

MEMORANDUM

DATE: November 8, 2019
TO: Zoning Review Office
FROM: Office of Administrative Hearings
RE: Case No. 2019-0384-X - Appeal Period Expired

The appeal period for the above-referenced case expired on November 7, 2019. There being no appeal filed, the subject file is ready for return to the Zoning Review Office and is placed in the 'pick up box.'

/dlw

c:  Case File
Office of Administrative Hearings

IN RE: PETITION FOR SPECIAL EXCEPTION * BEFORE THE
(15700 Hanover Road) *
4th Election District * OFFICE OF
3rd Council District *
Upperco Volunteer Fire Company, Inc. * ADMINISTRATIVE HEARINGS
Legal Owner *
* FOR BALTIMORE COUNTY
Petitioner *
* **Case No. 2019-0384-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 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.

ORDER RECEIVED FOR FILING

Date Sen

By 10/8/19

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.

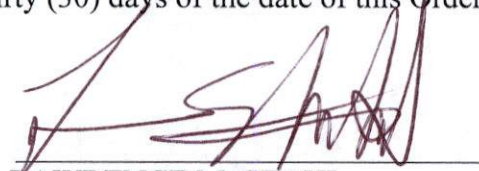
Under Maryland law, a special exception use enjoys a presumption that it is in the interest of the general welfare, and therefore, valid. *Schultz v. Pritts*, 291 Md. 1 (1981). The *Schultz* standard was revisited in *Attar v. DMS Tollgate, LLC*, 451 Md. 272 (2017), where the court of appeals discussed 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 8th 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.



LAWRENCE M. STAHL
Administrative Law Judge
for Baltimore County

LMS/sln

ORDER RECEIVED FOR FILING

Date Sen

By 10/8/19



PETITION FOR ZONING HEARING(S)

To be filed with the Department of Permits, Approvals and Inspections

To the Office of Administrative Law of Baltimore County for the property located at:

Address 15700 Hanover Road, Upperco

which is presently zoned RC 2

Deed References: 41104 1319

10 Digit Tax Account # 1900007892

Property Owner(s) Printed Name(s) Upperco Volunteer Fire Company, Inc.

(SELECT THE HEARING(S) BY MARKING X AT THE APPROPRIATE SELECTION AND PRINT OR TYPE THE PETITION REQUEST)

The undersigned legal owner(s) of the property situate in Baltimore County and which is described in the description and plan attached hereto and made a part hereof, hereby petition for:

1. a **Special Hearing** under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

2. X a **Special Exception** under the Zoning Regulations of Baltimore County to use the herein described property for

SEE ATTACHED

3. a **Variance** from Section(s)

Property is to be posted and advertised as prescribed by the zoning regulations.

I, or we, agree to pay expenses of above petition(s), advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

Legal Owner(s) Affirmation: I / we do so solemnly declare and affirm, under the penalties of perjury, that I / We are the legal owner(s) of the property which is the subject of this / these Petition(s).

Contract Purchaser/Lessee:

Legal Owners (Petitioners):

Upperco Volunteer Fire Company, Inc.

Name – Type or Print

Signature

Mailing Address

City

State

Zip Code

Telephone #

Email Address

Name #1 – Type or Print

Name #2 – Type or Print

Signature #1

Signature #2

5415 Arcadia Ave., Upperco, MD

Mailing Address

City

State

21155

443-790-2289

Zip Code

Telephone #

Email Address

Attorney for Petitioner:

John B. Gontrum, Esquire

Name – Type or Print

Signature

Whiteford, Taylor & Preston

1 W. Pennsylvania Ave., Ste. 300, Towson MD

Mailing Address

City

State

21204

410-832-2055

jgontrum@wtplaw.com

Zip Code

Telephone #

Email Address

Representative to be contacted:

Scott A. Boose, President

Name – Type or Print

Signature

Box 7

UPPERCO

MD.

Mailing Address

City

State

21155

443-790-2289

Scott.Boose@GMAIL.COM

Zip Code

Telephone #

Email Address

CASE NUMBER

2019-0384-X

Filing Date

7/1/19

Do Not Schedule Dates:

Reviewer

RJ

REV. 10/4/11

ORDER RECEIVED FOR FILING

Date

10/8/19

By

Sen

2019-0384-X

ATTACHMENT TO PETITION

FOR A VOLUNTEER FIRE COMPANY AND/OR AMBULANCE-RESCUE FACILITIES

Pursuant to section 1A01-2-C.28 of the BCZR

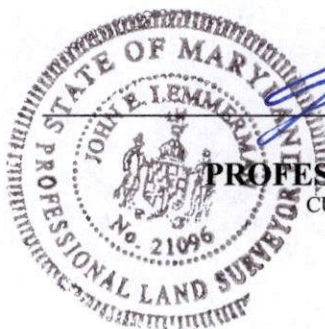
RTF ASSOCIATES, INC. LAND SURVEYORS & PLANNERS

