

<b>IN RE: PETITIONS FOR SPECIAL HEARING *</b>		BEFORE THE
<b>AND SPECIAL EXCEPTION</b>		OFFICE OF
(730 Wampler Road)	*	ADMINISTRATIVE HEARINGS
15 <sup>th</sup> Election District		FOR BALTIMORE COUNTY
6 <sup>th</sup> Council District	*	<b>Case No. 2018-0054-SPHX</b>
MD Transportation Authority, Lodge 34		
Of Fraternal Order of Police	*	
<i>Legal Owner</i>		
Prime Tower Development, LLC	*	
<i>Lessee</i>		
Petitioners	*	

\* \* \* \* \*

**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 MD Transportation Authority, Lodge 34 of Fraternal Order of Police (FOP), legal owner and Prime Tower Development, LLC, lessee (“Petitioners”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R”) to amend a special exception granted in Case No. 1975-0233-SPHX to exclude area for new telecommunications facility from original SPHX approval. A Petition for Special Exception was filed to permit a new telecommunications facility with a 107 ft. tall monopole on a portion of the property.

John Behnke and Tim Schindler attended the public hearing in support of the requests. Greg Rapisarda, Esq. represented the Petitioners. There were no protestants or interested citizens in attendance. The Petition was advertised as required by the Baltimore County Zoning Regulations. No substantive Zoning Advisory Committee (ZAC) comments were received from any of the reviewing county agencies.

The subject property is approximately 8.86 acres in size and is zoned DR 2. In 1975, the FOP was granted a special exception to operate their union hall (i.e., a “community building” in

zoning parlance) on the property. This case concerns a 2,500 sq. ft. area of the site, which would contain a telecommunications tower within a fenced enclosure. Petitioners submitted a five-sheet site plan which was marked and admitted as Exhibit 1.

The plan contains additional information and detail concerning the precise location on the site of the tower and fenced enclosure, which will contain certain equipment used in conjunction with the tower. As shown on the plan the enclosure and tower will accommodate at least three carriers/providers, and all setback requirements will be satisfied. At its June 27, 2017 public meeting, the County's Tower Review Committee conditionally approved, by unanimous decision, Petitioners' request to construct the 107-ft. tall tower. Petitioners sent via priority mail with confirmed delivery explanatory letters and a copy of the site plan to both the Windlass Run Improvement Association and Essex Middle River Civic Council. Neither association responded to the correspondence or filed with the OAH an objection to the requests.

#### SPECIAL HEARING

As noted above, the special hearing request seeks to amend the site plan submitted in connection with a 1975 zoning case. In that case, the property owner (one of the Petitioners herein) obtained a special exception which permitted the construction of a community building on the subject property, which is used to host police union activities. Presumably the entire 8.86 acre site was considered the special exception area, and counsel explained the special hearing request would in essence remove therefrom a 2,500 sq. ft. area in which the tower and enclosure would be located. This is a reasonable request and will prevent a scenario where there are overlapping special exceptions, which is arguably prohibited by B.C.Z.R. §102.2.

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 *Attar v. DMS Tollgate, LLC*, 451 Md. 272, (2017), where the court of appeals discussed the nature of the evidentiary presumption in special exception cases. The court again emphasized 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.

Here, Mr. Behnke testified via proffer that Petitioners satisfied each of the requirements set forth at B.C.Z.R. §§ 426 & 502.1, and no evidence was offered in opposition to that testimony. As such, and being mindful of the presumption provided by Maryland law, I believe the petition for special exception should be granted.

THEREFORE, IT IS ORDERED this **23rd** day of **October 2017**, by this Administrative Law Judge, that the Petition for Special Hearing to amend the special exception granted in Case No. 1975-0233-SPHX to exclude a 2,500 sq. ft. area (50 ft. x 50 ft.) as shown on the site plan for a new telecommunications facility, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Special Exception to permit a new telecommunications facility with a 107 ft. tall monopole on a 2,500 sq. ft. portion of the property, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their 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, Petitioners would be required to return the subject property to its original condition.

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