driveways from the public rights-of-way and adjacent properties. No refuse areas are proposed.

Thus, the number of parking spaces will be appropriate to serve the particular use. Parking areas, loading areas, driveways and refuse areas will be appropriately located and buffered or screened from public roads and residential uses to minimize adverse impacts on adjacent properties.

- 6. The ingress and egress drives will provide safe access with adequate sight distance, based on actual conditions, and with adequate acceleration and deceleration lanes where appropriate. For proposed Conditional Use sites which have driveway access that is shared with other residential properties, the proposed Conditional Use will not adversely impact the convenience or safety of shared use of the driveway.**

Mr. Vogel testified that he believes sight distance is adequate.

Precise sight distance measurements can only be determined by a detailed sight distance analysis, which is typically conducted during Site Development Plan review. The estimated site distance is over 500 feet to the north and 500 feet to the south. According to the American Association of State Highway and Transportation Officials (AASHTO) guidelines, based on an estimated stopping sight distance of 250 feet for a car going 35 miles per hour, the proposed

access point on Ten Oaks Road appears to provide safe access with adequate stopping sight distance. The driveway is shared with the existing tree farm. The minimal maintenance visits will not impact the safety and convenience of the shared use.

Thus, I find that this criterion has been met.

7. The proposed use will not have a greater potential for adversely impacting environmentally sensitive areas in the vicinity than elsewhere.

The environmentally sensitive areas in the vicinity consist of a wetland area located on the western portion of the farm site and an associated stream that runs through the western portion of the site. The solar panels are located approximately 300 feet from the wetland and stream identified on this plan, which exceed the buffer requirements in the Subdivision and Land Development Regulations. A full assessment of environmental features will be conducted during the Environmental Concept Plan stage.

Therefore, the proposed use will not have a greater potential for adversely impacting environmentally sensitive areas in the vicinity than elsewhere.

8. The proposed use will not have a greater potential for diminishing the character and significance of historic sites in the vicinity than elsewhere.

There are three historic structures, as defined in Section 16.601 of the Howard County Code, within a half mile viewshed of the Property - the Westwood M. E. Church (HO-207), the Francis Shipley House (HO- 182), and Isaacs Farm (HO-895). Photographs were taken from the three historic sites in the direction of the proposed solar facility to determine whether their views of the surrounding area would be altered. The proposed Type 'D' landscape buffer, topography and existing vegetation appear to screen the solar panels from the historic sites.

Therefore, the proposed use will not have a greater potential for diminishing the character and significance of historic sites in the vicinity than elsewhere.

B. Evaluation of petition according to Section 131.0.N.52 (Specific Criteria for a Conditional Use for a Solar Facility, Commercial Ground Mount):

52. Solar Collector Facility, Commercial Ground-Mount

A Conditional Use may be granted in the B. 1, B-2, CE, M- 1, M-2, PEC, POR, RC, or RR District for a commercial ground-mount solar collector facility, provided that:

- a. The parcel on which the commercial ground-mount solar collector facility is proposed must be a minimum of 10 acres in size. The maximum size of the solar facility shall be 75 acres notwithstanding the size of the parcel. However, on parcels which are in the Agricultural Land Preservation Program, the maximum size shall be 16 acres or 20% of the property, whichever is less.*

However, a ground mount solar collector facility on an Agricultural Preservation Parcel can be increased to a maximum of 34% of the parcel by the Hearing Authority if the Hearing Authority finds that the use shall not interfere with farming operations or limit future farming production. The Hearing Authority shall consider the following:

- (1) A. At least 60% of the acreage outside of the ground mount solar collector facility area is viable for a farm operation, inclusive of farm buildings needed for the farm operation; and*
B. The remaining soils capability are more than 50% USDA Classes I-III and more than 66% USDA Classes I-IV or;
- (2) The additional acreage above the allowable 20% for the CSF is unsuitable for farming.*

The operational area of the proposed commercial solar facility is 10.2 acres and is located on a 33.21-acre parcel. The parcel is not in the Agricultural Land Preservation Program.

- b. All structures and uses must meet a minimum 50 foot setback from all property lines.*

All solar panels and equipment meet the required 50-foot setback from all external property lines.

- c. No structure or use may be more than 20 feet in height.*

Neither the solar panels, fences nor equipment exceeds 20 feet in height.

- d. A 'Type D' landscaping buffer must be provided around the perimeter of the proposed commercial ground-mount solar collector facility unless the Hearing Authority determines that an alternative buffer is sufficient.*

Petitioner proposes a Type 'D' landscape buffer on the east and portions of the south, west and north boundaries of the solar facility. The Petitioner is seeking credit for existing vegetation in the areas identified as Areas 1-5 on the Plan. The Petitioner is seeking relief from the Type 'D' landscape buffer in these areas of existing vegetation and provided a tree survey on sheet 2 of the Plan. I find, based on the photos presented and the Plan, that the credit requested should be granted.

