

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
(15009 Hanover Pike)		
4 th Election District	*	OFFICE OF
3 rd Council District		
Shafi Javid MD	*	ADMINISTRATIVE HEARINGS
<i>Legal Owner</i>		
ICFTS MD Solar, LLC	*	FOR BALTIMORE COUNTY
<i>Lessee</i>		
Petitioners	*	Case No. 2019-0141-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 Shafi Javid, MD, legal owner and ICFTS MD Solar, LLC, lessee (“Petitioners”). The special exception petition was filed pursuant to Sections 4F-101 *et. seq.* of the Baltimore County Zoning Regulations (“BCZR”) to approve a solar facility.

Jodi Hunt, Kerri Neary, Stephanie Sienkowski and Mitch Kellman appeared in support of the petition. Timothy M. Kotroco, Esq. represented the Petitioners. Several neighbors 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”), the State Highway Administration (“SHA”) and the Department of Planning (“DOP”).

The subject property is 41.38 acres in size and split-zoned RC-2 and BM-CR. The property is unimproved and has been used for agricultural purposes. Farming will continue on the portions of the property outside of the fenced solar panel enclosures shown on the site plan. Pets.’

Ex. 1A.

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.

Counsel proffered the testimony of Mitchell Kellman and Jodi Hunt, and resumes were submitted for both witnesses. Pets.' Ex. Nos. 2 & 3. Petitioners described the site plan and the proposed solar facility, which would be situated on approximately 12 acres of the 41.38 acre parcel. The solar panels will be less than 7 ft. in height and will rotate to track the movement of the sun. Petitioners noted the SHA has already constructed a storm water management facility on the site as well as roadways to access same, which would also be used by Petitioners to access the proposed facility. Both witnesses opined Petitioners satisfied the requirements set forth at BCZR §502.1 and that the solar facility would not have a greater detrimental impact at this location as opposed to any other RC-2 parcel in the vicinity.

Among other issues, citizens at the hearing expressed concern with whether the solar facility would have a detrimental impact upon sensitive trout streams or other environmental resources in the vicinity. Ms. Hunt testified there are no toxic substances used in the solar panels, racking systems or inverters. She noted the transformer at the facility would use either vegetable oil or mineral oil, not PCBs or other toxic chemicals.

Petitioners conceded the panels would get hot when exposed to the sun. Although they could not provide a precise figure for the operating temperature of a solar panel, they noted the panels would get no hotter than a car windshield or other glass object exposed to the sun. Neighbors worried the heated panels would elevate the temperature of storm water runoff, which could harm fish and other aquatic creatures. While this is a valid concern, it is one that is addressed by proper storm water management (SWM). Petitioners submitted a guidance document provided by the Maryland Department of the Environment (Ex. 10) which discusses how SWM systems for solar facilities should be designed. Prior to issuance of permits DEPS will review the plan to verify Petitioners have complied with all environmental regulations. In addition, both the Circuit Court for Baltimore County and the Baltimore County Board of Appeals have held that storm water management and forest buffer/forest conservation plans are the means chosen by the State of Maryland and Baltimore County to address and prevent adverse impacts upon streams and other environmental features. *See, e.g., In Re: Burns Property*, Case No. 03-C-03-13020; *In Re: Smyth Property*, Case No. CBA-03-152.

THEREFORE, IT IS ORDERED this 12th day of **March, 2019**, 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 DEPS, DOP & DPR, copies of which are attached hereto and made a part hereof.

3. No trees, other than those in poor condition or which present a hazard to public safety, may be removed from the site.
4. No barbed wire fencing or lighting 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