142 East Main Street
Westminster, Maryland 21157
Phone 410-848-2040, 410-876-1222
Web RTFsurveying.com
Fax 443-289-8942

June 25, 2019
RTF Assoc. # 16-44

ZONING PROPERTY DESCRIPTION FOR LIPPY PROPERTY
INTERSECTION OF MD. ROUTE # 30 AND FRINGER ROAD

BEGINNING at a point on the west side of Maryland Route # 30 (Hanover Pike), which is a 66 foot wide right of way at the distance of 200.00 feet north of the centerline of the nearest improved intersecting street Fringer Road which is a 40 foot wide right of way. Thence with the following course and distances: (1st Point of Call "POC") S.01°10'41" E. 161.44', (2nd POC) S. 63°49'17" W. 743.48', (3rd POC) N. 04°18'51" W. 688.02', (4th POC) N. 79°11'11" E. 318.88', (5th POC) S. 01°09'09" E. 331.89', (6th POC) N. 79°13'22" E. 402.86', back to the point of beginning, S. 01°09'49" E. 332.00' from the beginning point as recorded in deed liber 27651, folio 231, containing 281,130 square feet or 6.453 acres of land. Located in the Fourth Election District and the Third Council District of Baltimore County, Maryland.



JOHN E. LEMMERMAN

PROFESSIONAL LAND SURVEYOR NO. 21096

CURRENT LICENSE EXPIRES AUGUST 3, 2021

2019-0384-X

RE: PETITION FOR SPECIAL EXCEPTION * BEFORE THE OFFICE
15700 Hanover Road; NW corner of *
Hanover Pike and Fringer Road * OF ADMINISTRATIVE
4th Election & 3rd Councilmanic Districts *
Legal Owner: Upperco Volunteer Fire Co., Inc.* HEARINGS FOR
Petitioner(s) *
* BALTIMORE COUNTY
* 2019-384-X

* * * * *

ENTRY OF APPEARANCE

Pursuant to Baltimore County Charter § 524.1, please enter the appearance of People's Counsel for Baltimore County as an interested party in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and the passage of any preliminary or final Order. All parties should copy People's Counsel on all correspondence sent and all documentation filed in the case.

RECEIVED

JUL 11 2019

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

CAROLE S. DEMILIO
Deputy People's Counsel
Jefferson Building, Room 204
105 West Chesapeake Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of July, 2019, a copy of the foregoing Entry of Appearance was mailed to Scott Boose, President, P.O. Box 7, Upperco, Maryland 21155 and John B. Gontrum, Esquire, 1 West Pennsylvania Avenue, Suite 300, Towson, Maryland 21204, Attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County



JOHN A. OLSZEWSKI, JR.
County Executive

MICHAEL D. MALLINOFF, *Director*
Department of Permits,
Approvals & Inspections

September 4, 2019

NOTICE OF ZONING HEARING

The Administrative Law Judge of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 2019-0384-X

15700 Hanover Road

NW corner of Hanover Pike and Fringer Road

4th Election District – 3rd Councilmanic District

Legal Owners: Upperco Volunteer Fire Company, Inc.

Special Exception for a volunteer fire company and/or ambulance rescue facilities.

Hearing: Monday, October 7, 2019 at 11:00 a.m. in Room 205, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204

A handwritten signature in cursive script, appearing to read "Michael Mallinoff".

Michael Mallinoff
Director

MM:kl

C: John Gontrum, 1 W. Pennsylvania Avenue, Ste. 300, Towson 21204
Upperco Volunteer Fire Company, Inc., 5415 Arcadia Avenue, Upperco 21155
Scott Boose, P.O. Box 7, Upperco 21155

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY TUES., SEPTEMBER 17, 2019.**
- (2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ADMINISTRATIVE HEARINGS OFFICE AT 410-887-3868.
- (3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

Sherry Nuffer

From: Marty Ogle <mert1114@aol.com>
Sent: Thursday, October 3, 2019 2:16 PM
To: Administrative Hearings
Subject: 2019-0384-X



CAUTION: This message from mert1114@aol.com originated from a non Baltimore County Government mailbox on BCPL email system. Hover over any links before clicking and use caution opening attachments.

