Debra Wiley

From: Malone, Patricia A. <PAMalone@Venable.com>
Sent: Tuesday, July 21, 2020 11:21 AM
To: Debra Wiley
Cc: Malone, Patricia A.; Rosenblatt, Adam M.
Subject: RE: Case No. 2017-0104-X - 632 Freeland Rd. (Atkinson)
Attachments: ONEENERGY OPINION AND ORDER.pdf

CAUTION: This message from PAMalone@venable.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

This is one of the solar cases where we re-filed. The "real" case was Case No. 2018-0194-X. See attached.

You can dismiss Case No. 2017-0104-X.

Thanks.
Patsy

Patricia A. Malone, Esq. | Venable LLP
t 410.494.6206 | f 410.821.0147| m 410.627.6014
210 W. Pennsylvania Avenue, Suite 500, Towson, MD 21204 PAMalone@Venable.com | www.Venable.com

-----Original Message-----
From: Debra Wiley <dwiley@baltimorecountymd.gov>
Sent: Friday, July 17, 2020 11:34 AM
To: Malone, Patricia A. <PAMalone@Venable.com>; Karceski, David H. <DKarceski@Venable.com>
Subject: Case No. 2017-0104-X - 632 Freeland Rd. (Atkinson)

Caution: External Email

Good Morning Counsel,

As you know, there is quite a backlog of cases to be scheduled.

Our office is attempting to help Kristen and it appears that an email was received from Ms. Malone to Kristen Lewis on October 21, 2016 indicating holding off scheduling (see attachments).

Please provide a status update (in writing). If we do not hear from you within ten (10) days, this case may be dismissed without prejudice.

Thank you in advance for your understanding.

Debra Wiley, Legal Administrative Secretary Baltimore County Office of Administrative Hearings
105 West Chesapeake Avenue, Suite 103
Towson, Maryland 21204
410-887-3868

-----Original Message-----

From: adminhearingscpr@baltimorecountymd.gov <adminhearingscpr@baltimorecountymd.gov>
Sent: Friday, July 17, 2020 11:29 AM
To: Debra Wiley <dwiley@baltimorecountymd.gov>
Subject: Message from "RNP002673F6C9D3"

This E-mail was sent from "RNP002673F6C9D3" (MP 3055).

Scan Date: 07.17.2020 11:29:28 (-0400)
Queries to: adminhearingscpr@baltimorecountymd.gov

[http://www.baltimorecountymd.gov/sebin/g/u/signature-covid.gif]<https://www.baltimorecountymd.gov/news/coronavirus.html>

<http://www.baltimorecountymd.gov>

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www.baltimorecountymd.gov<http://www.baltimorecountymd.gov>

PETITION FOR ZONING HEARING(S)

To be filed with the Department of Permits, Approvals and Inspections

To the Office of Administrative Law of Baltimore County for the property located at:

Address 632 Freeland Road, Freeland, MD 21053 **which is presently zoned** RC 2

Deed References: 26823/303 10 Digit Tax Account # 0 7 0 1 0 8 9 0 6 0

Property Owner(s) Printed Name(s) Charles Gary Atkinson and Stephen Gordon Atkinson

(SELECT THE HEARING(S) BY MARKING X AT THE APPROPRIATE SELECTION AND PRINT OR TYPE THE PETITION REQUEST)

The undersigned legal owner(s) of the property situate in Baltimore County and which is described in the description and plan attached hereto and made a part hereof, hereby petition for:

1.____ **a Special Hearing** under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

2.__X__ **a Special Exception** under the Zoning Regulations of Baltimore County to use the herein described property for

A solar panel array field as a public utility use, pursuant to Section 1A01.2.C.18 of the Baltimore County Zoning Regulations.

3.____ **a Variance** from Section(s)

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons: **(Indicate below your hardship or practical difficulty or indicate below "TO BE PRESENTED AT HEARING". If you need additional space, you may add an attachment to this petition)**

TO BE PRESENTED AT HEARING

Property is to be posted and advertised as prescribed by the zoning regulations.

I, or we, agree to pay expenses of above petition(s), advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

Legal Owner(s) Affirmation: I / we do so solemnly declare and affirm, under the penalties of perjury, that I / We are the legal owner(s) of the property which is the subject of this / these Petition(s).

Contract Purchaser/Lessee:

SEE ATTACHED SHEET

Name- Type or Print

Signature

Mailing Address City State

Zip Code Telephone # Email Address

Legal Owners (Petitioners):

Charles Gary Atkinson / Stephen Gordon Atkinson

Name #1 – Type or Print Name #2 – Type or Print

Signature #1 Signature # 2

632 Freeland Road Freeland MD

Mailing Address City State

21053 / /

Zip Code Telephone # Email Address

Attorney for Petitioner:

Patricia A. Malone, Esq.

Name- Type or Print

Signature

210 W. Pennsylvania Ave., Suite 500, Towson, MD

Mailing Address City State

21204 / (410) 494-6200 / pamalone@venable.com

Zip Code Telephone # Email Address

Representative to be contacted:

Patricia A. Malone, Esq.

Name – Type or Print

Signature

210 W. Pennsylvania Ave., Suite 500, Towson, MD

Mailing Address City State

21204 / (410) 494-6200 / pamalone@venable.com

Zip Code Telephone # Email Address

CASE NUMBER 2017-0104-X **Filing Date** 10/3/16 **Do Not Schedule Dates:** _____ **Reviewer** JCM

REV. 10/4/11

ATTACHMENT TO PETITION FOR SPECIAL EXCEPTION

632 Freeland Road

Contract Lessee:

OneEnergy Development, LLC
2003 Western Avenue, Suite 225
Seattle, WA 98121
Telephone: 206-900-9930
Facsimile: 206-922-7079
Email: projects@OneEnergyRenewables.com

By: _____
Name: Travis Bryan
Title: Chief Operating Officer

DAFT McCUNE WALKER

Description

To Accompany Petition

For a Special Exception

Baltimore County, Maryland

Commencing for the same at a point at the end of the following two courses and distances formed by the intersection of the centerline of Freeland Road with the centerline of Oakland Road; thence leaving said point and running with and binding on the centerline of said Oakland Road northwesterly 66.53 feet; thence northeasterly 11 feet, more or less, to the point of beginning; said point of beginning being also the edge of said Oakland Road; thence running with a portion of said Oakland Road and referring all courses of this description to the Maryland Coordinate System (NAD 83-1991), as represented by the Baltimore County GIS the following courses and distances: (1) North 27 degrees 19 minutes 20 seconds West 335.93 feet; thence (2) by a line curving to the left, having a radius of 360.00 feet, for a distance of 218.76 feet (the arc of said curve being subtended by a chord bearing North 44 degrees 43 minutes 49 seconds West 215.41feet); thence (3) North 62 degrees 08 minutes 18 seconds West 1,366.73 feet; thence (4) North 63 degrees 39 minutes 35 seconds West 85.37 feet; thence (5) by a line curving to the left, having a radius of 169.97 feet, for a distance of 80.86 feet (the arc of said curve being subtended by a chord bearing North 74 degrees 27 minutes 10 seconds West 80.10 feet); thence (6) North 33 degrees 59 minutes 43 seconds West 28.74 feet; thence (7) South 67 degrees 00 minutes 14 seconds West 438.76 feet; thence (8) South 59 degrees 17 minutes 29 seconds West 110.32 feet; thence (9) by a line curving to the left, having a radius of 191.77 feet, for a distance of 77.92 feet (the arc of said curve being subtended by a chord bearing South 46 degrees 46 minutes 11 seconds West

501 Fairmount Avenue, Suite 300, Towson, MD 21286 p: 410 296 3333 f: 410 296 4705 www.dmw.com

77.39 feet); thence (10) North 55 degrees 31 minutes 53 seconds West 282.30 feet; thence (11) North 42 degrees 25 minutes 04 seconds East 507.89 feet; thence (12) North 60 degrees 14 minutes 04 seconds West 108.94 feet; thence (13) North 27 degrees 29 minutes 55 seconds East 1,641.60 feet; thence (14) North 18 degrees 32 minutes 41 seconds West 74.29 feet; thence (15) North 89 degrees 05 minutes 09 seconds East 128.61 feet; thence 16.) South 14 degrees 42 minutes 23 seconds East 756.90 feet; thence (17) South 47 degrees 41 minutes 43 seconds East 1,719.91 feet; thence (18) South 47 degrees 15 minutes 14 seconds East 982.55 feet; thence (19) South 77 degrees 36 minutes 11 seconds West 340.77 feet; thence (20) by a line curving to the left, having a radius of 590.00 feet, for a distance of 454.21 feet (the arc of said curve being subtended by a chord bearing South 55 degrees 32 minutes 55 seconds West 443.08 feet); thence (21) South 33 degrees 29 minutes 39 seconds West 157.97 feet; thence (22) by a line curving to the right, having a radius of 23.00 feet, for a distance of 47.84 feet (the arc of said curve being subtended by a chord bearing North 86 degrees 54 minutes 51 seconds West 39.67 feet) to the point of beginning; having an area of 3,250,541.19 square feet or 74.622 acres, more or less, as based on Baltimore County GIS in October 2016.

