

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
(W/S Ridge 350 ft. N/Dogwood Road)		
2nd Election District	*	OFFICE OF
4th Council District		
Joan Sauter Stephens & Carrol Sauter	*	ADMINISTRATIVE HEARINGS
& Dawn Sauter Marszal		
Legal Owners	*	FOR BALTIMORE COUNTY
Lion One, LLC		
Lessee	*	Case No. 2020-0004-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 Joan Sauter Stephens, Carroll W. Sauter and Dawn Sauter Marszal, legal owners (the “Legal Owners”) and Lion One, LLC, Lessee (collectively, the “Petitioners”) for the property located on Ridge Rd. near Dogwood Rd. (the “Property”). The Petition for Special Exception was filed pursuant to Baltimore County Zoning Regulations (“BCZR”), § 4F-102 *et seq.*, for a solar facility.

Due to the COVID-19 pandemic, a public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petition was properly advertised and posted. Carroll W. Sauter and Dawn Sauter Marszai attended the hearing along with David C. Strouss, PE of McCone Engineers, Surveyors and Planners who prepared and sealed a site plan (the “Site Plan”). Patricia A. Malone, Esquire and Venable, LLP represented the Petitioners. Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”) who did not oppose the requested relief.

FINDINGS OF FACT

The Property is 92.685 acres +/- and zoned Rural Conservation and Residential (RC 6) located along the west side of Ridge Rd. Ridge Rd. is a designated Baltimore County Scenic Route. The Special Exception area proposed for the solar facility is 10.484 acres +/- and was previously used as a dairy farm (the “Solar Facility”). The Solar Facility will be located in a low-lying area of the Property. It will also be located outside of environmental areas of the Property which have been designated as the ‘Primary Conservancy Area’ and the ‘Secondary Conservancy Area’.

Testifying on behalf of the Petitioner was Bruce Wilson of SGC Power, LLC (“SGC Power”), a solar power company located in Elkridge, MD. Mr. Wilson’s duties include working with land owners to develop solar facilities. (Pet. Ex. 2). SGC Power will enter into a 20-year lease with the Legal Owners and to develop and install the solar array panels. After the installation, Lion One, LLC, an affiliated entity, will operate the Solar Facility. Toward that end, in March of 2020 SGC Power applied to the Maryland Community Solar Program and was granted capacity for 2 megawatts (mg) of alternating current (AC) electricity at this Property.

Mr. Wilson explained that the solar array panels are pile driven into the ground, similar to fence posts. (Pet. Ex. 3). The panels to be installed here will track the movement of the sun to absorb the sun’s rays. (*Id.*). When the panels move, there is no audible sound created because the panels move very slowly. At noon, the solar panels are in a flat position. At full tilt, the height of the solar panels is 7-8 ft. The Solar Facility will have 16 inverters to convert the DC power to AC power which then flows to a transformer. At most, the inverters make a humming sound. Surrounding the Solar Facility will be an 8 ft. tall agricultural fence. (Pet. Ex. 4). The Department of Planning does not object to the proposed agricultural fence in lieu of a black vinyl

fence mentioned in their ZAC Comment. (Pet. Ex. 5). Mr. Wilson stated that this type of farm fence more accurately reflects the agricultural area.

As reflected on the Scenic View photos taken from the viewpoint of Ridge Rd., the Solar Facility is not visible due to the topography and existing trees/vegetation. (Pet. Ex. 13). Mr. Wilson added that the proximity of the electric lines and BGE equipment on Ridge Rd. to the special exception area makes this Property suitable for a solar facility. The electric lines will run underground from the Solar Facility to the BGE pole located on Ridge Rd. An access road consisting of a gravel base with crush and run will be constructed from Ridge Rd. to the Solar Facility. Mr. Wilson testified that 2 times per year a maintenance crew of 2 people will check the equipment to ensure that all panels and wiring are connected and working. Additionally, the grass underneath the panels will be mowed.

