

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
Stella B. Werner Council Office Building
Rockville, Maryland 20850
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IN THE MATTER OF: *
DAVIS HILL DEVELOPMENT, LLC *
Applicant * Conditional Use Application
* No. CU 25-07
Jesse Connor, Authorized Representative *
For the Applicant *
*
Soo Lee-Cho, Esq. *
Attorney for the Applicant *
* * * * *

Before: Khandikile Mvunga Sokoni, Hearing Examiner

HEARING EXAMINER'S REPORT AND DECISION

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I. STATEMENT OF THE CASE

Davis Hill Development, LLC (Applicant or Davis Hill) filed an application on March 31, 2025, seeking conditional use approval to operate a Solar Collection System on Parcel P020 in the Mountain Vale subdivision in Barnesville, Maryland (subject property or property). Exhibit 1. The property is described as a 109.52-acre lot within the Agricultural Reserve zone identified as Parcel P020, on tax account number 11-00920793 located in the Mountain Vale Subdivision located at 17700 Barnesville Road, Barnesville, MD 20838. *Id.* Jasai Properties, LLC of 4007 Broadstone Street, Frederick, MD 21704 owns the property and has authorized Davis Hill to file this Conditional Use Application. *Id.* While the total area of the property is 109.52 acres, the Applicant proposes to locate the Solar Collection System of 2 MW or less on only an 11.23-acre portion of the Property. Exhibit 15, p. 16. Currently the parcel which is on the south side of Barnesville Road is a mix of wooded and active farm fields. T.17.

On June 16, 2025, the staff of the Montgomery County Planning Department¹ (Planning Staff or Staff) issued a report recommending approval of the proposed conditional use subject to certain conditions. Exhibit 15. The Staff Report concluded that the proposed conditional use complies with the findings required for approval of Solar Collection System of 2MW or less, subject to recommended conditions outlined in the report. Staff further concluded that the proposed use is consistent with the goals and recommendations of the 1980 Preservation of Agricultural and Rural Open Space, will not alter the agricultural and low-density residential character of the surrounding neighborhood, and will not result in any unacceptable noise, traffic, or environmental impacts on surrounding properties. Exhibit 15 p. 27. By transmittal letter dated July 17, 2025, the Planning Board conveyed to OZAH that it recommends approval of the proposed conditional use subject to certain conditions, by a 3-1 vote (with the Vice Chair being absent). Exhibit 23. Planning Staff, in response to a request from the Hearing Examiner submitted a supplemental report on July 22, 2025. Exhibit 26.

The public hearing proceeded as scheduled on Tuesday July 29, 2025.² Attorney Lee-Cho represented the Applicant during the hearing. In support of its application, Applicant presented a total of three³ witnesses: Mr. Tory Hanna testified on behalf of the Applicant as both a fact witness, in his capacity as representative of the applicant, and an expert witness. T. 11, 13-15. Mr. Gregg Eberly, a Registered Landscape Architect (T. 43-55) and Professional Civil Engineer, Brad Glatfelter (T. 57-69) also testified as the Applicant's experts. Exhibit 14, p. 2-3.

¹ Also known as the Maryland-National Capital Park and Planning Commission (MNCCP)

² The public hearing was held in a hybrid format using Zoom. A link and phone number for the parties and/or public to join the hearing were published on OZAH's website. Hearing exhibits (except for Exhibit 27 which was introduced at the hearing, and Exhibit 28 which was to be entered into the Record prior to close of the record on August 12, 2025), were also published on OZAH's website prior to the hearing to permit the public to participate.

³ Although the pre-hearing statement listed a Will Thurman, Development Manager, as a witness this witness did not testify at the hearing.

No witnesses in opposition testified at the hearing. Mr. Stephen Vasco who explained that his father-in-law, Ralph Cooley lives near the proposed project, tuned in on Zoom and with the Hearing Examiner's permission asked some questions of the applicant's witnesses. T. 8, 55. After hearing evidence presented, the Hearing Examiner held the record open for a period of 10 business days until August 12, 2025, for the limited purpose of receiving and entering into the record the court reporter's transcript and a copy of the lease between the Applicant and owner of the subject property. T. 75. OZAH received the transcript on August 7, 2025, and the redacted lease on August 11, 2025⁴. Exhibit 28. The Hearing Examiner closed the record on August 12, 2025. By Order dated September 12, 2025, pursuant to Article 59, Appendix A, Rule 24 the Hearing Examiner extended the deadline within which to render a Report and Decision, to September 26, 2025. For the following reasons, the Hearing Examiner approves the conditional use application subject to the conditions listed in Part IV of this Report and Decision.

II. FACTUAL BACKGROUND

A. Subject Property

The subject property consists of two individual pieces of land, separated by Barnesville Road, on which there is an existing single-family detached house and a driveway. The property (both parcels) is on Barnesville Road, with fields that are currently being used for farming and agricultural activities. Exhibit 15, p. 7. As depicted on the image below, one portion of the property is located on the south side of Barnesville Road and the other portion is diagonally northeast of it. This Conditional Use Application is for the western portion of the two pieces

⁴ As requested by the Hearing Examiner Attorney Lee-Cho submitted the full lease with proprietary information redacted. The Hearing Examiner is only publishing the relevant excerpts which document Applicant's decommissioning obligations under the lease. Exhibit 28.

of land on the south side of Barnesville Road. Approximately one quarter of the western portion of the Property is in the Town of Barnesville. T. 17. The site contains streams, stream buffers, wetlands, wetland buffers, 100-year floodplains, and hydraulically adjacent steep slopes. The site drains to Little Monocacy – Beallsville Tributaries, draining to Little Monocacy River, flowing into Potomac River Direct watershed, and eventually into the Potomac River. Little Monocacy Watershed is a State Use Class I-P stream. The site is not within a Special Protected Area (SPA). Exhibit 15, p. 7, 24.



Overall Subject Property
marked *Figure 2* in Exhibit
15, p. 7

Mr. Hanna testified that there is a single-family residence on the site, that the site is mostly forested, and there are some two or three farm fields. T. 19.

B. Surrounding Neighborhood

For Conditional Uses, the Planning staff delineates the “surrounding neighborhood” which is the area that will be most directly impacted by the proposed Conditional Use. This is done for

the purpose of, among other things, assessing whether or not the proposed use will adversely impact the character of the neighborhood.⁵

The Staff report defines the surrounding neighborhood as agricultural in nature with some low-density residential development. The property is partially located in the Town of Barnesville on the western side. The properties to the north, east and south are all zoned Agricultural Reserve (AR) and the properties to the northwest, southwest, and west are located in the Town of Barnesville which has its own zoning regulations.

