

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
(5050 King Avenue)		
14 th Election District	*	OFFICE OF
6 th Council District		
Boumi Temple Corporation	*	ADMINISTRATIVE HEARINGS
<i>Legal Owner</i>		
Verizon Wireless	*	FOR BALTIMORE COUNTY
<i>Lessee</i>		
Petitioners	*	Case No. 2018-0259-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 Boumi Temple Corporation, legal owner and Verizon Wireless, lessee (“Petitioners”). The petition was filed pursuant to the Baltimore County Zoning Regulations (“BCZR”) to install on the property a telecommunications tower with a height of 92 ft. in the DR 5.5 zone.

Paul Dugan, Joshua Schakola and Jacob Toroney appeared in support of the petition. Adam M. Rosenblatt, Esq. represented the Petitioners. 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).

The subject property is approximately 28.89 acres in size and is split-zoned DR 5.5 & DR 3.5. The Boumi Temple has a large building on the property and proposes to lease a small portion of the site to Verizon for construction of a telecommunications tower. Petitioners explained and presented exhibits showing that an additional tower is needed in the vicinity of the subject property to provide an acceptable level of reception and service for cell phones and other devices. The proposed tower will for the most part not be visible from roadways adjacent to the site, as demonstrated by the “balloon test” photographs submitted at the hearing. Petitioners’ Exhibit 7.

The County's Tower Review Committee recommended approval of the project. Petitioners' Exhibit 6.

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.

Mr. Dugan, a professional engineer accepted as an expert, testified via proffer Petitioners satisfied the requirements of BCZR §502.1 and the case law interpreting that provision. No evidence was presented to rebut this testimony, and in light of the presumption provided by Maryland law the petition for special exception will be granted.

In its ZAC comment the Bureau of DPR expressed concern the proposed tower would be located within a stormwater management easement on the property. Petitioners presented an exhibit (Ex. 8) which demonstrates the tower and all infrastructure will in fact be outside of the easement and thus the concern raised by DPR has been successfully addressed.

THEREFORE, IT IS ORDERED this 1st day of **June, 2018**, by this Administrative Law Judge, that the Petition for Special Exception to construct on the property a telecommunications tower with a height of 92 ft., 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