2nd set of certificates

CERTIFICATE OF POSTING

CASE NO. 2019-0384-X
PETITIONER/DEVELOPER
WHITEFOOT TAPES
PASTON LLC
DATE OF HEARING/CLOSING
10/7/19

BALTIMORE COUNTY DEPARTMENT OF
PERMITS AND DEVELOPMENT MANAGEMENT
COUNTY OFFICE BUILDING ROOM 111
111 WEST CHESAPEAKE AVENUE
ATTENTION:
LADIES AND GENTLEMAN:

THIS LETTER IS TO CERTIFY UNDER PENALTIES OF PERJURY THAT THE
NECESSARY SIGN(S) REQUIRED BY LAW WERE POSTED CONSPICUOUSLY ON
THE PROPERTY LOCATED AT
15700 HANOVER RD

THIS SIGN(S) POSTED ON September 17, 2019 October 3, 2019
(MONTH, DAY, YEAR)

SINCERELY,
Marty Ogle
SIGNATURE OF SIGN POSTER

MARTIN OGLE
9912 MAIDENBROOK ROAD
PARKVILLE, MD. 21234
443-629-3411

ZONING



CERTIFICATE OF POSTING
CASE NO. 2014-0384-1
PETITIONER/DEVELOPER
WILLIAM T. HARRIS
PRADO 4.7
DATE OF HEARING/CLOSING
8/7/14

BALTIMORE COUNTY DEPARTMENT OF
PERMITS AND DEVELOPMENT MANAGEMENT
COUNTY OFFICE BUILDING ROOM 111
111 WEST CHESAPEAKE AVENUE

ATTENTION:

LADIES AND GENTLEMEN:

THIS LETTER IS TO CERTIFY UNDER PENALTIES OF PERJURY THAT THE
NECESSARY SIGN(S) REQUIRED BY LAW WERE POSTED CONSPICUOUSLY ON
THE PROPERTY LOCATED AT

15700 HANOVER RD

SP-0112

THIS SIGN(S) POSTED ON September 17, 2014 - October 3, 2014
(MONTH, DAY, YEAR)

SINCERELY,

Martin Ogles 9/10/14
SIGNATURE OF SIGN POSTER

MARTIN OGLES
9911 MAIDENROCK ROAD
PARKVILLE, MD. 21234
443-629-3411

Sent from my iPhone

CERTIFICATE OF POSTING

CASE NO. 2019-0384-X

PETITIONER/DEVELOPER

WHITTEFORD TAYLOR &
PRESTON LLP

DATE OF HEARING/CLOSING

10/7/19

BALTIMORE COUNTY DEPARTMENT OF
PERMITS AND DEVELOPMENT MANAGEMENT
COUNTY OFFICE BUILDING ROOM 111
111 WEST CHESAPEAKE AVENUE
ATTENTION :

LADIES AND GENTLEMAN :

THIS LETTER IS TO CERTIFY UNDER PENALTIES OF PERJURY THAT THE
NECESSARY SIGN(S) REQUIRED BY LAW WERE POSTED CONSPICUOUSLY ON
THE PROPERTY LOCATED AT

15700 HANOVER Rd

SIGN #2

THIS SIGN(S) POSTED ON

September 17, 2019

(MONTH, DAY, YEAR)

SINCERELY,

Martin Ogle 9/17/19
SIGNATURE OF SIGN POSTER

MARTIN OGLE

9912 MAIDBROOK ROAD

PARKVILLE, MD. 21234

443-629-3411

ZONING NOTICE

CASE # 2019-0384-X

A PUBLIC HEARING WILL BE HELD BY
THE ADMINISTRATIVE LAW JUDGE
IN TOWSON, MD

PLACE: Room 205, Jefferson Building
105 W. Chesapeake Ave, Towson MD 21204
DATE AND TIME: MONDAY, OCTOBER 7, 2019 AT 11:00 A.M.
REQUEST: SPECIAL EXCEPTION FOR A VOLUNTARY
FIRE COMPANY AND/OR AMBULANCE RESCUE
FACILITIES.