THIS DESCRIPTION HAS BEEN PREPARED FOR ZONING PURPOSES ONLY AND IS NOT INTENDED TO BE USED FOR PROPERTY ESTABLISHMENT OR PROPERTY CONVEYANCE.

October 13, 2016

Project No. 16046.00 (L16046)

10-14-16

RE:	PETITION FOR SPECIAL EXCEPTION 632 Freeland Road; N corner of intersection Freeland and Oakland Roads 7th Election & 3rd Councilmanic Districts Legal Owner(s): Charles & Stephen Gordon Petitioner(s)	*	BEFORE THE OFFICE OF ADMINSTRATIVE HEARINGS FOR BALTIMORE COUNTY 2017-104-X

* * * * * * * * * * * * *

ENTRY OF APPEARANCE

Pursuant to Baltimore County Charter § 524.1, please enter the appearance of People's Counsel for Baltimore County as an interested party in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and the passage of any preliminary or final Order. All parties should copy People's Counsel on all correspondence sent and all documentation filed in the case.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

RECEIVED
OCT 25 2016

Carole S Demilio

CAROLE S. DEMILIO
Deputy People's Counsel
Jefferson Building, Room 204
105 West Chesapeake Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of October, 2016, a copy of the foregoing Entry of Appearance was mailed to Patricia Malone, Esquire, 210 W. Pennsylvania Avenue, Suite 500, Towson, Maryland 21204, Attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET AND FINANCE
MISCELLANEOUS CASH RECEIPT

No 145713

Date: 10/13/16

Fund	Dept	Unit	Sub Unit	Rev Source/ Obj	Sub Rev/ Sub Obj	Dept Obj	BS Acct	Amount
001	806	0000		6150				500. —
							Total:	500. —

Rec From: ONE ENERGY DEVELOPMENT LLC.

For: SPEC. X.

2017-0104-X.

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER GOLD - ACCOUNTING
PLEASE PRESS HARD!!!!

PAID RECEIPT

BUSINESS	ACTUAL	TIME	DRW
10/14/2016	10/13/2016	14:52:30	2

REG WS02 WALKIN JEE
>>RECEIPT # 985574 10/13/2016 OFLN
Dept 5 528 ZONING VERIFICATION
CR NO. 145713
Recpt Tot $500.00
$500.00 CK $.00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

DEPARTMENT OF PERMITS, APPROVALS AND INSPECTIONS
ZONING REVIEW OFFICE

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

The Baltimore County Zoning Regulations (BCZR) require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property (responsibility of the legal owner/petitioner) and placement of a notice in a newspaper of general circulation in the County, both at least twenty (20) days before the hearing.

Zoning Review will ensure that the legal requirements for advertising are satisfied. However, the legal owner/petitioner is responsible for the costs associated with these requirements. The newspaper will bill the person listed below for the advertising. This advertising is due upon receipt and should be remitted directly to the newspaper.

OPINIONS MAY NOT BE ISSUED UNTIL ALL ADVERTISING COSTS ARE PAID.

For Newspaper Advertising:

Case Number: 2017-0104-A

Property Address: 632 FREELAND ROAD

Property Description: N/S FREELAND ROAD, 250 FT +/- WEST OF ORWIG ROAD

Legal Owners (Petitioners): CHARLES GARY ATKINSON, et al.

Contract Purchaser/Lessee: ONE ENERGY DEVELOPMENT, LLC

PLEASE FORWARD ADVERTISING BILL TO:

Name: PATRICIA A. MALONE

Company/Firm (if applicable): VENABLE, LLP

Address: 210 W. PENNSYLVANIA AVENUE, SUITE 500
TOWSON, MD 21204

Telephone Number: 410-494-6200

Revised 7/9/2015

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

TO: Hon. Lawrence M. Stahl; Managing Administrative Law Judge
Office of Administrative Hearings

FROM: Jeff Livingston, Department of Environmental Protection and Sustainability (EPS) - Development Coordination

DATE: October 31, 2016

SUBJECT: DEPS Comment for Zoning Item # 2017-0104-X
Address 632 Freeland Road
(Atkinson Property)

Zoning Advisory Committee Meeting of **October 31, 2016**

__X__ The Department of Environmental Protection and Sustainability offers the following comments on the above-referenced zoning item:

__X__ Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 33-3-101 through 33-3-120 of the Baltimore County Code).

__X__ Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).

Additional Comments:

Reviewer: Glenn Shaffer Date: October 27, 2016

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits, Approvals
And Inspections

DATE: November 9, 2016

FROM: Dennis A. Kennedy, Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
For October 31, 2016
Item No. 2017-0104

The Bureau of Development Plans Review has reviewed the subject zoning Items and we have the following comments.

If granted, a Landscape Plan will be required per the requirements of the Landscape Manual and the CMDP.

Specific:

1. Freeland Road is a Baltimore County Scenic Route.
2. Perimeter landscape buffers are required.
3. Additional strip landscape buffers are required to address existing topography changes (40+/- feet of vertical change over approximately 1,000 feet).
4. Must minimize tree and vegetation removal.
5. Additional Landscape Buffers may be required depending on the subject property's topography, Scenic Views Scenic Routes, etc.
6. Solar panels are considered a utility and should be designed and located to harmonize with the surroundings and to create the least visual impact.
7. More comments may be rendered during review of the Landscape Plan.

* * * * * *

DAK:CEN
Cc:file
ZAC-ITEM NO 17-0104-10312016.doc

Larry Hogan, *Governor*
Boyd K. Rutherford, *Lt. Governor*

SHA State Highway Administration
Maryland Department of Transportation

Pete K. Rahn, *Secretary*
Gregory C. Johnson, P.E., *Administrator*

Date: 10/24/16

Ms. Kristen Lewis
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
Towson, Maryland 21204

Dear Ms. Lewis:

Thank you for the opportunity to review your referral request on the subject of the Case number referenced below. We have determined that the subject property does not access a State roadway and is not affected by any State Highway Administration projects. Therefore, based upon available information this office has no objection to Baltimore County Zoning Advisory Committee approval of Case No. 2017-0104-X
Special Exception
Charles Gary Atkinson & Stephen Gordon Atkinson
632 Freeland Road

Should you have any questions regarding this matter, please contact Mr. Richard Zeller at 410-229-2332 or 1-866-998-0367 (in Maryland only) extension 2332, or by email at (rzeller@sha.state.md.us).

Sincerely,

Richard A. Zeller

for Wendy Wolcott, PLA
Acting Metropolitan District Engineer – District 4
Baltimore & Harford Counties

WW/RAZ

Debra Wiley

From: Debra Wiley
Sent: Tuesday, July 21, 2020 11:45 AM
To: 'Malone, Patricia A.'
Cc: Rosenblatt, Adam M.
Subject: RE: Case No. 2017-0104-X - 632 Freeland Rd. (Atkinson)

Good Morning Patsy,

Thank you for the update; we will mark the above-referenced case as dismissed.

Have a great and safe day !

Debra Wiley, Legal Administrative Secretary Baltimore County Office of Administrative Hearings
105 West Chesapeake Avenue, Suite 103
Towson, Maryland 21204
410-887-3868

-----Original Message-----
From: Malone, Patricia A. <PAMalone@Venable.com>
Sent: Tuesday, July 21, 2020 11:21 AM
To: Debra Wiley <dwiley@baltimorecountymd.gov>
Cc: Malone, Patricia A. <PAMalone@Venable.com>; Rosenblatt, Adam M. <AMRosenblatt@Venable.com>
Subject: RE: Case No. 2017-0104-X - 632 Freeland Rd. (Atkinson)

This is one of the solar cases where we re-filed. The "real" case was Case No. 2018-0194-X. See attached.

You can dismiss Case No. 2017-0104-X.

