

<b>IN RE: PETITIONS FOR SPECIAL HEARING *</b>	BEFORE THE
<b>AND SPECIAL EXCEPTION</b>	
<b>(1605-1607 Bellona Ave.) *</b>	OFFICE OF
8 <sup>th</sup> Election District	
3 <sup>rd</sup> Council District *	ADMINISTRATIVE HEARINGS
Lutherville Volunteer Fire Company, Inc.	
<i>Legal Owner</i> *	FOR BALTIMORE COUNTY
Petitioner *	<b>Case No. 2016-0070-SPHX</b>
* * * * *	

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Special Exception filed on behalf of Lutherville Volunteer Fire Company, Inc., legal owner (“Petitioner” or “LVFC”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to approve an amendment to the plan previously approved in Case No. 2008-169-SPHXA. A Petition for Special Exception was filed pursuant to §1B01.1.C.23 to use the subject property for an extension of the existing LVFC to the property known as 1528 Norman Avenue, to provide additional parking and to further LVFC activities.

Appearing at the public hearing in support of the requests was Jamie Cahn, Vice President of the LVFC. Adam Rosenblatt, Esq. represented the Petitioner. Eric Rockel and Martin Reisinger, both of whom live in the neighborhood, attended the hearing to express concerns regarding the inadequacy of storm water management in the area. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP) and the Bureau of Development Plans Review (DPR).

### **Special Hearing**

The petition for special hearing does not request substantive zoning relief. Rather, the Petitioner merely seeks to amend the site plan approved in a prior case (2008-0169-SPHXA), to reflect the relief granted herein; i.e., an expansion of the special exception area for the LVFC. As such, the petition will be granted.

### **Special Exception**

Under Maryland law, a special exception use enjoys a presumption that it is in the interest of the general welfare, and therefore, valid. Schultz v. Pritts, 291 Md. 1 (1981). The Schultz standard was revisited in People's Counsel v. Loyola College, 406 Md. 54 (2008), where the court emphasized that a special exception is properly denied only when there are facts and circumstances showing that the adverse impacts of the use at the particular location in question would be above and beyond those inherently associated with the special exception use.

In this case, David Martin (a registered landscape architect accepted as an expert) reviewed each of the standards set forth in the B.C.Z.R. § 502 and opined Petitioner satisfied same. In addition, Petitioner was previously granted a special exception for the operation of a volunteer fire company in a residential zone. In light of the above the petition for special exception will be granted.

The DOP ZAC comment suggested a 6 ft. privacy fence be constructed at the site. But counsel noted (and Mr. Rockel agreed) that none of the dwellings or businesses in the vicinity have such fencing, which would cause it to “stick out like a sore thumb.” I agree, and believe that the proposed landscaping (shown on a conceptual landscape plan, Petitioner’s Exhibit 4) will provide an adequate buffer.

## **Community Concerns**

As noted above, Messrs. Rockel and Reisinger both expressed concern with the inadequacy of storm water management in the historic Lutherville area. In fact, they noted that the situation was especially dire in the vicinity of the site, and recent photos were submitted (Community Ex. No. 1) showing flooding conditions. Mr. Rockel indicated that the County had begun to perform surveys and preliminary engineering for upgraded storm drains in this area, but that the project never came to fruition and is not (to his knowledge) in the County's capital budget.

As indicated at the hearing, the LVFC cannot be expected or required to remedy the drainage problems in connection with its zoning request. While developers of large residential and commercial projects are frequently required to dedicate land and/or construct capital improvements as a condition of approval, a local government would not be permitted to extract such commitments in a case like this. *See, e.g., Koontz v. St Johns River Water Mngmt. Dist.*, 133 S.Ct. 2586 (2013) (there must be some nexus or rough proportionality between the scope and impact of the project and the government exactions). Even so, the community's concerns are certainly valid, and it is ultimately Baltimore County's responsibility to provide storm drains that are adequate to meet the demands imposed by "ordinary and usual rainfalls." *Eisenstein v. City of Annapolis*, 177 Md. 222, 228 (1939).

THEREFORE, IT IS ORDERED this **13<sup>th</sup>** day of November 2015, by this Administrative Law Judge, that the Petition for Special Hearing to approve an amendment to the plan previously approved in Case No. 2008-0169-SPHXA, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Special Exception pursuant to B.C.Z.R. § 1B01.1.C.23 to use herein described property for an extension of the existing Volunteer Fire Company to the property known as 1528 Norman Avenue to provide additional parking and to

further Volunteer Fire Company activities, be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at its own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioner would be required to return the subject property to its original condition.
2. Petitioner shall provide landscaping at the site as determined in the sole discretion of the County's Landscape Architect.

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

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Signed \_\_\_\_\_  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County

JEB/sln