STANDING APPLICANT ACCESSIBLE

9/17/19



CERTIFICATE OF POSTING

CASE NO. 2019-0384-X

PETITIONER/DEVELOPER

WATTEFORD TAYLOR

PRESTON LLP

DATE OF HEARING/CLOSING

10/7/19

BALTIMORE COUNTY DEPARTMENT OF
PERMITS AND DEVELOPMENT MANAGEMENT
COUNTY OFFICE BUILDING ROOM 111
111 WEST CHESAPEAKE AVENUE

ATTENTION :

LADIES AND GENTLEMAN :

THIS LETTER IS TO CERTIFY UNDER PENALTIES OF PERJURY THAT THE
NECESSARY SIGN(S) REQUIRED BY LAW WERE POSTED CONSPICUOUSLY ON
THE PROPERTY LOCATED AT

15700 HANOVER Rd
SIGN #1

THIS SIGN(S) POSTED ON September 17, 2019
(MONTH, DAY, YEAR)

SINCERELY,

Martin Ogle 9/17/19
SIGNATURE OF SIGN POSTER

MARTIN OGLE
9912 MAIDBROOK ROAD
PARKVILLE, MD. 21234
443-629-3411



SGN#3

ZONING NOTICE

CASE # 2019-0384-X

**A PUBLIC HEARING WILL BE HELD BY
THE ZONING COMMISSIONER
IN TOWSON, MD**

PLACE: Room 205, Jefferson Building
105 W. Chesapeake Ave., Towson MD 21204
DATE AND TIME: MONDAY OCTOBER 7, 2019 AT 11:00 A.M.
REQUEST: SPECIAL EXCEPTION FOR A VOLUNTEER
FIRE COMPANY AND/OR AMBULANCE RESCUE
SQUADS

NOTICE: THE CITY OF TOWSON IS OFFERING A PUBLIC HEARING AND A PUBLIC COMMENT PERIOD FOR THE PROPOSED ZONING CASE. THE PUBLIC HEARING WILL BE HELD ON MONDAY, OCTOBER 7, 2019 AT 11:00 A.M. IN ROOM 205 OF THE JEFFERSON BUILDING, 105 W. CHESAPEAKE AVENUE, TOWSON, MD 21204. THE PUBLIC COMMENT PERIOD WILL BE FROM OCTOBER 4, 2019 TO OCTOBER 6, 2019. ANY COMMENTS SHOULD BE SUBMITTED TO THE ZONING COMMISSIONER, CITY OF TOWSON, 105 W. CHESAPEAKE AVENUE, TOWSON, MD 21204. FOR MORE INFORMATION, PLEASE CONTACT THE ZONING COMMISSIONER AT (410) 288-1234.

BLADDE APP'D BACK, ENCL. 1

Myra J. De 9/17/19

The Daily Record

200 St. Paul Place Suite 2480

Baltimore, Maryland 21202

1 (443) 524-8100

www.thedailyrecord.com

PUBLISHER'S AFFIDAVIT

We hereby certify that the annexed advertisement was published in **The Daily Record**, a daily newspaper published in the State of Maryland 1 times on the following dates:

9/17/2019

Order #: 11789612
 Case #: 2019-0384-X
 Description:

NOTICE OF ZONING HEARING - CASE NUMBER: 2019-0384-X



Darlene Miller, Public Notice Coordinator
 (Representative Signature)

Baltimore County**NOTICE OF ZONING HEARING**

The Administrative Law Judge of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 2019-0384-X

15700 Hanover Road

NW corner of Hanover Pike and Fringer Road

4th Election District - 3rd Councilmanic District

Legal Owners: Upperco Volunteer Fire Company, Inc.

Special Exception for a volunteer fire company and/or ambulance rescue facilities.

Hearing: Monday, October 7, 2019 at 11:00 a.m. in Room 205, Jefferson Building, 105 West Chesapeake Avenue, Towson 21204

Michael Mallinoff

Director of Permits, Approvals and Inspections for Baltimore County

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS, PLEASE CONTACT THE ADMINISTRATIVE HEARINGS OFFICE AT 410-837-3868.

(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-837-3391.

s17

TO: THE DAILY RECORD
Tuesday, September 17, 2019 - Issue

Please forward billing to:

Scott Boose
Upperco Volunteer Fire Company, Inc.
P.O. Box 7
Upperco, MD 21155

443-790-2289

NOTICE OF ZONING HEARING

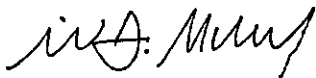
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15700 Hanover Road
NW corner of Hanover Pike and Fringer Road
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Legal Owners: Upperco Volunteer Fire Company, Inc.

Special Exception for a volunteer fire company and/or ambulance rescue facilities.

Hearing: Monday, October 7, 2019 at 11:00 a.m. in Room 205, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204



Michael Mallinoff
Director of Permits, Approvals and Inspections for Baltimore County

- NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ADMINISTRATIVE HEARINGS OFFICE AT 410-887-3868.
- (2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

**DEPARTMENT OF PERMITS, APPROVALS AND INSPECTIONS
ZONING REVIEW OFFICE**

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

The Baltimore County Zoning Regulations (BCZR) require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property (responsibility of the legal owner/petitioner) and placement of a notice in a newspaper of general circulation in the County, both at least twenty (20) days before the hearing.