Mr. Hanna testified that he absolutely agreed with the Staff's demarcation of the designated neighborhood. T. 20. The Staff Report identified two existing, approved conditional uses/special exceptions within the defined neighborhood: (1) CBA-2579, S116, S688 (A-E) at 21830 Peach Tree Road, The Barnesville School of Arts and Sciences (Private Educational Institution) and (2) S1050 and S2118: 17411 Conoy Road, Group Home up to 14 persons (Residential Care Facility under current code). Staff concluded that if approved, this would be the only Solar Collection System within the general area and, therefore, will not overburden the neighborhood with Conditional Uses or specifically Solar Collection Systems. Exhibit 15, p. 6. There are two previously-approved Conditional Uses for Solar Collection Systems, making this the third. Cumulatively, the three total 31.6 acres of Conditional Use and 19.95 acres of fenced solar arrays, well under the 1,800 acre limit. Exhibit 26; Exhibit 15, p. 6 and 16.

The Hearing Examiner has approved two previous Solar Collection Systems on the east side of the County, not in the general area of the subject application. The first project, Rein Solar (CU 2023-05) was approved on June 8, 2023, and located at 5011 Riggs Road in Brookeville,

⁵ Section 59.7.3.1.E.1 provides that to approve a conditional use application the Hearing Examiner must find that the proposed development "d. is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the [applicable master] plan".

consisting of 7.73 acres. The second project, Gregg Road Solar (CU 2024-04) was approved on January 18, 2024, and is located at 4434 Gregg Road in Brookeville, consisting of 12.64 acres.

Exhibit 26, p.3.



Vicinity Map/Staff-delineated
Neighborhood
Exhibit 15, pg. 6

C. Proposed Use

The Applicant proposes to construct a 2 MW or less Solar Collection System on 11.23 acres of the 109.52-acre parcel. Exhibit 15, p. 8. The proposed development will have the following features:

- A new entrance and driveway on Barnesville Road at the northeast corner of the Conditional Use area shown in Figure 4 of the Planning Staff Report. The facility will not have any persons on site with occasional visits for maintenance purposes.
- Electrical interconnection to be located near the proposed entrance to the site.
- Solar arrays measuring approximately seven feet in height, to be surrounded by an eight feet high chain link fence.
- A fire access turnaround and a 30,000-gallon cistern for fire protection to be constructed.

Id.

The Applicant is not proposing any signage or lighting with this Application. The Solar Collection System will be surrounded on the east, west and south sides with existing trees and forested areas. The Applicant is proposing landscaping screening along the frontage between the solar arrays and Barnesville Road to help screen the facility from the road. *Id.*

The requested Conditional Use is outlined in the green dotted line in Figure 3 in the Staff Report reproduced on the next page:

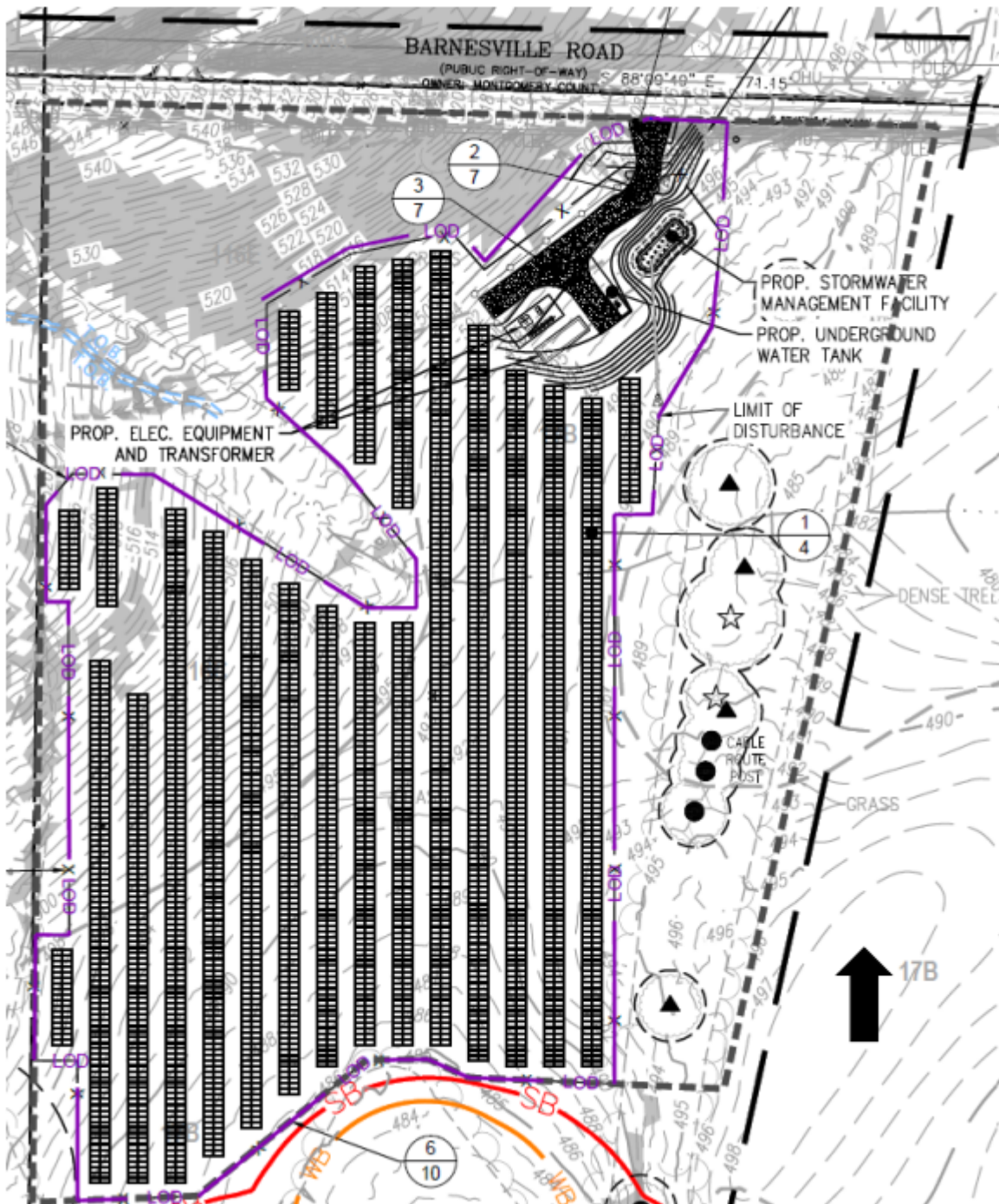


Marked Figure 3 – Property with
Conditional Use
Exhibit 15, p. 9

Applicant's expert witness testified to the Applicant's compliance with the requirements of the State metering system under Maryland Code Section 7-306 and COMCAR 20.50.10 and COMCAR 20.62. T. 27-28.

1. Site Plan and Landscape

Applicant's expert witness Mr. Hanna reviewed the Conditional Use Site Plan, and testified that all the existing uses on the subject property (i.e. a single-family residence on the site; the forested areas and two to three farm fields) will be retained. T. 19; Exhibit 16(b). Once completed the proposed project will not require on-site personnel and will not generate traffic except for occasional maintenance.