- e. All security fencing must be located between the landscaping buffer and the commercial ground-mount solar collector facility.*

A seven-foot tall chain link security fence is proposed between the landscape buffer and the commercial solar facility.

- f. The systems shall comply with all applicable local, state, and federal laws and provisions.*

The Petitioner agrees to comply with this criterion.

- g. A commercial ground-mount solar collector facility that is no longer used shall be removed from the site within 6 months of the date that the use ceases. The Property Owner shall secure this obligation by maintaining a bond, escrow, or other form of security, in an amount equal to the estimated future cost of removal, that is acceptable to the Director of Finance.*

The Petitioner shall comply with this criterion.

- h. The premises shall be maintained at all times in a clean and orderly condition, including the care or replacement of plant materials required in the landscaping plan. The responsibility for compliance with this provision shall be with all parties having a lease or ownership interest in the commercial ground-mount solar collector facility. The applicant shall*

provide the Hearing Authority with details regarding maintenance and access for the site.

The Petitioner shall comply with this criterion.

- i. The applicant shall agree to register all solar collectors with the Department of Fire and Rescue Services. The registration shall include a map of the solar facility noting the location of the solar collectors and the panel disconnect.*

The Petitioner shall comply with this criterion.

- j. Tree removal shall be minimized and reforestation shall be done in accordance with Section 16.1026 of the Howard County Code.*

Petitioner shall comply with Sec. 16.1026 of the Howard County Code.

k. Scenic Views

(1) The applicant shall demonstrate that the solar facility does not harm the scenic characteristics of the view of or from:

- A. A public park;*
- B. A national or state designated scenic byway;*
- C. A road listed in the Scenic Roads Inventory adopted under Section 16.1403 of the Howard County Code; or*
- D. a historic structure as defined in Section 16.601 of the Howard County Code.*

(2) Visual Impact Analysis Required to Demonstrate Minimal Impact to or from Scenic Views

- A. The Conditional Use petition shall include a visual impact analysis mapping all viewshed impacts and any proposed mitigation. This analysis shall include mapped visual impact assessments of all important or critical viewpoints or elevations from which the solar facility can be seen from a fixed vantage point. For purposes of this subsection, A viewshed is a topographically defined area including all critical observation points from which the solar facility is viewed.*
- B. If the visual impact assessment as mapped particularly interferes with and compromises critical observation points within the viewshed that warrant viewshed protection, the petitioner shall mitigate the view through additional landscaping or other forms of mitigation, including reconfiguration of the solar panels, or as may be required by the Hearing Authority.*
- C. Fencing along road frontage or the perimeters of the commercial solar facility site where the fencing would be visible shall be constructed of a material and design consistent with the character of the roadway or area.*
- D. The petition shall include a landscape plan.*

The proposed commercial solar facility is not visible from a public park, national or state designated scenic byway, a scenic road listed in the Scenic Roads Inventory adopted under Section 16. 1403 of the Howard County Code.

There are three historic properties within a half mile radius of the proposed facility. The Petitioner submitted the required visual impact assessment demonstrating that the slope of the terrain and existing/proposed vegetation completely screen the view of the commercial solar facility from these historic structures. The Petitioner proposes a 'Type D' landscape buffer that, with the existing vegetation, will screen the solar collector facility from Ten Oaks Road and the historic structures.

I. The Howard County Agricultural Preservation Board shall review any Conditional Use petition which proposes to build a new commercial ground-mount solar collector facility on parcels which are in the Agricultural Land Preservation Program prior to approval by the Hearing Authority, using a two-step review process, in the following manner:

(1) Prior to scheduling and convening a presubmission community meeting pursuant to Howard County Zoning Regulations Section 131.0.f.1, the petitioner shall submit a proposed concept plan for a commercial ground-mount solar collector facility on a parcel or parcels in the Agricultural Land Preservation Program to the Howard County Agricultural Preservation Board for advisory review as to whether the siting of the commercial ground-mount solar collector facility on the parcel or parcels supports the primary agricultural purpose of the easement property or is an ancillary business which supports the economic viability of the farm.

A. Preliminary review: The Agricultural Preservation Board shall conduct a preliminary review of a concept plan to review the placement of the proposed facility and the remaining soil capability. The materials submitted for the preliminary review shall include, at a minimum, a letter signed by the property owner requesting the commercial ground-mount solar collector facility, a concept plan depicting proposed locations for the facility and a soil classification analysis, consistent with the provisions of the Agricultural Preservation Board's commercial Solar Facilities Policy. The Concept Plan should show at least two potential placements of the

CSF on the property to allow the APB an opportunity to advise on the best placement of the solar facility to minimize negative impacts on the farming operation.