Zoning Review will ensure that the legal requirements for advertising are satisfied. However, the legal owner/petitioner is responsible for the costs associated with these requirements. The newspaper will bill the person listed below for the advertising. This advertising is due upon receipt and should be remitted directly to the newspaper.

OPINIONS MAY NOT BE ISSUED UNTIL ALL ADVERTISING COSTS ARE PAID.

For Newspaper Advertising:

Case Number: 2019-0384-X

Property Address: 15700 HANOVER ROAD

Property Description: _____

Legal Owners (Petitioners): UPPERCO VOLUNTEER FIRE CO.

Contract Purchaser/Lessee: _____

PLEASE FORWARD ADVERTISING BILL TO:

Name: SCOTT A. BOOSE, President

Company/Firm (if applicable): UPPERCO Volunteer Fire Company, Inc.

Address: P.O. Box 7

UPPERCO, MD. 21155

Telephone Number: 443-790-2289



JOHN A. OLSZEWSKI, JR.
County Executive

MICHAEL D. MALLINOFF, *Director*
Department of Permits,
Approvals & Inspections

October 02, 2019

John B. Gontrum
1 W. Pennsylvania Ave Suite 300
Towson MD 21204

RE: Case Number: 2019-0384-X, 15700 Hanover Road

To Whom It May Concern:

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits, Approvals, and Inspection (PAI) on July 1, 2019. This letter is not an approval, but only a **NOTIFICATION**.

The Zoning Advisory Committee (ZAC), which consists of representatives from several approval agencies, has reviewed the plans that were submitted with your petition. All comments submitted thus far from the members of the ZAC are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. All comments will be placed in the permanent case file.

If you need further information or have any questions, please do not hesitate to contact the commenting agency.

Very truly yours,

A handwritten signature in black ink, appearing to read "W. Carl Richards, Jr.", is written over a horizontal line.

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR/kl

Enclosures

c: People's Counsel
Scott A. Boose Po Box 7 Upperco MD 21155



BALTIMORE COUNTY, MARYLAND
INTER-OFFICE MEMORANDUM

TO: Michael D. Mallinoff
Director, Department of Permits, Approvals and Inspections

DATE: 9/27/2019

FROM: C. Pete Gutwald
Director, Department of Planning

SUBJECT: ZONING ADVISORY COMMITTEE COMMENTS
Case Number: 19-384

INFORMATION:

Property Address: 15700 Hanover Pike
Petitioner: Upperco Volunteer Fire Company, Inc.
Zoning: RC 2
Requested Action: Special Exception

The Department of Planning has reviewed the petition for a special exception for a volunteer fire company and/or ambulance-rescue facility.

This property is located within the boundaries of the Hanover Pike Corridor Study. The study lists multiple design guidelines for the area, starting on page 34. The guidelines state that the use of indigenous species or ones commonly found in the area should be used for landscaping. Hanover Pike is also designated as a Baltimore County scenic route.

The Department has no objection to granting the petitioned zoning relief conditioned on the following:

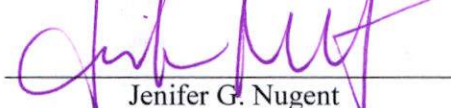
- Use a mix of indigenous plants to better screen the public parking area facing Hanover Pike.
- Lighting be reduced after 11pm, except to maintain adequate security.

For further information concerning the matters stated herein, please contact Joseph Wiley at 410-887-3480.

Prepared by:


Jessie Bialek

Division Chief:


Jenifer G. Nugent

CPG/JGN/JAB/

c: Joseph Wiley
Scott A. Boose, President, Upperco Volunteer Fire Co., Inc.
John B. Gontrum, Esquire
Office of the Administrative Hearings
People's Counsel for Baltimore County

10-1-19

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence



TO: Hon. Lawrence M. Stahl; Managing Administrative Law Judge
Office of Administrative Hearings

FROM: Jeff Livingston, Department of Environmental Protection and
Sustainability (EPS) - Development Coordination

DATE: July 10, 2019

SUBJECT: DEPS Comment for Zoning Item # 2019-0384-X
Address 15700 Hanover Pike
(Upperco Volunteer Fire Company,
Inc. Property)

Zoning Advisory Committee Meeting of **July 8, 2019**.

X The Department of Environmental Protection and Sustainability offers the following comments on the above-referenced zoning item:

1. Any building permits for a proposed new fire station on well and septic will, of course, get reviewed by Ground Water Management.

