

**MEETING MINUTES  
BOARD OF ZONING APPEALS  
FOR CAROLINE COUNTY, MARYLAND**

**DATE:** September 17, 2019

**PLACE:** Health & Public Services Building  
403 S. 7<sup>th</sup> Street, 2<sup>nd</sup> Floor, Room 206  
Denton, Maryland 21629-1335

**BOARD MEMBERS  
(PRESENT):** René Swafford, Chairman  
Mary Leavell, Vice-Chair  
Mike Mann, Member

**ALSO, PRESENT:** Crystal Dadds, Assistant Director of Codes  
Robert Merriken, Board Attorney  
Melanie Smith, Administrative Assistant to the Board

Chairman Swafford called the Caroline County Board of Zoning Appeals to order at 6:03 p.m. The Board members and staff were introduced to the audience and meeting procedures were explained.

**REVIEW AND APPROVAL**

The members read the minutes of the July 16, 2019 Board of Zoning Appeals meeting. No corrections or additions were needed.

**Motion:** Ms. Leavell made a motion to approve the minutes as written.

**Second:** Ms. Swafford seconded the motion.

**In Favor:** The motion was approved unanimously (2-0).

The members read the minutes of the August 20, 2019 Board of Zoning Appeals meeting. No corrections or additions were needed.

**Motion:** Mr. Mann made a motion to approve the minutes as written.

**Second:** Ms. Swafford seconded the motion.

**In Favor:** The motion was approved unanimously (2-0).

**GROUND STAR SPECIAL USE EXCEPTION #201900019**

Chair Swafford read the Notice of Public Hearing into the record. Ground Star is requesting permission to construct a small scale commercial solar energy system. The property is owned by Edward Francis Wright and is located at 6435 Reliance Road in Federalsburg.

Ms. Dadds read the exhibits into the record:

- Exhibit 1 – Planning & Codes Staff Report
- Exhibit 2 – SUE Application #201900019
- Exhibit 3 – Compliance Narrative
- Exhibit 4 – Environmental and Historical Mapping
- Exhibit 5 – Response to Comments from the Technical Advisory Committee
- Exhibit 6 – Decommissioning Plan and Bond
- Exhibit 7 – Operation and Vegetation Maintenance
- Exhibit 8 – Landscape Management Plan
- Exhibit 9 – Setback and Modification Agreements
- Exhibit 10 – Site Plan by Ground Star
- Exhibit 11 – Cannon House Solar Review Letter
- Exhibit 12 – Water & Sewerage Verification
- Exhibit 13 – SDAT Tax Map & Real Property Data Sheet M67 - G9 – P2
- Exhibit 14 – Photographs of Property Taken on 9/3/19
- Exhibit 15 – Aerial Photograph with Feature Overlay
- Exhibit 16 – Staff Review Letter for Site Plan Approval
- Exhibit 17 – List of Notified Adjoining Property Owners
- Exhibit 18 – Notice of Hearing to Applicant
- Exhibit 19 – Notice of Public Hearing in the Times Record on September 4 & 11, 2019

Chairman Swafford swore in:

Finn McCabe, 12905 Harbor Road, Ocean City, Maryland 21842

Mr. McCabe testified that this is his third hearing for the same application. The project was delayed due to the guarantee the County Comptroller required in the decommissioning bond. They did not get the surety they had expected before they realized the Special Use Exception had expired.

Bonding for the project has been resolved and they are ready to move forward. Mr. McCabe provided responses to the requirements for a Special Use Exception and a Solar Energy System (Exhibit No. 3) and summarized them for the Board.

Mr. McCabe further testified, that since the last hearing, non-tidal wetlands were found to exist on the property. It was necessary for them to rearrange the display in order to avoid the wetland area. Therefore, the site plan was amended to show this update and the required 25-foot buffer.

Chairman Swafford asked if he could provide them a written timeline for the project. She was concerned that Ground Star did not request an extension on either of the earlier approved applications. She informed him that the Board has met to hear this application three times and they do not care to hear it a fourth time.

Mr. McCabe explained that they expect to receive final site plan approval next month from the Planning Commission and will need another two to three months to erect the panels. They expect to be operational by spring of 2020.

She asked Mr. McCabe what issues he still had to resolve. Mr. McCabe reiterated the difficulty they faced finalizing the bond and remapping the site plan to allow setbacks for the non-tidal wetlands that were discovered. They have also resolved the forestry requirements.

Chairman Swafford asked the Board if they had any questions before they closed for deliberation. Mr. Mann was satisfied that there were no substantial changes to the application. He added that the compliance narrative (Ex. 3) and Mr. McCabe's testimony answered the requirements of the application sufficiently. Chairman Swafford agreed but remained concerned that they will not follow through on their approval as occurred with the two previous applications.

Chairman Swafford needed Mr. McCabe to provide a timeline with the phases of the project over the next year, so they can be assured an appropriate extension is given.

