

**IN RE: PETITIONS FOR SPECIAL HEARING *
AND SPECIAL EXCEPTION**

(9203 Dogwood Road) *
2nd Election District *
4th Council District *
Margaret E. Neubauer, et al *
Legal Owners *
Solar Smart, LLC *
Lessee *

Petitioners *

BEFORE THE
OFFICE OF
ADMINISTRATIVE HEARINGS
FOR BALTIMORE COUNTY
Case No. 2018-0123-SPHX

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Special Exception filed on behalf of Margaret E. Neubauer, et al, legal owners and Solar Smart, LLC, lessee (“Petitioners”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R”) to approve an amendment to the Minor Subdivision No. 06072M, Lot 2, to allow the development of a Solar Facility. A Petition for Special Exception was filed to allow a Solar Facility on property zoned RC 2.

Nicholas Linehan, Donald Zimmerman, Elizabeth Neubauer, Jane Culver and Ann Albrecht attended the public hearing in support of the requests. Timothy Kotroco, Esq. represented the Petitioners. Three citizens attended the hearing to obtain additional information in reference to the requests. The Petition was advertised as required by the Baltimore County Zoning Regulations. Substantive Zoning Advisory Committee (ZAC) comments were received from the Bureau of Development Plans Review (DPR), Department of Planning (DOP) and the Department of Environmental Protection and Sustainability (DEPS). None of the reviewing agencies opposed the requests.

The subject property is approximately 25.268 acres in size and is zoned RC 2. The

proposed solar facility would occupy approximately 5 acres of land and would generate 0.9 MW of electricity. The lessee explained it would install approximately 3,000 fixed solar panels at the site, and would conduct routine maintenance twice yearly. The lessee has entered into a 20 year lease for the site, with an option to renew.

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. Linehan, a landscape architect accepted as an expert testified Petitioners satisfied the requirements of B.C.Z.R. §502.1 governing special exceptions. He noted the site was well screened by existing, mature trees and vegetation, and he also described the landscaping proposed which would provide additional screening. In light of this testimony, and in the absence of any evidence to the contrary, the petition for special exception will be granted.

Concerning the ZAC comment submitted by DPR, the undersigned respectfully disagrees that “solar panels are considered a utility.” Indeed, in a 2015 zoning case the undersigned made just such a determination, which was ultimately reversed by the circuit court. Bill 37-17 was enacted at least in part in response to this precedent. The landscaping requirements for a solar facility are not specified in the Landscape Manual, which is understandable given the legislation permitting the use was enacted less than a year ago. In fact, Bill 37-17 itself specifies that a “landscaping buffer shall

be provided around the perimeter” of a solar facility that is visible from a dwelling or public street. Petitioners are aware of this requirement and the schematic landscape plan submitted at the hearing (Petitioners #__) shows plantings in that area.

THEREFORE, IT IS ORDERED this 26th day of **January 2018**, by this Administrative Law Judge, that the Petition for Special Hearing to approve an amendment to the Minor Subdivision No. 06072M, Lot 2, to allow the development of a Solar Facility thereon, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Special Exception to allow a Solar Facility on property zoned RC 2, 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. For so long as the solar facility is operational and/or solar panels remain on the subject property no dwelling (s) or improvements of any kind other than these shown on the site plan admitted as Exhibit 1 shall be permitted on Lot 2 of the Minor Subdivision Plan.
3. Petitioners must comply with the ZAC comment submitted by DEPS, a copy of which is attached hereto and incorporated herein.
4. Prior to issuance of permits Petitioners must submit for approval by Baltimore County a landscape plan for the site.

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