

sIN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
(11121 Pfeffers Road)		
11 th Election District	*	OFFICE OF
5 th Council District		
11121 Pfeffers LLC	*	ADMINISTRATIVE HEARINGS
<i>Legal Owner</i>		
Petitioner	*	FOR BALTIMORE COUNTY
	*	Case No. 2016-0086-X

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Special Exception filed for property located at 11121 Pfeffers Road. The Petition was filed on behalf of the legal owner of the subject property, 11121 Pfeffers LLC. The Special Exception petition seeks relief pursuant to §1A04.2.B.12 of the Baltimore County Zoning Regulations (B.C.Z.R) to approve a solar panel array field as a “public utility use”. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioner’s Exhibit No. 1.

Appearing in support of the request was Aaron Menger and Brian Childress, whose firm prepared the site plan. Patricia A. Malone, Esq. represented the Petitioner. The Petition was advertised and posted as required by the B.C.Z.R. Several citizens, whose names are listed on the sign-in sheets, attended the hearing to obtain additional information regarding the requests.

Substantive Zoning Advisory Committee (ZAC) comments were received from the Bureau of Development Plans Review (DPR) and the Department of Planning (DOP). Those agencies did not oppose the request, but provided suggested conditions for inclusion in the final Order.

The subject property is approximately 31.59 acres and is zoned RC-5. The site is improved with a single-family dwelling, and has a large area currently being used for agricultural purposes.

Petitioner proposes to lease an 11 acre portion of the site to be used for an array of solar panel devices. As shown on the plan, the solar panels will be situated in the southern portion of the site, near to where Interstate 95 adjoins the property. The RC-5 zone permits by special exception a “public utility” use, although that term is not defined in the Regulations.

Aaron Mengle, employed by SGC Power, LLC (the Lessee) described the components which will be used in the project, which he estimated will provide on a yearly basis 2.2 megawatts of electricity; i.e., roughly the amount of energy which is used by about 200 homes every year. The energy produced by the solar panels will be transferred to the electric “grid” and ultimately sold to consumers by energy suppliers, as shown on Petitioner’s Exhibit 6. Though his company will lease approximately 11 acres of the site, Mr. Mengle estimated the solar panels and necessary equipment will occupy roughly 6 acres of the property. Mr. Mengle opined that B.C.Z.R. §502.1 (concerning special exceptions) was satisfied, and that the use would have little to no impact upon surrounding properties.

The only interpretive difficulty in the case arises because the B.C.Z.R. does not define what constitutes a “public utility,” and by all accounts that term is harder to apply in light of the emergence of wind, solar and other alternative energy sources. Industry literature and the Solar Energy Industries Association, the leading trade group for solar developers, recognize that “utility-scale” solar (in contrast to residential-scale (rooftop) systems) is defined as greater than 1 megawatt. In this case the solar panels are projected to generate 2.2 megawatts, which under prevailing industry standards would constitute “utility-scale solar.” For similar reasons, I believe the proposed use is properly characterized under the Regulations as a “public utility.”

Special Exception Law in Maryland

Under Maryland law, a special exception use (in this case, a public utility) enjoys a presumption

that it is in the interest of the general welfare, and therefore, valid. Schultz v. Pritts, 291 Md. 1 (1981). The Schultz standard was revisited in People’s Counsel v. Loyola College, 406 Md. 54 (2008), where the court emphasized that a special exception is properly denied only when there are facts and circumstances showing that the adverse impacts of the use at the particular location in question would be above and beyond those inherently associated with the special exception use. No evidence was presented in this case regarding that issue, and the petition will therefore be granted.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 16th day of December, 2015, that the Petition for Special Exception to approve a solar panel array field as a “public utility use” be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at its own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioner would be required to return the subject property to its original condition.
2. The special exception area shall be restricted to the 11 acre tract shown on the site plan, and all public utility uses must be restricted to that area.
3. Petitioner must comply with the ZAC comments of DOP and DPR, both of which are attached hereto and incorporated herein.
4. No lighting shall be permitted on the special exception area.
5. No signage (other than customary “No Trespassing” signs) shall be permitted in connection with the public utility use.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

JEB/sln

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County