

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
(18627 Falls Road)		
5 <sup>th</sup> Election District	*	OFFICE OF
3 <sup>rd</sup> Council District		
Holly Springs Nature Conservancy &	*	ADMINISTRATIVE HEARINGS
Wildlife Sanctuary, Inc.		
<i>Legal Owner</i>		
Power Factor, LLC	*	FOR BALTIMORE COUNTY
<i>Lessee</i>		
Petitioners	*	<b>Case No. 2019-0183-X</b>

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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 Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc., legal owner and Power Factor, LLC, lessee (“Petitioners”). The special exception petition was filed pursuant to Section 4F-102 of the Baltimore County Zoning Regulations (“BCZR”) for a solar facility.

Andrew Streit and Nick Leffner appeared in support of the petition. Lawrence E. Schmidt, Esq. represented the Petitioners. Several neighbors opposed the request. Substantive Zoning Advisory Committee (“ZAC”) comments were received from the Bureau of Development Plans Review (“DPR”), the Department of Environmental Protection and Sustainability (“DEPS”), the Department of Planning (“DOP”) and the State Highway Administration (“SHA”).

The subject property is approximately 32.59 acres in size and is comprised of two separately deeded parcels. The property is split-zoned RC-2 and RC-8, although Petitioners amended the site plan so that the vast majority of the solar panels and related infrastructure would be located in the RC-2 zone. One of the parcels (Parcel 144, 26.34 Ac.) is unimproved and the other (Parcel 121, 6.25 Ac.) contains a dwelling and accessory structures. The property is located in rural northern Baltimore County, and Falls Road at this location is a state and county designated

scenic roadway. Petitioners propose to construct and operate on the property a solar facility, a use permitted by special exception.

This is an unusual case in one important respect. The legal owner of the property is Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc. (“Holly Springs”). Members of the community testified the entity is registered with the IRS as a Section 501(c)(3) organization, and documents were submitted to substantiate that claim. To be tax-exempt under section 501(c)(3) of the Internal Revenue Code, an entity must be organized and operated exclusively for exempt purposes.

To qualify for tax-exempt status Holly Springs filed with the Maryland Department of Assessments and Taxation in 2006 documents which stated the organization was formed to: “serve and educate the public about protecting our natural environment and wildlife and also works to mitigate the effects of pollution on our air, lands and waters. The mission is to educate others about the humane treatment of wildlife, to prevent cruelty to wildlife, and to provide habitat for small mammals that are displaced or unwanted in urban and suburban development.” It would seem, as the community argues, the proposed use of the land for a solar facility would be contrary to the limited purposes for which this charitable entity was formed.

Most corporations in Maryland are formed as for-profit entities, and their organizational documents state they are permitted to engage in “any lawful business.” But Holly Springs is a charitable non-stock corporation which was formed for a very different purpose, as noted above. While perhaps not relating directly to the propriety of special exception relief under BCZR Section 502.1, I agree with the Protestants it is counter-intuitive or unseemly to allow a charitable entity which promotes—among other things—preservation of wildlife habitat to lease the subject property to a solar power company for operation of a public utility on this site.

Other aspects of the case concern me as well. Holly Springs acquired the subject property by deed in 2015, and that instrument notes it was exempt from County transfer tax since the grantee is a charitable entity. Liber 36664, folio 498. But according to state and county tax records, the 26.34 acre parcel is used for agricultural purposes, and as such is assessed at a value of only \$9,800. The same records show the owner has paid just \$117.70 in yearly real property taxes for the years 2016-2019. This is at odds with the testimony of Petitioners' engineer who stated the property is not used for agricultural purposes. Thus it is unclear how or why the property would be entitled to an agricultural exemption from property tax.

Along the same lines, the court of appeals has held that to be exempt from taxation a charitable corporation's "use of the property must be reasonably necessary for the charitable or educational work of the institution." *Maryland State Fair v. Supervisor*, 225 Md. 574 (1967). Allowing the charity's tax-exempt property to be used for a solar facility in these circumstances would appear to violate restrictions imposed by Maryland law governing corporations and federal and state taxation principles. Even so, I believe such issues would need to be resolved in a different forum, since they are not (strictly speaking) relevant to the zoning issue in this case.

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.

Leffner, a professional engineer accepted as an expert, opined the proposal satisfied the requirements for a special exception as set forth at BCZR Section 502.1.

As in several previous cases involving solar facilities in rural Baltimore County, I believe all of the adverse impacts identified by the Protestants (*i.e.*, visual blight, environmental concerns, and potential impact upon property values) are inherent in the operation of a solar facility. As such, I do not believe the petition can be denied on this basis, although I will impose certain conditions below in an effort to minimize the adverse impact upon the community.

THEREFORE, IT IS ORDERED this 20<sup>th</sup> day of **June, 2019**, by this Administrative Law Judge, that the Petition for Special Exception pursuant to Section 4F-102 of the 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 of the Bureau of DPR, DOP & DEPS, copies of which are attached.

3. No signage or lighting shall be installed at the site in connection with the solar facility.

4. No deliveries to or maintenance of the solar facility shall occur between the hours of 6:00 PM – 7:00 AM.

5. Other than the “limited clearing” at the site access location described by Petitioners, no trees shall be cut or removed from the subject property in connection with the construction and operation of the proposed solar facility.

6. No barbed wire fencing shall be permitted in connection with the solar facility.

7. The proposed gravel access road for the solar facility shall be constructed in the location shown on the amended site plan, a copy of which was filed with the Office of Administrative Hearings on June 12, 2019, and marked as Petitioners’ Ex. No. 10.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

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Signed \_\_\_\_\_  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County

JEB/sln