

IN THE MATTER OF : BEFORE THE
Chaberton Solar Catherine LLC : HOWARD COUNTY
Petitioner : BOARD OF APPEALS
 : HEARING EXAMINER
 : BA Case No. BA-21-028C

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DECISION AND ORDER

On January 26, 2022, 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 Chaberton Solar Catherine LLC, Petitioner, for Conditional Use approval for a Commercial Ground Mount Solar Collector Facility (Section 131.0.N.52) 14196 Frederick Road, Cooksville, Maryland, Tax Map 8, Grid 24, Parcel 115 (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 Thomas Meachum, Esq. Ryan Boswell, Development Manager, Chaberton Energy, and Piero “Pete” Mellits, P.E., Century Engineering, testified in support of the petition. No one was present to oppose 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 comprises 66.11 acres (the Conditional Use Area or “Site” is 19.1 acres) and is located in the RC-DEO (Rural Conservation - Density Exchange Option) Overlay zoning district. The Property descends from an elevation of 590 feet along the

west property line to 560 feet along the east property line. As one drives into the driveway on the Property from Frederick Road, the Site cannot be seen until one proceeds toward the back of the Property.

B. Vicinal properties. To the north of the Property lies I-70. To the south is Frederick Road and RC-DEO zoned parcels used as Single-Family Residential. To the east are RC-DEO parcels used for Single-Family Residential and Farm purposes. To the west are RC-DEO parcels used as Single-Family Residential and a parcel used as a Howard County DPW Facility.

C. Roads. The Property is accessed by Frederick Road, which has a speed limit of 45MPH. Frederick Road has two travel lanes within a 60-foot wide right-of-way.

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 Rural Resource on the Designated Place Types Map of PlanHoward 2030. Frederick Road is a Minor Arterial and designated as a Scenic Road.

F. Zoning History. In Case No. BA-02-019C, a Conditional Use request was approved on July 19, 2002, for a private academic school and retreat center. In Case No. BA-13-033C, a Conditional Use request was approved on May 13, 2014, for a daycare facility.

G. Current Use. The Property now is used for an academic school and religious facility.

H. Proposal. The Petitioner proposes a commercial ground mount solar collector facility with a 19.1-acre operational area. The facility will utilize single axis tracking which means that the panels follow the direction of the sun. A 2700 SF gravel driveway is proposed.

I. Technical Staff Report. The January 12, 2022, Technical Staff Report (“TSR”) was made part of the record.

J. Testimony.

Ryan Boswell, Development Manager, Chaberton Energy. Mr. Boswell testified that the energy produced by the facility will be used for the onsite school and religious facility and also for the state’s community solar power program. He described the type of panels to be installed and stated that the panels used produce no glare and no noise.

Piero “Pete” Mellits, P.E., Century Engineering. Mr. Mellits testified that he prepared the Conditional Use Plan dated September 22, 2021 (“Plan”) for the Property. The Plan describes 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. Mr. Mellits explained how the proposal meets the specific and general criteria for a solar facility in the Howard County Zoning Regulations. He testified that there will be no adverse impacts of noise, dust, fumes, etc., and that the only potential adverse impact is glare.

The Plan shows that setbacks on all sides of the Site will be met. The Plan includes Landscape Buffer Type D around the west and north boundaries and part of the east boundary. Existing perimeter trees are located along the part of the east boundary where the Landscape Buffer will not be placed.

The Plan includes diagrams that indicate the view of the Site from various points along Frederick Road. The diagram shows that existing vegetation, topography and

existing buildings will buffer the view from Frederick Road looking northwest toward the Site. A proposed 84 inch chain link fence will encircle the Site.

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. Mr. Boswell described how this project will be a solar project that creates enough power for the uses on the site plus additional energy for the state solar power program.

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 19.1-acres solar facility comprises approximately 28.8% of the 66.11-acre property and complies with the 75-acre maximum size limitation set forth in Sec. 131.0.N.52. Additionally, the Plan shows that the facility complies with all required bulk regulations and dimensional conditional use criteria. Frederick Road is a Scenic Road and only has two lanes, but the traffic associated with the proposed use is negligible.

