

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

**DATE:** June 12, 2018

**PLACE:** Health & Public Services Building  
403 S. 7<sup>th</sup> Street, 1<sup>st</sup> Floor, Room 110  
Denton, Maryland 21629-1335

**BOARD MEMBERS  
(PRESENT):** Bryan Saathoff, Chairman  
René Swafford, Member  
Mark Faulstick, Alternate Member

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

Chairman Saathoff called the Caroline County Board of Zoning Appeals to order at 6:00 p.m. and proceeded to describe the procedures of the hearing.

**PUBLIC HEARING**

**FOREFRONT POWER, LLC –Special Use Exception (#201700011)**

Chairman Saathoff read the notice of public hearing into the record.

Ms. Dadds read the exhibits into the record:

- Exhibit 1 - Department of Planning & Codes Staff Report
- Exhibit 2 - Application for Special Use Exception (2 pgs.)
- Exhibit 3 - Real Property Data Sheet & Tax Map 59, Grid 9, Parcel 129 (2 pgs.)
- Exhibit 4 - Aerial Photographs with Features Overlay (2 pgs.)
- Exhibit 5 - Site Plan by TRC Engineers (15 pgs.)
- Exhibit 6 - Photographs of Property (7 pgs.)
- Exhibit 7 - Storm Water Management Plan (54 pgs.)
- Exhibit 8 - List of Notified Adjoining Property Owners (4 pgs.)
- Exhibit 9 - Notice of Hearing to Applicant
- Exhibit 10 - Notice of Public Hearing Published in Times Record on 5/30/18 and 6/6/18
- Exhibit 11 – Revised Site Plan Including Recommended PC Changes dated 5/30/18

Chairman Saathoff swore in:

Kelsey Crane, Forefront Power Project Manager  
Alan Finio, TRC Project Manager

Ms. Crane explained that they are proposing a 2 MW AC Community Solar project. The power from this project will be offered to anyone in the Delmarva area that subscribes. It's a ground mount tracker that rotates from east to west to maximize the absorption of the sun. The site was originally placed in the middle of the field with a longer entranceway off of Payne Road. This was changed in response to the County Planning Commission's review and the farmer's comments. The new plans show the area has been moved to the corner of the field with the access road off the State Highway.

Ms. Crane stated that they have responded to each of the Code requirements. She provided documentation to show that they have permission to connect to the grid. They received clearance from the Maryland Historical Trust. They are not cutting down any trees. They intend to do an onsite Forest Conservation Easement rather than offsite. She provided a landscape screening and maintenance plan as is required. They will have a six-foot fence with an additional foot of barbed wire around the perimeter. Access will be given to the utility company and the fire department. They have applied for clearance with the FAA and are confident they will receive this as is required for permitting. They have never had a project cause glare but a response to this will be included in the FAA report.

Chairman Saathoff asked Ms. Crane to tell him why she feels this is a permissible use in the County. Ms. Dadds provided Ms. Crane with a copy of Article XVI of the Zoning Ordinance to address the conditions of approval for a Special Use Exception.

Ms. Crane stated that the project will not endanger the public health. The panels are contained within the fence, no herbicides will be used, and solar is a pollution free source of energy.

She confirmed that research throughout the industry has shown there is no negative affects to neighboring properties because of a solar array. This is particularly true due to the buffers that are required around the perimeter of the fence.

The project will not overburden existing public facilities or improvements. They have moved the site to allow farming up to the edge of the project. State Highway will provide them with any improvements they require of them to use the current entrance. The preliminary plans have been approved by both the Technical Advisory Committee and the Planning Commission.

The parcel is approximately 75 acres and the solar project will be using about 15 acres. Neither Ms. Crane or Mr. Finio could recall the actual setback numbers but could confirm that it is set back further than the required 25 feet from the roadway.

The last condition applied to critical area land which does not pertain to this project. They did however confirm they are not interfering with wildlife and plant habitat but are increasing habitat with their screening landscape and tree plantings. The solar panels are safe for wildlife to roam around without harm.

The project is expected to remain productive for 25 to 30 years. Mr. Finio added that a decommissioning plan and decommissioning bond has been submitted as well.

They are part of the Maryland Community Solar Program. Thirty percent of the power generated by this project will serve low and moderate-income customers with renewable energy benefits they

may not be eligible to otherwise. It is operated by subscriber organizations that are approved by the Public Service Commission and the electric company serving the project.