Excerpt of Conditional Use Site
Plan reproduced from Exhibit 15, p.
10 marked Figure 4⁶

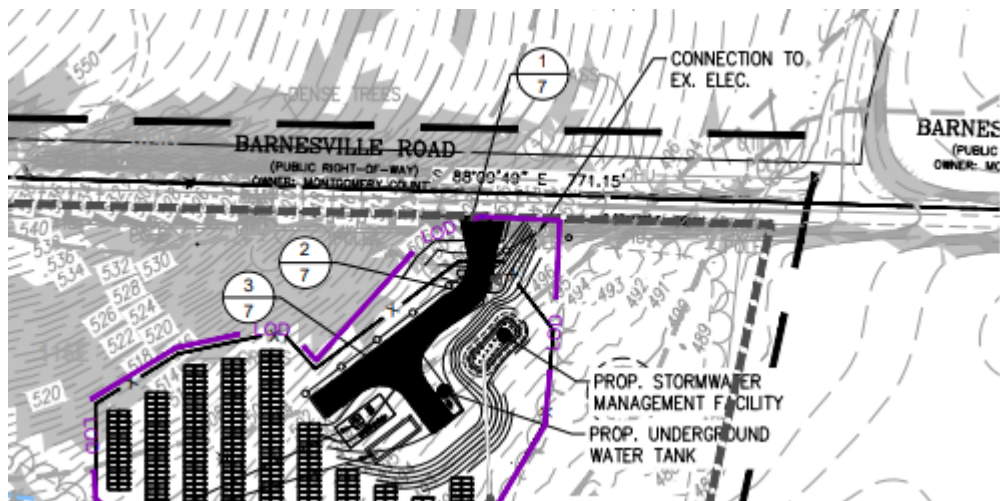
⁶ The site plan is contained in the signed Drawings of Bowman Consulting Group Ltd, entered into evidence as Exhibits 16 a, b, c, d and e.

The Applicant is not proposing signage or lighting with this Application. The proposed Solar Collection System was presented as being surrounded on the east, west and south with existing trees and forested areas. The Applicant is proposing landscaping screening on the frontage between the solar arrays and Barnesville Road to help screen the facility from the road. Exhibit 15, p. 8.

Mr. Hanna further testified that the project location will be accessed by an access road which is proposed to be off Barnesville Road towards the eastern part of the footprint, avoiding any forested areas, and requiring no removal of vegetation. T. 21.

According to Mr. Hanna, Applicant found this parcel after exploring a few other parcels in the County and this one was found to be most suitable for its ability to interconnect to a feeder line that runs to a very specific substation that has capacity. T. 22. Another significant feature of appeal to the Applicant is the parcel's natural north to south grade/slope downward from Barnesville Road.

The point of interconnection is shown on the image below⁷:



⁷ Exhibit 16.b. Also see Figure 5 in the Staff Report, Exhibit 15 at page 11.

An excerpt of the Landscape Plan is reproduced below:

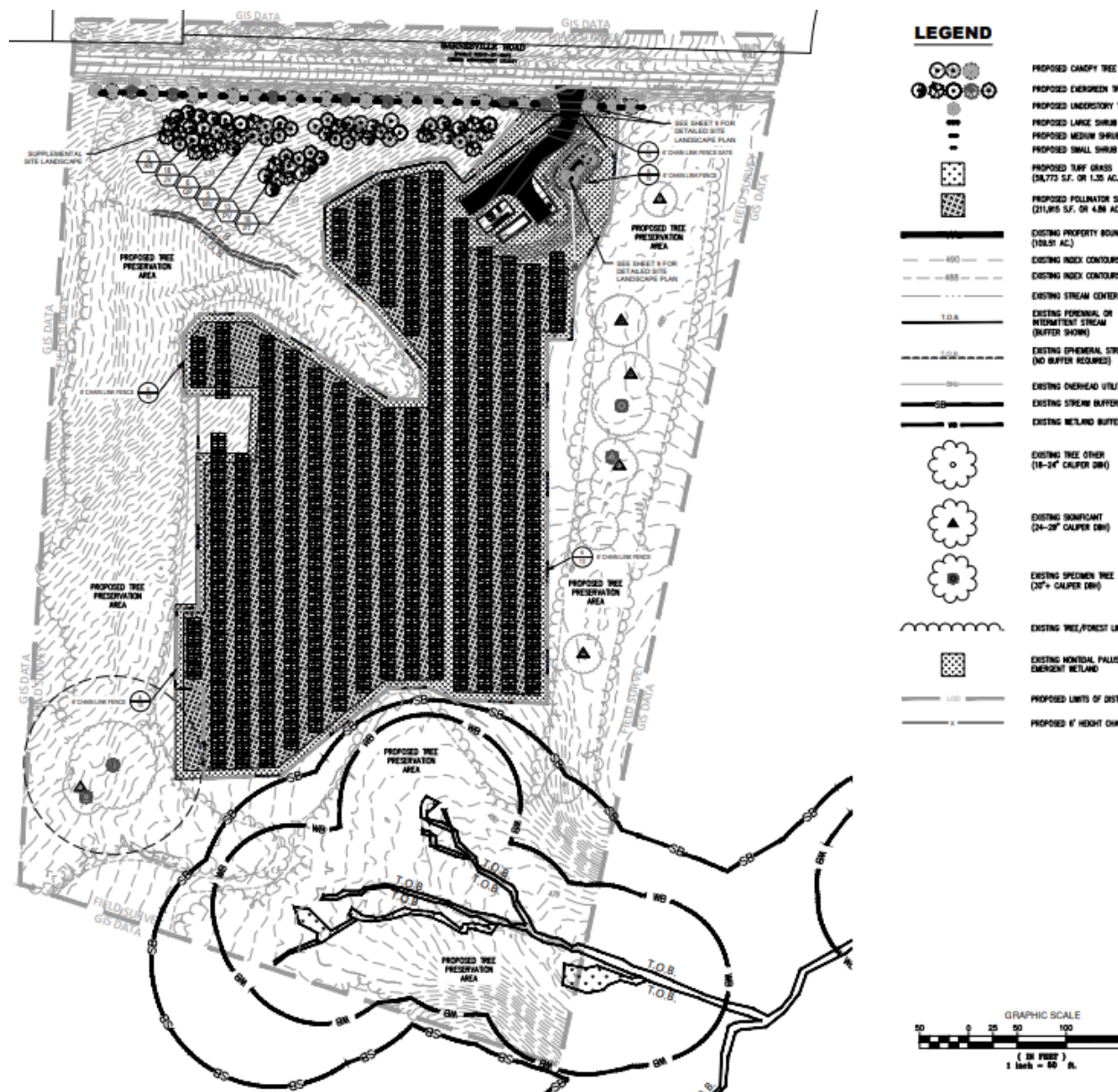
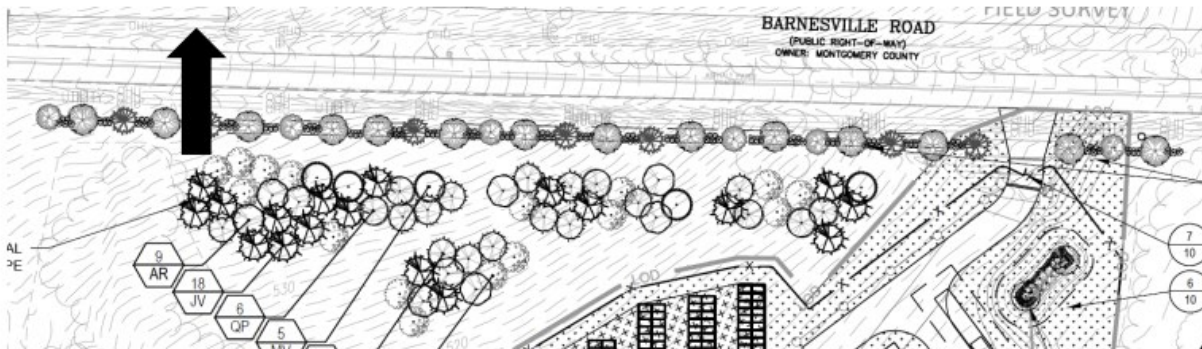