SGC Power prepared a Solar Photovoltaic Glare Assessment Report (the “Glare Report”) to determine whether the solar array panels will produce glare as they rotate with the sun. (Pet. Ex. 6). The panels are comprised of solar cells which have an anti-reflective coating so that the rays of the sun can be absorbed into the cells. The conclusion in the Glare Report was that there will not be any potential glare produced from the Solar Facility.

Petitioner Carroll Sauter owns and resides in the single family home located at 2316 Ridge Rd. which is next to the Solar Facility. The new gravel access road will be constructed south and west of his home to the Solar Facility. In addition to Mr. Sauter’s home, there are only 2 other homes which would potentially have a view of the Solar Facility. Both of those homes are owned by Benjamin and Adelaide Weber. Adelaide Weber appeared at the hearing in support of the Petition. Additional landscaping will be planted to screen the Solar Facility from those homes.

Also testifying on behalf of the Petitioner was David C. Strouss, PE of McCrone Engineering who was admitted as an expert professional engineer and in the BCZR. Mr. Strouss prepared and sealed the Site Plan. (Pet. Ex. 1). In preparation for his analysis of the Property, Mr. Strouss reviewed the Baltimore County GIS information, topography and aerial photographs. Mr. Strouss explained that before submitting the Petition here, environmental features and areas had to be designated. In 2018, DEPS previously approved these environmental features including five (5) wetlands with intermittent stream channels, steep slopes, soil analysis and forest stand delineations consisting of Virginia white pines and mixed oak. (Pet. Ex. 9A, 9B).

Mr. Strouss overlaid the proposed Solar Facility onto an aerial photograph and added the proposed landscaping. (Pet. Ex. 10). He added that, in an RC 6 zone, prior to filing a Petition for development, a Site Analysis Plan is required to be reviewed and approved by DOPS and DEPS under BCC, §32-4-251 *et seq.* Under that Section, a Primary Conservancy area and a Secondary Conservancy area must be delineated. (Pet. Ex. 11). The Primary and Secondary Conservancy areas in an RC 6 zone must also meet the requirements of BCZR, §1A07.7. In this case, the Site Analysis Plan dated November 13, 2020 was submitted and approved by both DOP and DEPS. (Pet. Exs. 12, 13). Mr. Strouss highlighted that a Primary Conservancy Area contains the most precious natural resources and are the most critical areas which need to be conserved. (Pet. Ex. 11).

Mr. Strouss testified that a Scenic View Report was also prepared which analyzed the view points along Ridge Rd., a designated Baltimore County Scenic Route in MP 2020 (Map 27, p. 102) (the "Scenic View Report"). (Pet. Ex 13). He explained that the photographs of the views from Ridge Rd. reveal that the Solar Facility will not be visible because it is located in a low-lying area of the Property. The grade rises up hill toward Ridge Rd. This topography, along with

existing trees and vegetation, act as a natural buffer to shield the Solar Facility from a driver's view along adjacent roads.

Mr. Strouss stated that there are 3 areas where the Solar Facility will be visible and in those areas, additional landscaping will be planted. The proposed landscaping here is outlined on the Schematic Landscaping Plan which has not yet been approved by Baltimore County. That additional landscaping will include Evergreen, Douglas Firs, and Leland Pines and Holly trees. (Pet. Ex. 14). Mr. Strouss opined that the additional landscaping will buffer the view from the neighboring residences as well as shielding the scenic views. Mr. Strouss also opined the Schematic Landscaping Plan meets the requirement of the Baltimore County Landscape Manual and the Comprehensive Manual of Development Policies ("CMDP").

Mr. Strouss opined that the proposed Solar Facility meets the requirements of BCZR, §4F-102 and §4F-104. Mr. Strouss testified that the special exception area for the Solar Facility is 10.484 acres +/- which is the area needed to produce no more than 2 megawatts of AC electricity. BCZR, §4F-102.B.1. He added that the limit of 10 solar facilities has not been met in the 4th Councilmanic District. BCZR, §4F-102.B.2.

