

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
(21138 Old York Road)		
7 th Election District	*	OFFICE OF
3 rd Council District		
Steven Wilson	*	ADMINISTRATIVE HEARINGS
<i>Legal Owner</i>		
Parkton York Solar, LLC	*	FOR BALTIMORE COUNTY
<i>Lessee</i>		
Petitioners	*	Case No. 2019-0138-X

* * * * *

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 Steven Wilson, legal owner, and Parkton York Solar, LLC, lessee (“Petitioners”). The special exception petition was filed pursuant to Sections 502.1 and 4F-104 the Baltimore County Zoning Regulations (“BCZR”) to approve a solar facility.

Steven Wilson, Greg Werner, and professional engineer Jeff Smith appeared in support of the petition. Benjamin S. Wechsler, Esq. represented the lessee. Several members of the community 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”), the Bureau of Development Plans Review (“DPR”) and the State Highway Administration (“SHA”). None of the reviewing agencies oppose the request.

In the aggregate, the subject property is approximately 40 acres (with parcels on both sides of Old York Road) and is zoned RC-2. The property is in active agriculture and the owner (Steven Wilson) testified he was born and raised on this farm and that his family have been farming in this area since the 1930s. The parcel on the south side of Old York Road is approximately 19 acres in size, while the proposed solar panels would occupy approximately 9.38 acres.

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.

Petitioners presented testimony from Greg Werner, an employee of Nexamp, the lessee which would operate the facility. Ms. Werner testified at length concerning the proposed facility and described in detail the site improvements and landscaping planned for the site. Professional engineer Jeff Smith also testified and explained the proposed improvements shown on the site plan. Mr. Smith also addressed how storm water management would be handled at this site and he emphasized that, as required by state and county law, there would be no increase in storm water runoff as a result of the solar panels. He opined Petitioners satisfied all requirements for special exception relief.

Although community members identified certain concerns including visibility of the site from the scenic route and the potential for interfering with and discouraging agricultural activity in the area, these are the same concerns which have been identified in nearly every contested zoning case involving solar facilities. As such, I believe they are inherent in the operation of such a facility regardless of its location in the rural portions of the County. Such testimony cannot, pursuant to *Schultz* and *Attar*, successfully rebut Petitioners *prima facie* case outlined above.

The DOP submitted thorough and detailed ZAC comment(s) concerning this project, and in the most recent correspondence indicated it no longer opposes the request. Counsel indicated the site plan was revised to address many of the concerns raised by the DOP, and other conditions are included below as suggested by that agency. The only condition suggested by that agency which is not included below concerns the number of years the solar facility may operate before it is decommissioned. The solar facilities law (Council Bill 37-17) does not contain any time limitations on the operations of these facilities and Petitioner presented testimony that the panels have a useful life in excess of 25 years. Special exceptions, like variances, “run with the land,” which means they are transferrable to a subsequent owner and are extinguished only by request of the property owner or by operation of law. *See, e.g., Upper Minnetonka Yacht Club v. City of Shorewood*, 770 N.W. 2d 184, 187 (Minn. 2009) (special exception or conditional use permit is a “protected property right [that] runs with the land”).

THEREFORE, IT IS ORDERED this **14th** day of **January, 2019**, by this Administrative Law Judge, that the Petition for Special Exception seeking relief from Sections 502.1 and 4F-104 of the Baltimore County Zoning Regulations (“BCZR”), 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, a copy of which is attached hereto and made a part hereof.

3. No barbed wire fencing shall be permitted in connection with the solar facility. The fence enclosing the panels shall be black vinyl/coated chain link fence.
4. Prior to issuance of permits, Petitioners must submit for approval by the Baltimore County Landscape Architect a landscape plan for the site.
5. The special exception area shall include only the property within the proposed fenced enclosure, i.e., approximately 9.38 acres.
6. No lighting or signage 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/dlw