B. Final Review: The materials submitted for final review shall include, at a minimum, a copy of the Agricultural Land Preservation Program easement, a copy of the Howard County Soil Conservation and Water Quality Plan, and a copy of the proposed final concept plan.

- (2) The Board's advisory review shall be in writing.*
- (3) The petitioner shall make the Board's advisory review available at the presubmission community meeting.*
- (4) The Department of Planning and Zoning's Technical Staff Report on the petition shall include an evaluation of and a recommendation on the Board's advisory review of the petition and shall include as attachments the Board's advisory review and a copy of the Agricultural Preservation Easement.*

The Property is not in the Howard County Agricultural Land Preservation Program. Thus this criterion does not apply.

m. Subject to Section 106 of these regulations, the property on which an approved commercial ground-mount solar collector facility is located is eligible to be a sending parcel provided that one density right is retained for the conditional use until the commercial ground-mount solar collector facility is removed.

This criterion does not apply, as the Property is not a density sending parcel.

n. Regulations for Solar Collector Facility, Commercial Ground-Mount

A solar collector or combination of solar collectors shall be designed and located to avoid glare or reflection onto adjacent properties and adjacent roadways and shall not interfere with traffic or create a safety hazard. The petitioner or applicant shall provide to the Department of Planning and Zoning a glare study or other certification or assurance acceptable to the Department that the solar collectors are designed, manufactured, and will be installed:

- A. To eliminate glare;*
- B. To ensure that glare will not be reflected onto nearby buildings or roadways; or*
- C. With anti-reflective coatings or light-trapping technologies.*

The Petitioner submitted a glare study using a glare modeling tool developed by the US Department of Energy. The results of the study concluded that there will be no glare related impacts to residential properties to the south and no impacts to motorists along Ten Oaks Road.

- o. For ground mount solar collector facilities on agriculture preservation parcels, the area used for the ground-mount solar collectors must also be used for pollinator or native grass habitats, grazing for livestock such as sheep, crop production under or directly adjacent to the installation such as edible landscape barriers or tree crops, or other agricultural or ecologically enhancing alternative that the applicant proposes and the hearing authority finds to be harmonious with the purposes of the Agricultural Land Preservation Program.*

The property is not an agricultural preservation parcel, however; the Petitioner proposes to include pollinator habitat plants and provided information about the grading, planting and maintenance for the pollinator mix.

ORDER

Based upon the foregoing, it is this 9th day of August 2021, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the petition of Community Power Group, LLC, Petitioner, for Conditional Use approval for a Commercial Ground Mount Solar Collector Facility (Section 131.0.N.52) 3950 Ten Oaks Road, Glenelg, Maryland, Tax Map 22, Grid 14, Parcel 201, is hereby **GRANTED**;

Provided, however, that:

1. The Commercial Ground Mount Solar Collector Facility Conditional Use shall be conducted in conformance with and shall only to the Petition as submitted and as shown on the Conditional Use Plan dated April 2021 submitted with the Petition, and not to any other activities, uses, or structures on the Property.

2. The Petitioner shall be granted relief from the Type “D” Landscape Buffer required for the areas identified on the Plan as Areas 1-5, provided that the existing vegetation and existing tree buffers on Areas 1-5 remain.
3. Petitioner shall comply with all Conditional Use standards.
4. The Site Development Plan, or its equivalent, shall include a note containing all conditions of approval.
5. Petitioner shall comply with all federal, state, and local laws and regulations.
6. The systems installed by the Petitioner on the Property shall comply with all applicable local, state, and federal laws and provisions.
7. A commercial ground-mount solar collector facility that is no longer used shall be removed from the site within 6 months of the date that the use ceases. The Property Owner shall secure this obligation by maintaining a bond, escrow, or other form of security, in an amount equal to the estimated future cost of removal, that is acceptable to the Director of Finance.
8. The premises shall be maintained at all times in a clean and orderly condition, including the care or replacement of plant materials required in the landscaping plan. The responsibility for compliance with this provision shall be with all parties having a lease or ownership interest in the commercial ground-mount solar collector facility.
9. The applicant shall agree to register all solar collectors with the Department of Fire and Rescue Services. The registration shall include a map of the solar facility noting the location of the solar collectors and the panel disconnect.
10. Tree removal shall be minimized, and reforestation shall be done in accordance with Section 16.1026 of the Howard County Code.

11. All required landscaping shall be provided within 6 months of installation of the solar panels.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**

Katherine L. Taylor

Date Mailed: _____

NOTICE: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.