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| IN RE: PETITION FOR SPECIAL EXCEPTION | * | BEFORE THE |
| (20920 Old York Road) | | |
| 7 th Election District | * | OFFICE OF |
| 3 rd Council District | | |
| The Farm, LLC | * | ADMINISTRATIVE HEARINGS |
| <i>Legal Owner</i> | | |
| Forefront Power, LLC | * | FOR BALTIMORE COUNTY |
| <i>Lessee</i> | | |
| Petitioners | * | Case No. 2019-0057-X |

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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 The Farm, LLC, legal owner and Forefront Power, LLC, lessee (“Petitioners”). The special exception petition was filed pursuant to the Baltimore County Zoning Regulations (“BCZR”) to approve a solar facility.

Professional engineer Andrew Brown and landscape architect Stacy McArthur appeared in support of the petition. Lawrence E. Schmidt, Esq. represented the Petitioners. Two interested 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 Department of Planning (“DOP”) and the Bureau of Development Plans Review (“DPR”). None of the reviewing agencies opposed the request.

This case involves a 52.4 acre tract of land along a scenic route in northern Baltimore County. The subject property is zoned RC-2 and a 19.9 acre portion of the site is designated for the special exception use; the balance of the site is planted with crops and is farmed. The proposed solar panels would occupy approximately 6 acres of the special exception area, and the facility would generate 0.825 megawatts alternating current (AC) of electricity.

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.

Ms. McArthur, a landscape architect accepted as an expert, opined Petitioners satisfied all requirements set forth in BCZR Section 502.1 and BCZR Article 4F concerning solar facilities. The witness testified the forest buffer was delineated and shown on the site plan and that none of the proposed solar panels would be in an environmentally-sensitive area. Ms. McArthur also testified there was no flood plain on site and that the large areas of forest at the south of the site would be protected by a forest conservation easement.

Based on this testimony and the exhibits submitted at the hearing Petitioners have established a *prima facie* case entitling them to the special exception. I do not believe the testimony from Protestants successfully rebutted this *prima facie* case. James Baseman, who lives about one mile from the site, testified that solar facilities should not be in the RC 2 zones, and would be much more appropriate in a commercial area. That may be the case, but the County Council decided otherwise and Bill 37-17 expressly permits solar facilities in RC-2 zones and along scenic routes. The bottom line is the Protestants' objections in this case are virtually identical to those expressed by opponents in all of the prior zoning cases proposing solar facilities

in northern Baltimore County. I believe this underscores that these are detrimental impacts inherent in the operation of a large solar facility, and the petition cannot be denied on that basis. *Montgomery County v. Butler*, 417 Md. 271, 276-77 (2010) (opponent must show “non-inherent adverse effect” to “undercut the presumption of compatibility enjoyed by a proposed special exception use”).

THEREFORE, IT IS ORDERED this 27th day of **November, 2018**, by this Administrative Law Judge, that the Petition for Special Exception 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 DEPS and DOP, copies of which are attached hereto and made a part hereof.
3. No barbed wire fencing shall be permitted in connection with the solar facility.

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