Mr. Strouss testified that the Solar Facility will not be located on land which is encumbered by an agricultural preservation easement, an environmental preservation easement or a rural legacy easement. BCZR, §4F-104.A.1. He stated that the Solar Facility will not be located in a Baltimore County historic district or on a property that is listed on the Baltimore County Final Landmarks List. BCZR, §4F-104.A.2. He explained that no portion of the land on which the Solar Facility is proposed will be located in a forest conservation easement, or be in a designated conservancy area in an RC 6 zone, those conservancy areas having been determined and approved by the County. BCZR, §4F-104.A.3.

Mr. Strouss continued that the Solar Facility will be set back 50 ft. from the tract boundary. (Pet. Ex. 1). BCZR, §4F-104.A.4. He added that the solar panels at full tilt will not exceed 20 ft. in height; the max height is 7-8 ft. in height. BCZR, §4F-104.A.5. As previously indicated on the Schematic Landscape Plan (Pet. Ex.14), a landscape buffer will be planted around the perimeter of the Solar Facility that is visible from the 3 neighboring homes as well as from Ridge Rd. and Dogwood Rd. BCZR, §4F-104.A.6. The security fencing between the landscape buffer and the solar facility will be an agricultural fence. BCZR, §4F-104.A.7. (Pet. Ex. 4).

Mr. Strouss reiterated that a Glare Report was prepared and the conclusion was that no glare would be produced from the proposed solar facility. BCZR, §4F-104.A.8. Accordingly, he opined that there would not be an interference with traffic and that no safety hazard would be created. Lastly, with regard to BCZR, §4F-104.A.9, Mr. Strouss testified that the Site Plan complies with the requirements of BCC, §33-3-108.

With regard to the Special Exceptions factors in BCZR, §502.1 which are required to be satisfied under BCZR, §4F-102.A, Mr. Strouss opined that the Solar Facility meets each of those factors. In particular, Mr. Strouss testified that the Solar Facility proposed here is a benign use, set within a buffered, low lying area and therefore will not be detrimental to the health, safety or general welfare of the locality. The solar facility will not create congestion in roads because the use does not generate traffic; the only additional vehicles would be from maintenance which occurs twice per year. Mr. Strouss stated that there is no potential hazard from fire or other danger as the closest fire station is 3.3 miles away. There is no overcrowding of the land or undue concentration of population because this use does not generate people going to, or coming from, the Property. Likewise, there is no interference with adequate provisions for schools, parks, water, sewerage, transportation or other improvements as the use does not impact any of these.

There is no interference with adequate light and air. In fact, no lighting is proposed with this use and the height of the panels is 8 ft. which does not cast shadows onto neighboring properties.

Mr. Strouss testified that the proposed use is consistent with the purpose of the RC6 zone and with the spirit and intent of the BCZR in that solar facilities are specifically permitted by special exception in the RC6 zone and its meets all setbacks. The Solar Facility is also consistent with impermeable surface and vegetative retention provisions in the RC6 zone as it complies with the maximum 10% impervious surface. Finally, the Solar Facility will not be detrimental to the environmental or natural resources of the Property including the Primary and Secondary Conservancy areas which were delineated and approved by DOP and DEPS.

COMMUNITY WITNESSES

Cathy Wolfson, 8434 Dogwood Rd., Windsor Mill, a member of the Greater Patapsco Community Association (“GPCA”) asked questions of the Petitioners’ witnesses in regard to the proposed agricultural fence.

Kathleen Skullney, President of the GPCA whose address is PO Box 31, Granite, MD 21163 asked questions and also testified on behalf of the GPCA. GPCA was incorporated in 1984 and its boundaries include a 10-mile square rural area with Marriottsville to the north, Randallstown to the east, Patapsco River to the west and Johnny Cake Rd. to the south. The GPCA territory has the largest concentration of RC6 zoned land in Baltimore County and consists of watershed and environmental areas. Ms. Skullney explained MP 2020 designates the RC6 zones as Resource Preservation Areas and limits development. The Granite Patapsco Community Plan was created in 1998. In regard to the proposed Solar Facility, Ms. Skullney confirmed that GPCA is not opposed to this Petition.