Exhibit 17(a) – Landscape Plan

An excerpt of the Landscape Plan, marked Figure 7 in the Staff Report, is reproduced below:



2. Parking, Lighting Plans and Signage

No parking, lighting or signage is being proposed with this Application and none is needed nor required by the Code for the use. Exhibit 15, pgs. 17, 20. The Applicant proposes to construct a new entrance on Barnesville Road approximated 200 feet west of the intersection with Conoy Road. The proposed driveway will consist of asphalt pavement (20 feet wide) and will include a fire department turn-around.

The proposed Solar Collection System is unmanned and will only generate one to two maintenance trips on days when such activities are scheduled. The Zoning Ordinance does not require parking for a Solar Collection System. The Hearing Examiner agrees with staff that the proposed asphalt driveway provides ample parking for when maintenance needs to be performed on site. *Id.*

3. Operations

Mr. Glatfelter⁸ testified that using County metrics, there is an annual daily traffic count of about 3,500 vehicles per day right now on Barnesville Road, which is a rustic road. He estimated that during construction, which would be the peak generating time, there would be about 15

⁸ In the Transcript In some areas Mr. Glatfelter is incorrectly identified as “MR HANNA”, such as at T. 58.

additional vehicles per day of added traffic on Barnesville Road. T. 62. He further testified that during normal operations, there would only be one or two trips per day. *Id.*

D. Community Response

Technical Staff reported that as of the date of completion of the report, which was June 16, 2025, Staff had not received any correspondence from the public. Exhibit 15, p. 12.

The OZAH record contains three letters opposing this application. In summary Dawn McDonald opposed the application and presented the following concerns: that community comments made at a Zoom meeting with the developer were ignored; there are no fire hydrants near the site; plantings will need water supply; safety of well water; what agency monitors compliance if approved; the developer must locate this use in a more developed area not in the Ag. Reserve. Exhibit 21.a. Holly Larisch opposed the application and presented the following concerns: Environmental impacts including water run-off from the panels into a pond on her property, effect on aquatic life, noise -destruction of bird habitat, the viewshed will be negatively impacted and this industrial project will destroy the rustic and historic character of Barnesville Road; she wants the Category I easement extended back to meet her property. Exhibit 21.b. Carol DeRamon opposed the application and presented the following concerns: the Fire Department has not been alerted about this project and has no plan in place in case of a fire; the proposed chain link fence and 8 foot plantings are neither adequate nor consistent with the rustic and agricultural character of this area. Exhibit 21.c.

Applicant's Statement of Justification contained, among other records, a summary of Pre-Submittal Community Meeting Minutes from an October 10, 2024 meeting listing the Applicant

representatives and the community members who attended the meeting. Exhibit 5(c). At the hearing, Applicant's witness explained that some of the concerns raised in those minutes were rendered moot because the plans were adjusted.

E. Environmental Issues

The Staff Report (starting at page 24) contains a detailed exposition of the environmental issues associated with this project. Exhibit 15, p. 24-26. As noted above, Mr. Hanna testified that the project would be accessed by an access road which developer proposes to construct off Barnesville Road in the eastern part of the footprint, avoiding any forested areas, and with no removal of vegetation. T. 21.

The Application is subject to the County's Forest Conservation Law and submitted a Preliminary Forest Conservation Plan that conforms with the Environmental Guidelines. *Id.*

The Natural Resource Inventory/Forest Stand Delineation ("NRI/FSD") 420242090 for this Property was approved on September 13, 2024. The NRI/FSD identifies the environmental features and forest resources on the Subject Property. The Subject Property is located within the Little Monocacy watershed, which the State of Maryland classifies as Use I-P watershed. It contains steep slopes, streams, wetlands, floodplains, and environmental buffers. There are large specimen trees distributed mainly along the waterways and the eastern side of the overall Property. The property is not within a Special Protection Area.

Exhibit 15. at pg. 24; see NRI/FSD Exhibit 9a-g.

The project has a net tract area of 11.23 acres that is subject to Chapter 22A of the Forest Conservation Law. There are 2.25 acres of forest within the 11.23-acre net tract area. The 2.25 acres of forest within the net tract area will be placed into a Category I conservation easement. *Id.*

According to the Technical Staff Report, the Application meets the requirements of Chapter 22A of the Montgomery County Forest Conservation Law. A Final Forest Conservation Plan was been submitted for review. *Id.* at p. 24. The Planning Board approved the Forest

Conservation Plan Number F20250530 with conditions that include a requirement that Applicant must comply with all tree protection and tree save measures on the Final Plan; and that before the start of any demolition, clearing, grading construction, whichever comes first, the Applicant must record a Category I Conservation Easement over all areas of forest retention and environmental buffers by deed, and install permanent conservation easement signage along the perimeter of the conservation easement. Exhibit 24.

Mr. Gregg Eberly testified that "...Within the 11.23 acres of net tract area, there's 2.25 acres of existing forest. All 2.25 acres of the existing forest are to remain in conservation..." and "...will be placed into a Category 1 easement". T. 48. Mr. Eberly further testified that little to none of the solar panels to the south of the Category 1 easement will be visible from Barnesville Road. T. 49. He testified that on the northern portion of the site, there is proposed a buffer consisting of a mix of predominantly native evergreen trees and shrubs which will provide as much screening as possible from Barnesville Road, mitigating any visual impact there may be from Barnesville Road and adjacent properties. Mr. Eberly testified that under the Montgomery County Code there is no screening required, and that whatever screening is being proposed by the Applicant is over and above anything required by the Code. T. 51.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A conditional use is a zoning device that authorizes certain uses provided that pre-set legislative standards are met. Pre-set standards are both specific (to a particular use) and general (applicable to all conditional uses). The specific standards applied for a solar collection system are found in Section 59.3.7.2 of the Zoning Ordinance. The general standards (termed "Necessary Findings" in the Zoning Ordinance) for all conditional uses are found in Section 59.7.3.1.E. An applicant must prove that the use proposed meets all specific and general standards by a

preponderance of the evidence. Applicant's Counsel explained that for the general approval requirements, Applicant rests on the Staff Report predominantly, with some additional testimony provided by witnesses. The Hearing Examiner concludes that the Applicant has done so in this case, with conditions of approval included in Part IV of this Report.