Thanks.
Patsy

Patricia A. Malone, Esq. | Venable LLP
t 410.494.6206 | f 410.821.0147| m 410.627.6014
210 W. Pennsylvania Avenue, Suite 500, Towson, MD 21204 PAMalone@Venable.com | www.Venable.com

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Sent: Friday, July 17, 2020 11:34 AM
To: Malone, Patricia A. <PAMalone@Venable.com>; Karceski, David H. <DKarceski@Venable.com>
Subject: Case No. 2017-0104-X - 632 Freeland Rd. (Atkinson)

Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

May 10, 2019

Patricia A. Malone, Esquire
Adam M. Rosenblatt, Esquire
Venable LLP
210 W. Pennsylvania Avenue, Suite 500
Towson, Maryland 21204

Peter M. Zimmerman, Esquire
Carole S. Demilio, Esquire
Office of People's Counsel
The Jefferson Building, Suite 204
105 W. Chesapeake Avenue
Towson, Maryland 21204

H. Barnes Mowell, Esquire
H. Barnes Mowell, P.A.
16925 York Road
Monkton, Maryland 21111

RE: *In the Matter of: Charles Gary Atkinson and Stephen Gordon Atkinson – Legal Owners OneEnergy Development, LLC – Lessee*
Case No.: 18-194-X

Dear Counsel:

Enclosed please find a copy of the final Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT. Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number.** If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Enclosure
Multiple Original Cover Letters

c: See Attached Distribution List

Charles Gary Atkinson
Stephen Gordon Atkinson
Travis Bryan, Chief Operating Officer/OneEnergy Development, LLC
Freeland Legacy Alliance, Inc.
Bobby Rohe
Don and Nadine Lentz
John M. Altmeyer
Ronald Danielson
Matt Hubbard
Connie Wood
Bob Clark
Slave Schener
Richard Ryan
Lois Jeanne Bowman
Scott Dykes
Beverly and Salvatore Scavone
Theresa and Christopher Norton
Kathleen and Christopher Marciniak
Christine Pignataro
Laverne Poe
Diana Householder
Theresa Sassler
Paul and Linda Hoeckel
Beverly Kram
Rhonda and William Rollins
Ed and Debra Myslinski
Lynne Jones
Debbie Frank
Patricia Trump
Kathleen Pieper
Robin Arrington
Teresa Moore
Lawrence M. Stahl, Managing Administrative Law Judge
C. Pete Gutwald, Director/Department of Planning
Michael Mallinoff, Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
Michael E. Field, County Attorney/Office of Law

IN RE: PETITION FOR SPECIAL EXCEPTION	*	**BEFORE THE**
	*	**BOARD OF APPEALS OF**
(632 Freeland Road)	*	**BALTIMORE COUNTY**
7th Election District **3rd Council District**	*	**Case No. 18-194-X**
OneEnergy Development, LLC ***Petitioner***	*	
	*	
Charles Gary Atkinson and Stephen Gordon Atkinson ***Legal Owners***	*	

* * * * * * * * * * *

OPINION

This case comes before the Board on appeal of the final decision of the Administrative Law Judge ("ALJ") in which the ALJ granted a Petition for a Solar Facility by Opinion and Order dated April 3, 2018. The Petition was filed by Charles Gary Atkinson and Stephen Gordon Atkinson and OneEnergy Development, LLC, (collectively, the "Petitioner"). Protestants, Freeland Legacy Alliance, Inc., Bobby Rohe, Don and Nadine Lentz, John M. Altmeyer, Ronald Danielson, Matt Hubbard, Connie Wood, Bob Clark, Slave Schener, Richard Ryan, Lois J. Bowman, Scott Dykes, Beverly and Salvatore Scavone, Theresa and Christopher Norton, Kathleen and Christopher Marciniak, Christine Pignataro, Laverne Poe, Diana Householder, Theresa Sassler, Paul and Linda Hoeckel, Beverly Kram, Rhonda and William Rollins, Ed and Debra Myslinski, Lynne Jones, Debbie Frank, Patricia Trump, Kathleen Pieper, Robin Arrington, Teresa Moore (collectively the "Protestants") filed an appeal.

A *de novo* hearing took place before this Board over five days, on July 24 and 25, October 9, November 20, 2018 and January 15, 2019. Adam Rosenblatt, Esquire, Patricia A. Malone, Esquire and Venable, LLP represented the Petitioners. H. Barnes Mowell, Esquire, represented

the Protestants. People's Counsel also participated in the hearing. A public deliberation was held on March 7, 2019.

Factual Background

The subject property is located at 632 Freeland Road and consists of just under 100 acres+/- lying to the north of the intersection formed by the west side of Freeland Road and the north side of Oakland Road (the "Property"). It is zoned RC2. Both Freeland and Oakland Roads are designated scenic routes. The Property, which is improved by a single-family owner-occupied dwelling, was previously a farm but no farming activities presently take place there. The Petitioners are proposing to use 19 acres± for a solar facility on a relatively flat cleared area in the westernmost portion of the Property pursuant to Baltimore County Zoning Regulations ("BCZR"), Article 4F. The solar facility will generate no more than 2 Mw of AC electricity. The balance of the Property is largely cleared, with areas of slopes, wetlands, wooded areas and streams. These sensitive areas will be subject to protective environmental easements as required by Baltimore County regulations.

Solar Facilities Law

On July 17, 2017, the County Council enacted Bill 37-17 permitting solar facilities by special exception in certain zones, including RC2, RC4, RC5, and RC8. 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. Above ground 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 locality involved;
B. Tend to create congestion in roads, streets or alleys therein;
C. Create a potential hazard from fire, panic or other danger;
D. Tend to overcrowd land and cause undue concentration of population;
E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;
F. Interfere with adequate light and air;
G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations;
H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor
I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone.

In *Schultz v. Pritts*, 291 Md. 1, 22-23, 432 A.2d at 1331 (1981), the Court of Appeals held that "the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and therefore should be denied, is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone."

The Court of Appeals in *People's Counsel for Baltimore County v. Loyola College in Md.* 406 Md. 54, 106, 956 A.2d 166 (2008) upheld that longstanding *Shultz* analysis, explaining that a special exception use has "certain [inherent] adverse effects....[which] are likely to occur". In its analysis, the *Loyola* Court observed that "[t]he special exception adds flexibility to a comprehensive legislative zoning scheme by serving as a 'middle ground' between permitted use and prohibited uses in a particular zone." *Id.*, 406 Md. at 71, 956 A.2d at 176 (2008).

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").

Motions to Dismiss

1. Improper Notice of Hearing Before the Administrative Law Judge.

The Protestants' argued in their Post Hearing Memorandum that the Petition should be dismissed or remanded based on alleged improper notice of the hearing before the Administrative Law Judge, because the petition was filed prior to the effective date of Bill No. 6-18, which strengthened the notice requirements set forth in the Baltimore County Code. The Board found that there had been substantial compliance with notice requirements, finding that there was notice in fact, based on the *de novo* hearing that took multiple days over several months and as evidenced by Protestants' attendance at those hearings, consistent with *Cassidy v. County Board of Appeals*, 218 Md. 418, 146 A.2d 896 (1958).

Evidence

Petitioner presented testimony from six expert witnesses, who testified on its behalf in the merits of the case as to every element required for a special exception for a solar facility in Baltimore County.

The first witness, Marni Carroll, the Director of Project Development for OneEnergy Renewables, was qualified as an expert in community solar facilities, site selection, site production, site management, and maintenance of solar facilities;

Ms. Carroll gave the Board an understanding of OneEnergy and its experience operating facilities, including its prior experience in Maryland and in locations across the country. Ms. Carroll submitted a PowerPoint presentation that provided information about the company and its relationship to the proposed lessee of the subject facility. She also described the materials and

panels that will be installed, and the studies performed to assist in finding a suitable location and to ensure that any impacts to surrounding properties will be minimized. She also provided testimony about the detailed analysis that takes place when choosing potential locations for solar facilities. The selection process involves screening potential site through a variety of criteria and maps, including historical status, glare studies, existence of wetlands, species of concern, topography, forest cover, and consultation with the Department of Natural Resources and the Federal Aviation Administration, and U.S. Fish and Wildlife Service. Only after identifying feasible sites does OneEnergy approach landowners with the offer of an arrangement, normally a lease, that would allow the landowner a stable means of supplemental income while allowing the continued ability to farm the remaining land if the landowner so desired.