Reviewer: Dan Esser

MDC
MARYLAND DEPARTMENT
OF TRANSPORTATION
STATE HIGHWAY
ADMINISTRATION

Larry Hogan
Governor
Boyd K. Rutherford
Lt. Governor
Pete K. Rahn
Secretary
Gregory Slater
Administrator

Date: 7/9/19

Ms. Kristen Lewis
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
111 West Chesapeake Avenue
Towson, Maryland 21204

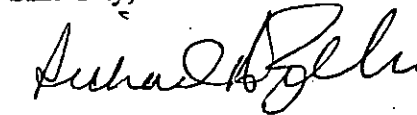
Dear Ms. Lewis:

Thank you for the opportunity to review your referral request on the subject of the Case number referenced below. We have determined that the subject property does not access a State roadway and is not affected by any State Highway Administration projects. Therefore, based upon available information this office has no objection to Baltimore County Zoning Advisory Committee approval of Case No. 2019-0384-X.

*Special Exception
Upperco Volunteer Fire Company, Inc.
15700 Hanover Pike
MD30*

Should you have any questions regarding this matter, please contact Mr. Richard Zeller at 410-229-2332 or 1-866-998-0367 (in Maryland only) extension 2332, or by email at (rzeller@sha.state.md.us).

Sincerely,



Wendy Wolcott, P.L.A.
Metropolitan District Engineer
Maryland Department of Transportation
State Highway Administration
District 4 - Baltimore and Harford Counties

WW/RAZ



BALTIMORE COUNTY, MARYLAND
INTER-OFFICE MEMORANDUM

TO: Michael D. Mallinoff
Director, Department of Permits, Approvals and Inspections

FROM: C. Pete Gutwald
Director, Department of Planning

SUBJECT: ZONING ADVISORY COMMITTEE COMMENTS
Case Number: 19-384

DATE: 9/27/2019

INFORMATION:

Property Address: 15700 Hanover Pike
Petitioner: Upperco Volunteer Fire Company, Inc.
Zoning: RC 2
Requested Action: Special Exception

The Department of Planning has reviewed the petition for a special exception for a volunteer fire company and/or ambulance-rescue facility.

This property is located within the boundaries of the Hanover Pike Corridor Study. The study lists multiple design guidelines for the area, starting on page 34. The guidelines state that the use of indigenous species or ones commonly found in the area should be used for landscaping. Hanover Pike is also designated as a Baltimore County scenic route.

The Department has no objection to granting the petitioned zoning relief conditioned on the following:

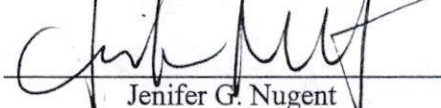
- Use a mix of indigenous plants to better screen the public parking area facing Hanover Pike.
- Lighting be reduced after 11pm, except to maintain adequate security.

For further information concerning the matters stated herein, please contact Joseph Wiley at 410-887-3480.

Prepared by:


Jessie Bialek

Division Chief:


Jenifer G. Nugent

CPG/JGN/JAB/

c: Joseph Wiley
Scott A. Boose, President, Upperco Volunteer Fire Co., Inc.
John B. Gontrum, Esquire
Office of the Administrative Hearings
People's Counsel for Baltimore County

ORDER RECEIVED FOR FILING

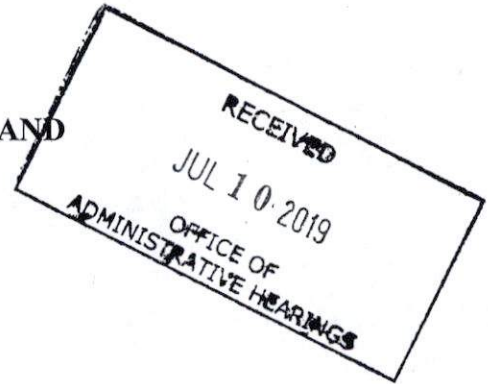
Date Sen

By 10/8/19

10-1-19

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence



TO: Hon. Lawrence M. Stahl; Managing Administrative Law Judge
Office of Administrative Hearings

FROM: Jeff Livingston, Department of Environmental Protection and
Sustainability (EPS) - Development Coordination

DATE: July 10, 2019

SUBJECT: DEPS Comment for Zoning Item # 2019-0384-X
Address 15700 Hanover Pike
(Upperco Volunteer Fire Company,
Inc. Property)

Zoning Advisory Committee Meeting of **July 8, 2019**.

X The Department of Environmental Protection and Sustainability offers the following comments on the above-referenced zoning item:

1. Any building permits for a proposed new fire station on well and septic will, of course, get reviewed by Ground Water Management.