Ms. Dadds then handed Ms. Crane a copy of Article IX of Ordinance #2017-2 that lists the siting requirements for Solar Energy Systems in Caroline County. Ms. Crane confirmed with Ms. Dadds that they would not be exceeding the 2000-acre cap that was set by the Commissioners. The project is not within the Transferable Development Rights (TDR) receiving area. The land is not under an agricultural preservation easement. The project may be located in the Preston growth area and the Town of Preston has been informed of the project. They have avoided areas of biological conflict and the project will not have a significant impact to the visual corridor of any scenic viewsheds. She repeated that they are not removing any trees and they have remained within the required setbacks. The height of the panels is well below the allowable 15-foot height. They have provided the utility connection agreement with Delmarva Power. Their landscaping plan addresses any visibility issues. Ms. Dadds measured the tree buffer area and it was 15 to 25 feet deep and the initial planting includes six-foot gum trees. Ms. Crane repeated that there is no glare and the FAA analysis will be provided prior to permitting. There is no lighting on the site. The fence is 6 feet high. A decommissioning plan was submitted. They will have the normal required signage on the fence. The lease agreement was also provided. She already addressed that there were no public safety issues, an FAA report is in progress and the rationale was provided. The site plan requirements will be addressed by the Planning Commission.

Chairman Saathoff asked if anyone wanted to speak on behalf of the project. No one answered. Then he asked if anyone wanted to speak in opposition to the project. No one answered. He read the names from the sign in sheet and the following people were sworn in:

Glen Plutschak, 21776 Marsh Creek Road, Preston, MD  
Kathleen Barry 107 Sunset Blvd, Preston, MD  
Mike McCrea, 3531 Seaman Road, Preston, MD  
Linda Nabb, 4025 Harmony Road, Preston, MD – Site Land Owner  
Russell Dukes, President of the Preston Fire Department  
Dr. Eric Cheezum, 3821 Payne Road, Preston, MD  
Tom Cheezum, 3931 Payne Road, Preston, MD

Mr. Plutschak referred to Article IX of Ordinance #2017-2, §175-85.B, Design Standards: Considerations shall be made to visual corridors that are prominent scenic viewsheds, or scenic areas designated by the county. He stated the one he is there to argue is the last line that requires they avoid known sensitive historical, cultural or archeological resources.

He stated that they failed to mention that Linchester Mill is directly across the road from their site and that the revised site location is closer to the Mill and adjacent to Linchester Pond. He was informed by JOK Walsh, Director of the County Historical Society that 11 State agencies refused to allow them to reconstruct the Mill Pond from 1825 but they are now approving the Solar Array. He added that the site is directly on the highway in view of a major corridor. And finally, he stated that this is a farming community and taking away from agricultural production goes against what the County supports. He added that he felt the Commissioners made a mistake allowing 2000 acres of Caroline County land to be allotted for solar arrays.

Mr. Plutschak asked why the project was not put in the municipality and what did the Town of Preston say when they were informed of the project.

Ms. Dadds stated that the Town did not provide a response to the notification. Ms. Barry, Preston Town Commissioner, asked when they were notified because she was unaware of the project until this morning. The records show a notice was sent out on May 29, 2018 to PO Box 91, Preston, MD and the notice was followed up by an email to the "prestonmanager". Forefront stated they also went to the town office to inform them a week ago and again this morning.

Chairman Saathoff advised Mr. Plutschak that the Board is there to gather information from citizens to use in deciding to approve the application. Chairman Saathoff asked how this project would impede the development of the Linchester property. Mr. Plutschak stated he has provided his testimony and suggested Mr. McCrea could better answer that question.

Mr. McCrea spoke next. He is a member of the Historical Society and has been involved in the restoration of the mill. He explained that the original location of the mill was by the pond that is adjacent to the solar site. The Historical Society met with State agencies at the Lions Club in Preston in consideration of restoring the pond. Because it is fed by an underground stream they could not disturb the vegetation that existed. The best place to restore the site is where they are proposing to place the solar panels.

Chairman Saathoff asked if the project was being proposed on public land. Mr. McCrea said it was not, it was privately owned. Chairman Saathoff asked how, if this project were approved, would it be detrimental to the Linchester Mill property that was across the street and down the road from the site. Mr. McCrea explained that the economic development in Preston is increasing because of the Mill. When they first opened they received 2 busses per year and now they receive 40. He doesn't want to see anything interfere with that.

Chairman Saathoff again asked how this project would impede the development of the surrounding property. Mr. McCrea was not present during Forefront's testimony and admitted he couldn't answer that.