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.**

Adverse impacts that would typically include things like noise, dust fumes, odors, light pollution or vibrations are not an issue with a solar facility. The only potential impact would be glare but the Plan shows that the panels will mitigate glare through anti-reflective coating and single axis tracking. Thus, there will be little if no glare-related adverse 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.**

The Plan shows that existing vegetative buffers along with newly installed screening will adequately screen the project. The Plan proposes a Type D buffer on the north and west boundaries and part of the east boundary. Existing perimeter trees are located along the part of the east boundary where the Landscape Buffer will not be placed. The Plan includes diagrams that indicate the view of the Site from various points along Frederick Road. The diagram shows that existing vegetation, topography and existing buildings will buffer the view from Frederick Road looking northwest toward the Site. A proposed 84 inch chain link fence will encircle the

Site. The Plan shows that setbacks on all sides of the Site will be met.

The Petitioner is seeking credit for existing vegetation along the east and south boundaries of the Site. I find, based on the diagrams presented and the Plan, that the credit requested should be granted.

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 solar collectors, at 13 feet high, are setback the minimum of 20 feet beyond the required setback.

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 in the Howard County Zoning Regulations for a Commercial Solar Facility. However, the Petitioner proposes a 15-foot by 40-foot gravel 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.**

As stated in the TSR, 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 Official (AASHTO) guidelines, based on an estimated stopping sight distance of 360 feet for a car going 45 miles per hour, the proposed access point on Frederick Road appears to provide safe access with adequate stopping sight distance. The driveway is not shared with any residential properties.

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 only environmentally sensitive area in the vicinity is a stream located approximately 800 feet to the south of the Site. The use, therefore, is unlikely to have a greater potential for adversely impacting any environmentally sensitive areas in the vicinity than elsewhere.

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 is one historic structure, as defined in Section 16.601 of the Howard County Code, approximately 800 southwest of the Site – that property is known as Old National Pike

Milestone #23 (HO-603). The solar panels will not be visible from HO-603 due to the distance, the existing buildings, and existing and proposed vegetation.

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 19.1 acres and is located on a 66.1-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 or exceed 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.*

The Plan shows that existing vegetative buffers along with newly installed screening will adequately screen the project. The Plan proposes a Type D Landscape Buffer on the north and west boundaries and part of the east boundary. Existing perimeter trees are located along the part of the east boundary where the Landscape Buffer will not be placed.

The Plan includes diagrams that indicate the view of the Site from various points along Frederick Road. The diagram shows that existing vegetation, topography and existing buildings will buffer the view from Frederick Road looking northwest toward the Site.

The Petitioner is seeking credit for existing vegetation along the east and south boundaries of the Site. I find, based on the diagrams presented and the Plan, that the credit requested should be granted.

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 solar collectors, at 13 feet high, are setback the minimum of 20 feet beyond the required setback.

- 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 [sic] of the Howard County Code.*

Petitioner shall comply with Sec. 16.1206 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.*

Frederick Road is a scenic road listed in the Scenic Roads Inventory adopted under Section 16. 1403 of the Howard County Code. An historic structure is located southwest of the Site. The proposed commercial solar facility is not visible from either Frederick Road or the historic structure. Nor is it visible from a public park or a national or state designated scenic byway. As stated above, 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 the historic structure and Scenic Road.

- 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. 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.

- o. 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 Plan shows the facility will use single axis tracking design, which allows panels to move with the sun such that glare visible to or reflected on surrounding properties will be reduced. The solar collectors will have anti-reflective coating which mitigates the glare visible from surrounding properties. Glare will not be reflected onto nearby buildings or roads.

ORDER

Based upon the foregoing, it is this 24th day of February 2022, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of Chaberton Solar Catherine LLC, Petitioner, for Conditional Use approval for a Commercial Ground Mount Solar Collector Facility (Section 131.0.N.52) located at 14196 Frederick Road, Cooksville, Maryland, Tax Map 8, Grid 24, Parcel 115, 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 September 22, 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 along the east boundary of the Property, provided that the existing vegetation and existing tree buffers in that area 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, which 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.