Reviewer: Dan Esser

ORDER RECEIVED FOR FILING

Date Sen

By 10/8/19

CASE NAME _____
CASE NUMBER _____
DATE _____

[illegible]

CHECKLIST

Attorney

Comment
ReceivedDepartmentSupport/Oppose/
Conditions/
Comments/
No Comment

DEVELOPMENT PLANS REVIEW

(if not received, date e-mail sent _____)

DEPS

(if not received, date e-mail sent _____)

FIRE DEPARTMENT

PLANNING

(if not received, date e-mail sent _____)

STATE HIGHWAY ADMINISTRATION

TRAFFIC ENGINEERING

COMMUNITY ASSOCIATION

ADJACENT PROPERTY OWNERS

ZONING VIOLATION

(Case No. related case 2018-0052-XA

PRIOR ZONING

(Case No. 2016-0335-SPHX)

NEWSPAPER ADVERTISEMENT

Date:

9/17/19THE Daily RecordSIGN POSTING (1st)

Date:

9/17/19

by

CgkSIGN POSTING (2nd)

Date:

10/31/19

by

Cgk

PEOPLE'S COUNSEL APPEARANCE

Yes



No



PEOPLE'S COUNSEL COMMENT LETTER

Yes



No



Comments, if any: _____

Real Property Data Search

Search Result for BALTIMORE COUNTY

View Map		View GroundRent Redemption		View GroundRent Registration			
Tax Exempt: None		Special Tax Recapture: None					
Exempt Class: None							
Account Identifier:		District - 04 Account Number - 1900007892					
Owner Information							
Owner Name:	UPPERCO VOLUNTEER FIRE COMPANY INC		Use:	RESIDENTIAL			
Mailing Address:	5415 ARCADIA AVE UPPERCO MD 21155-		Principal Residence:	NO			
			Deed Reference:	/41104/ 00319			
Location & Structure Information							
Premises Address:	HANOVER RD 0-0000		Legal Description:	6.837 AC WS HANOVER 1590 S BORTNER RD			
Map:	Grid:	Parcel:	Neighborhood:	Subdivision:	Section: Block: Lot: Assessment Year: Plat No: Plat Ref:		
0025	0021	0267	4020022.04	0000	2019		
Special Tax Areas: None			Town:		None		
			Ad Valorem:		None		
			Tax Class:		None		
Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use			
			6.8300 AC	05			
Stories	Basement	Type	Exterior	Quality	Full/Half Bath	Garage	Last Notice of Major Improvements
Value Information							
	Base Value		Value		Phase-in Assessments		
			As of		As of		
			01/01/2019		07/01/2019		
Land:	134,200		134,200				
Improvements	0		0				
Total:	134,200		134,200		134,200		134,200
Preferential Land:	0						0
Transfer Information							
Seller: LIPPY DONALD E		Date: 01/30/2019		Price: \$400,000			
Type: ARMS LENGTH IMPROVED		Deed1: /41104/ 00319		Deed2:			
Seller: LIPPY BROTHERS INC		Date: 02/13/2009		Price: \$205,000			
Type: ARMS LENGTH IMPROVED		Deed1: /27651/ 00231		Deed2:			
Seller: BORTNER ROBERT O		Date: 12/08/1982		Price: \$0			
Type: NON-ARMS LENGTH OTHER		Deed1: /06442/ 00740		Deed2:			
Exemption Information							
Partial Exempt Assessments:	Class	07/01/2019		07/01/2020			
County:	000	0.00					
State:	000	0.00					
Municipal:	000	0.00 0.00		0.00 0.00			
Tax Exempt: None		Special Tax Recapture: None					
Exempt Class: None							
Homestead Application Information							
Homestead Application Status: No Application							

omeowners' Tax Credit Applical nformatio

Homeowners' Tax Credit Application Status: No Application**Date:**

JB
10-12-16

IN RE: PETITIONS FOR SPECIAL HEARING *	BEFORE THE
AND SPECIAL EXCEPTION	
(15700 Hanover Pike) *	OFFICE OF
4 th Election District	
3 rd Council District *	ADMINISTRATIVE HEARINGS
Donald E. & Kathleen F. Lippy	
<i>Legal Owners</i> *	FOR BALTIMORE COUNTY
Petitioners *	Case No. 2016-0335-SPHX

* * * * *

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 Donald E. & Kathleen F. Lippy, legal owners ("Petitioners"). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to approve the proposed solar panel array field as a permitted accessory use or structure to the farm. A Petition for Special Exception was filed to approve the proposed solar panel array field as a "public utility use."

