

**BEFORE THE BOARD
OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA**

**APPLICATION OF
CATHOLIC CHARITIES OF THE
ARCHDIOCESE OF WASHINGTON, INC.
HEARING DATE: FEBRUARY 27, 2019**

**BZA APPLICATION NO. 19927
PARCEL 167, LOTS 67 AND 68
ANC 5C**

STATEMENT OF THE APPLICANT

**I.
NATURE OF RELIEF SOUGHT**

This prehearing statement includes updated and additional information for the application filed by Catholic Charities of the Archdiocese of Washington, Inc. (the “Applicant”) on November 14, 2018, seeking special exception approval for a utility use in the R-1-B Zone District pursuant to Subtitle X § 901.2 and Subtitle U § 203.1(p). The subject property is located at 2800 Otis Street, N.E., which is more particularly described as Parcel 167, Lots 67 and 68 (the “Property”).

The Applicant also seeks a waiver from Subtitle Y § 300.15 in order to file a report prepared by Exponent less than 21 days prior to the public hearing on the application. The report pertains to the electromagnetic field levels for the proposed solar array use at the Property. The Applicant is scheduled to present the application to Advisory Neighborhood Commission (“ANC”) 5C at its regularly scheduled meeting on February 20, 2019. At this meeting, the Applicant will share the findings of Exponent’s report with the community, and will forward the report to the Board prior to the public hearing on the application. As a result, we submit that granting the waiver would not prejudice the rights of any party.

II.
JURISDICTION OF THE BOARD

The Board of Zoning Adjustment (“BZA” or Board”) has jurisdiction to grant the requested special exceptions pursuant to Subtitle X § 901.2 of the Zoning Regulations.

III.
ADDITIONAL EXHIBITS IN SUPPORT OF THE APPLICATION

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| <u>Exhibit A:</u> | Revised Architectural Drawings |
| <u>Exhibit B:</u> | Excerpt from the Zoning Map |
| <u>Exhibit C:</u> | BZA Order No. 14852 |
| <u>Exhibit D:</u> | Excerpt from the Comprehensive Plan Future Land Use Map (“FLUM”) |
| <u>Exhibit E:</u> | Mission of Charities Convent Letter of Support |
| <u>Exhibit F:</u> | Outlines of Testimony and Resumes of Expert Witnesses |

IV.
WITNESSES

1. Monsignor John J.ENZLER, President and Chief Executive Officer, Catholic Charities of the Archdiocese of Washington, Inc.
2. Lisa Walsh, Solar Energy Services, Inc.
3. Joshua Clark, Anacostia Watershed Society – to be proffered as an expert in landscape architecture

V.
BACKGROUND

A. Description of the Property and Surrounding Area

The Property is an irregularly shaped parcel that consists of approximately 14.15 acres. The southern portion of the Property is improved with a community residence facility approved pursuant to BZA Order No. 14852, a copy of which is attached as Exhibit C. The community residence facility, “Gift of Peace,” is a home for the homeless and terminally ill, including those with AIDS. The facility is operated by 32 religious sisters of the Missionaries of Charity, founded by Saint Mother Theresa. The majority of the land area of the Property is vacant.

The Property is zoned R-1-B and designated Institutional use on the FLUM. The Property is located in the northeast quadrant of the District and is bounded by Randolph Street to the north and a segment of Otis Street to the south. The eastern edge of the Property abuts lots fronting on 26th Street and Randolph Street, respectively, and the western edge of the Property abuts lots fronting on 30th Street and Perry Street, respectively. Parcel 167/66 to the northeast corner of the Property, adjacent to Eastern Avenue, is federally owned vacant land. Parcel 167/65 to the southeast corner of the Property and Parcel 167/64 to the northwest corner of the Property, both adjacent to Otis Street are owned by the Applicant.