As Ms. Carroll explained, the solar panels are nontoxic, nonflammable, and do not contain any cadmium. Through an industry-standard glare study, she was able to confirm that the proposed facility will not cause any glare on surrounding roads and properties. In terms of installation, the panels are mounted on galvanized steel posts and have an aluminum and steel frame to which they clip "like legos." The supporting posts are driven into the ground without any cement or permanent impact to the land. She explained that the land beneath the panels will be planted with pollinator habitat that absorbs runoff and provides the possibility for the production of agricultural products, such as honey. Ms. Carroll presented the Board with a small jar of honey produced at one her company's other facilities. The panels rotate with the sun and are approximately nine feet tall at the point of maximum rotation. The inverter makes a very low hum not audible at the property line, the facility does not have any smell, and only a handful of trips to the site per year are required for maintenance. Ms. Carroll explained that at the end of the lease, OneEnergy is required to remove all equipment to three feet below the ground and to

restore the ground to its previous condition. All of the materials can either be recycled or reused by the solar industry.

Ms. Carroll also stated that a seven-foot tall fence will enclose the site, and all equipment will be stored and housed inside the fence. A gravel road will provide access to the area, and all equipment is expected to be delivered during the first two weeks that installation commences on the site. Maintenance will occur on a regular basis, at least quarterly each year.

Petitioner then called David Martin, a vice-president of DMW, a licensed landscape architect in Maryland and Pennsylvania, who was admitted as an expert in landscape architecture and site planning with particular knowledge of the requirements for landscape plans and special exceptions in Baltimore County. Mr. Martin introduced photographs of the site, keyed to a copy of the site plan indicating where each was taken.

Mr. Martin testified that the goals for landscaping the site are to screen adjacent residential properties. Mr. Martin explained that the Department of Planning representative wanted to preserve select views from Oakland Road into the Property and instructed him not to propose an unnatural wall of vegetation along the road that could block any view. Much of the landscaping is concentrated around the seven-foot-tall fence that surrounds the proposed solar panels. Additional landscaping is proposed at the access road to the facility. Mr. Martin stated that initially, 2 ½ to 3" trees and 6' evergreens will be planted along Oakland Road, and these size trees exceed the plantings required under the Baltimore County Landscape Manual. Existing forested area provides screening from residential homes to the north of the Property, and Petitioner will install additional landscaping along the northern boundary of the Property to further screen the view from neighboring homes.

Matt Durette, a professional engineer, working for OneEnergy next testified in support of the special exception. Mr. Durette was accepted as an expert in mechanical engineering, solar design and siting of solar facilities.

Mr. Durette testified that the facility will consist of just under 14.5 acres within a special exception area approximately 19± acres in size. Specifically, the facility will consist of: (i) galvanized steel posts driven directly into the ground in a north to south orientation; (ii) an aluminum racking system placed on top of the posts; (iii) photovoltaic solar panels with an antireflective coating that are connected to the racking system; (iv) wiring connecting the panels to an inverter, transformer, and, ultimately, to external power lines; (v) fencing placed around the facility for security, and (vi) additional landscaping. No barbed wire will be installed on the fencing.

Petitioner is proposing a "single-axis tracker" panel array that is designed to move with the position of the sun to provide maximum exposure of the panels to the sun and decrease the area needed to generate the permitted amount of electricity. The panels are 3' by 6' in size, are no taller than 9' when they are tilted towards the sun, and are constructed of an aluminum frame and a glass top designed to minimize glare. Mr. Durette confirmed that there are no fossil fuels, toxic chemicals, or radiation associated with the solar facility. Rainwater is sufficient to clean the panels, so no chemicals or other substances are used on them. Mr. Durette also testified that the risk of fire from the panels is "unlikely". On being questioned on cross-examination, Mr. Durette explained that the tracker motors are also solar powered.

Eric Hadaway, also of DMW, appeared on behalf of Petitioner, and was accepted as an expert in environmental regulation, analysis and evaluation of soils in Baltimore County. Mr. Hadaway testified that there are no environmentally protective buffers on the Property, but if the

solar facility is approved, Petitioner would subject sensitive areas to forest and stream buffers. He confirmed that there are non-tidals wetlands on areas of the Property outside the special exception area. Mr. Hadaway explained that Petitioner performed and obtained approval of a wetland and forest stand delineation and a steep and erodible soils analysis. There are streams that generate a forest buffer on the eastern half of the Property 740 feet away from the proposed facility. The newly established buffers and additional landscaping will offer protection that does not currently exist for these resources.

Mr. Hadaway also stated that there would be a stormwater management plan and measures installed on the site, as required by Baltimore County, and that Baltimore County had already approved the concept stormwater management plan for this project. Final approval of stormwater management will take place at the permitting stage of this project.

Mr. Hadaway opined that the various environmental measures being added on-site and the extent of undisturbed vegetated areas outside the special exception area would protect the Property from any negative environmental impacts.

Mr. Hadaway also provided testimony regarding an offsite stream located approximately 1,000 feet south of the proposed facility, which, at that distance, would not be negatively impacted.

On cross-examination Mr. Hadaway explained that the extent of soils analysis was limited to wetlands delineation. He also explained the multiple techniques available to control storm water management stabilize soils and increase absorption, including non-rooftop disconnects, new grasses, pollinator planting and seed mixtures that provide persistent vegetation throughout the seasons.

Mitch Kellman testified on behalf of Petitioner, and was accepted as an expert in Baltimore County land planning and zoning, with particular knowledge of the requirements for seeking and obtaining special exceptions in Baltimore County.

Mr. Kellman testified about the site location, size and zoning of R.C. 2. He confirmed that the only relief Petitioner sought was for a special exception. Mr. Kellman explained that the solar field will not be visible from Freeland Road because of a nearly 100' rise in elevation from that road with an intervening stand of existing trees. He also testified to specific zoning requirements for a solar facility in the R.C. 2 zone: that the use is permitted by special exception; that there were fewer than ten such facilities in the Third Councilmanic District where the Property is located; that there are no agricultural or rural legacy easements encumbering the Property; that the Property does not have an historic designation; that the proposed facility is not in a forest conservation easement; that the above ground components are at least fifty feet from the tract boundary; that all structures are less than twenty feet in height; that Oakland Road, a scenic road, will be screened.

Mr. Kellman also explained that on May 2, 2018, the plan had been submitted to the Development Review Committee and granted a limited exemption under Baltimore County Code §32-4-106(a).

Mr. Kellman provided additional testimony that the proposed facility meets the requirements of BCZR § 502.1. Specifically,

The solar facility will not tend to create congestion in roads, streets or alleys, since it will be unmanned and will only generate a handful of trips to the Property per year.

The solar facility will not create a potential hazard from fire, panic or other danger. As Mr. Durette testified, there is a strict electrical code governing the installation and the inverters

have a ground fault detection interruption system that would detect any fires and shut the equipment down, so there is little likelihood of fire. Additionally, Mr. Kellman confirmed that the Property is in close proximity (less than 1.5 miles) to a fire station in the unlikely event of a fire.

The facility will not overcrowd land and cause undue concentration of population. This requirement does not apply to a solar facility as it does not have any density. Because this use does not generate traffic or attract people, there is no overcrowding of the land or undue concentration of population.

The solar facility will not interfere with adequate provisions for schools, parks, waters, sewerage, transportation or other public requirements, conveniences, or improvements. The solar facility does not generate a need for public facilities of any kind. In fact, it assists with the provision of public services to the extent it adds electric power into the grid.

The solar facility will not interfere with adequate light and air. The components of the solar facility, which are approximately 10 feet in height and set back over 50 feet from any property line, will have no impact on adequate light and air.

The solar facility will not be inconsistent with the purposes of the property's zoning classification or the spirit and intent of the BZCR. Mr. Kellman opined that the use is expressly permitted by special exception.

The solar facility will not be inconsistent with the impermeable surface or vegetative retention provisions of the BCZR. Mr. Kellman noted that there are no impermeable surface or vegetative retention provisions applicable to the RC 2 zone. No clearing will be done in conjunction with the installation of the solar facility, additional plantings will be added, storm water management will be in place, and existing vegetation will remain. The special exception

area is the cleared area which was previously used for farming. There is no permanent disturbance of the soil because, after removal of the poles supporting the solar facility, the land may be used for farming or other purposes.

The solar facility will not be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers, and floodplains in the RC 2 zone. Mr. Kellman cited Mr. Hadaway's testimony that there are now no delineated or recorded wetlands or forest buffers to protect streams or other environmental resources on the Property. If the proposed solar facility is approved, however, buffers will be established and covenants recorded to protect the environmental and natural resources on the Property. Mr. Kellman noted that the facility will occupy only about 20% of the total acreage.

Mr. Kellman finally opined that the use at this location would have no greater negative impact than at another location in the R.C.2 zone than those inherent to the use.

After Protestants case closed, Petitioner offered David Straitman as a rebuttal witness. Mr. Straitman, a residential real estate appraiser was accepted as an expert in property valuation. He offered only one example of a solar facility (in Howard County) to demonstrate that the value of adjoining homes did not decline after the installation of the solar panels.