Ms. Linda Nabb, Trustee, came forward to address some of Mr. McCrea's concerns. She explained that the bamboo plants were located on the 1.6-acre parcel #109 which she also now owns. Her father, William Kleinwachter, had owned the land since 1960 and she and her brother inherited it when he died. Parcel 109 was her brothers portion. He passed away last September. This is the land that sits adjacent to Linchester Pond. She stated that her brother offered the land free to the County Commissioners and the Historical Society and they rejected his offer.

She explained that the land is higher than the highway which will assist with screening the array.

Ms. Kathleen Barry came forward to speak. She stated that, although she is a Preston Town Commissioner, she was representing Preston's Planning and Zoning Department tonight. She asked when the Solar Moratorium expired. Although the Board did not have that date, they were able to confirm it occurred prior to the effective date of December 12, 2017 when the new Ordinance #2017-2 was enacted.

Ms. Barry asked Ms. Crane when Forefront notified the Town of Preston. Ms. Crane replied that they were mailed a notice a week before today and they visited the office earlier today. Ms. Barry said that she thought it unfair to the town and the citizens that the Town of Preston was not notified more than a week before to testify tonight. Ms. Dadds suggested she check with her staff because County staff could confirm notification was sent to the Town on May 29<sup>th</sup> and again after that. Ms. Barry argued that this was only two weeks' notice.

Ms. Barry asked who the owner of the property was and was Forefront leasing the property or intending on purchasing it. She also asked what the County has in place should the company leave the property without returning it to its original state. Ms. Crane responded that Ms. Linda Nabb, who spoke earlier, was the owner of the property and Forefront was leasing the property. She added that a cash bond is required, as part of the application, should the property not be returned to its original state.

Ms. Barry asked why the entrance to the site changed from the original plan. Ms. Dadds showed Ms. Barry how the original entrance interfered with the farmers field, to his detriment, and in response to the Planning Commission's condition it was moved to a more direct location off the State Highway. Ms. Barry said it was suggested that there would be a traffic jam, but she did not agree.

When Ms. Barry asked about the screening, Chairman Saathoff explained that the Board had the power to put conditions on their approval. He then asked her what her wish was regarding the screening of the project. Ms. Barry said that she did not expect the fencing to be completely hidden initially, but that the vegetation would eventually grow to screen the fence completely. Everyone agreed to this condition.

Ms. Barry stated that the Town is concerned about the maintenance of the screening. Ms. Crane explained that Forefront is responsible for the maintenance of the landscaping. They have a contractor on staff to oversee that. Ms. Dadds added that they are required, as part of the approval, to submit a landscape maintenance agreement that will be kept on file and this agreement is enforced by the County Codes Enforcement Officer.

Ms. Barry asked if the workers on the site are required to be hired locally. Ms. Dadds stated that there is no such requirement in the law. Ms. Barry than stated that as a citizen she feels that this project is not consistent with the County and Town's Comprehensive Plan specifically, where it states it must conserve and preserve the rural character of the County and to control development and design to promote and enhance the physical appearance and rural character of the County.

She ended by saying that she could see a traffic problem for the Town as the bus traffic increases to the Linchester site. The site has been heavily promoted by the Department of the Interior and visitors are increasing greatly. She suggested the visibility could be hidden if it was constructed further away from the road.

Mr. Russell Dukes asked to speak. He stated that he recently took training on fires that involve solar roof panels and is aware they cannot be turned off. He made it clear that it is not the Fire Departments responsibility to protect the panels in case of a fire. Ms. Crane agreed and informed him that as a precaution they have informed Emergency Services of the project location and provided access for them to contain a fire from spreading outside of the fence should one occur.

Chairman Saathoff asked if she is aware of panels catching fire. Ms. Crane is not but believes the issue may be more about the solar panels that are placed on a roof.

Mr. Duker asked what the protocol was should a panel catch fire. Ms. Crane stated that Delmarva Power would be contacted and the section would be disconnected from the grid. He was satisfied to know who the fire department would contact in such an emergency. Chairman Saathoff asked if disconnecting it would be done remotely. Ms. Crane replied that it would not, Delmarva would send out a crew like any storm event.

Dr. Cheezum asked to see how the new entrance was sited. He explained to all that he had spent several hours at the Planning Commission meeting working with Forefront to work out a plan that would best serve his father and himself, who farm the property, and the company. He conceded that in a perfect world people may not want to see a solar array, but that is the prerogative of the land owner. The Cheezum's desire was that their design did not clash with farming. That is why the entrance way was moved as well as the original site of the array. He stated that the people of Forefront made a great effort and went back to the drawing board and altered their designs for them.