A. Necessary Findings (§59-7.3.1. E)

The relevant standards and the Hearing Examiner's findings for each standard are discussed below.⁹ For discussion purposes, the general standards may be grouped into four main areas:

1. Substantial Conformance with the Master Plan;
2. Adequate Public Services and Facilities;
3. No Undue Harm from Non-Inherent Adverse Effects; and
4. Compatibility with the Neighborhood

E. Necessary Findings

1. To approve a conditional use application, the Hearing Examiner must find that the proposed development:

a. satisfies any applicable previous approval on the subject site or, if not, that the previous approval must be amended;

Conclusion: No prior approvals were granted for the subject property. Nothing in the testimony or the record disputes this fact. This section does not apply.

b. satisfies the requirements of the zone, use standards under Article 59.3, and to the extent the Hearing Examiner finds necessary to ensure compatibility, meets applicable general requirements under Article 59.6;

Conclusion: This subsection requires review of the development standards of the AR Zone contained in Article 59.4; the use standards for a Solar Collection Facility contained in Article

⁹ Although §59.7.3.1.E. contains six subsections (E.1. through E.6.), only subsections 59.7.3.1.E.1., E.2., E.3 and E.4. contain provisions that apply to this application. Section 59.7.3.1.E.1. contains seven subparts, a. through g.

59.3.7.2.B.2 and the applicable development standards contained in Article 59.6. Each of these Articles is discussed below in Parts III.B, C, and D, of this Report, respectively. For the reasons explained there, the Hearing Examiner finds that the application satisfies these requirements.

1. Substantial Conformance with the Master Plan

c. substantially conforms with the recommendations of the applicable master plan;

The property is located within the 1980 Preservation of Agricultural Rural Open Space (AROS) Master Plan. Exhibit 15, pg. 5. According to the Staff Report, the AROS Master Plan is a comprehensive approach to preserving agricultural and rural spaces. For this Solar Collection System the Applicant is utilizing Class III and VII soils which are not prime agricultural soils. *Id.* p. 18. The Applicant is proposing the use of a pollinator-friendly seed mix under and around the Solar Collection System which will encourage bees and other insects to pollinate the surrounding fields, and to retain the rest of the parcel for agricultural and farm uses. The County Office of Agriculture found the Applicant's proposal to be acceptable and expressed support for it.¹⁰

The subject property has frontage along Barnesville Road which is classified as Rustic Road. According to the Staff Report, the master-planned right-of-way for this segment of Barnesville Road is 70 feet. *Id.* at p. 20. This minimum right-of-way requirement was confirmed by the County's Department of Transportation. Exhibit 15(a) p. 15.¹¹

¹⁰ Office of Agriculture memorandum to the Planning Department dated June 5, 2025, attached as an appendix to the staff report.

¹¹ MCDOT letter to the Planning Department dated May 20, 2025, attached as an appendix to the staff report.

Conclusion: Based on this record, the Hearing Examiner agrees that the solar collection facility will substantially conform to the goals of the applicable master plans neither or which contain an property-specific recommendation for this site.

e. will not, when evaluated in conjunction with existing and approved conditional uses in any neighboring Residential Detached zone, increase the number, intensity, or scope of conditional uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area; a conditional use application that substantially conforms with the recommendations of a master plan does not alter the nature of an area;

Conclusion: The property is zoned AR and not located in a “residential detached” zone. The standard does not apply.

2. Adequate Public Services and Facilities

f. will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities. If an approved adequate public facilities test is currently valid and the impact of the conditional use is equal to or less than what was approved, a new adequate public facilities test is not required. If an adequate public facilities test is required and:

i. if a preliminary subdivision plan is not filed concurrently or required subsequently, the Hearing Examiner must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; or

ii. if a preliminary subdivision plan is filed concurrently or required subsequently, the Planning Board must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; and

No preliminary plan of subdivision is required, and Staff determined that there are adequate public services and facilities to serve the proposed use. The site is not served by public sewer or water and none are required for the use. Exhibit 5. The Applicant submitted all required plans for emergency services access and stormwater management. Both fire access and the stormwater management concept plan received approval from the County on March 8, 2023. *Id* at 10. Per the Applicant's traffic statement and testimony of its engineer addressed elsewhere in this Report, the project will generate less than 50 trips that would be required for a traffic study and per the LATR guidelines the number of trips when totaled correlate to zero added vehicle trips per day on a typical day. *Id*.

Barnesville Road is a rustic road there are no existing or planned pedestrian facilities. The Hearing Examiner finds that none are required to support a Solar Collection System.

Applicant submitted Conditional Use Plans that include Fire Hydrant and Emergency Access Plans. Exhibit 16(d). The Plan notes that its purpose is to address the requirements of Executive Regulation 14-24 (Fire Department Apparatus Access and Water Supply). It notes that the subject property is located in a rural where public water supply facilities do not exist and that the nearest fire hydrant is 2,200 feet away. Applicant specified that on-site water supply shall be reviewed, approved, inspected and installed under a Department of Permitting Services (DPS) fire protection systems permit prior to finalizing building permits. *Id*. Applicant submitted a Plan approval from DPS dated December 13, 2024.

Conclusion: The Hearing Examiner agrees with the findings in the Staff Report and finds the evidence provided and testimony of Applicant's expert persuasive regarding adequate public facilities. This is not a residential development so there is it will not generate any need for school

facilities. Based on the information in the record, adequate public facilities do exist for the project, including police, fire, healthcare, stormwater, sewer, water, and public roads.

3. No Undue Harm from Non-Inherent Adverse Effects

g. will not cause undue harm to the neighborhood as a result of a non-inherent adverse effect alone or the combination of an inherent and a non-inherent adverse effect in any of the following categories:

i. the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood;

ii. traffic, noise, odors, dust, illumination, or a lack of parking; or

iii. the health, safety, or welfare of neighboring residents, visitors, or employees.

This standard requires consideration of the inherent and non-inherent adverse effects of the proposed use on the surrounding area. Inherent adverse effects are “adverse effects created by physical or operational characteristics of a conditional use necessarily associated with a particular use, regardless of its physical size or scale of operations.” *Zoning Ordinance*, §1.4.2. Inherent adverse effects, alone, do not justify the denial of a conditional use. Non-inherent adverse effects are “adverse effects created by physical or operational characteristics of a conditional use not necessarily associated with the particular use or created by an unusual characteristic of the site.” *Id.* Non-inherent adverse effects may be a basis to deny a conditional use, alone or in combination with inherent effects, if they cause “undue” harm to properties in the surrounding area.