DECISION

On July 17, 2017, the County Council enacted Bill 37-17 permitting solar facilities by special exception in certain zones, including RC6. BCZR, §4F-102.A. The County Council imposed limits on the number of facilities per councilmanic district (*i.e.* 10 per district), and on the maximum area for each facility (*i.e.* the amount of acreage that produces no more than 2 megawatts alternating current (AC) of electricity). BCZR, §4F-102.B.1 and 2.

In addition to the special exception factors, there are 10 requirements set forth in BCZR, §4F-104.A:

1. The land on which a solar facility is proposed may not be encumbered by an agricultural preservation easement, an environmental preservation easement, or a rural legacy easement.
2. The land on which a solar facility is proposed may not be located in a Baltimore County historic district or on a property that is listed on the Baltimore County Final Landmarks List.
3. The portion of land on which a solar facility is proposed may not be in a forest conservation easement, or be in a designated conservancy area in an RC 4 or RC 6 Zone.
4. Aboveground components of the solar facility, including solar collector panels, inverters, and similar equipment, must be set back a minimum of 50 feet from the tract boundary. This setback does not apply to the installation of the associated landscaping, security fencing, wiring, or power lines.
5. A structure may not exceed 20 feet in height.
6. A landscaping buffer shall be provided around the perimeter of any portion of a solar facility that is visible from an adjacent residentially used property or a public street. Screening of state and local scenic routes and scenic views is required in accordance with the Baltimore County Landscape Manual.
7. Security fencing shall be provided between the landscaping buffer and the solar facility.
8. A solar collector panel or combination of solar collector panels shall be designed and located in an arrangement that minimizes glare or reflection onto adjacent properties and adjacent roadways, and does not interfere with traffic or create a safety hazard.

9. A petitioner shall comply with the plan requirements of § 33-3-108 of the County Code.

10. In granting a special exception, the Administrative Law Judge, or Board of Appeals on appeal, may impose conditions or restrictions on the solar facility use as necessary to protect the environment and scenic views, and to lessen the impact of the facility on the health, safety, and general welfare of surrounding residential properties and communities, taking into account such factors as the topography of adjacent land, the presence of natural forest buffers, and proximity of streams and wetlands.

There are also provisions regarding maintenance of the facilities:

§ 4F-106. - Maintenance.

A. All parties having a lease or ownership interest in a solar facility are responsible for the maintenance of the facility.

B. Maintenance shall include painting, structural repairs, landscape buffers and vegetation under and around solar panel structures, and integrity of security measures. Access to the facility shall be maintained in a manner acceptable to the Fire Department. The owner, operator, or lessee are responsible for the cost of maintaining the facility and any access roads.

C. Appropriate vegetation is permitted under and around the solar collector panels, and the tract may be used for accessory agricultural purposes, including grazing of livestock, apiculture, and similar uses.

D. The provisions on this section shall be enforced in accordance with Article 3, Title 6 of the County Code.

A solar facility which has reached the end of its useful life must be removed in accordance with §4F-107.

In order to grant a request for a special exception under BCZR, §502.1, it must appear that the use for which the special exception is requested will not:

A. Be detrimental to the health, safety or general welfare of the

The *Schultz* and *Loyola* Courts, and more recently in *Attar v. DMS Tollgate, LLC*, 451 Md. 272, 285 (2017) have expressly recognized that “[a] special exception is presumed to be in the

interest of the general welfare, and therefore a special exception enjoys a presumption of validity.” (See also *Loyola*, 406 Md. at 84, 88; 105 *Schultz*, 291 Md. at 11). Based on this standard, once an applicant puts on its *prima facie* evidence in support of a special exception, the opponents must then “set forth sufficient evidence to indicate that the proposed [use] would have any adverse effects above and beyond those inherently associated with such use under the *Schultz* standard.” *Attar*, 451 Md. at 287. (See *Montgomery County v. Butler*, 417 Md.271, 276-77 (2010) (opponent must show “non-inherent adverse effects” to “undercut the presumption of compatibility enjoyed by a proposed special exception use”). (See also, *Clarksville Residents Against Mortuary Defense Fund, Inc. v. Donaldson Properties*, 453 Md. 516, 543 (2017) (“there is a presumption that the [special exception] use is in the interest of the general welfare, a presumption that may only be overcome by probative evidence of unique adverse effects”).

