

**STAFF REPORT TO THE  
SURRY COUNTY PLANNING COMMISSION**

**Conditional Rezoning – REZ No. 2019-01**

**May 8, 2020**

|   |  |
|---|--|
| <b>Applicants / Owners Name &amp; Address</b> | Spring Grove Solar III, LLC<br>337 Log Canoe Circle<br>Stevensville, MD 21666  |
| <b>Property Location and Description</b>      | Parcel 26-4C (672 acres)<br>Spring Grove, Virginia 23881<br>Approximately ± 3/4 mile southwest of the<br>intersection of Hollybush Rd. & Rt. 10. |
| <b>Statistical Data</b>                       |  |
| Current Zoning District                       | A-R, Agricultural-Rural  |
| Current Use                                   | Residential  |
| <b>Surrounding Zoning / Land Uses</b>         | A-R, Agricultural-Rural; agricultural,<br>residential  |

**REZ No. 2019-01:**

Spring Grove Solar III, LLC, applicant/owner, has applied for an amendment to the Surry County Zoning Map; specifically, to amend the zoning of the subject property to M-1, General Industrial district, from its current zoning of A-R, Agricultural-Rural district.

The applicant/owner is part of the Urban Grid firm which received a Conditional Use Permit (CUP #2018-03) to develop utility-scale solar electric generating facilities with a generating capacity up to 400 megawatts (MW) and another (CUP #2018-04), to construct a utility switchyard.

Due to the first two projects under this approval (Colonial Trail West and Spring Grove 1 Solar Farms) requiring more land than expected to generate the desired amount of electric power, the applicants have acquired a 672 acre parcel adjacent to their existing property to facilitate the production of their entire approved 400 MW capacity.

The Surry County Solar Ordinance, adopted in December 2018 and after the aforementioned CUPs, disallows utility-scale solar projects in the A-R, Agricultural-Rural zoning district, only allowing such facilities to be located in M-1 (General Industrial) and M-2 (General Industrial) zoning districts with Conditional Use Permits.

**Conditional Rezoning**

This application is for a conditional rezoning, rather than a straight rezoning. A straight rezoning would simply change the zoning designation of the property to the proposed district such that all ordinance regulations for the newly designated zoning district would apply to the land, but no additional conditions would. In a conditional rezoning, some, or all, of the regulations from the underlying zoning district can be removed and/or additional conditions can be voluntarily proffered by the applicant as part of their application. In this case, both elements apply; some of the ordinance regulations are proposed to be removed and additional conditions have been proposed. The applicants signed proffers are enclosed.

Proffers must be voluntarily submitted by the applicant; the locality cannot require or recommend any unreasonable proffer of the applicant. Applicants can amend their proffers once the public hearing has begun if the amended proffers do not materially affect the overall proposal.

### **M-1, General Industrial District (Conditional) Requested**

The applicant has requested the subject property be rezoned from A-R, Agricultural-Rural to conditional M-1, General Industrial. The purpose of the district generally is to provide an environment suitable for light industrial activities that do not conflict with adjacent uses; the entirety of its purpose is found in the ordinance summary below.

#### Proposed Conditional M-1 Proffers

1. Setbacks. No building or structure shall be constructed on the Property within (a) Two Hundred (200) feet of Colonial Trail West, Route 10, or (b) Seventy-Five (75) feet of all other exterior boundary lines of the Property, except to the extent necessary for vehicular and pedestrian access ways, utility easements, gates and fencing, signage or other purposes specifically set forth in the Site Plan approval for the Property.
2. Buffer and Screening Standards. Buffers consisting of natural areas or landscaping, or combinations thereof, for the purposes of lessening the visual impact of the development of the Property on adjacent land, of a minimum width set forth in the Ordinance as supplemented by these conditions, will be provided and maintained, except to the extent necessary for vehicular and pedestrian access ways, utility easements, signage or other purposes specifically set forth in the Site Plan approval for the Property: Vegetation with a mature height exceeding twenty-five (25) feet shall not be required. Under Section 5-403B where existing or supplemental vegetation within the buffers provides full screening, opaque fencing shall not be required. Oversized, fallen, diseased or dead plant growth may be removed from such buffer areas, and if so removed, additional plantings may be added to achieve the intent of this condition.
3. Uses. The following uses shall be prohibited:  
COMMERCIAL USE TYPES  
Auction Establishment  
Motor Vehicle Outside Storage  
Motor Vehicle Repair Service Major  
Taxidermy  
Truck Stop

INDUSTRIAL USE TYPES (by Conditional Use Permit)

Recycling Center

Transfer Station

Proffers #1 and #2 are relatively straight-forward. Based upon the applicant’s Proffer #3, the uses conditionally allowed would be the following (Those proffered to be prohibited are struck-through):

Sec. 3-902. - Permitted uses.