Conclusion: The Hearing Examiner agrees with Staff's list of inherent adverse characteristic of this use. Staff identified the following physical and operational characteristics necessarily associated with (i.e. inherent to) a Solar Collection System: solar panels and maintenance chips.

Exhibit 15, p. 22. The proposed solar panels on the east, south, and west sides which are all screened by existing and proposed landscaping and forestry stand approximately seven feet high, and are therefore going to be screened off from neighboring properties. Therefore, the project will not alter the character of the surrounding neighborhood. Maintenance trips will typically occur once or twice a month. The Hearing Examiner agrees with Staff's conclusion that the proposed use will not cause undue harm to the neighborhood solely due to non-inherent adverse effects, or the combination of inherent and non-inherent adverse effects. *Id.*

4. Compatibility with the Neighborhood

Several sections of the Zoning Ordinance require a proposed conditional use be compatible with the character of the surrounding neighborhood.

Section 59.7.3.1.E.1 includes the standards of approval below:

d. is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the [master] plan.¹²

Staff found the project to be harmonious with and not alter the character of the neighborhood. Exhibit 15, pg. 19. The proposed use produces minimal noise traffic and visual impacts. The installation of the solar project sits back within the boundaries of the parcel will be surrounded by natural and additional screening along Barnesville Road. *Id.* The property is surrounded by properties to the north, east and south that are all zoned AR and the properties to

¹² Section 59.7.3.2.E.2 requires that "any structure to be constructed ... under a conditional use in a Residential Detached zone must be compatible with the character of the residential neighborhood." This conditional use is in an AR zone, not a residential detached zone making this provision not applicable.

the west are within the Town of Barnesville which has its own zoning authority and has not submitted any objections.

Conclusion: Section 59.7.3.1.E.2.d examines whether the Master Plan goals are achieved in a manner compatible with the area. The Hearing Examiner has adopted Staff's characterization of the existing neighborhood as Agricultural Rural with no residential dwellings within 200 feet.

For these reasons, the Hearing Examiner finds that the use is compatible with the surrounding neighborhood in a manner consistent with the Master Plan and will not adversely affect the character of the surrounding area.

Section 59.7.3.1.E.3. The fact that a proposed use satisfies all specific requirements to approve a conditional use does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require conditional use approval.

Conclusion: The application satisfies all specific requirements for the conditional use, and with the conditions imposed, meets the standards required for approval.

Section 59.7.3.1.E.4 In evaluating the compatibility of an agricultural conditional use with surrounding Agricultural or Rural Residential zoned land, the Hearing Examiner must consider that the impact does not necessarily need to be controlled as stringently as if it were abutting a Residential zone.

Conclusion: Given the agricultural location of the use and the immediate surrounding area, the use and proposed development within the existing parcel will not be a detriment to the surrounding properties.

B. Development Standards of the Zone (Article 59.4)

To approve a conditional use, the Hearing Examiner must find that the application meets the development standards of the AR Zone, contained in Article 59.4 of the Zoning Ordinance.

Staff included a table (Exhibit 15, p.16-17, shown on the following page) in its Report comparing the minimum development standards of the AR Zone to what is proposed in this application. Staff correctly note in the chart that “[t]here is no proposed development with this application.” *Id.*

Table 1: Development and Parking Standards Agriculture Reserve (AR)

Development Standard Section 59.4.2.1.F	Permitted/ Required	Proposed
Minimum Lot Area	40,000 sq. ft.	109.52 acres
Minimum Lot Width at Front Building Line	125 ft.	>700 ft.
Minimum Lot Width at Front Lot Line	25 ft.	715 ft.
Maximum Density	1 dwelling/25 acres	N/A
Maximum Lot Coverage	10%	<1%
Minimum Front Setback	50 ft.	>50
Minimum Side Setback	20 ft.	Left- 450 ft./Right- 1,440 ft.
Minimum Sum of Side Setbacks	40 ft.	1890 ft.
Minimum Rear Setback	35 ft.	900 ft.
Maximum Height	50 ft.	N/A
Vehicle Parking Requirement (Section 59.6.2.4.B)	N/A	N/A

Mr. Glatfelter testified confirming Staff's conclusions regarding these development standards and setbacks. T. 65-70.

Conclusion: Nothing contradicts Staff's assessment of compliance with the development standards of the Zone. The Hearing Examiner finds that the proposed facility complies with the development standards of the AR Zone.

C. Use Standards for a Solar Collection System (Section 59.3.7.2.)

The specific use standards for approval of a Solar Collection System are set out in Section 59.3.7.2. of the Zoning Ordinance.

Zoning Ordinance §59.3.7.2.

A. Solar Collection System

1. Defined

Solar Collection System means an arrangement of panels or other solar energy devices that provide for the collection, inversion, storage, and distribution of solar energy for electricity generation, space heating, space cooling, or water heating. A Solar Collection System includes freestanding or mounted devices. Solar Collection Systems are facilities that comply with the requirements of the State's net metering program under Maryland Code §7-306, COMAR 20.50.10, and COMAR 20.62, including Community Solar Energy Generating Systems, Aggregate Net Energy Metering Systems, and projects limited to a percentage of on-site energy use. A Solar Collection System larger than 2 megawatts (AC) is prohibited in the Agricultural Reserve Zone.

Conclusion: The Applicant proposes to construct and operate to a 2-megawatt photovoltaic solar collection system. Exhibit 5. The use proposed meets this definition.

2. Use Standards¹³

A Solar Collection System may be allowed as a Conditional Use in the AR zone if it exceeds a facility rated at more than 200% of on-site energy use and is less than 2 megawatts (AC). Where a Solar Collection System is allowed as a conditional use in the AR zone, it may be permitted by the Hearing Examiner under Section 7.3.1. Conditional Use and the following standards:

- a. The Solar Collection System is prohibited:*
 - i. on soils classified by the United States Department of Agriculture as either Soil Classification Category I or Category II;*
 - ii. in a stream buffer;*
 - iii. on wetlands; or*
 - iv. on slopes equal to or greater than 15%.*

¹³ 59.3.7.2.B.2

Conclusion: Elsewhere in this Report the Hearing Examiner referenced Mr. Hanna's testimony regarding the nature of the soils on the project location, that this location has soil categories 3 and 4 which are some of the least productive soils from an agricultural stand point, and that this project would actually allow these soils to "rest" and rejuvenate. T. 27. The Hearing Examiner finds that placement of the solar array meets this requirement.

b. Scraping topsoil from the site is prohibited.

c. Grading and any soil removal are minimized.

Conclusion: Applicant's witness testified that no soil will be scraped, and grading will be minimized. The Hearing Examiner finds the testimony and totality of the evidence persuasive that grading and soil removal will be minimized and that scraping of topsoil will not occur.

d. The solar collection system is compliant with the requirements of the State's net metering program under Maryland Code §7-306, COMAR 20.50.10, and COMAR 20.62.

