

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
(8629 Winands Road)		
2 nd Election District	*	OFFICE OF
4 th Council District		
WBAL Division	*	ADMINISTRATIVE HEARINGS
Hearst Corporation		
<i>Legal Owner</i>	*	FOR BALTIMORE COUNTY
Petitioner		
	*	Case No. 2017-0006-X

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of a Petition for Special Exception filed on behalf of WBAL Division Hearst Corporation, legal owner. The Special Exception was filed pursuant to the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit the construction of a new monopole with microwave dish antenna on a portion of the property. Petitioner seeks to replace an 80 ft. tall guy tower that was destroyed in a spring, 2015 storm.

Kerry Plackmeyer, WBAL Assistant Director of Engineering, appeared in support of the petition. Greg Rapisarda, Esq. represented the Petitioner. There were no protestants or interested citizens in attendance. A substantive Zoning Advisory Committee (ZAC) comment was received from the Bureau of Development Plans Review (DPR), noting a landscape plan would be required.

The subject property is approximately 48.5 acres and is split-zoned DR 3.5/DR 5.5. The property is improved with a commercial building and three existing 500' tall communication towers. WBAL uses the property as a transmitter station, and the tower in question establishes a microwave link to the WBAL-TV studios and broadcast center in Baltimore City. Mr.

Plackmeyer explained WBAL is designated by the federal government as the primary contact to broadcast emergency warnings, and this tower plays a vital role in that process.

The tower involved in this case is only 80' tall and was first erected at this site more than 60 years ago. The tower was destroyed in a 2015 storm, and Petitioner seeks only to reconstruct the tower in approximately the same location at the site. While the tower arguably qualified as a lawful nonconforming use that could be reconstructed without zoning relief, Petitioner believed that obtaining a special exception for the new tower was the more prudent course.

Under Maryland law “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.” Schultz v. Pritts, 291 Md. 1, 22-23 (1981). In this case, no evidence was presented which would suggest the use would have a detrimental impact upon the community. Indeed, the tower has existed for many years at the site and there is nothing in the file to suggest it has during that time negatively impacted the health, safety or welfare of the community. Mr. Plackmeyer testified (via proffer) Petitioner satisfied all requirements in B.C.Z.R. §502 (pertaining to special exceptions) and §426 (pertaining to communication towers). In these circumstances the special exception will be granted.

THEREFORE, IT IS ORDERED this 13th day of **October, 2016** by this Administrative Law Judge, that the Petition for Special Exception to permit the construction on the subject property of a new monopole with microwave dish antenna (as shown in detail on the site plan admitted as Petitioner’s Exhibit No. 5), be and is hereby GRANTED.

The relief granted herein shall be subject to 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. Prior to issuance of permits Petitioner must 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.

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/sln