

|                                       |   |                             |
|---------------------------------------|---|-----------------------------|
| IN RE: PETITION FOR SPECIAL EXCEPTION | * | BEFORE THE                  |
| (300 Clubhouse Road)                  |   |                             |
| 8 <sup>th</sup> Election District     | * | OFFICE OF                   |
| 3 <sup>rd</sup> Council District      |   |                             |
| 40 Clubhouse, LLC                     | * | ADMINISTRATIVE HEARINGS     |
| <i>Legal Owner</i>                    |   |                             |
| Daniel J. Frey                        | * | FOR BALTIMORE COUNTY        |
| <i>Lessee</i>                         |   |                             |
| Petitioners                           | * | <b>Case No. 2019-0163-X</b> |

\* \* \* \* \*

**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 40 Clubhouse, LLC, legal owner and Daniel J. Frey, lessee (“Petitioners”). The special exception petition was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to approve a service garage in ML-IM.

Daniel Frey and landscape architect Michael Pieranunzi appeared in support of the petition. John B. Gontrum, Esq. represented the Petitioners. There were no Protestants or interested citizens in attendance. A substantive Zoning Advisory Committee (“ZAC”) comment was received from the Department of Planning (“DOP”). That agency did not oppose the request.

In the aggregate, the site is 16.09 acres and zoned ML-IM. The property is improved with a large office/warehouse building (350,061 sq. ft.). The property at issue in this case is a small portion (4,872 sq. ft.) of the overall building, in which the Lessee would operate a service garage with five bays and a small office. The use is permitted by special exception in the ML-IM zone.

**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. Pieranunzi described the improvements shown on the site plan he prepared and opined Petitioner satisfied all requirements for special exception relief. He noted that in the ML-IM zone the garage must “serve primarily the industrial uses and related activities in the surrounding industrial area.” BCZR Section 253.2.B. Mr. Pieranunzi opined this requirement is also satisfied since the service garage (which has for many years been located just a few blocks from the subject property, on Beaver Dam Road) has many corporate and individual customers from the surrounding industrial area. In the absence of any evidence to rebut this *prima facie* case the petition for special exception will be granted.

THEREFORE, IT IS ORDERED this **14<sup>th</sup>** day of **January, 2019**, by this Administrative Law Judge, that the Petition for Special Exception seeking relief from Section 500.7 of the BCZR, to approve a service garage in ML-IM, 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.
2. The special exception area for the use shall include only the 16,118 sq. ft. portion of the site outlined in green on the site plan marked and admitted as Petitioners’ Exhibit 1.

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/dlw