

<b>IN RE: PETITIONS FOR SPECIAL HEARING *</b>		BEFORE THE
<b>AND SPECIAL EXCEPTION</b>		
(10021 Old Court Road)	*	OFFICE OF
2 <sup>nd</sup> Election District		
4 <sup>th</sup> Council District	*	ADMINISTRATIVE HEARINGS
Margaret E. Neubauer, et al		
<i>Legal Owners</i>	*	FOR BALTIMORE COUNTY
Solar Smart, LLC		
<i>Lessee</i>	*	<b>Case No. 2018-0124-SPHX</b>
Petitioners	*	

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**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 Minor Subdivision No. 06059M, Lot 1, 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. Four citizens attended the hearing to obtain additional information regarding 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), State Highway Administration (SHA) and the Department of Environmental Protection and Sustainability (DEPS).

The subject property (known as Lot 1) is approximately 62.386 acres in size and is zoned RC 2. Petitioners propose to construct a solar facility on approximately 10 acres of the subject

property, as delineated on the site plan admitted as Exhibit 1. A solar facility is permitted by special exception in the RC 2 zone.

### 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 indicated the Lessee would install approximately 6,000 solar panels on two separate “pods” at the site, which would generate approximately 1.98 MW of electricity. He described the site plan in detail and discussed the landscaping proposed for the project, which would for the most part screen the solar facility from adjacent homes and motorists on Old Court Road, which is a scenic route. 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 2016 zoning case (No. 2016-0335-SPHX) 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 (Pet. Ex. No. 2) shows plantings in those areas. There was a reference in the DOP ZAC comment to “interior contour screening” at the site. Mr. Zimmerman, an engineer employed by the Lessee, indicated that vegetation and shrubs cannot be planted among the solar panel arrays, since it would require frequent maintenance and could also interfere with or shade the solar panels. This would be antithetical to the goal of such a facility, and Petitioners shall not be required to provide landscaping inside the chain link fencing which will enclose the solar panels.

THEREFORE, IT IS ORDERED this 26<sup>th</sup> day of **January 2018**, by this Administrative Law Judge, that the Petition for Special Hearing to approve an amendment to Minor Subdivision No. 06059M, Lot 1, 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 those shown on the site plan admitted as Exhibit 1 shall be

permitted on Lot 1 of Minor Subdivision Plan No. 06059M.

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 providing for a buffer around the perimeter of any portion of the solar facility that is visible from a dwelling or public street.
5. The chain link fence proposed for the site shall have black vinyl coating on all portions which are visible from a dwelling or public roadway.

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