B. Description of the Project

The solar array will cover approximately five of the 14.15 acres that make up the Property, and includes approximately 5,000 solar panels, a transformer, and 15 solar inverters distributed throughout the array. As shown on the enclosed plans, the solar array will be trisected by a north-south utility access easement and the existing service road. Each section of the solar array will be screened by a 7 foot tall security fence. A natural ground cover/pollinator meadow

is proposed for underneath the solar array that includes native grasses and forbs, which will provide aesthetic value and improve the stormwater management of the Property. It is anticipated that the solar array will only require maintenance twice annually, even with the inclusion of the pollinator meadow.

The solar array use is proposed for the Property primarily for two reasons. First, the Applicant desires a passive use for the Property that will not generate noise or traffic that would adversely affect the existing hospice/shelter facility on the Property. The solar panels do not produce any perceptible noise, and, according to the equipment data sheets the sound levels from the inverters and the single transformer are 65 decibels; equivalent to the sound levels of a normal conversation. The proposed solar array use is a significantly less intense use than 43 single family homes that could be developed on the same five acres as a matter of right. In its entirety, the Property could be redeveloped with approximately 123 single family homes as a matter of right. The placement of a solar array is a less permanent option because, as discussed below, Catholic Charities retains the contractual right and flexibility to have the solar array removed after 15 years.

Second, the solar array will generate enough renewable energy to off-set the majority of the electricity costs for the 12 facilities in the District owned/operated by the Applicant, consistent with the Clean Energy DC Plan. The off-set will be in the form of credits by PEPCO to the Applicant, allowing the Applicant to apply those financial resources to fund the maintenance and capital repairs of the existing facility on the Property. The solar array will be installed on the Property by Solar Energy Services, Inc. (“SES”) pursuant to a 15-year ground lease between the Applicant and Interstate Gas Supply, Inc. of Columbus, Ohio (“IGS”). Under the agreement, IGS is granted the right to install the solar array, and they will be responsible

throughout the term for operations and maintenance via their contractual relationship with SES. In return, Catholic Charities will pay IGS a fixed per kilowatt rate for the solar energy generated on-site. At the end of the 15-year ground lease, Catholic Charities has the right to require IGS to remove the solar array in its entirety.

VI.

SPECIAL EXCEPTION APPROVAL FOR UTILITY USE

The Applicant requests special exception approval for the solar array pursuant to Subtitle U § 203.1(p).

A. Standard of Review

Pursuant to D.C. Code §6-641.07(g)(2) and Subtitle X § 901.2, the Board is authorized to grant a special exception where it finds the special exception will be in harmony with the general purpose and intent of the Zone Plan and will not tend to adversely affect the use of neighboring property, subject in each case to the special conditions specified. In reviewing an application for special exception relief, “[t]he Board’s discretion... is limited to a determination of whether the exception sought meets the requirements of the regulation.” *First Baptist Church of Washington v. District of Columbia Bd. of Zoning Adjustment*, 423 A.2d 695, 706 (D.C. 1981) (quoting *Stewart v. District of Columbia Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)). If the applicant meets its burden, the Board must ordinarily grant the application. *Id.*

The Project is in harmony with the general purpose and intent of the Zone Plan and will not tend to adversely affect the use of neighboring property. Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the requested relief are met. In this case, as described below, all of the requirements under Subtitle U, Sec. 203.1(p) have been met. The solar array is a passive use of the Property in that it does not generate an

excessive amount of noise or traffic. Additionally, as described in detail below, the Applicant will install landscaping along the perimeter of the Property, which, at maturity, will largely screen the solar array from view from the surrounding properties.

B. Special Exception Standard for Utility Uses

Pursuant to Subtitle U, Sec. 203.1(p), utility uses are permitted by special exception in the R-1-B Zone District, subject to the following conditions:

- (1) An electronic equipment facility shall not be permitted;
- (2) Any requirements for setbacks, screening, or other safeguards that the Board of Zoning Adjustment deems necessary for the protection of the neighborhood; and
- (3) Any new construction of a freestanding structure for use as an optical transmission node shall be built to appear compatible with surrounding construction, including exterior building material, fenestration, and landscaping and there shall be no advertisement on the structure.