Mr. Kellman also testified in rebuttal, essentially affirming his opinion that the proposed facility met the requirements of the zoning regulation, both under Sections 502.1 and 4F.

Protestants' Case.

Protestants presented several witnesses whose testimony was directed at particular issues:

Theaux Le Gardeur testified as an expert in water quality, and serves as the Riverkeeper and Executive Director of the Gunpowder Riverkeeper, an organization devoted to monitoring and conserving the Gunpowder River watershed. He raised concerns that the Property drains

into the headwater of Bee Tree Run, a brook trout stream. Mr. Le Gardeur feared that the run off from the panels would change the hydrology of the stream and raise the temperature of the stream such as to threaten the brook trout. His testimony was that the cumulative impacts of the installation would degrade the trout stream since the panels don't allow water to infiltrate as slowly and would allow runoff to heat up the stream. Upon questioning, Mr. Le Gardeur could not identify any studies addressing nor could he quantify a safe distance from any stream on which to locate a solar array.

Ann Holmes Jones was offered but not accepted as an expert in agricultural preservation, the Board having found her substantial expertise as an independent consultant in agricultural and conservation easements not relevant to the issues before the Board. Nonetheless, Ms. Jones presented factual testimony regarding Agricultural Priority Preservation Areas and factors considered for easement purchase.

Meaghan Billingsley, the Assistant Director of the Valleys Planning Council ("VPC"), testified that even though the site is not within the geographic area of the organization, VPC had voted to appear in opposition to this facility as inconsistent with the R.C. 2 zone. She offered a resolution adopted by the VPC to that effect along with the requisite Rule 8 documents.

Nadine Lentz, a neighbor who resides on Orwig Road whose property adjoins the subject site, voiced her concerns that the installation would have a negative impact on the abundant wildlife in the area, such as snapping turtles, coyote, deer and eagles. She also feared increased lightning strikes because of the elevation of her property and the subject Property, though her house is some 300' from the proposed installation. Ms. Lentz also raised concerns that there would be chemical runoff from the panels that could degrade wells, that property values may be affected and that the installation may be visible from her home.

Lynne Jones lives at 815 State Church Rd., Parkton, MD. Her home is a 150 acre farm where her family has lived for 7 generations beginning in 1745. Ms. Jones testified individually and as President of Sparks-Glencoe Community Planning Council ("Sparks-Glencoe Council"). Sparks-Glencoe Council has 400 members and its boundaries run in a heart-shaped pattern from Hunt Valley in the south, to the Harford County/Baltimore County line in the east, to the Carroll County/Baltimore County line in the west. Not only is Sparks-Glencoe Council not a party to this case, more importantly, the Property, though near to, is not located within its boundaries. Those facts notwithstanding, Sparks Glencoe Council submitted a letter, signed by Ms. Jones, which described general opposition to solar facilities on farmland in northern Baltimore County. Ms. Jones' farm is located over five miles from the Property. She expressed her concerns about water runoff, flooding, impairment of scenic views and the negative impact on Targeted Ecological Areas and on the agriculture industry created by using farmland for solar facilities. Ms. Jones provided photographs of areas south of the Property on Heathecoate Road that are prone to flooding in heavy storms, but had no evidence if or how the solar facility would affect this existing condition. In support of her views, Ms. Jones attempted to introduce many articles she found on the internet, whose provenance the Board questioned. She also voiced some concerns regarding wildlife becoming entangled in fencing. Ms. Jones believes that solar facilities should be located in business and manufacturing zones. She is worried that the language in Bill 37-17 is not strong enough with regard to the issuance of a bond for maintenance and dismantling of the facility.

Lastly, Ms. Jones raised concerns that Petitioner's submission did not comport with Baltimore County Code §33-3-108.

Robert Rohe, Sr., a neighbor who resides on Orwig Road whose property abuts the subject site, testified that he maintains a Christmas tree farm on his property. As his trees are cut and sold over the next three years, he is concerned that the panels will affect the view from his deck. Mr. Rohe voiced concerns that the solar panels would be installed on prime agricultural soils and that, though his property sits at a higher elevation and upstream from the proposed solar array, the installation could create runoff that would affect wildlife and plantings in sensitive areas. He further voiced concerns that property values could be affected.

Kathleen Pieper lives at 4310 Beckeysville Rd., Hampsted, MD, which is 10 miles from the Property. Ms. Pieper presented Rule 8 papers for the North County Community Group, LLC for which she is the President ("North County"). North County is a volunteer organization of 500 members formed in 2015 with boundaries from the Maryland-Pennsylvania line in the north, York Rd. in the east, the Baltimore/Carroll County line in the west and Mt. Carmel Rd. in the south. The Property is within the boundaries of North County.

Ms. Pieper testified that she is familiar with the Property as a result of having worked with her former husband who farmed the Property at one time.

Ms. Pieper expressed concern that the special exception area is composed of prime and productive soils, and that solar facilities in general remove available farmland and crop production. Much of her testimony focused on 'Targeted Ecological Areas' or 'TEAs' which are designated as such because the land contains: forests; wildlife and rare habitats; non-tidal streams and fisheries; wetland adaptation areas; and tidal fisheries, bay and coastal ecosystems. Having done so, she explained when land is designated as having a TEA designation; it has the opportunity to receive state funding from Project Open Space ("POS"). Ms. Pieper testified that this Property is an unprotected TEA, and without any recorded conservation easement.

Ms. Pieper also testified that there are other sites available in Baltimore County that, in her opinion, might be more suitable for a solar facility because of their particular soil composition. She also suggested that Petitioner was seeking more acreage than it needs to produce 2 Mw of energy, based solely on other special exception cases in the County.

Ms. Pieper also felt that the security required by Baltimore County was not adequate and did not provide for soil remediation.

Paul Solomon was called by People's Counsel to testify, and was accepted, as an expert in planning, with a focus on rural zoning and land use planning. Mr. Solomon served as environmental planner for Baltimore County, retiring in 1992. He resides in New Freedom, Pennsylvania, approximately three miles from the Property. Mr. Soloman testified to the history of the R.C. 2 zone while he was employed by Baltimore County, his involvement in planning for the north part of the county, and in part, on his experience as a farm owner. He talked about the regional farming character and the quality of the farm land in the area, extending from Baltimore County into Pennsylvania and the effect of interrupting a 'critical mass' of farm land. It was Mr. Soloman's opinion that the solar facility conflicts with the legislative findings and purposes of the R.C. 2 zone as well as with certain provisions of the Master Plan 2020 concerned with farmland. He admitted on cross-examination that the Baltimore County statute does not prohibit solar facilities on prime agricultural soils. On cross-examination, he conceded that there is no prohibition to placing a solar facility on prime agricultural soils, and on re-direct conceded that the use is permitted by special exception in the zone.

John Altmeyer lives at 21722 Orwig Rd., Freeland, MD 21053 and adjoins the Property. He is a retired building inspector who worked for Baltimore County for 32 years. He was not offered as an expert in this case. Mr. Altmeyer calculated slope percentages for areas on the

Property using a topographical map to determine to his satisfaction whether the Petitioner's proposal complied with recommended grading for solar facilities.

Relying on Maryland Department of Environment ("MDE") Stormwater Design Guidance for Solar Panel Installations, Mr. Altmeyer testified that, in his opinion, if a slope is greater than 5% but less than 10%, the Petitioner would need "level spreaders" to catch the water runoff from the solar panels. He stated that if the slope is more than 10%, a full engineering study would have to be conducted and submitted to EPS. Mr. Altmeyer expressed his concern that the Site Plan does not show any stormwater management facilities.

Mr. Altmeyer also raised a concern that the panels would be visible from his house, and that the panels may contain carcinogens. He suggested that the proposed planting of Leland cypress would not survive winter weather.

Decision

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. Martin, Mr. Durette, Mr. Hadaway, and Mr. Kellman 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. To the contrary, the Protestants' collective concerns are impacts, which are inherent with this particular use. The crux of Protestants' case rest on the fact that the facility will be located on farmland with soils highly desirable for agricultural use, an element that was not adopted by the County Council's enactment of Bill 37-17 which is codified in BCZR, Article 4F. Understandably, the Protestants want the land in RC zones to remain farmland.

However, it is beyond the jurisdiction of this Board to rewrite Bill 37-17 or Article 4F. Applying the standard in *Shultz, Loyola* and *Attar*, the Protestants were required to present

evidence that the adverse effects stemming from this solar facility, at this location, are unique and different than the inherent impacts associated with this use in general. We did not have such evidence here.