A. The following uses are permitted by right subject to all other applicable requirements contained in this ordinance. An asterisk (\*) indicates additional, modified or more stringent standards are listed in article IV, Use and design standards, for those specific uses.

|  |  |
|--|--|
| <p><u>AGRICULTURAL USES</u><br/>Agriculture<br/>Silvicultural activities</p> <p><u>CIVIC USE TYPES</u><br/>Park and Ride Facility<br/>Parks and Recreation<br/>Post Office<br/>Public Maintenance Facility<br/>Utility Service/Minor</p> <p><u>COMMERCIAL USE TYPES</u><br/><del>Auction Establishment</del><br/>Bank<br/>Business Support Service<br/>Business or Trade School<br/>Construction Office, Temporary<br/>Equipment Sales and Rental<br/>General Service and Repair</p> | <p>Mini Warehouse<br/><del>Motor Vehicle/Outdoor Storage</del><br/><del>Motor Vehicle Repair Service/Major</del><br/>Office, General<br/><del>Taxidermy</del><br/><del>Truck Stop</del></p> <p><u>INDUSTRIAL USE TYPES</u><br/>Contractor's Yard<br/>Convenience Center<br/>Custom Manufacturing<br/>Industry, Type I<br/>Laboratory<br/>Warehousing and Distribution</p> <p><u>MISCELLANEOUS USE TYPES</u><br/>Parking Facility<br/>Reconstructed Wetland<br/>Windmill*</p> |
|--|--|

B. The following uses are allowed only by special exception from the board of zoning appeals pursuant to [section 1-304](#). An asterisk (\*) indicates additional, modified or more stringent standards are listed in article IV, Use and design standards, for those specific uses.

|  |   |
|--|---|
| <p><u>RESIDENTIAL USES</u><br/>Accessory Apartment</p> <p><u>CIVIC USE TYPES</u><br/>Day Care Center</p> | <p><u>MISCELLANEOUS USE TYPES</u><br/>Communication Tower</p> |
|--|---|

C. The following uses are allowed only by conditional use permit from the board of supervisors pursuant to section 1-501. An asterisk (\*) indicates additional, modified or more stringent standards are listed in article IV, Use and design standards, for those specific uses.

|  |  |
|--|--|
| <p><u>CIVIC USE TYPES</u><br/>Utility Service/Major</p> <p><u>COMMERCIAL USE TYPES</u><br/>Convenience Store<br/>Lumber Yard</p> | <p><u>INDUSTRIAL USE TYPES</u><br/>Industry, Type II<br/><del>Recycling Center</del><br/><del>Transfer Station</del></p> <p><u>MISCELLANEOUS USE TYPES</u><br/>Alternate Discharge Sewage System</p> |
|--|--|

**Surry County Ordinances / State Code Summary:**

**Surry County Solar Energy Ordinance**

**Section 4.12 Allowable Zoning Districts, Applicable Codes and Inspections**

**A. Allowable Zoning Districts**

- a. Solar farms shall be permitted by a Conditional Use Permit in the M-1 (General Industrial District) and M-2 (General Industrial District) zoning districts.

**Surry County Subdivision Ordinance**

**Sec. 8.1.4. - Conformance.**

In addition to the regulations found in this appendix, all land development activity within the county shall comply with the county's comprehensive plan...

**Surry County Zoning Ordinance**

**Sec. 1-107. - Relationship to comprehensive plan.**

It is the intention of the board of supervisors that this ordinance implements the planning policies and objectives for the county as reflected in the comprehensive plan...

**Virginia State Code**

**§ 15.2-2201. Definitions.**

"Conditional zoning" means, as part of classifying land within a locality into areas and districts by legislative action, the allowing of reasonable conditions governing the use of such property, such conditions being in addition to, or modification of the regulations provided for a particular zoning district or zone by the overall zoning ordinance.

**Virginia State Code**

**§ 15.2-2298. Same; additional conditions as a part of rezoning or zoning map amendment in certain high-growth localities.**

- A. ... In any such locality, notwithstanding any contrary provisions of § [15.2-2297](#), a zoning ordinance may include and provide for the voluntary proffering in writing, by the owner, of reasonable conditions, prior to a public hearing before the governing body, in addition to the regulations provided for the zoning district or zone by the ordinance, as a part of a rezoning or amendment to a zoning map, provided that (i) the rezoning itself gives rise to the need for the conditions; (ii) the conditions have a reasonable relation to the rezoning; and (iii) all conditions are in conformity with the comprehensive plan as defined in § [15.2-2223](#)...

