

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
(632 Freeland Road)		
7 th Election District	*	OFFICE OF
3 rd Council District		
Charles Gary Atkinson &	*	ADMINISTRATIVE HEARINGS
Stephen Gordon Atkinson		
<i>Legal Owners</i>	*	FOR BALTIMORE COUNTY
OneEnergy Development, LLC		
<i>Lessee</i>	*	Case No. 2018-0194-X
Petitioners		
* * * * *		

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 Charles Gary Atkinson and Stephen Gordon Atkinson, legal owners and OneEnergy Development, LLC, lessee (“Petitioners”). The petition was filed pursuant to the Baltimore County Zoning Regulations (“BCZR”) to approve a Solar Facility on a property zoned RC-2.

Eric Anderson, Steve Pieper, David Wagner, John Douglas, Marni Carroll, Kate Larkin, Matthew Durette, Henry Fawell and Mitch Kellman appeared in support of the petition. Adam M. Rosenblatt, Esq. and Patsy Malone, Esq. represented the Petitioners. Several citizens attended the hearing and opposed the request. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Environmental Protection and Sustainability (DEPS), the Bureau of Development Plans Review (DPR) and the Department of Planning (DOP).

The subject property is approximately 99.46 acres in size and is zoned RC-2. The rural property is located in the Freeland area and adjoins Oakland and Freeland Roads, both of which are Baltimore County scenic routes. The property is presently farmed, and Charles Atkinson indicated in correspondence (Pet. Exhibit 3) his family has owned the farm since 1810. The owners have leased a portion of the property for a period of 35 years (which includes an initial 25 year

term and a 10-year renewal option) to OneEnergy which proposes to use approximately 19 acres of the site for a solar facility. The balance of the property would continue to be farmed.

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.

Mitch Kellman, a zoning and land use planner accepted as an expert, opined the proposal was in compliance with B.C.Z.R. §502.1 and the case law interpreting that provision. While the Protestants object to using prime agricultural land in rural areas for solar facilities, the law specifically permits the use in these areas. As such, I do not believe the evidence and testimony presented by Protestants can overcome the presumption in favor of the special exception use.

One or more of the Protestants expressed concern with streams on the property, along with the potential that some of the tributaries could be classified as sensitive due to trout populations. No evidence was presented as to whether or not there are Class III or otherwise sensitive streams on the subject property. The DEPS has noted in its ZAC comment, a copy of which is attached hereto, that Petitioners will be required to comply with State-mandated stormwater management requirements specific to solar facilities. As such, I am confident that agency will impose whatever conditions may be necessary to protect nearby water resources.

THEREFORE, IT IS ORDERED this 3rd day of **April, 2018**, by this Administrative Law Judge, that the Petition for Special Exception to use the property for a Solar Facility 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 comply with the ZAC comments submitted by the DOP, DEPS and DPR, copies of which are attached hereto and incorporated herein.
3. All solar panels installed on the subject property must be confined to an area no larger than 10 acres situated within the overall 18.929 Ac. special exception area shown on the site plan.

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