Dr. Cheezum asked what the requirement was for notification to the town. Ms. Dadds stated that the requirement is to inform all adjacent property owners. The notice was sent to the town of Preston since the project borders the town. Chairman Saathoff added that part of the property is in the town limits of Preston. Dr. Cheezum was aware of this but added that the project is a half a mile away from the portion that is within the town. He is also aware that the project will only require a quarterly visit in a pick-up truck and would not cause any traffic issue. Ms. Crane concurred except for the delivery of the panels at the onset of the project and the construction that is intended to occur in September and October. Dr. Cheezum stated the traffic would be no more problematic than when they use the farm equipment to access the field at the same entrance.

Tom Cheezum asked about the new configurations of the site and was pleased that they accommodated his request to increase his available tillable land by moving the site to a corner location and changing the entrance to a direct path off the State Highway. He and Ms. Crane discussed staking the property so he knows what the perimeters are. They are taking a "pole test" the next day to be sure the poles will not pull the ground up when they are placed.

Ms. Crane asked to respond to the concerns. Regarding the visibility from Linchester Mill, she explained, that there are trees, then houses, then the highway, more trees and a buffer and fence atop a hill separating the project from the Mill. She explained that while they are using a portion of agricultural land, it is a practice of farmers to allow a field to lay dormant for a period to allow the soil to build up. Adding that they did change their entire site plan to move the array to the furthest section of the third field as the farmers requested. When the project is complete the land can immediately be farmed, the soil will be intact and no trees will have grown up on that portion.

In response to the comment that the project could have been placed in a different location, Ms. Crane explained that placement was decided by the proximity to the substation, the required setbacks, the wetlands, the disturbance to forestry and the interest of the owners. This confines their choices of locations.

She addressed the concerns about reaching out to the Maryland Historical Trust. She provided a letter from them dated April 12, 2018. Ms. Dadds marked this as Exhibit 12.

She closed by saying that solar is a renewable and sustainable energy and a quiet neighbor. It causes very little disturbance, allowing owners to protect the land from changing over the course of time. The program allows those with lower income to take advantage of the savings that they normally wouldn't be eligible for. Chairman Saathoff asked her how such programs are initiated, by the landowner or the company. Ms. Crane said they have been initiated both ways.

Mr. Plutschak stated that he did not feel that the concerns of the Historical Society had been addressed. He claimed the buffer is no more than what is expected from all such applications. He added that they should have heard comments from the Town of Preston and was disappointed that the Historical Society was not notified. Ms. Dadds read the Zoning Ordinance §175-179 outlining the requirement of notification. She pointed out that both the Historical Society and the Town of Preston was represented at this hearing.

Mr. Faulstick found it interesting that the Historical Society is concerned with the view from the Mill when there is a modern State Highway and land preserved to dualize it separates the two properties.

Ms. Barry asked if it were true that the application went before the Planning Commission and was turned down and therefore are before the Board of Zoning Appeals (BZA). Ms. Dadds answered no and explained that they were required to go before the Planning Commission first for preliminary site plan review. They were given recommendations because of that review and those comments were addressed by the updated site plan. They are now before the BZA to address the Special Use Exception. If the application is approved they will go back before the Planning Commission to request a final site plan approval. She asked if the Planning Commission is responsible for advertising the application. Ms. Dadds replied that all they are required to do is have it on the agenda which is posted on the County website. Ms. Dadds advised that anyone can sign up to receive notification of the Planning Commission and BZA Agenda's and Minutes.

## **DELIBERATION**

### **FOREFRONT POWER, LLC –Special Use Exception (#201700011)**

Chairman Saathoff consulted and the Board discussed the table of uses which states that a solar power plant is permitted in an R-Rural zone with the approval of a Special Use Exception application. §175-142 the conditions of approval for a Special Use Exception were considered below:

- (1) A written application has been submitted indicating the specific special use exception being sought and stating the grounds on which it is requested. *See Exhibit #2.*
- (2) A duly advertised public hearing has been held as prescribed by § 175-179 of this chapter. *See Exhibit #10.*

(3) The Board has considered the application in accordance with the following principles and requirements and determined that the granting of a special use exception:

(a) Will not be detrimental to or endanger the public health, safety or general welfare. *The Board heard testimony that the area will be secured by a 6-foot fence with 1 foot of barbed wire. Signage will be placed on the fence with any warnings or contact information. Ms. Swafford noted that there is no environmental issues and no pollution.*

(b) Will not be injurious to the peaceful use and enjoyment of other property in the neighborhood and will not substantially diminish or impair property values in the neighborhood. *Ms. Crane gave testimony that solar projects have, to this point, not had any effect on property values and is a quiet and peaceful neighbor. There was no testimony to dispute this.*