**Surry County Subdivision Ordinance**

**Sec. 1-511. - Commission study and action.**

- A. All proposed amendments to the zoning ordinance shall be referred by the board to the commission for study and recommendation. The commission shall study proposals to determine:
  - 1. The need and justification for the change.
  - 2. When pertaining to a change in the district classification of property, the effect of the change, if any, on the property, surrounding property, and on public services and facilities. In addition, the commission shall consider the appropriateness of the property for the proposed change as related to the purposes set forth at the beginning of each district classification.
  - 3. The relationship of the proposed amendment to the purposes of the general planning program of the county, with appropriate consideration as to whether the change will further the purposes of this ordinance and the general welfare of the entire community.
  - 4. Whether the proposed amendment conforms to the general guidelines and policies contained in the county comprehensive plan.

**Surry County Subdivision Ordinance**

**Sec. 1-513. - Conditional zoning; generally.**

- C. All conditions proffered by the owner shall meet the following standards:
  - 1. The rezoning itself must give rise for the need for the conditions.
  - 2. The conditions shall have a reasonable relation to the rezoning.
  - 3. The conditions shall be in conformity with the comprehensive plan.
  - 4. The conditions must be clearly understood and enforceable.
  - 5. The conditions must not require or allow a design or standard that is less restrictive than the general provisions of this ordinance.
- E. The commission and the board shall not be obligated to accept any or all of the conditions made by the property owner.

**Surry County Subdivision Ordinance**

**M-1 General Industrial District**

**Sec. 3-901. - Purpose of the district.**

This district is intended to provide an environment suitable for industrial activities that do not create appreciable nuisances, hazards or threats to the natural environment or surrounding development. Uses that would typically be found in this district include a wide variety of light manufacturing, fabricating, processing, wholesale distributing and warehousing uses appropriately located for access to highways and providing a controlled environment within which uses are to be conducted in completely enclosed buildings. In order to preserve the land for industry, to reduce extraneous traffic, and avoid future conflicts between industry and other uses, business and service uses are limited primarily to those which will be useful to employees in the district and future residential uses are restricted.

## **Vicinity Map**



### **Staff Comments:**

Conditional zoning and proffers have been the subject of General Assembly action in recent years in efforts to protect the development community from unreasonable conditions of localities. Some of these efforts have had the unintended consequence of causing alarm on the part of localities concerned they would step into a legal trap by considering conditional rezoning; with many localities not accepting conditional rezoning at all. With certain exceptions, proffered conditions are deemed reasonable if:

1. They are voluntary proffered in writing, by the owner, prior to a public hearing before the governing body,

2. the rezoning itself gives rise to the need for the conditions;
3. the conditions have a reasonable relation to the rezoning; and
4. all conditions are in conformity with the comprehensive plan.

Even though the applicants have a specific proposed use in mind with this request, they have left a large number of potential uses in the conditional M-1 zoning requested. While these other uses may benefit the county tax base if developed, the expectation from staff following conversations with the applicants, was that there would only be three uses requested: Agriculture, Silvicultural activities, and Utility Service/Major. The applicants contend that these additional uses would open up opportunity for other industrial uses to be developed on the property in case the Conditional Use Permit for the solar project is not approved. Whether this is seen as a strength or a weakness is up to the Planning Commission and Board of Supervisors to determine.

In regard to the rezoning of the subject parcel to M-1, General Industrial, planning staff identifies the following strengths and weaknesses:

Strengths:

- The application is serving to facilitate a previously approved Conditional Use Permit.
- The subject parcel is adjacent to the existing project and associated infrastructure.
- The subject parcel is adjacent to a major thoroughfare.
- The subject parcel is adjacent to the VDOT facility and is a short distance from the Surry West Business Park; both similar industrial uses and sites.
- The parcel is not comprised of prime agricultural land currently in production.
- A future industrial use here would expand the county's tax base due to the increased value of the land and the addition of machinery and tools to the site.

Weaknesses:

- Utility-scale solar in this location could bar more desirable industry from it.

Contact William Saunders at (757) 294-5210 or [wsaunders@surrycountyva.gov](mailto:wsaunders@surrycountyva.gov) with questions.