

IN RE: APPLICATION OF SUNN : MOUNT JOY TOWNSHIP,
1015, LLC : LANCASTER COUNTY
: :
: Special Exception Hearing

**LEGAL MEMORANDUM IN SUPPORT OF APPLICATION OF SUNN 1015, LLC FOR
A SPECIAL EXCEPTION**

SUNN 1015, LLC (“Applicant”) by and through its undersigned counsel, Jeffrey J. Malak, Esquire, of Chariton Malak, hereby submits this Legal Memorandum (“Memorandum”) in Support of Application for Special Exception (“Application”), and in support thereof, states as follows:

I. INTRODUCTION

Applicant proposes a small-scale, 3 megawatt AC solar electric energy facility (“Project”) on approximately 34.49 acres located at 1311 Schwanger Road (“Subject Property”), Mount Joy Township (“Township”), Lancaster County, Pennsylvania. The Subject Property is located in the Agricultural Zoning District. The Project is an Accessory Use to the Principal Use of the Subject Property. As to maintain the continued use of farming operations, the agreement between the landlord and tenant allows both parties the right to conduct “agrivoltaics” on the Subject Property within the Project area. “Agrivoltaics” is defined by the U.S. Department of Energy as follows: “This practice, also known as agrivoltaics or dual-use solar, involves locating agricultural production, such as crops, livestock, or pollinator habitats, underneath solar panels or between rows of solar panels.” A copy of the definition from the U.S. Department of Energy’s website is attached to this Memorandum as **Exhibit “1”** and incorporated by reference. In this Project, “agrivoltaics” involves active livestock grazing (sheep) to occur within the fenced area of the Project.

Chapter 135, §135-313(D)(1) of the Mount Joy Zoning Ordinance (“Zoning Ordinance”) provides that: “Large-scale solar energy systems shall be permitted by special exception as an accessory use to a nonresidential principal use located on the same lot or an adjacent lot owned by the applicant, except that no large-scale solar energy systems shall be permitted within the R-

1, R-2, or R-3 Zoning Districts.” Because the proposed Project will function as an Accessory Use to an existing nonresidential farm-related business located on the Subject Property, it satisfies the criteria established in §135-313(D)(1).

The evidence presented at the August 5, 2026 hearing (“Hearing”) establishes that the Project satisfies all objective criteria required for special exception approval under the Zoning Ordinance. Accordingly, the Mount Joy Township Zoning Hearing Board (“ZHB”) should grant the Application.

II. LAW AND ARGUMENT

A. STANDARD FOR GRANTING A SPECIAL EXCEPTION

The Project is expressly permitted as a special exception pursuant to Chapter 135, §135-313(D)(1) of the Zoning Ordinance. An applicant is entitled to a special exception if it meets the objective standards in the Zoning Ordinance for a special exception. *In Re Thompson*, 2006 Pa. Commw. LEXIS 147, 896 A.2d 659 (Pa. Commw. 2006).

A special exception is a use that is expressly permitted by a zoning ordinance. *Broussard v. Zoning Hearing Board of Adjustment of the City of Pittsburgh*, 2003 Pa. Commw. LEXIS 598, 831 A.2d 764 (Pa. Commw. 2003). Once an applicant for a special exception proves that its proposed use meets the objective criteria found in the zoning ordinance, it is presumed that the local legislature has already considered that such use satisfies local concerns for the general health, safety and welfare of the community and that such use comports with the intent of the zoning ordinance. *Id.*

B. APPLICANT MEETS ALL OBJECTIVE CRITERIA UNDER THE ZONING ORDINANCE

Applicant presented testimony from Matthew McGregor, Vice President, Business Development, Abundant Solar Power, Inc., and Cassidy Robinson, P.E., LaBella¹. The ZHB and the ZHB Solicitor, John Henry, Esquire, asked questions of Applicant’s representatives.

¹Ms. Robinson was admitted as an expert witness.

Testimony established that the Project satisfies all criteria of §135-173, Special Exception Uses, and is not detrimental to the health, safety and general welfare of the community.

C. OBJECTORS FAILED TO MEET BURDEN

During the Hearing, certain public comments and objections raised concerns with regard to the Project. However, the objections and concerns consisted of personal concerns and speculative assertions. The burden of showing that a proposed use is detrimental to the public's health, safety and welfare or does not meet the general requirements of a zoning ordinance is on the objector to that proposed use. *Bray v. Zoning Board of Adjustment*, 48 Pa. Commw. 523, 410 A.2d 909 (Pa. Commw. 1980). The Pennsylvania Commonwealth Court determined that although it is natural to expect the residents of the community to oppose a use, the testimony of neighbors of the property amounted to nothing more than fears concerning the possible negative impact upon the neighborhood. *Id.* Pennsylvania courts have consistently rejected speculative objections. An objector must demonstrate more than unsubstantiated concerns or vague generalities and mere speculation as to possible harm is insufficient. *Dunbar v. Zoning Hearing Board of City of Bethlehem*, 2016 Pa. Commw. LEXIS 330, 144 A.3d 219 (Pa. Commw. 2016).

D. APPLICANT AGREED TO REASONABLE CONDITIONS

During the Hearing, Applicant agreed that the ZHB may impose reasonable conditions pursuant to 53 P.S. §10912.1. The conditions must be reasonable and must find support in the record warranting the imposition of such conditions. *Sabatine v. Zoning Hearing Board of Washington Township*, 1994 Pa. Commw. LEXIS 673, 651 A.2d 649 (Pa. Cmwlth. 1994). The ZHB proposed several conditions for the Project. Applicant is agreeable to those conditions.

III. CONCLUSION

For all of the reasons set forth above, and based on the testimony and evidence presented at the Hearing, Applicant respectfully requests that the ZHB approve the Application for a special exception. In addition, Applicant would like to thank the ZHB for their time, careful consideration and service to the community.

Respectfully submitted,

/s/ Jeffrey J. Malak

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EXHIBIT “1”

[Integrated Energy Systems Office](#) > [Agrivoltaics: Solar and Agriculture Co-Location](#)

Agrivoltaics: Solar and Agriculture Co-Location

What is Agrivoltaics?

Most large, ground-mounted solar photovoltaic (PV) systems are installed on land used only for solar energy production. However, it is possible to co-locate solar systems and agriculture on the same land. This practice, also known as agrivoltaics or dual-use solar, involves locating agricultural production, such as crops, livestock, or pollinator habitats, underneath solar panels or between rows of solar panels.

Exploring methods that optimize both energy and agricultural production at co-located sites is an active area of research both at DOE and other government agencies like the U.S. Department of Agriculture. This research may offer opportunities to increase overall land productivity. Research efforts aim to quantify the potential effects on farmer revenue, ecosystems, rural communities, and [solar energy soft costs](#)—the non-hardware costs of solar energy deployment. Understanding these dynamics can help to evaluate the benefits and challenges of this growing practice.

Why is Agrivoltaics Research Important?

Agrivoltaics research provides information to enable farmers, ranchers, and other agricultural producers to determine whether they could gain value from installing solar systems while keeping their land available for agricultural purposes. Since installing a solar energy system is a long-term investment with an expected system lifetime of 25 years or more, having accurate research and analysis available will help these stakeholders make informed decisions.

Agrivoltaics research has shown that the co-location of solar PV and agriculture could provide agricultural enterprises with benefits such as diversified revenue sources and ecological advantages, while reducing land use competition and siting restrictions. Research in agrivoltaics explores how proper planning,