

<b>IN RE: PETITIONS FOR SPECIAL HEARING, *</b>	BEFORE THE
<b>SPECIAL EXCEPTION &amp; VARIANCE</b>	OFFICE OF
<b>(11956 Philadelphia Road) *</b>	ADMINISTRATIVE HEARINGS
11 <sup>th</sup> Election District	
6 <sup>th</sup> Council District *	FOR BALTIMORE COUNTY
11956 Philadelphia Road, LLC	
<i>Legal Owner</i> *	<b>Case No. 2018-0095-SPHXA</b>
Turning Point Energy, LLC	
<i>Lessee</i> *	
Petitioners	

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County for consideration of Petitions for Special Hearing, Special Exception and Variance filed on behalf of 11956 Philadelphia Road, LLC, legal owner, and Turning Point Energy, LLC, lessee (“Petitioners”).

The Petition for Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R”) as follows: (1) asking the Administrative Law Judge (ALJ) if the requirement for a 50 ft. setback applies to an internal property line; (2) to approve shared access for an existing farm and a proposed solar facility; and (3) to approve use of an easement to connect special exception areas. In the alternative, a Petition for Variance seeks to permit a 20 ft. setback in lieu of the required 50 ft. Finally, a Petition for Special Exception was filed to permit a solar facility in the RC 5 zone.

Appearing at the public hearing in support of the requests was Mitch Kellman. Jennifer R. Busse, Esq. represented the lessee and Howard Alderman, Esq. represented the legal owner. Doug Behr, of the Greater Kingsville Civic Association, attended the hearing to obtain additional information regarding the requests. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Substantive Zoning Advisory Committee (ZAC)

comments were submitted by the Department of Planning (DOP), the Bureau of Development Plans Review (DPR) and the Department of Environmental Protection and Sustainability (DEPS). None of the reviewing agencies opposed the requests.

The subject property adjoins Interstate 95 to the north and Philadelphia Road (Md. Route 7) to the south. The site is approximately 23.55 acres in size and is zoned RC-5. The property is improved with a single-family dwelling and agricultural outbuildings (which constitute a “farm” under the B.C.Z.R.), which will remain on site. Petitioners propose to operate a solar facility on approximately 16 acres of the site, which is bisected by high-voltage power lines owned by Baltimore Gas & Electric (BGE).

### **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.

Mr. Kellman testified Petitioners satisfy the requirements of B.C.Z.R. §502.1, and he believes this is an “ideal location” for the facility. He noted the site is adjacent to I-95 and a BGE electric substation, and he believed the landscaping proposed would screen the solar facility from view of motorists and/or pedestrians. This appears to be the first hearing seeking approval for a solar facility in the 6<sup>th</sup> Council district, and Mr. Kellman confirmed the property is not subject to an agricultural or preservation easement. He also advised none of the roadways adjoining the site

are designated as scenic. Based on this testimony and the exhibits presented, and in the absence of any evidence to the contrary, the petition for special exception will be granted.

### **Special Hearing**

The petition for special hearing primarily concerns whether the 50 ft. “tract boundary” setback requirement found in B.C.Z.R. §4E-104 applies to an internal lot line at the site. As Mr. Kellman explained, the subject property is bisected by a strip of land owned in fee simple by BGE, on which are located high-voltage power lines and support structures. BGE will grant to Petitioners an easement so they may travel across this strip while constructing and/or operating the solar facility. In these circumstances, the bisecting strip/road does not create separate parcels for development and zoning purposes. *Freeland Comm. Ass’n v. HZ Props., LLC*, Ct. Special Appeals (9/16/2016, unreported). As such, the internal property lines created by the BGE strip are not considered “tract boundaries,” and a variance is not required to locate the solar panels 20 feet from these lines.

The other aspect of the special hearing concerns the use of a shared access driveway. The driveway, which is shown on the redlined site plan (Ex. 3), would be used by the existing resident and the solar facility. Nothing in the law prohibits such an arrangement, and with the exception of construction traffic accompanying the installation of the panels there will be little or no vehicular traffic using the drive to access the solar facility. As such this aspect of the petition for special hearing will also be granted.

THEREFORE, IT IS ORDERED this **29th** day of **December, 2017**, by this Administrative Law Judge, that the Petition for Special Hearing filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”): (1) to determine the requirement for a 50 ft. setback does not apply to an internal property line; (2) to approve shared access for an existing farm and a proposed

solar facility; and (3) to approve use of an easement to connect special exception areas, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Special Exception to permit a solar facility in the RC 5 zone, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance to permit a 20 ft. setback in lieu of the required 50 ft., be and is hereby DISMISSED WITHOUT PREJUDICE..

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. No lighting or signage (with respect to the solar facility) shall be installed at the property.
3. No trees shall be removed from the site in connection with the construction and/or operation of the solar facility.
4. Petitioners must submit for approval by Baltimore County (with a copy to the Greater Kingsville Civic Association, Inc.) a landscape plan for the site.
5. Petitioners must comply with the ZAC comment submitted by the DEPS, a copy of which is attached hereto.

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

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County

JEB:sln