Conclusion: A condition of approval will require compliance with the above regulations.

Therefore, the use as conditioned will meet this requirement.

e. The area under the solar facility must be actively used for farming or agricultural purposes by satisfying one or more of the following requirements:

- (i) designated pollinator-friendly under the Maryland Pollinator-Friendly Designation Program;*
- (ii) planted, managed, maintained, and used for grazing farm animals; or*
- (iii) planted, managed, maintained, and used for any other agrivoltaic plant material.*

The Record and testimony support a conclusion that the project will comply with 59.3.7.2.B.2(e). The Hearing Examiner finds that the project satisfies requirements of this subsection.

f. The applicant must provide evidence that the local utility company will allow the Solar Collection System to be connected to the utility grid.

g. The applicant must provide evidence that the application was submitted to the Office of Agriculture.

Conclusion: Attachment D to the Staff Report contains a series of email exchanges between the representatives of the Applicant and the First Energy confirming approval of the interconnection for this project. Expert testimony also confirmed this approval. T. 23-25.

h. Removal of trees or landscaping otherwise required or attached as a condition of approval of any plan, application, or permit for the installation or operation of a Solar Collection System is prohibited.

i. Any tree in or on a floodplain, stream buffer, steep slope, critical habitat, contiguous forest, or historic site, and any champion tree or other exceptionally large tree is left undisturbed unless a disturbance is allowed under Section 22A-12(b)(1).

j. Except for pad areas for transformers and electrical equipment, the use of concrete is prohibited.

k. Screening that satisfies Section 59.6.5.3.C.8 (Option A) on the sides of the facility within 200 feet of any neighboring house is required; however, a fence may not be required or prohibited.

Conclusion: The Hearing Examiner agrees with Staff that application as submitted satisfies subsections (h), (i), (j) and (k).

l. The Hearing Examiner's decision must consider the recommendations of the Office of Agriculture.

Conclusion: The Office of Agriculture (OAG) letter dated June 5, 2025 states that based on review of documents related to the Conditional Use Application #202507, OAG supports the Mountain Vale Community Solar project as proposed for the following reasons::

- The applicant proposes to install a photovoltaic collection system on 11.23 acres of land with soils with a USDA capability class of 3 or higher and slopes less than 15%, outside of any wetlands and stream buffers, without stripping topsoil, and minimizing grading on-site.
- The applicant proposes to meet the farming or agricultural activity requirement by planting the area underneath the solar panels in a pollinator habitat with an appropriate seed mix during the correct planting season using best practices.

Exhibit 15(a).¹⁴

The Staff report and details included in the landscape plan as referenced on previous pages of this Report and Decision align with the comments from OAG and are included in this Application. The Hearing Examiner considered OAG's review and notes that OAG offered no other specific recommendations to the Application.

m. The applicant must include a calculation of the total acreage used for the Solar Collection System, including any required setbacks and all acreage within the fenced or shrubbed area.

Conclusion: The Staff Report affirmed that the requirements of subsection (m) are satisfied and the Hearing Examiner finds no evidence in this Record to contravene that conclusion.

n. The land area approved for the Conditional Use, in addition to all other Conditional Use approvals for solar facilities in the AR zone, will not exceed 1,800 acres of land.

¹⁴ Attachment C of the Planning Staff Report.

Conclusion: As noted earlier in this Report, there are two previously-approved Conditional Uses for Solar Collection Systems, making this the third. Cumulatively, the three total 31.6 acres of Conditional Use and 19.95 acres of fenced solar arrays, well under the 1,800 acre limit. Exhibit 26; Exhibit 15, p. 6 and 16.

The Hearing Examiner agrees with Staff that acreage remains available in the AR Zone and this facility will not exceed the maximum amount. The requirements of subsection (n) are satisfied.

D. General Development Standards (Article 59.6)

Article 59.6 sets the general requirements for site access, parking, screening, landscaping, lighting, and signs. These requirements need be satisfied only “to the extent the Hearing Examiner finds necessary to ensure compatibility.” *Zoning Ordinance*, §59.7.3.1.E.1.b. However, most of these requirements do not apply to the Application for the subject property.

I. Site Access

Conclusion: Zoning Ordinance section 59.6.1 governs “Site Access;” however, by its own terms, as stated in §59.6.1.2., section 59.6.1 does not apply to development in an agricultural zone as presented in this case. The Applicant proposes to construct a new entrance on Barnesville Road approximated 200 feet west of the intersection with Conoy Road. The proposed driveway will consist of asphalt pavement (20 feet wide) and will include a fire department turn-around.

The Hearing Examiner agrees with Staff's finding that the subject property has frontage along Barnesville Road, which is classified as a Rustic Road. The Master-planned right-of-way along the property's frontage from Conoy Road to the western boundary. Exhibit 15, pg. 20.

Mr. Bradley Glatfelter¹⁵, a professional engineer with Bowman Consulting, testified that Applicant is proposing an entrance off Barnesville Road with two 60-foot hammer head turns for access, and then an underground storage vault or tank for onsite water supply because there is no fire hydrant in the immediate vicinity. T. 60. He further testified that this has been coordinated with the Fire Marshall's Office and approved by DPS. T. 61.

2. Parking, Queuing and Loading

Conclusion: Zoning Ordinance section 59.6.2 governs "Parking, Queuing and Loading." The use requires no parking. However, in the event service or repairs are needed, the site provides ample parking. *Id.*

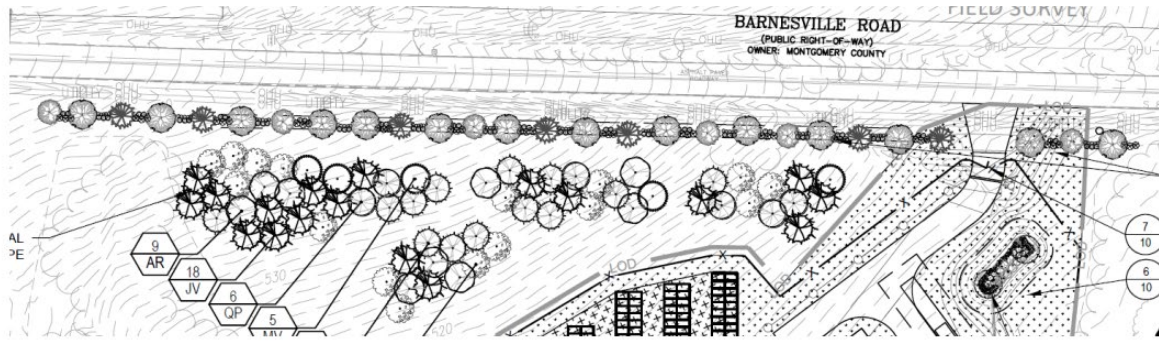
3. Lighting and Landscaping

Conclusion: Zoning Ordinance section 59.6.4 governs "General Landscaping and Outdoor Lighting". As no lighting is proposed, this section is inapplicable. The proposed landscaping is covered in the screening section below.