Ms. Dadds suggested that realistically, if Ground Star were to receive approval from the Board of Zoning Appeals tonight, the next available Planning Commission meeting to request approval for the final site plan would be in November or December. Once they receive the Planning Commission's approval, they can begin applying for a building permit. Review and approval of the building permit generally takes an additional 30 days. Mr. McCabe testified that it would take a month and a half to have the equipment delivered to the site and three months to build. Mr. McCabe also testified they would need another month to test and calibrate the equipment.

Mr. Mann asked, if the Board were to extend the approval an additional six month, would that allow them the time they would need to complete the project.

This portion of the meeting was closed for deliberation.

## **DELIBERATION**

The Board referred to the County Table of Uses and found the request was permissible, subject to a Special Use Exception.

The Board referred to Chapter 175, Article 16, Section 142 for the conditions of a Special Use Exception.

1. *An application was received (Exhibit 2).*
2. *The hearing was duly advertised on September 4, 2019 and again on September 11, 2019. (Exhibit 19).*

Chairman Swafford read the compliance narrative into the record and the Board found that Mr. McCabe's testimony and review of the exhibits satisfied the requirements of the code. Furthermore, no opposition to the project was received.

3. (a) *Based on Mr. McCabe's testimony, review of the exhibits, and the lack of opposition to the proposed use, the Board did not find that the proposed solar energy system will be detrimental to and/or endanger the public health, safety or general welfare. The facility*

*will not produce any emissions or harmful chemical byproducts. The proposed use is complementary to the continued agricultural use of the parcel.*

*(b) Based on Mr. McCabe's testimony, review of the exhibits, and the lack of opposition to the proposed use, the Board found that the proposed facility will not be injurious to the peaceful use and enjoyment of other properties in the neighborhood and will not diminish or impair property values in the neighborhood. Compliance with the code further protects the peaceful use and enjoyment of adjacent property owners.*

*(c) Based on Mr. McCabe's testimony, review of the exhibits, and the lack of opposition to the proposed use, the Board found no impediment to the normal and orderly development and improvement of the surrounding property for uses permitted in the zoning district. The project will comply with setbacks and screening requirements. Surrounding parcels are either residential or agricultural. The parcels are not likely to be extensively developed.*

*(d) Based on the testimony of Mr. McCabe and review of the exhibits, the Board found that the proposed facility will have no substantial impact on public facilities or resources. No additional burdens will be placed on schools, police, or fire protections. The facility will not require potable water or sewerage facilities. Public roads will see a slight increase in traffic only during construction. An appropriate storm water management plan will be submitted before they can obtain a building permit.*

*(e) Based on the testimony of Mr. McCabe and review of the exhibits, the Board found that care has been taken to ensure that the project meets all County requirements as specified in §175-85 and as amended in Ordinance 2017-02.*

*(f) The project is not located within the critical area.*

Ms. Leavell added that Mr. McCabe addressed the non-tidal wetlands that were recently discovered and revised the site plan to meet the new setbacks.

The Board found that most of Mr. McCabes responses responded to the requirements of Ordinance #2017-2 for Solar Energy Systems.

However, Chairman Swafford suggested to make it a condition of approval that the modification agreements are fully executed. Mr. McCabe stated that they do have the agreements fully executed but they referred to the previous site plan. He will need to produce an agreement that refers to the new plans once their final site plan is approved.

Mr. McCabe added that the project was revised because one of the neighbors did not agree to sign a modification agreement. In the 11<sup>th</sup> bullet point of Exhibit 5, Mr. McCabe stated, "The designs remain in compliance with the terms of the previously executed setback modification agreements. Revised modification agreements will be provided to reflect the latest site plan upon BZA approval of such plans."

**Motion:** Mr. Mann made a motion to grant the application for a special use exception for a solar energy system with the following conditions. Additionally, they will allow 18 months before the special use exception expires:

- A Building Permit and/or Zoning Certificate is obtained prior to any proposed development and must be accompanied by all the necessary documentation and site plan requirements.
- A storm water management plan is submitted with the building permit.
- All requirements provided in the August 2, 2019 letter from Matt Kaczynski, the Development Review Coordinator (Exhibit 16) are met prior to any proposed development.
- A project timeline is submitted for approval to the Planning Commission during the final site plan process.

**Second:** Ms. Leavell seconded the motion.

**In Favor:** The motion was approved unanimously (3-0).

The members approved and signed the Cherrywood decision #201900017 and the Invisible Towers decision #201800015.


#### **ADJOURNMENT**

**Motion:** Ms. Leavell made a motion to adjourn the meeting at 7:07 p.m.

**Second:** Mr. Mann seconded the motion.

**In Favor:** The motion was approved unanimously (3-0).

The meeting was adjourned at 7:07 p.m.

  
Minutes prepared by: Melanie Smith