

June 14, 2022

Zoning Board of Appeals  
Woodville Township  
321 East Main Street  
P.O. Box 121  
Woodville, OH 43469

**Re: Appeal for a Variance Pursuant to Ohio Revised Code Section 519.14 and Section 13.2-2 of the Woodville Township Zoning Resolution**

Pursuant to Section 519.14 of the Ohio Revised Code ("R.C.") and Section 13.3-2 of the Woodville Township (the "Township") Zoning Resolution (the "Resolution"), this letter serves as OEE XXXIII LLC's ("One Energy") appeal to the Woodville Township Zoning Board of Appeals ("BZA") for a variance from its Resolution.

One Energy is the lessee of Parcel No. 28-21-00-0024-00 (the "Property"), which is owned by Martin Marietta Magnesia Spec LLC ("Martin Marietta"). On April 19, 2022, One Energy submitted its application for a zoning permit to construct three wind turbines (the "Project") on the Property to directly power the Martin Marietta facility. The request for a permit was denied and is being appealed concurrently with this appeal for a variance. Under R.C. 519.15, "appeals to the board of zoning appeals may be taken by any person aggrieved...by any decision of the administrative officer." One Energy has been aggrieved by the permit denial and therefore properly requests this appeal for a variance.

For the reasons set forth in this appeal, it is lawful and appropriate for the BZA to grant a variance to find that this specific Project, a wind generation facility that makes electricity to directly power a manufacturing facility, generally, is an "other manufacturing use" in an M-2 Heavy Industrial District.

*Reservation of Rights: One Energy maintains that the Project already qualifies as both a "structure" and permitted manufacturing use under the Resolution, and that a permit should have been granted as explained in its separate appeal. This appeal for variance is in no way a concession or admission that the Project is not permitted under the Resolution or that the permit should have been denied. However, in the event the BZA chooses not to reverse the decision of the Zoning Inspector, and in the interests of expediency, One Energy requests that the BZA grant this appeal for a variance.*

**A. The BZA should grant One Energy's request for a use variance pursuant to Ohio law.**

**a. The BZA should grant One Energy a use variance under R.C. 519.14.**

Again, One Energy asserts that a permit should have been issued by the Zoning Inspector because the Project is an "other manufacturing use" in an M-2 Heavy Industrial under 4.8-1 of the Resolution. However, to the extent the BZA finds the Resolution ambiguous or unclear, One Energy requests the BZA grant a use variance to find that the Project, specifically, and a wind generation facility that makes electricity to directly power a manufacturing facility, generally, is explicitly permitted as an "other manufacturing use" in an M-2 Heavy Industrial District and, therefore, should be allowed to proceed.

Under R.C. 519.14(B) the "township board of zoning appeals may authorize, upon appeal, in specific cases, such variance from the terms of the zoning resolution as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the resolution will result in unnecessary hardship, and so that the spirit of the resolution shall be observed and substantial justice done."

First, granting a variance to the Resolution so that the Project is a permitted "other manufacturing" use will not be "contrary to the public interest." The Project will benefit the public interest. Martin Marietta is a major employer and taxpayer in the community. The Project is a 20-year commitment by Martin Marietta and will enable Martin Marietta to lower its energy costs and become more competitive in the global market. Finally, the Project will offer a \$5,000 per turbine per year scholarship to students in the community pursuing STEM degrees. The Project will not create any condition that is more objectionable than existing and permitted uses of the Property.

Second, in the absence of a variance, the Resolution will result in "unnecessary hardship." A zoning regulation imposes an unnecessary hardship "where the hardship is unique to a particular owner's property" and "the only permitted uses are not economically feasible." *Johnson's Island Inv.. Grp., L.L.C. v. Marblehead Bd. of Zoning Appeals*, 2012-Ohio-1667, ¶ 8 (6th Dist.) (citing *Fox v. Johnson*, 28 Ohio App.2d 175, 181, 275 N.E.2d 637 (7th Dist.1971)).

Martin Marietta needs a significant amount of low cost clean energy. The hardship imposed by the regulation here (in the event One Energy's appeal is unsuccessful) is unique to the particular owner's property in this case. Martin Marietta's property is uniquely situated, and was purchased prior to enactment of the Resolution and prior to the feasibility of on-site wind energy at this scale. It also has the practical effect of prohibiting economical feasible uses thereof. The specific location of the turbines sits on land that, due to the subsurface, is likely unable to have another beneficial use. Because it is an active mine and large portions of it are capped areas with lime tailings beneath, there are significant limitations to what can be constructed on those areas as compared to other property situated in the Heavy Industrial District within the township. It is not a matter of the wind turbines being the best economic use for the land; but rather, at least given present technology, the only such use. Other typical industrial uses of the property are not economically feasible because of the subsurface and the proximity to an open surface mine.