4. Screening

Conclusion: Zoning Ordinance section 59.6.5 governs "Screening". Zoning Ordinance section 59.3.7.2.B.2.k requires screening within 200 feet of any neighboring house. As noted in this Report and Decision above, Staff confirmed that there is no residential house within 200 feet of this project, and therefore, this requirement does not apply. That notwithstanding, the Applicant is proposing to provide landscape screening consisting of a mix of plantings and shrubs along Barnesville Road frontage on the north side of the arrays to mitigate any perceived visual impacts of the project. Exhibit 15, p. 18.

¹⁵ In the Transcript In some areas Mr. Glatfelter is incorrectly identified as "MR HANNA", such as at T. 58.



Proposed Screening shown in Staff
Report as Figure 8

5. Signage

Conclusion: Zoning Ordinance section 59.6.7 governs “Signage”. Since the Applicant proposes no signage, this section is inapplicable.

IV. CONCLUSIONS AND DECISION

As set forth above, the application meets all the standards for approval in Articles 59.3, 59.4, 59.6 and 59.7 of the Zoning Ordinance. Based on the foregoing findings and conclusions and a thorough review of the entire record, the application of Davis Hill Development, LLC for the Mountain Vale Solar (CU 25-07) for a conditional use under Section 59.3.7.1. of the Zoning Ordinance to operate a Solar Collection System on Parcel P020 in the Mountain Vale subdivision in Barnesville, Maryland, is hereby **GRANTED**, subject to the following conditions:

1. The use is limited to a Solar Collection System that generates no more than two (2) megawatts.
2. Before issuance of any building permit or sediment control permit, whichever comes first, the Applicant must enter into a Surety and Maintenance Agreement with the Planning Board in a form approved by the M-NCPPC Office of General Counsel that outlines the responsibilities

of the Applicant. The Agreement must include a performance bond or other form of surety, with the following provisions.

- a) A cost estimate of the materials and facilities, which, upon Staff approval, will establish the surety amount.
- b) The cost estimate must include landscape screening and fencing, as shown on the approved Conditional Use Site Plan.
- c) Completion of all improvements covered by the surety will be followed by inspection and potential adjustment¹⁶ of the surety, through the one-year warranty period.
- d) The bond or surety for each item shall be clearly described within the Surety & Maintenance Agreement, including all relevant conditions.

3. The Applicant must schedule a preconstruction (pre-con) meeting, preferably on-site, with staff from the County's Department of Permitting Services (DPS) responsible for Conditional Use Plan conformance and compliance. The pre-con must occur before any site development work and any work covered by the surety and maintenance agreement commences. The Applicant, along with its representatives, must attend the pre-con with DPS staff. Throughout the pre-con and construction phase, a copy of the approved Conditional Use Plan, along with any subsequent amendments, must be on-site at all times.

4. Before approval of the release of any portion of the performance bond, the Applicant must deliver to the Planning Department, with a copy to DPS, certification by a professional engineer licensed in the State of Maryland that the fire access improvements have been constructed and

¹⁶ The Staff recommendation used the phrase "potential reduction" which the Hearing Examiner changed to "potential adjustment" to allow for a reduction or an increase.

installed per the recommendations from the Fire Department Access and Water Supply Section, as shown in the approved DPS fire access plan, or as amended.

5. Before release of the access permit by the County Department of Transportation or DPS, the Applicant will dedicate by deed the right-of-way:

- a. To the east of the Town of Barnesville limits:
 - i. Right-of-way measuring 70 feet from the opposite right-of-way line along the Property frontage from Conoy Road to the west to the Town of Barnesville limits.
- b. To the west of the Town of Barnesville limits:
 - i. Right-of-way measuring 35 feet to the property line where the property line is north of the roadway centerline.
 - ii. Right-of-way measuring 35 feet to the roadway centerline where the property line is south of the roadway centerline.

Issued this 26th day of September, 2025.

Office of Zoning and Administrative Hearings



Khandikile Mvunga Sokoni
Hearing Examiner

NOTICE OF RIGHT TO APPEAL

Any party of record may file a written request to appeal the Hearing Examiner's Decision by requesting oral argument before the Board of Appeals, within 10 days issuance of the Hearing Examiner's Report and Decision. Any party of record may, no later than 5 days after a request for oral argument is filed, file a written opposition to it or request to participate in oral argument. If the Board of Appeals grants a request for oral argument, the argument must be limited to matters contained in the record compiled by the Hearing Examiner. A person requesting an appeal, or opposing it, must send a copy of that request or opposition to the Hearing Examiner, the Board of Appeals, and all parties of record before the Hearing Examiner.

Additional procedures are specified in Zoning Ordinance §59.7.3.1.f.1. Contact information for the Board of Appeals is:

Montgomery County Board of Appeals
100 Maryland Avenue, Room 217
Rockville, MD 20850
(240) 777-6600
<http://www.montgomerycountymd.gov/boa/>

PLEASE NOTE THE FOLLOWING BOARD OF APPEALS FILING REQUIREMENTS:

The Board of Appeals website sets forth these procedures for filing documents:

Because remote operations may not always allow us to promptly date-stamp incoming U.S. Mail, until further notice, all time-sensitive filings (administrative appeals, appeals of conditional use decisions/requests for oral argument, requests for public hearings on administrative modifications, requests for reconsideration, etc.) should be sent via email to BOA@montgomerycountymd.gov, and will be considered to have been filed on the date and time shown on your email. In addition, you also need to send a hard copy of your request, with any required filing fee, via U.S. Mail, to the Board's 100 Maryland Avenue address (above). Board staff will acknowledge receipt of your request and will contact you regarding scheduling.

If you have questions about how to file a request for oral argument, please contact Staff of the Board of Appeals.

The Board of Appeals will consider your request for oral argument at a work session. Agendas for the Board's work sessions can be found on the Board's website and in the Board's office. You can also call the Board's office to see when the Board will consider your request. If your request for oral argument is granted, you will be notified by the Board of Appeals regarding the time and place for oral argument. Because decisions made by the Board are confined to the evidence of record before the Hearing Examiner, no new or additional evidence or witnesses will be considered. If your request for oral argument is denied, your case will likely be decided by the Board that same day, at the work session.

Parties requesting or opposing an appeal must not attempt to discuss this case with individual Board members because such *ex parte* communications are prohibited by law. If you have any questions regarding this procedure, please contact the Board of Appeals by calling 240-777-6600 or visiting its website: <http://www.montgomerycountymd.gov/boa/>.

NOTIFICATION OF DECISION TO BE SENT TO:

Soo Lee-Cho, Esquire

Attorney for the Applicant

Barbara Jay, Executive Director, Montgomery County Board of Appeals

Robert Kronenberg, Deputy Director, Planning Department

Mark Beall, Planning Department

Greg Nichols, Manager, Department of Permitting Services

Victor Salazar, Department of Permitting Services

Michael Coveyou, Director, Finance Department

Elana Robison, Esquire, Associate County Attorney