

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
(715 Westminster Pike)		
4 th Election District	*	OFFICE OF
4 th Council District		
Elaine Oursler Burns	*	ADMINISTRATIVE HEARINGS
<i>Legal Owner</i>		
SGC Power, LLC	*	FOR BALTIMORE COUNTY
<i>Lessee</i>		
Petitioners	*	Case No. 2019-0147-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 Elaine Oursler Burns, legal owner and SGC 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 David Thaler appeared in support of the petition. Lawrence E. Schmidt, Esq. represented the Petitioners. One neighbor attended the hearing to obtain additional information regarding the project. 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”). None of the reviewing agencies opposed the request.

In the aggregate the subject property is 49.13 acres and zoned RC-4. The area used for the special exception however will only be slightly larger than the fenced enclosure surrounding the proposed solar panels, which is approximately 10.76 acres in size. Petitioners noted this will be an unmanned facility that will be visited twice yearly for maintenance and inspection. The property will not be lighted and there will be no signage visible from Maryland Route 140.

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. Thaler, who was accepted as an expert, opined Petitioners satisfied all requirements set forth in BCZR Section 502.1 and the Maryland case law interpreting that provision. He testified that in his opinion this site is ideal for the proposed use, especially since the property slopes upward 30 +/- feet from Route 140 and the solar panels would be situated on the other side of that slope. This means of course the panels would not be visible to motorists on Route 140 which, as noted in the DOP's ZAC comment, is designated as a scenic route in Master Plan 2020.

For the same reason Mr. Thaler noted glare will not be an issue in this case, since the fixed panels will not be visible from the roadway and will also face south, away from the road and nearby homes. Based on this testimony and the exhibits presented at the hearing I believe Petitioners have established a *prima facie* case entitling them to the special exception, and in the absence of any evidence to the contrary the petition will be granted.

The only remaining issue concerns the fence which would enclose the solar panels. Petitioners submitted a photograph of an agricultural-style fence (Pets. Ex. 4) which they believe would be in keeping with the rural setting. The Bureau of DPR and the DOP, on the other hand,

suggest a black vinyl coated chain-link fence be used. While I agree with Petitioners the agricultural fence shown in Exhibit 4 would be most appropriate for this site, I will defer to the expertise of the County's landscape architect to make the final determination.

THEREFORE, IT IS ORDERED this 4th day of **January, 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 comment submitted by the DEPS, a copy of which is attached hereto and made a part hereof.
3. Prior to issuance of permits Petitioners must submit for approval by Baltimore County a landscape plan for the site.
4. 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