

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
(15700 Hanover Road)		
4 <sup>th</sup> Election District	*	OFFICE OF
3 <sup>rd</sup> Council District		
Upperco Volunteer Fire Company, Inc.	*	ADMINISTRATIVE HEARINGS
<i>Legal Owner</i>		
	*	FOR BALTIMORE COUNTY
Petitioner		
	*	<b>Case No. 2019-0384-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 Upperco Volunteer Fire Company, Inc., legal owner (“Petitioner”). The special exception petition was filed pursuant to Section 1A01.2.C.28 of the Baltimore County Zoning Regulations (“BCZR”) for a volunteer fire company and/or ambulance-rescue facilities.

John Gonzalez, Landmark, Science & Engineering, Gary Campbell, Manns Woodward Architect and Geoff Rice, Upperco Volunteer Fire Company, Inc. appeared in support of the petition. John B. Gontrum, Esq. represented the Petitioner. There were no protestants or interested citizens in attendance. Substantive Zoning Advisory Committee (“ZAC”) comments were received from the Department of Environmental Protection and Sustainability (“DEPS”) and the Department of Planning (“DOP”). Neither agency opposed the request.

The subject property is approximately 6.83 acres in size and is zoned RC-2.

**Special Exception**

Mr. Gontrum proffered on behalf of the Petitioners. This project is a new structure built on previously undeveloped land. The Upperco Volunteer Fire Department is a new entity, created by the recent merger of the Boring and Arcadia Volunteer Fire Departments.

Counsel proffered that Mr. Gonzalez, a 32 year licensed engineer would testify that he prepared the site plan for this project (Developers Exhibit #1). It is a facility for equipment and personnel only; there will be no “hall” or other facility contained therein. Further, the use is a permitted one by special exception in an RC-2 zone. He would have addressed all of the requirements set out in §502.1 of the BCZR, concluding that there would be no negative effects under that section. Finally, he would testify that the project is in conformance with the master plan and would be a tremendous benefit to the surrounding communities.

Counsel proffered the testimony of the architect Gary Campbell. He described the interior and exterior lay outs of the proposed new firehouse (Petitioners Exhibits 3 & 4).

Counsel proffered Jeff Rice’s testimony as to the merger of the two fire companies and the decision to purchase and relocate to the proposed site.

At the conclusion of Counsels proffer, each witness, having been sworn, adopted in detail as their own the testimony offered on their behalf.

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.

THEREFORE, IT IS ORDERED this 8<sup>th</sup> day of **October, 2019**, by this Administrative Law Judge, that the Petition for Special Exception for a volunteer fire company and/or ambulance-rescue facilities, 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 comply with the ZAC comments submitted by DEPS and the DOP, copies of which are attached hereto and made a part hereof.

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

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Signed  
LAWRENCE M. STAHL  
Administrative Law Judge  
for Baltimore County

LMS/sln