As described in detail above, Petitioner's experts, Mr. Kellman and Mr. Durette provided cumulative testimony 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. Durette confirmed that there are no flammable materials used in this solar facility. There is fire station on Middletown Rd. (BCZR, §502.1.C.) As with the lack of traffic, Mr. Kellman repeated that this use does not generate people and therefore it would not tend to overcrowd the land or cause and undue concentration of population. (BCZR, §502.1.D.) Additionally, Mr. Kellman 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, the Board finds that it produces electricity, which benefits the surrounding community.

Mr. Martin confirmed that the height of the facility will be under 10 feet and would therefore not interfere with adequate light or air. (BCZR, §502.1.F.) The facility will stand in the cleared area of the Property, removed from any adjacent homes. Accordingly, the Board finds that shadowing and air circulation are not areas of concern.

As to the consistency of this use with the purposes of the RC zones and with the spirit and intent of the BCZR, solar facilities are consistent uses because they are temporary and are removed at the end of a lease term. There was much testimony and argument about removing 'prime and productive' soil from the agriculture industry. However, 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 RC zone, provided they meet the special exception standard, as explained in *Shultz*, *Loyola* and *Attar*. The Protestants' argument that farming is the primary use and therefore is consistent with the RC zones, is an argument which should be directed to the County Council. This Board is not required to determine whether a solar facility is detrimental to agricultural uses. Our authority to approve this use is contained in Article 4F and §502.1 factors. Moreover, even if this Property contains 'prime and productive' soil (an alleged fact, which we are not deciding), the owner cannot be compelled to farm or to lease the Property to a farmer.

Mr. Hadaway explained that the use is consistent with impermeable surface and vegetative retention provisions of the BCZR because there will not be any clearing or grading of land, or no tree removal. Rain will propel off the solar panels and soak into the ground between the rows. Ms. Carroll noted that there would be pollinator species planted under the panels and year round vegetation. Even so, Mr. Hadaway added that the Department of Environmental Protection and Sustainability ("EPS") will determine whether any further storm water management retention measures are needed.

Finally, Mr. Kellman 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, aquifers and floodplains. Sensitive areas of the Property will be subject to protective forest buffer easements and forest conservation easements where none now exist, and the facility will not be placed within, or disturb, those areas.

Having analyzed the special exception factors, the requirements of BCZR, §4F-102.B.1 and BCZR, §4F-104.A. 1-9, must also be satisfied by the Petitioner. Mr. Durett testified that the

19 ± acre special exception area and 14.5 acre solar panel array is the minimum acreage needed to produce 2.0 megawatts AC of electricity. (BCZR, §4F-102.B.1.)

Based on the evidence presented to the Board, we find that there was no compelling evidence by the Protestants here, which contradicts the Petitioner's plan that 19± acre special exception area is the minimum area needed to produce less than 2 megawatts AC electricity. The Protestants did not have an expert testify on this issue. Accordingly, we find that the Petitioner has met this burden.

Mr. Kellman 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. Kellman testified that the solar facility will not be located in the forest conservation easement or designated conservancy area. (BCZR, §§4F-104.A.3.) There was no evidence by the Protestants that contradicted either of these requirements.

As to the setback and height requirements, Mr. Kellman made clear that the facility at its highest peak will not exceed 10 ft. and will be located at least 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 by the Protestants that contradicted either of these requirements.

With regard to the requirement for a landscape buffer on the perimeter, Mr. Martin worked with the Department of Planning to preserve views from Oakland Road and to concentrate planting around the fence surrounding the panels. In addition, Petitioner will install additional landscaping at the access road to the facility and along the northern boundary of the Property to screen neighboring homes. We 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. (BCZR, §4F-104.8). Ms. Carroll testified that Petitioner conducted a glare study applying industry standards and methodology developed by the Federal Aviation Administration. The glare study indicated that there would be no glare produced by the solar panels here. The Protestants did not present an expert to contradict this testimony. Thus, we find that requirement is satisfied.

Finally, the Site Plan must comply with BCC, §33-3-108. (BCZR, §4F-104.A.9). The Protestants argued that the Petition should be dismissed because the Site Plan failed to list each of the 18 elements in Subsection (c). In our review of BCC, §33-3-108, we find the language in Subsection (a) is unambiguous. That Subsection requires the Department of Environmental Protection and Sustainability ("EPS") (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 EPS to "make a reasonably informed decision regarding the proposed activity." Additionally, a plan submitted to EPS for approval must also contain the information listed in Subsection (c).

In our view, the specific items listed in Subsection (c) must be considered by EPS when it reviews and approves the Plan under that Section, not this Board. The testimony of Mr. Kellman was that EPS' policy is that they will not approve a site plan until after the special exception relief is granted. We find his testimony to be consistent with the language in Section 33-3-105 (1) and (2) which provides that EPS is "responsible for enforcing the provisions of [Title 33]" and the Director of EPS "may adopt policies and regulations as necessary to implement the provisions of [Title 33]."

On this issue, there was no expert testimony presented by the Protestants to counter the evidence presented by the Petitioner. Given the express wording of Section 33-3-108 that EPS shall approve the Site Plan, and that EPS is responsible for ensuring that the Site Plan comply with both the general and specific requirements of Subsections (b) and (c), we find that the appropriate resolution for this Board is to place a condition in the Order reiterating the words of §4F-104.A.9, that the Petitioner shall comply with Section 33-3-108. To do otherwise would be to overstep this Board's statutory authority.

Conclusion

After reviewing all of the testimony and evidence presented, the Board finds that Petition for Special Exception pursuant to BCZR, Article 4F is granted.

ORDER

THEREFORE, IT IS THIS 10th day of May, 2019, by the County Board of Appeals of Baltimore County,

ORDERED, that the Protestants' Motion to Dismiss the Petition on the basis of inadequate notice, be and the same is hereby **DENIED** for the reasons set forth herein, and it is further,

ORDERED, that the Petition for Special Exception for a solar facility pursuant to BCZR, Article 4F as set forth on the Site Plan and the Schematic Landscape Plan be, and the same is hereby **GRANTED**, subject to the following conditions under the Board's authority in §4F-104.A.10:

1. Petitioner shall submit for approval by Baltimore County a landscape plan for the Property demonstrating appropriate screening and vegetation as required by the Landscape Manual and as set forth in the Zoning Advisory Committee Comments from the Department of Planning dated March 27, 2018.

The Landscape Plan shall take into consideration the residential properties adjoining the Property on the North and East, in an effort to minimize the visual impact of the solar facility on those residences.

2. The area occupied by the solar panel array shall not exceed 14.5 acres;

3. Petitioner shall utilize panels that minimize glare to prevent traffic or safety hazards; the height of the panels shall not exceed ten feet (10');

4. Petitioner shall install a 7 ft. high, security fence, without barbed wire, between the landscaping buffer and the solar facility as required by BCZR, §4F-104.A.7. Attached to the fence in a conspicuous place, while the solar facility is in operation, shall be 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, Petitioner 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 the Department of Environmental Protection and Sustainability as required in that Section.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

BOARD OF APPEALS
OF BALTIMORE COUNTY

Andrew M. Belt, Panel Chairman

Deborah C. Dopkin

Kendra Randall Jolivet

Debra Wiley

From: Debra Wiley
Sent: Friday, July 17, 2020 11:34 AM
To: 'pmalone@venable.com'; Karceski, David H.
Subject: Case No. 2017-0104-X - 632 Freeland Rd. (Atkinson)
Attachments: 20200717112928708.pdf

Good Morning Counsel,

As you know, there is quite a backlog of cases to be scheduled.

Our office is attempting to help Kristen and it appears that an email was received from Ms. Malone to Kristen Lewis on October 21, 2016 indicating holding off scheduling (see attachments).

Please provide a status update (in writing). If we do not hear from you within ten (10) days, this case may be dismissed without prejudice.

Thank you in advance for your understanding.

Debra Wiley, Legal Administrative Secretary Baltimore County Office of Administrative Hearings
105 West Chesapeake Avenue, Suite 103
Towson, Maryland 21204
410-887-3868

-----Original Message-----
From: adminhearingscpr@baltimorecountymd.gov <adminhearingscpr@baltimorecountymd.gov>
Sent: Friday, July 17, 2020 11:29 AM
To: Debra Wiley <dwiley@baltimorecountymd.gov>
Subject: Message from "RNP002673F6C9D3"

This E-mail was sent from "RNP002673F6C9D3" (MP 3055).