(c) Will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the zoning district. *There was testimony that more tillable land was available for the farmer to plow up to the perimeter of the project. Chairman Saathoff did not hear any testimony that this will in any way effect the improvement to adjacent property owners. Some of the types of uses in the vicinity include a cemetery, bank, residences, and a historical site.*

(d) Will not overburden existing public facilities, including schools, police and fire protection, water and sewerage, public roads, storm drainage and other public improvements. *There is no water and sewerage necessary for this project. State Highway has approved the entrance with conditions. Standard Operating Procedures are in place should there be a fire event. There is no increase to schools.*

(e) Conforms in all other respects to this chapter and especially to the applicable regulations of the zoning district in which it is to be located. *Ms. Swafford stated that Ms. Crane did a good and thorough presentation of responding to all the code requirements.*

(f) Will not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the critical area and that the granting of the special use exception will be in accordance with the "Critical Area Program for Caroline County," the critical area law and this chapter. *The property is not located within the critical area.*

The Board referred to Article IX §175-85 regulations for the conditions of approval for a solar energy system. The conditions of approval were considered below:

- A. Siting. A commercial solar energy system that complies with the provision of this section may be permitted as described in §175-13, table of uses. *The project does not exceed the 2000-acre cap of commercial solar energy systems within the county. The parcels are not located in the Transferable Development Rights (TDR) receiving areas. It is not under a land preservation easement and the Town of Preston was appropriately notified.*
- B. Design Standards. *Mr. Merriken noted that this is the area to address the concerns regarding the "visual corridor" of Linchester Mill. The members noted that there is a state*



highway (intended for dualization) already separating the properties as well as homes and trees. The site is on a hill and with the fencing and screening that has been proposed there is no expectation of the public seeing the panels. Ms. Barry, representing the Preston Planning Department, made a condition that the fence be hidden over time was met regarding the screening. No "significant impact" was presented through the Historical Society's testimony. Screening is 18 to 20 feet deep with starter trees as tall as 6-feet using vegetation that attracts wildlife. There will be no tree removal. The setbacks were met. The panels are well below the fifteen-foot height limit. A utility connection agreement was submitted. The visibility will be screened with appropriate plantings approved by the County Planner. No glare will be produced as the Federal Aviation Administration (FAA) report will show. No lighting is necessary. Fencing is six feet in height and encloses the entire system. A condition that all State regulations and permit requirements will be stated.

- C. Decommissioning. *A decommissioning plan and bond has been submitted.*
- D. Signs. *The 24-hour contact information will be posted on the fence. No advertising will be posted on the fence.*
- E. Agreements/Easements. *A lease agreement was submitted.*
- F. Public Safety. *No Public safety issues were noted.*
- G. FAA. *FAA report is in progress.*
- H. Project Rationale. *The construction schedule was included in the testimony and the market will include Preston/Caroline County residents with 30% of the use designated to low income families.*
- I. Site & Development Plans. *This section was reviewed by the Technical Advisory Committee (TAC) and preliminary site plan approval was given by the Planning Commission.*

**Motion:** Ms. Swafford made a motion to approve the application on the condition that the plants will be higher than the fence at final height, that the project follows all other State regulatory agency requirements and that they receive a building permit and zoning certificate.

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

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

## REVIEW AND APPROVAL OF MINUTES

All members read the minutes of the February 20, 2018 Board of Zoning Appeals meeting. No changes were needed. Chairman Saathoff approved and signed them.

## ADJOURNMENT

**Motion:** Ms. Swafford made a motion to adjourn the meeting at 8:40 p.m.

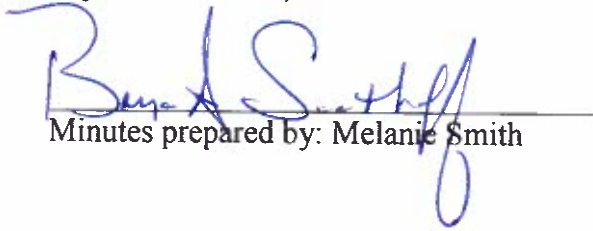
**Second:** Mr. Faulstick seconded the motion.

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

The meeting was adjourned at 8:40 p.m.

BOARD OF ZONING APPEALS

Bryan A. Saathoff, Chairman

A handwritten signature in blue ink, appearing to read "Bryan A. Saathoff", is written over a horizontal line. Below the line, the text "Minutes prepared by: Melanie Smith" is printed.

Minutes prepared by: Melanie Smith