As set forth above in BCZR, §4F-102.A, solar facilities are only permitted by special exception under the factors set forth in BCZR §502.1. The testimony of Mr. Wilson and Mr. Strouss support the Petitioner’s position that the proposed solar facility would not be detrimental to the health, safety or general welfare of the locality involved. This evidence was uncontroverted.

As described in detail above, Mr. Strouss testified that the solar facility would not create congestion in the roads as it is not a use that generates traffic into or out of the Property. BCZR, §502.1.B. Further, Mr. Strouss confirmed that there is fire station 3.3 miles away. BCZR, §502.1.C. As with the lack of traffic, Mr. Strouss repeated that this use does not generate people and therefore it would not tend to overcrowd the land or cause an undue concentration of population. BCZR, §502.1.D. Additionally, Mr. Strouss confirmed that this use does not interfere with schools, parks, water, sewerage, transportation or other public requirements, conveniences or

improvements. BCZR, §502.1.E. To the contrary, I find it produces electricity which benefits the surrounding community.

Mr. Strouss confirmed that the height of the facility will be 7-8 ft and would therefore not interfere with adequate light or air. BCZR, §502.1.F. The evidence revealed that the Solar Facility will stand in the cleared, low-lying area of the Property, removed from any adjacent homes, surrounded by trees and vegetation. Accordingly, I find that shadowing and air circulation are not areas of concern.

As to the consistency of this use with the purposes of the RC6 zone and with the spirit and intent of the BCZR, §4F-102 makes clear that solar facilities are consistent uses because they are temporary and are removed at the end of a lease term. The evidence showed that the soil type remains the same before, during and after removal. The County Council deemed solar facilities are uses consistent with the RC6 zone, provided they meet the special exception standard, as explained in *Shultz, Loyola* and *Attar*.

Mr. Strouss explained that the use is consistent with impermeable surface and vegetative retention provisions of the BCZR in that it meets the maximum 10% impervious surface. I find the design of the solar array panels here will direct rain to propel off the panels and soak into the ground between the rows. The design here shows that there will be separation between the rows of panels which are designed so that there is no concentrated flow of water as there might be with water flowing off an impermeable surface such as pavement.

Finally, Mr. Strouss testified that this use, at this location, would not be detrimental to the environmental or natural resources of the Property, including the forest, streams, wetlands, and floodplains. DOP and DEPS reviewed and authorized the Primary Conservancy Area and Secondary Conservancy Area such that those environmental areas are separated and protected

from activity associated with the Solar Facility. (Pet. Ex. 2). Accordingly, there is no dispute as to the precise location of these important natural resources within the Property, and that this Solar Facility will not be located in those areas.

Having analyzed the special exception factors, I also find that the requirements of BCZR, §4F-102.B.1 and BCZR, §4F-104.A. 1-9, have been satisfied by the Petitioner. Mr. Strouss testified that the 10.484 acre special exception area is the minimum acreage needed to produce no more than 2.0 megawatts AC of electricity. BCZR, §4F-102.B.1.

Mr. Strouss testified that the Property is not encumbered by an agricultural preservation easement, an environmental preservation easement or rural legacy easement, nor is it in a Baltimore County historic district or on the Baltimore County Final Landmarks list. BCZR, §§4F-104.A.1 and 2. In addition, as with the special exception factors, Mr. Strouss testified that the Solar Facility will not be located in the environmental areas or in designated conservancy areas. BCZR, §§4F-104.A.3. There was no evidence which contradicted either of these requirements.