Scan Date: 07.17.2020 11:29:28 (-0400)
Queries to: adminhearingscpr@baltimorecountymd.gov

Kristen L Lewis

From: Malone, Patricia A. <PAMalone@Venable.com>
Sent: Friday, October 21, 2016 11:11 AM
To: Kristen L Lewis
Cc: Karceski, David H.; Malone, Patricia A.
Subject: Solar Cases

Kristen:

Please hold off on scheduling my two cases for now:

~~Case No. 2017-0104-X~~ (632 Freeland Road)
Case No. 2017-0108-X (20450 Middletown Road)

David will respond separately with his schedule for his case, which he does want scheduled.

Patsy

Patricia A. Malone, Esq. | Venable LLP
t 410.494.6206 | f 410.821.0147
210 W. Pennsylvania Avenue, Suite 500, Towson, MD 21204
PAMalone@Venable.com | www.Venable.com

Patricia A. Malone, Esq. | Venable LLP
t 410.494.6206 | f 410.821.0147
210 W. Pennsylvania Avenue, Suite 500, Towson, MD 21204
PAMalone@Venable.com | www.Venable.com

PETITION FOR ZONING HEARING(S)

To be filed with the Department of Permits, Approvals and Inspections

To the Office of Administrative Law of Baltimore County for the property located at:

Address 632 Freeland Road, Freeland, MD 21053 **which is presently zoned** RC 2

Deed References: 26823/303 10 Digit Tax Account # 0 7 0 1 0 8 9 0 6 0

Property Owner(s) Printed Name(s) Charles Gary Atkinson and Stephen Gordon Atkinson

(SELECT THE HEARING(S) BY MARKING X AT THE APPROPRIATE SELECTION AND PRINT OR TYPE THE PETITION REQUEST)

The undersigned legal owner(s) of the property situate in Baltimore County and which is described in the description and plan attached hereto and made a part hereof, hereby petition for:

1.____ **a Special Hearing** under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

2._X_ **a Special Exception** under the Zoning Regulations of Baltimore County to use the herein described property for

A solar panel array field as a public utility use, pursuant to Section 1A01.2.C.18 of the Baltimore County Zoning Regulations.

3.____ **a Variance** from Section(s)

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons: **(Indicate below your hardship or practical difficulty or indicate below "TO BE PRESENTED AT HEARING". If you need additional space, you may add an attachment to this petition)**

TO BE PRESENTED AT HEARING

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above petition(s), advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.
Legal Owner(s) Affirmation: I / we do so solemnly declare and affirm, under the penalties of perjury, that I / We are the legal owner(s) of the property which is the subject of this / these Petition(s).

Contract Purchaser/Lessee:

SEE ATTACHED SHEET

Name- Type or Print

Signature

Mailing Address City State

Zip Code Telephone # Email Address

Legal Owners (Petitioners):

Charles Gary Atkinson / Stephen Gordon Atkinson

Name #1 – Type or Print Name #2 – Type or Print

Signature #1 Signature # 2

632 Freeland Road Freeland MD

Mailing Address City State

21053 / /

Zip Code Telephone # Email Address

Attorney for Petitioner:

Patricia A. Malone, Esq.

Name- Type or Print

Signature

210 W. Pennsylvania Ave., Suite 500, Towson, MD

Mailing Address City State

21204 / (410) 494-6200 / pamalone@venable.com

Zip Code Telephone # Email Address

Representative to be contacted:

Patricia A. Malone, Esq.

Name- Type or Print

Signature

210 W. Pennsylvania Ave., Suite 500, Towson, MD

Mailing Address City State

21204 / (410) 494-6200 / pamalone@venable.com

Zip Code Telephone # Email Address

CASE NUMBER 2017-0104-X **Filing Date** 10/3/16 **Do Not Schedule Dates:** _____ **Reviewer** JCM

REV. 10/4/11

Kristen L Lewis

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Sent: Friday, October 21, 2016 11:11 AM
To: Kristen L Lewis
Cc: Karceski, David H.; Malone, Patricia A.
Subject: Solar Cases

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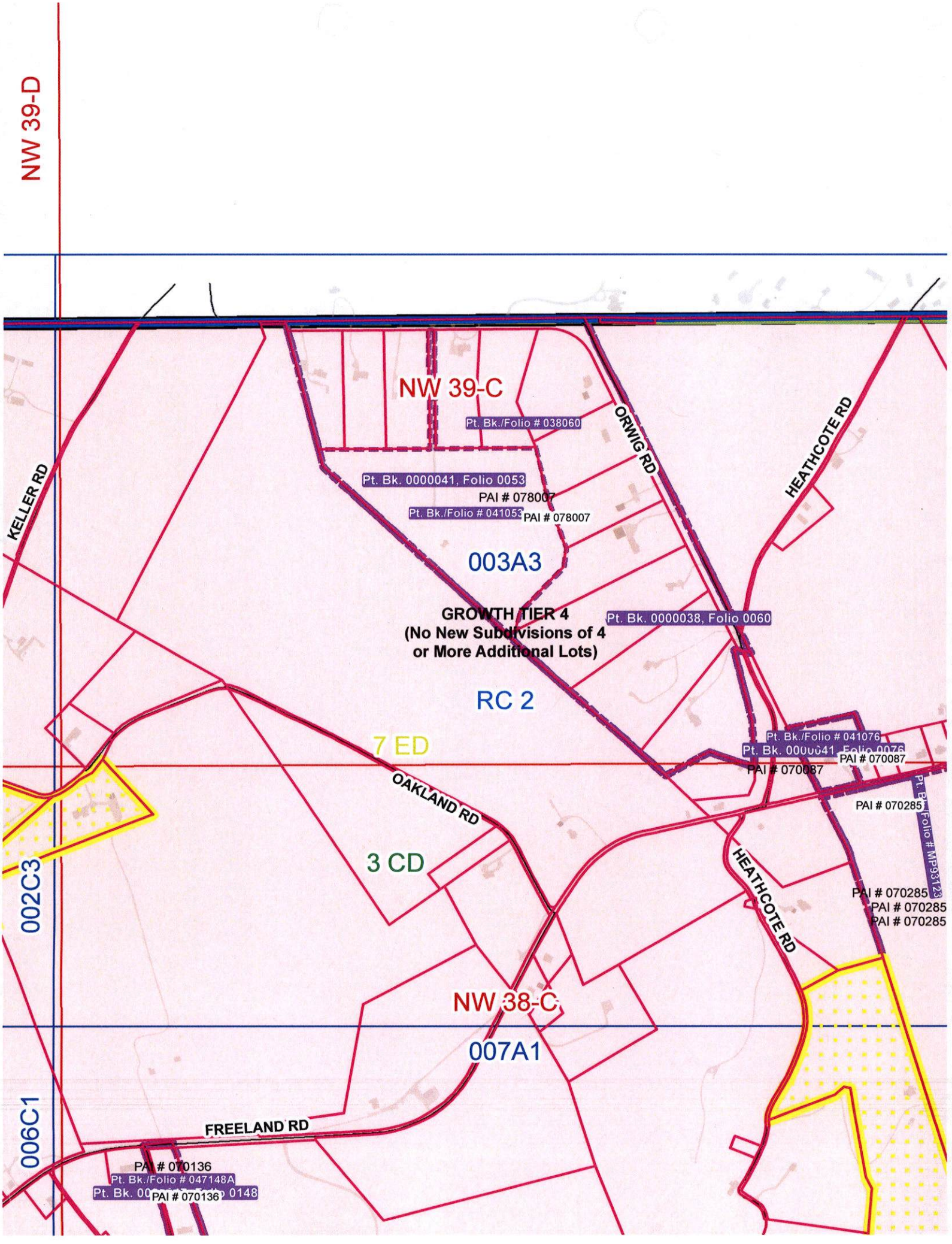
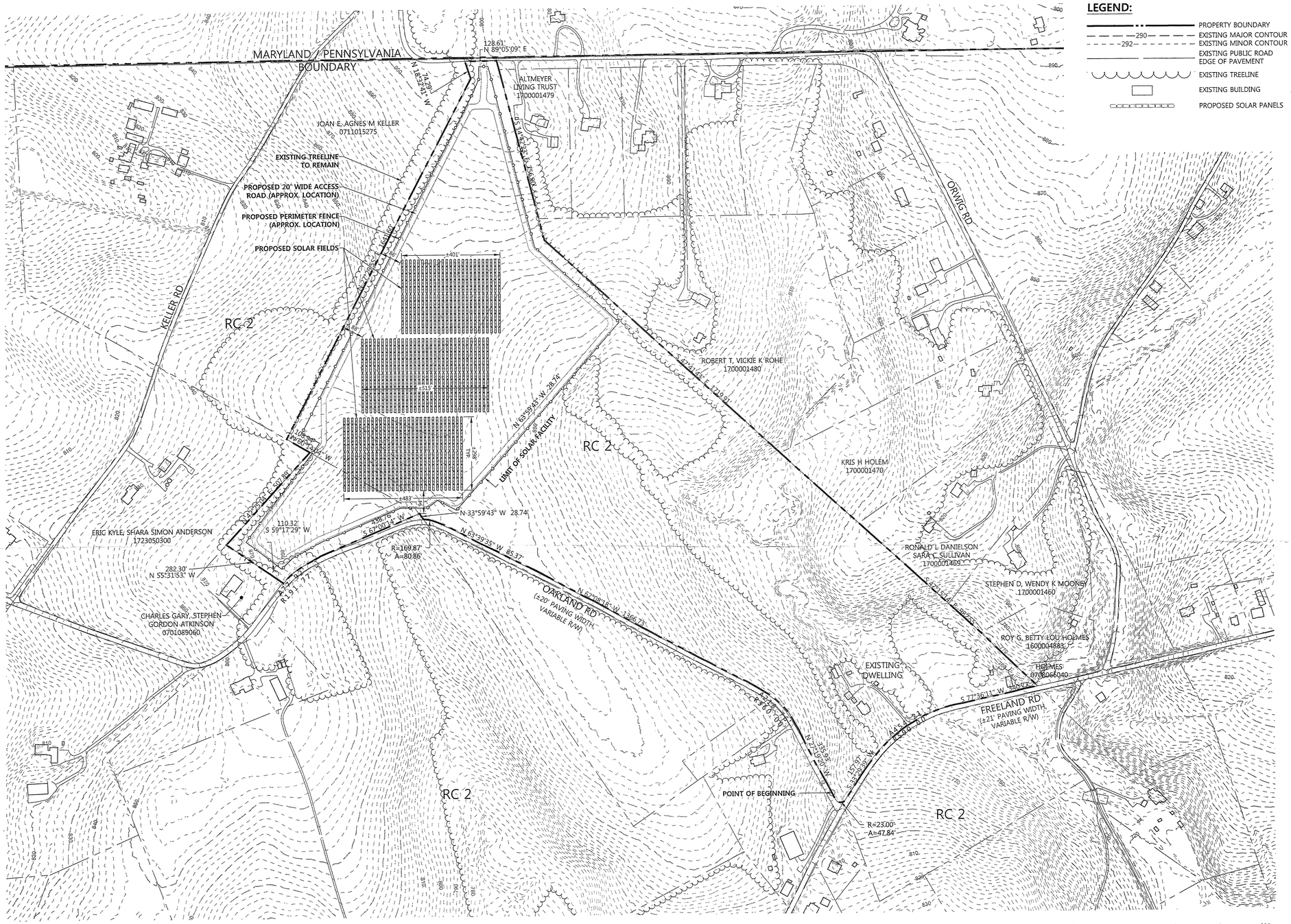

