

JB
12-18-17

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
(15637 York Road)		
8 th Election District	*	OFFICE OF
3 rd Council District		
Robert K. Gerner	*	ADMINISTRATIVE HEARINGS
Legal Owner		
ESA Sparks Glenco, LLC	*	FOR BALTIMORE COUNTY
Lessee		
	*	Case No. 2018-0047-X
Petitioners	*	
* * * * *		

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 Robert K. Gerner, legal owner and ESA Sparks Glenco, LLC, lessee ("Petitioners"). The Special Exception was filed pursuant to the Baltimore County Zoning Regulations ("B.C.Z.R.") to approve a 9 acre ± solar facility on a portion of a 30.723 acre parcel of land in a RC-7 zone.

Brian Quinlan, owner Robert Gerner and surveyor Bruce Doak appeared in support of the petition. Timothy M. Kotroco, Esq. represented Petitioners. Several area residents opposed the request. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP), the Bureau of Development Plans Review (DPR), the Department of Environmental Protection and Sustainability (DEPS) and State Highway Administration (SHA). None of the reviewing agencies opposed the requests.

The subject property is approximately 30.7230 acres and is zoned RC-7. Petitioners propose to use approximately nine (9) acres of the tract for a solar facility, and the site plan was highlighted to show this area. Exhibit 2. The property is unimproved and the proposed facility

would be located approximately 1,275 ft. from York Road, which is designated as a scenic route. The nearest dwelling is approximately 750 ft. from the proposed facility.

Brian Quinlan testified he is a principal in the entity which would operate this project. He is a U.S. Naval Academy graduate with an engineering background and nearly 10 years of experience in solar energy. He testified the panels will be approximately 7 ½ ft. in height and would not emit sound or odor. Other than grass mowing between May-September and twice yearly maintenance inspections, the site will be unmanned and will not generate any traffic.

Bruce Doak, a licensed surveyor, explained he has over 30 years of experience in zoning and development matters in Baltimore County. He is a resident of northern Baltimore County and lives on a 50 acre farm, and stated he is intimately familiar with the rural portions of the north County. Mr. Doak opined the Petitioners satisfied the requirements for a special exception under B.C.Z.R. §502.1, and he believes this is an "ideal location" for the solar facility. He explained the proposed gravel access road into the site would be approximately 8 to 10 ft. wide and would be situated at least 10 ft. from any boundary line.

The neighbors at the hearing stated the solar facility was inappropriate in a rural zone. They testified the facility would be an eyesore and would be visible from their homes. There was some dispute as to whether the facility would be visible from York Road. The DOP noted in its ZAC comment the solar panels "will not be visible from York Road or adjacent residentially [sic] properties." But Al Rude and William Mayo, whose properties adjoin the subject property, disagreed and said the site will be visible from their homes and York Road as well.

Lynn Jones testified there are wetlands on the site, and she also feared that water runoff from the site and panels would flow into and increase the temperature in a nearby Class III trout stream. Several of the residents expressed dissatisfaction with the recent legislation (Bill 37-17)

which expressly permits by special exception solar facilities in all rural zones in the County. Residents testified their representative on the Council was “dead set against” the solar bill, but that the majority of the Council approved the bill allowing the facilities in RC zones. Such conflicts are inherent in the nature of our representative democracy.

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.

Based on the testimony of Messrs. Quinlan and Doak, I believe Petitioners are entitled to special exception relief. Petitioners presented expert testimony regarding their compliance with the requisite standards for a special exception, and none of the County review agencies expressed misgivings about the proposal. I found this testimony to be credible and persuasive.

I also believe the subject property is an appropriate site for this use. Unlike several recent cases in which solar facilities have been proposed in rural areas, this site is situated over 1,200 feet from York Road and will also benefit from topographical changes and existing forest and tree cover which will help to screen the solar panels. I do not dispute the testimony of the neighbors that they will be able to view the site, especially in the fall and winter when the leaves are off the trees. But the law does not require the facilities to be invisible; instead, it specifies only that “screening of...scenic routes and scenic views” be provided in accordance with the Baltimore

County landscape manual. B.C.Z.R. §4E-104.A.6. A condition will be added below to ensure this requirement is satisfied.

I am sympathetic to the concerns raised by the neighbors, and as I stated at the hearing I would likely feel the same way if I was in their shoes. But I am not able to decide a case on that basis. I am required to evaluate zoning cases based on existing law and regulations, and cannot decide a matter based on subjective opinions. Solar panels are not aesthetically pleasing, and everyone would prefer a view from their home which featured a field, forest or pasture in its natural state. But that is true in every case involving a solar facility, and is an adverse effect the Council was presumed to have considered when it enacted this legislation. In other words, most special exception uses are regarded as “potentially troublesome because of noise, traffic, congestion....” *Montgomery County v. Butler*, 417 Md. 271, 297 (2010). As such, I believe the petition should be granted, subject to the conditions noted below which will help to “lessen the impact of the facility on the health, safety and general welfare of surrounding residential properties.” B.C.Z.R. §4E-104.A.10.

THEREFORE, IT IS ORDERED this 21st day of **December, 2017**, by this Administrative Law Judge, that the Petition for Special Exception to approve a nine (9) acre ± solar facility on a portion of a 30.723 acre parcel of land in a RC-7 zone, 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.
3. Petitioners must obtain from the State Highway Administration (SHA) a residential or farm entrance permit.
4. No trees shall be removed from the site in connection with the construction and/or operation of the solar facility.
5. No weed killers or herbicides shall be used to control weed or grass growth at the solar facility.
6. No signage or lighting shall be installed at the site in connection with the solar facility.
7. Petitioners must submit for approval by Baltimore County a landscape plan for the site.

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



JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/sln