As to the setback and height requirements, Mr. Strouss made clear that the facility at its highest peak will not exceed 8 ft. and will not be located within 50 ft. from the tract boundary. BCZR, §§4F-104.A.4 and 5. Accordingly, both the height and setback requirements have been met. There was no evidence which contradicted either of these requirements.

With regard to the requirement for a landscaped buffer on the perimeter, the photographs presented reveal that there is an existing row of trees along the northern end of the Property Ridge Rd. and Dogwood Rd. (BCZR, §4F-104.6). (Pet. Ex. 13). The comments from the DOP dated February 22, 2021 recommended supplementing the existing trees and plantings as required by the Baltimore County Landscape Architect. (Pet. Ex. 14). The Petitioner is amenable to planting additional trees in accordance with the Schematic Landscaping Plan, and then as prescribed by a

Final Schematic Landscaping Plan which will be approved by the Baltimore County Landscape Architect. (Pet. Exs. 6, 7). Moreover, the proposed 8 ft. agricultural farm fence surrounding between the landscaped buffer and the Solar Facility was approved by DOP and this type of fence is more conducive to an agricultural area. (BCZR, §4F-104.7). I find that these requirements have been satisfied.

Additionally, there is a requirement that the solar panels minimize glare in order to prevent vehicle collisions and safety hazards as well as to minimize glare and reflection onto adjacent residences here. (BCZR, §4F-104.8). The Glare Report indicated that there would be no glare produced by the solar panels here. (Pet. Exs. 6, 7). Thus, I find that requirement is satisfied.

Finally, the Site Plan must comply with BCC, §33-3-108. (BCZR, §4F-104.A.9). Subsection (c) requires the DEPS (as defined in §33-3-101(f)), to approve the Site Plan. Further, Subsection (b) directs that the Site Plan shall generally include such information (graphs, charts, etc.) to enable DEPS to “make a reasonably informed decision regarding the proposed activity.” Additionally, a Site Plan submitted to DEPS for approval must also contain the information listed in Subsection (c).

Given the express wording of BCC, §33-3-108 that DEPS shall approve the Site Plan, and that DEPS is responsible for ensuring that the Site Plan comply with both the general and specific requirements of Subsections (b) and (c), I find it appropriate to place a condition in the Order reiterating the words of BCZR, §4F-104.A.9, that the Petitioner shall comply with BCC, §33-3-108.

Based on the exhibits and testimony detailed above, I find that the special exception relief should be granted. Specifically, I find that the proposed Solar Facility meets BCZR, §502.1, §4F-102 *et seq.* and §4F-104 *et seq.*

THEREFORE, IT IS ORDERED this **13th** day of **April 2021**, by this Administrative Law Judge, that the Petition for Special Exception from the BCZR, §502.1, §4F-102 *et seq.* and §4F-104 *et seq.*, for a solar facility as set forth on the Site Plan (Pet. Ex. 1), be, and it 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 its 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 DOP comments dated February 22, 2021, a copy of which are attached hereto and made a part thereof.
3. Petitioners shall submit for approval by Baltimore County Landscape Architect, a Final Landscape Plan for the Property demonstrating appropriate screening and vegetation is provided along Ridge Rd. and Dogwood Rd., both scenic routes, as well as from the adjacent residentially used properties as required by BCZR, §4F-104.A.6.
4. Petitioners shall install an 8 ft. high agricultural security fence between the landscape buffer and the Solar Facility as required by BCZR, §4F-104.A.7. Attached to the entrance gate in the fence, in a conspicuous place, shall be placed a sign with the current contact information (name, address, telephone number, website and email address) of the operator of the Solar Facility.
5. Prior to the issuance of a building permit, Petitioners must satisfy the environmental regulations set forth in BCC, §33-3-108 pertaining to the protection of water quality, streams, wetlands and floodplains and obtain approval of the Site Plan from DEPS as required by BCC, §33-3-108, as required by BCZR, §4F-104.A.9.

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

MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM:dlm