NW 39-D
NW 39-C
Pt. Bk./Folio # 038060
KELLER RD
ORWIG RD
HEATHCOTE RD
Pt. Bk. 0000041, Folio 0053
PAI # 078007
Pt. Bk./Folio # 041053
PAI # 078007
003A3
GROWTH TIER 4
(No New Subdivisions of 4
or More Additional Lots)
Pt. Bk. 0000038, Folio 0060
RC 2
7 ED
Pt. Bk./Folio # 041076
PAI # 070087
PAI # 070087
OAKLAND RD
PAI # 070285
3 CD
HEATHCOTE RD
PAI # 070285
PAI # 070285
PAI # 070285
002C3
NW 38-C
007A1
006C1
FREELAND RD
PAI # 070136
Pt. Bk./Folio # 047148A
PAI # 070136

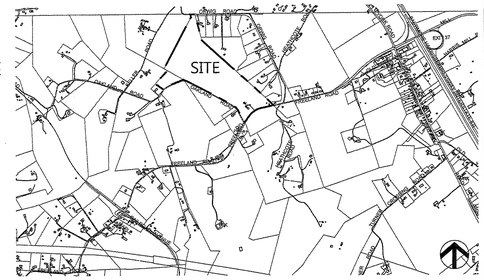


SITE PLAN

SCALE: 1"=200'

LEGEND:

- PROPERTY BOUNDARY
- 290 EXISTING MAJOR CONTOUR
- 292 EXISTING MINOR CONTOUR
- EXISTING PUBLIC ROAD EDGE OF PAVEMENT
- EXISTING TREELINE
- EXISTING BUILDING
- PROPOSED SOLAR PANELS



VICINITY MAP

SCALE: 1"=2000'

SITE DATA:

1. OWNER: ATKINSON CHARLES GARY, ATKINSON STEPHEN GORDON
2. TAX ACCT. #: 0701089060, DEED REF. #: 26823 / 00303
3. TAX PREMISE ADDRESS: 632 FREELAND ROAD, FREELAND, MD 21053
4. CONTRACT PURCHASER: OR LESSEE: ONE ENERGY RENEWABLES, 2003 WESTERN AVENUE, SUITE 225, SEATTLE, WA 98121
5. ZONING: RC 2
6. COUNCILMANIC DISTRICT: 3
7. ELECTION DISTRICT: 7
8. TAX MAP / PARCEL: 0003 / 0017
9. SITE AREA: 99.46 AC ± (SDAT), 74.622 AC (GIS)
10. GROWTH TIER: 4
11. CENSUS TRACT: 40700
12. WATERSHED: LOCH RAVEN RESERVOIR
13. FREELAND ROAD IS DESIGNATED AS A BALTIMORE COUNTY SCENIC ROUTE, AS IDENTIFIED IN THE BALTIMORE COUNTY MASTER PLAN 2020.
14. THE SITE IS NOT HISTORIC AND THERE ARE NO LANDMARKS ON THE PROPERTY (AS PER BALTIMORE COUNTY "MY NEIGHBORHOOD" WEBSITE).
15. THE SITE IS SERVED BY PRIVATE WELL AND SEPTIC.
16. THE SITE IS NOT WITHIN A MORATORIUM AREA AS WOULD BE IDENTIFIED ON THE BALTIMORE COUNTY BASIC SERVICES MAPS.
17. THE SITE IS NOT WITHIN A FLOOD HAZARD AREA AS WOULD BE IDENTIFIED ON THE FIRM/FEMA MAPS.
18. NO SUBDIVISION IS PROPOSED.
19. NO STRUCTURES WILL EXCEED A HEIGHT OF 35 FEET.
20. PARKING REQUIRED: 0, UNMANNED FACILITY. A TEMPORARY PARKING SPACE WILL BE PROVIDED FOR MAINTENANCE.
21. NO SIGNAGE IS PROPOSED.
22. THERE IS NO ZONING HISTORY OR DEVELOPMENT PROCESS HISTORY ON THE PROPERTY (BASED UPON REVIEWED COUNTY RECORDS).
23. THERE ARE NO ACTIVE BUILDING PERMITS IN THE AREA OF THE PROPOSED SOLAR PANELS (BASED UPON REVIEWED COUNTY RECORDS).

DATA SOURCE:

1. THE PROPERTY LINES, TOPGRAPHY, ROADS, AND BUILDINGS SHOWN HEREON WERE OBTAINED FROM BALTIMORE COUNTY GIS, AERIAL PHOTOGRAPHY BY GOOGLE, AND DEED INFORMATION.

DMW
DAFT McCUNE WALKER INC
501 FAIRMOUNT AVENUE SUITE 300 TOWSON, MD 21286
P: 410 296 3333 F: 410 296 4705 WWW.DMW.COM

SITE PLAN TO ACCOMPANY SPECIAL EXCEPTION FOR A SOLAR FACILITY

632 Freeland Rd.

Freeland, MD 21053

SEAL

THIS PLAN IS SEALED FOR ZONING PURPOSES ONLY AND DOES NOT REPRESENT A BOUNDARY SURVEY

STATE OF MARYLAND · MICHAEL DAVID MARTIN · 21431 · REGISTERED PROFESSIONAL ENGINEER

10-19-16

DATE	BY	REVISIONS

ISSUE DATES			
REVIEW:	10/13/16	BASE:	
BID:		DRAWN:	JAD
PERMIT:		DESIGNED:	MJK
CONSTRUCTION:		CHECKED BY:	
SCALE:	1" = 100'	DATE CHECKED:	
PROJECT NO.:	16046	DRAWING:	1 of 1