The Application meets all of the foregoing criteria as discussed below:

1. *Electronic equipment facility not permitted.* Subtitle U § 203.1(p)(1). An electronic equipment facility is defined as “[a] facility or space used primarily for or intended to be used primarily for the housing, operation, and/or co-location of computer equipment that provides: (a) electronic data switching, (b) transmission, and/or (c) telecommunication functions, whether inside or outside the facility.” The proposed solar array does not fall within the definition of an electronic equipment facility.

2. *Any requirements for setbacks, screening, or other safeguards that the Board of Zoning Adjustment deems necessary for the protection of the neighborhood.* The Applicant will take the

following measures to mitigate the impacts of the solar array on the surrounding neighborhood:

First, the solar array will be setback from the property lines and residences.

- a. The northernmost row of the solar panels is set back 15 feet from Randolph Street.
- b. The easternmost row of solar is set back 107 feet from Eastern Avenue.
- c. The eastern edge of the solar array is set back 86 feet from the closest residential lot on Perry Street.
- d. The western edge of the solar array is set back approximately 21 feet from the closest residential lot on 30th Place, NE.

The setback dimensions are reflected on Sheet S 003 of the enclosed plans.

Second, the Applicant will install landscaping along the perimeter of the Property that will largely screen the solar array from view from the surrounding residences. A total of 109 trees will be planted around the perimeter of the Property including the following:

- 25 Yoshino Japanese Cedar Trees: These trees are fast growing evergreens, which will be 6 feet to 8 feet at time of planting. They reach a height of 18 feet within five years and at the time of maturity they are 30 to 40 feet tall and 20 to 30 feet in circumference.
- 22 Bracken's Brown Beauty Magnolia Trees: These trees are moderate growing evergreens, which will be 6 feet to 8 feet at time of planting. They reach a height of 15 feet within five years and at the time of maturity are 30 to 50 feet tall and 15 to 30 feet in circumference.
- 50 American Holly Trees: These trees are moderate growing native evergreens, which will be 6 feet to 8 feet at time of planting. They reach a height of 15 feet within five years and at the time of maturity they are 30 to 40 feet tall and 15 to 25 feet in circumference.

- 12 Okame Cherry Trees: These trees are fast growing deciduous trees, which will be 8 feet to 10 feet at time of planting. They reach a height of 12 feet within five years and at the time of maturity they reach 15 to 20 feet tall and 15 to 20 feet in circumference.

Third, the Applicant will address any stormwater management concerns with the implementation of bioretention systems and landscaping. The finalized design will be coordinated with the District Department of Energy and Environment (“DOEE”) and will comply with all District stormwater management requirements.

3. *Any new construction of a freestanding structure for use as an optical transmission node shall be built to appear compatible with surrounding construction, including exterior building material, fenestration, and landscaping and there shall be no advertisement on the structure.*

The solar array will not include a freestanding structure for use as an optical transmission node.

IX. **COMMUNITY OUTREACH**

Since filing the application, the Applicant has presented the application at two community meetings – on December 8, 2018 and January 5, 2019 – facilitated by Commissioner Gail Brevard, the single-member District representative for ANC 5C-01. Comments on the application were also fielded by the Office of Planning through the large tract review process. In response to the questions and comments from the community, the Applicant has commissioned Exponent to do a study on the electromagnetic field levels for the solar array specifically proposed for the Property; revised the application to include substantially more landscaping to further screen the solar array and a pollinator meadow to beautify the project and help with stormwater runoff; and agrees to replace segments of the fence along Randolph Street and Eastern Avenue.

The Applicant is scheduled to present the application to the full ANC at its regularly scheduled meeting on February 20, 2019. The Applicant will share the findings of Exponent's report with the community at the ANC meeting, and will forward the report to the Board prior to the public hearing on the application.

X.
CONCLUSION

For the reasons stated above, the Applicant has demonstrated that its request is in harmony with the purpose and intent of the Zoning Regulations and meets the test for special exception approval. Accordingly, the Applicant respectfully requests the Board to approve the application.

Respectfully submitted,

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By: _____

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