

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
(9155 Old Court Road)		
2 nd Election District	*	OFFICE OF
4 th Council District		
Delores White-Rose	*	ADMINISTRATIVE HEARINGS
<i>Legal Owner</i>		
Forefront Power, LLC	*	FOR BALTIMORE COUNTY
<i>Lessee</i>		
Petitioners	*	Case No. 2018-0078-X

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of a Petition for Special Exception filed on behalf of Delores White-Rose, legal owner and Forefront Power, LLC, lessee (“Petitioners”). The Special Exception was filed pursuant to the Baltimore County Zoning Regulations (“B.C.Z.R.”) to use the property for a 1,980 kilowatt (kW) A/C ground-mounted solar facility.

Kelsey Crane, Brian Maliszewski, Delores White-Rose, Shana Beiger and professional engineer Andrew Miller appeared in support of the petition. Lawrence E. Schmidt, Esq. represented the Petitioners. Cathy Wolfson, of the Greater Patapsco Community Association, attended the hearing and opposed the request. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP), the Bureau of Development Plans Review (DPR) the State Highway Administration (SHA), and Department of Environmental Protection and Sustainability (DEPS). None of the reviewing agencies opposed the requests.

The subject property is approximately 16.75 acres and is zoned RC-2. The property is unimproved and is situated along Old Court Road in the Granite area. Forefront proposes to install on the property 6,822 solar panels which would be enclosed within a fence. The enclosure area

would be approximately 9.81 acres in size. The panels would be 6-8 feet in height and would be set back a minimum of 50 ft. from any property boundary.

Special Exception

Under Maryland law, a special exception use 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 *Attar v. DMS Tollgate, LLC*, 451 Md. 272 (2017), where the court of appeals discussed the nature of the evidentiary presumption in special exception cases. The court again emphasized 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.

Professional engineer Andrew Miller testified via proffer the facility would be unmanned and would generate no noise or traffic. While not required under County law, Forefront undertook a “glare analysis” and determined the project would satisfy Federal Aviation Administration (FAA) standards. Those standards are designed to ensure a pilot’s vision is not obscured by glare, and while they are not applicable in this case it is helpful to know the project would satisfy those rigorous standards. Mr. Miller opined Petitioner satisfied the requirements of B.C.Z.R. §502.1.

A landscape plan has not yet been approved for this project, although Petitioners submitted a proposed plan (Ex. 2) which reflects that substantial vegetative buffers would be installed around the periphery of the site, and Mr. Miller did not believe the solar panels would in fact be visible to motorists on Old Court Road. A chain-link fence will also enclose the panels, and Forefront representatives indicated they would be amenable to installing slats or sheeting on the fence to soften its appearance.

Ms. Wolfson stated her association met and voted to object to the proposal, based solely upon the anticipated (negative) visual impact the project will have on the community. Solar panels certainly do not improve the view shed in a rural area; a forest or open field would have more aesthetic appeal. But the County Council recently enacted legislation (Bill 37-17) which permits such facilities in the RC zones, and the petition cannot be denied based on aesthetics. In special exception parlance, the lack of visual appeal is an inherent negative impact of the use, and the Council is presumed to have been aware of this when it enacted the legislation. Without proof that the use would have non-inherent impacts at this location I believe the petition should be granted.

THEREFORE, IT IS ORDERED this 7th day of **December, 2017**, by this Administrative Law Judge, that the Petition for Special Exception to use the property for a 1,980 kilowatt (kW) A/C ground-mounted solar facility in accordance with Section 4E-102 of Baltimore County Council Bill No. 37-17, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their 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, Petitioners would be required to return the subject property to its original condition.
2. Petitioners must obtain from SHA an entrance or access permit.
3. Petitioners must comply with the ZAC comments of the DOP, DPR & DEPS, copies of which are attached.

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

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/sln