

**VARIANCE OF DEVELOPMENT STANDARDS  
FINDINGS OF FACT**

Petitioner: POSEY SOLAR, LLC  
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Posey County Board of Zoning Appeals hearing date of October 14, 2021

The Posey County Board of Zoning Appeals must determine that the following criteria have been met in order to approve an application for a variance of development standards. In accordance with Indiana Code 36-7-4-918.5, the Board of Zoning Appeals shall make a determination that the following Findings of Fact have been met.

1. *The variance grant will not be injurious to the public health, safety, morals, or general welfare of the community.*

The proposed use will not substantially and permanently injure the appropriate use of the neighboring properties and will serve the public convenience and welfare because the project will not be detrimental to the public welfare, and will meet or exceed the required setbacks for the overall project perimeter. The proposed facility will not have a negative effect on public convenience, health or welfare, as the facility will comply with all operational safety and setback requirements for the overall project perimeter. The project will also provide significant economic benefits to participating property owners, local businesses during construction, and Posey County as a whole. Detailed conditions regarding development standards and provisions beyond the Posey County Zoning Ordinance (the "Ordinance") have been submitted with the development plan application.

2. *The use or value of the property adjacent to the property included in the variance will not be affected in a substantially adverse manner.*

The development plan proposes to place a Solar Energy Conversion System ("SECS") - Tier 1 facility, as defined by the Ordinance within the combined Agricultural/Forest land use designation of the Posey County Comprehensive Plan. SECS facilities are compatible with, and typically found within, agricultural areas. Further, the Posey County Comprehensive Plan states that approximately 90% of Posey County has been set aside for the combined Agricultural/Forest land use recommendation. Solar power facilities naturally reserve agricultural land for an easy transition back to a future agricultural re-use of the properties involved following the life-cycle of the SECS facility.

The proposed SECS is compliant with the solar energy, and all other agricultural district standards of the Ordinance regulations, will not substantially and permanently injure the appropriate use of the neighboring property and will serve the public convenience and welfare because the project will not be detrimental to the public welfare, and will meet or exceed the otherwise required setbacks concerning the perimeter of the project. The proposed facility will comply with all operational safety and setback requirements. The project will also provide significant economic benefits to participating property owners, local businesses during construction, and Posey County as a whole. Detailed conditions regarding development standards and provisions beyond the Ordinance and consideration to adjoining property owners have been submitted with the related development plan application. The proposed project will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district because the project is located in a rural, predominantly agricultural area of Posey County. Adequate access roads, drainage and other necessary facilities have been or are being provided for the proposed project. Adequate utilities exist to support the project. A Road Use

Agreement and Decommissioning Agreement are required under the Ordinance for approval by the County Commissioners and have been submitted with the related Development Plan application. Adequate measures have been or will be taken to provide ingress or egress for the proposed project. Additionally, the project will help to achieve agricultural preservation by providing economic benefits to farm owners and families, without permanently displacing the agricultural uses and activities in the vicinity.

3. *The strict application of the terms of the zoning ordinance will result in a practical difficulties in the use of the property.*

The development plan proposes to place a Solar Energy Conversion System (“SECS”) - Tier 1 facility, as defined by the Ordinance, within the combined Agricultural/Forest land use designation of the Posey County Comprehensive Plan. SECS facilities are compatible with, and typically found within, agricultural areas. Further, the typical standard ordinance interpretation would provide that setback requirements apply only to the perimeter of the overall project, rather than requiring side and rear setbacks (or even front, as may be interpreted for landlocked parcels) *within* the project itself, between participating properties. In this context, the requirement to provide minimum setbacks within the project itself, between participating properties, represents a practical difficulty in the use of these properties. Additionally, it should be noted that absent approval of the requested variance, more land would need to be added to the project land mass to accommodate the need for additional setbacks.

Additionally, the Posey County Comprehensive Plan recommends the subject properties for agricultural use. Since solar power facilities naturally reserve agricultural land for an easy transition back to a future agricultural re-use of the properties involved following the life-cycle of the SECS facility, requiring side and rear setbacks within the overall project does not facilitate the overall reservation of these agricultural lands for long-term agricultural use. On the contrary, since maintaining side and rear setbacks *within* the overall project area would serve no purpose whatsoever, thus further constituting a practical difficulty in the use of the property.