Third, granting the variance will ensure that "substantial justice" is done. The "other manufacturing use" category is a broad category. Manufacturing is defined in the Resolution as "the making of anything by agency or process." A variance granted in the manner requested ensures that a plant that makes electric energy for use by Martin Marietta falls into this incredibly broad category and is treated as intended by the Resolution.

- b. The Applicant is entitled to a variance under the Woodville Zoning Resolution standard for variances set forth in 13.2-2.

One Energy submits that its entitlement to a variance under the Ohio Revised Code is clear. But the same is true under the Resolution. Section 13.2-2 authorizes an appeal for a variance where an extraordinary situation causes a strict application of the terms of this Zoning Resolution to "result in peculiar and exceptional practical difficulties or undue hardship upon the owner. In that instance the Resolution authorizes "a variance from such strict application to relieve such difficulties or hardship provided said relief may be granted without substantial detriment to the public good and without substantially impairing the intent of the Resolution."

The application of the ordinance in the manner it has been applied, at least to date, creates exceptional practical difficulty. Martin Marietta has been deprived of its ability to lower its electricity costs by installing on-site generation and its ability to use and enjoy its land. In addition, the strict application has resulted in unnecessary/undue hardship, for the reasons described above. Finally, relief may be granted in this instance without substantial detriment to the public good or impairing the intent of the Resolution. The public good will be benefited by the Project's positive economic impact to Martin Marietta and the community. In addition, the intent of the Resolution will not be impaired. The Resolution provides that "other manufacturing uses" are permitted in the Heavy Industrial District, which is an incredibly broad standard. It is in line with the intent of the Resolution to find that the Project fits within this broad category.

Further, even if some may find a renewable, clean energy project that benefits the community's largest employer objectionable, Section 4.8-1 specifically notes—as a matter of practicality—that permitted industrial/manufacturing “may be objectionable.” Indeed, the BZA can even approve applications for development that is “especially noxious” because of “noise, odor, dust, etc.” Here, however, the Project will produce no odors, minimal noise, and minimal dust only during construction. It will not be “especially noxious.” In other words, this type of manufacturing use is well within the intent of the types of uses that can exist in a Heavy Industrial District. Indeed, it is cleaner and quieter than other uses typically allowed. To take this further:

- Unlike fat rendering, a permitted use, the Project emits no odors.
- Unlike turpentine manufacturing, a permitted use, the Project emits no fumes or gases.
- Unlike cinder block manufacturing, a permitted use, the Project emits no dust.
- Unlike asphalt mixing plants, a permitted use, the Project emits no smoke.
- Unlike a stone mill, a permitted use, the Project produces comparatively little noise.
- Unlike metal stamping, a permitted use, the Project produces no noticeable vibrations.

The remaining requirements for a variance are readily satisfied. Section 13.2-2 of the Resolution specifies certain, additional conditions necessary to support a variance. First, the BZA must find “the special circumstances or conditions applying to the building or land in question are peculiar to such lot or property and do not apply generally to other land or buildings in the vicinity.” Second, it must find “the granting of the application is necessary for the preservation and enjoyment of substantial property rights and not merely to serve as a convenience to the applicant.” Finally, the BZA must find “the authorizing of the variance will not impair an adequate supply of light and air to adjacent property; not unreasonably increase the congestion in public streets; nor increase the danger of fire or imperil the public safety; nor unreasonably diminish or impair established property values within the surrounding areas; nor in any way impair the health, safety, convenience, or general welfare of the inhabitants of the Township.”

All of these conditions clearly exist here. Again, as explained above, the subsurface of this land is unique and it is located in close proximity to a cemetery and an open quarry so it is extremely difficult to develop. Further, the Project is in no way a matter of convenience. This Project is economically important to Martin Marietta and is an exercise of its rights of use and enjoyment of its land. And, the Project will not impair the light or air available to adjacent property. It will not unreasonably increase congestion to public streets as traffic will be minimal during operation of the facility and will be controlled and brief during construction. The project will also not increase the danger of fire or imperil the public safety. Project construction and operation will be performed by highly trained individuals and local fire and safety personnel will be trained regarding the Project and informed of progress of construction. This Project will also not impair property values in the area nor will it impair the health, safety, convenience, or general welfare of the community.

Given the foregoing, One Energy respectfully requests the BZA grant the appeal for a variance allowing the Project to be located on Martin Marietta's property as specified herein.

Respectfully Submitted,



Jereme Kent  
CEO

jeremekent@oneenergyllc.com

cc: Woodville Township Board of Township Trustees  
Woodville Township Zoning Inspector

Consent and acknowledgement of landowner:

Martin Marietta Magnesia Spec LLC

By: 

Wade Weaver, General Manager