

IN THE MATTER OF	*	BEFORE THE
CONSTELLATION SOLAR	*	HOWARD COUNTY
MARYLAND MC, LLC	*	BOARD OF APPEALS
Petitioner	*	Case No. BA 15-14C

DECISION AND ORDER

The Howard County Board of Appeals (the "Board") convened on June 13, 2016 to hear closing arguments in the above-captioned matter and to deliberate and reach a decision regarding the proposed conditional use sought by Constellation Solar Maryland MC, LLC ("Constellation"). Constellation was represented by John Gontrum, Esq. and Jennifer N. Busse, Esq. Thomas Coale, Esq. represented John and Bobbin Kreider, who opposed the conditional use, and Susan Booth, also opposed to the conditional use, spoke on her own behalf (collectively "Opponents"). The Board also held hearings in this matter on February 11 and 23, and March 10 and 31, 2016.

Members of the Board present at the June 13, 2016 hearing were: James Howard, Steven Hunt, John Lederer, Genevieve Walker-Lightfoot, and James Walsh. Chairperson James Howard presided.

The case was heard pursuant to the Board's Rules of Procedure, Section 2.209. The burden of proof is one of a preponderance of the evidence and is on the Petitioner to show, by competent, material and substantial evidence, that Petitioner is entitled to the relief requested and that the request meets all prescribed standards and requirements of the applicable Zoning Regulations.

On preceding hearing nights, the Board received evidentiary presentations from each party. The Board accepted closing arguments in writing and, additionally, on June 13, the Board heard oral arguments from all parties that were present and wished to be heard.

The Howard County Charter, the Howard County Code, the Howard County Zoning Regulations, the various technical staff reports and agency comments, the General Plan of Howard County, the General Plan of Highways, and the conditional use petition were incorporated into the record by reference.

FINDINGS OF FACT

Constellation petitioned for approval of a conditional use for a solar facility to be located on a tract of land on the northwest corner of Maryland Route 32 and Old Frederick Road under Section 131 of the Howard County Zoning Regulations. The proposed location is on a portion of Old Frederick Road that has been designated a Howard County scenic road.

In support of its petition, Constellation presented testimony from several witnesses, including professionals from several fields, including landscaping and engineering, as well as offering a number of exhibits which were admitted into evidence. Opponents offered testimony from witnesses as well as exhibits which were admitted into evidence.

In light of the totality of the credible evidence offered by the parties and admitted into evidence during the course of the hearings, the Board is not persuaded that the proposed facility is, “designed and located to avoid glare or reflection onto adjacent properties and adjacent roadways”

ANALYSIS

Constellation bears the burden to demonstrate by a preponderance of the evidence that each of the criteria in the Zoning Regulations, including those specific to the proposed commercial solar facility, would be met if its conditional use were granted.

In pertinent part, the Zoning Regulations require as follows:

Section 131.N.52. Solar Facility, Commercial

A Conditional Use may be granted in the RC or RR District for a commercial solar facility, provided that:

- a. The land on which the commercial solar facility is proposed may not be in the Agricultural Land Preservation Program and it may not be encumbered by any environmental preservation easements.
- b. The maximum size of a solar facility shall be 75 acres notwithstanding the size of the parcel. The parcel on which the commercial solar facility is proposed must be a minimum of 10 acres in size.
- c. All structures and uses must meet a minimum 50 foot setback from all property lines.
- d. No structure or use may be more than 20 feet in height.
- e. A 'Type D' landscaping buffer must be provided around the perimeter of the proposed commercial solar facility unless the Hearing Authority determines that an alternative buffer is sufficient.
- f. All security fencing must be located between the landscaping buffer and the commercial solar facility.
- g. The systems shall comply with all applicable local, state, and federal laws and provisions.
- h. A commercial solar facility that is no longer used shall be removed from the site within one year of the date that the use ceases.
- i. The premises shall be maintained at all times in a clean and orderly condition, including the

care or replacement of plant materials required in the landscaping plan. The responsibility for compliance with this provision shall be with all parties having a lease or ownership interest in the commercial solar facility. The applicant shall provide the Hearing Authority with details regarding maintenance and access for the site.

j. A solar collector or combination of solar collectors shall be designed and located to avoid glare or reflection onto adjacent properties and adjacent roadways and shall not interfere with traffic or create a safety hazard.

k. The applicant shall agree to register all solar collectors with the Department of Fire and Rescue Services. The registration shall include a map of the solar facility noting the location of the solar collectors and the panel disconnect.

l. Tree removal shall be minimized and reforestation shall be done in accordance with Section 16.1026 of the Howard County Code.

m. The applicant shall demonstrate that the solar facility does not harm the scenic characteristics of the view of or from:

(1) A public park;

(2) A national or state designated scenic byway;

(3) A road listed in the Scenic Roads Inventory adopted under Section 16.1403 of the Howard County Code; or

(4) A historic structure as defined in Section 16.601 of the Howard County Code.

Constellation presented witness testimony and exhibits regarding the design and location of the proposed solar facility, including with respect to where the facility would and would not cause

glare and reflection. Constellation's own witnesses conceded in portions of their testimony, testimony supported by certain of Constellation's and Opponent's exhibits, that if the proposed facility is approved and built as designed in this location, glare and reflection from the solar array would nonetheless fall upon the adjacent Kreider property, at least for some period of time at certain times of year.

Based upon the evidence before the Board, it might be possible to block this remaining, limited glare and reflection that would occur despite Constellation's design. However, the only proposal to do so involved planting trees on the Kreider's own property, which they have not consented to do. Nothing in the Zoning Regulations allows the Kreider's to be required to make such an adjustment to accommodate Constellation's proposal.

CONCLUSIONS OF LAW

Constellation has not met its burden to show that its conditional use, as proposed, would satisfy the applicable Zoning Regulations.

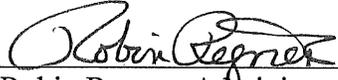
ORDER

Based upon the foregoing, it is this 19 day of August, 2016, by the Howard County Board of Appeals, **ORDERED:**

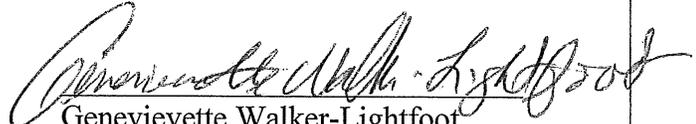
That the Petition of Constellation Solar Maryland MC, LLC for a conditional use allowing a commercial solar facility is **DENIED**.

ATTEST:

HOWARD COUNTY BOARD OF APPEALS


Robin Regner, Administrator

DISSENT
James Howard, Chairperson

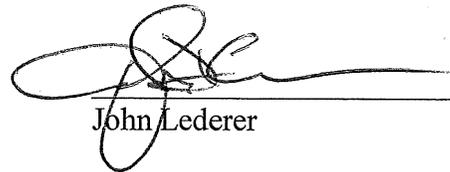

Genevieve Walker-Lightfoot
Vice Chairperson

PREPARED BY:

HOWARD COUNTY OFFICE OF LAW

Gary W. Kuc
County Solicitor


Steven Hunt


John Lederer


David Moore
Senior Assistant County Solicitor

DISSENT
James Walsh