Appearing at the public hearing in support of the requests was Donald E. Lippy, surveyor John Lemmerman and Ken Donithan. Lawrence E. Schmidt, Esq. represented the Petitioners. Several protestants, represented by Michael McCann, Esq., opposed the requests. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP) and the Bureau of Development Plans Review (DPR).

Petitioners presented testimony from surveyor John Lemmerman, who described the project and introduced the site plan (Ex. 2A) he prepared for the case. The witness testified the parcel is approximately 6.5 acres and is zoned R.C.-2. He stated landscaping and fencing would be provided to screen the solar panels, and noted Petitioners would comply with the County's

Scenic Route guidelines.

Ken Donithan is the owner of Earth and Air Technologies, and he testified that solar projects comprise the vast majority of his business. He has an electrical engineering degree from Johns Hopkins University and is certified as a "power engineer." Mr. Donithan testified he has designed and constructed approximately 100 solar farms, and he believes the subject property is ideal given the site is open, relatively flat and adjacent to high power electric lines on Hanover Pike. The witness stated approximately 6,500 panels would be installed at the site--which would be an unmanned facility--which would generate two (2) megawatts of electricity. Mr. Donithan opined the use would not be detrimental to the community, and he also stated the panels would meet all fire protection codes and the solar farm would not generate any noise which could be heard off site.

In response to questions on cross-examination, the witness stated approximately 60% of the electricity generated would be used by the Lippy farm, while 40% would go into the electric grid and sold to other customers. Given the size and scope of the facility, he confirmed the project would be regulated by the Maryland Public Service Commission.

The final witness in Petitioners' case was Donald Lippy, who has been farming in Baltimore County for over 50 years. Mr. Lippy testified his family owns approximately 2,600 acres of land in the County, 2,200 of which are protected by agricultural easements. The witness stated his children would like to continue farming, but face increasing economic pressures with the rapidly fluctuating prices of crops. He testified the solar farm would generate steady income that would greatly assist his farming operations.

Several community members testified and expressed concern with the project. In addition to noting that proposed legislation concerning solar farms was pending before the County Council,

neighbors stated that numerous applications have been made recently to construct solar farms in agricultural zones. The neighbors believe the solar farm would be a visual blight that would be detrimental to the character of the rural area. In addition, they testified that using prime and productive agricultural land for solar farms would jeopardize the viability of area farms.

One threshold issue concerns whether a "solar farm" is permitted in the R.C.-2 zone. The Regulations permit by special exception "public utility uses." B.C.Z.R. §1A01.2.C.18. The term "public utility" is not defined in the Regulations. The Webster's Third New International Dictionary defines the term as "a business organization deemed by law to be vested with public interest usually because of monopoly privileges and so subject to public regulation." Here, Mr. Donithan confirmed this project would be regulated by the Maryland Public Service Commission, which regulates public utility companies. As such, I believe the solar farm would qualify as a "public utility use" permitted in the zone by special exception.

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 People's Counsel v. Loyola College, 406 Md. 54 (2008), where the court emphasized that 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.

Maryland courts recognize most uses for which a special exception is required are regarded as "potentially troublesome because of noise, traffic, congestion...." Montgomery County v. Butler, 417 Md. 271, 297 (2010). The primary concern identified by the community was aesthetics or the loss of a rural feel, which I believe would be the case for any solar farm in an R.C.-2 zone.

Thus that impact is “inherent” in the use. To warrant the denial of a special exception, the opponents must show that the use, at the particular location proposed, would have “non-inherent adverse effects.” Id. at 282. In this case, I do not believe the Protestants made such a showing.

A discussion was held at the hearing concerning the evidentiary burden in a special exception case. I believe Petitioners have an initial burden to establish a *prima facie* case, demonstrating they “conform to all applicable requirements.” Loyola College, 406 Md. at 109. Thereafter, protestants must rebut the evidence presented by Petitioners and establish that the adverse impacts at this location would be greater than those inherent in the use. Id.; Attar v. DMS Tollgate, LLC, 2015 WL 9461754 (unreported, Court of Special Appeals); Dellinger v. Lincoln County, 789 S.E.2d 21, 30 (N.C. 2016)(reviewing special exception burden of proof in case involving solar farm).

Based on the testimony of Petitioners’ witnesses (as summarized above), I believe they have stated a *prima facie* special exception case, especially since they are aided by the presumption discussed in Schultz. In rebuttal, Protestants focused upon the aesthetic or visual impact of the use, which I believe is “inherent” in “public utilities” generally and solar farms specifically. Protestants argue the impact would be greater here due to the scenic route designation, but I do not believe such a designation would cause the panels to have any non-inherent impacts. The scenic route guidelines do not prohibit development; instead they attempt to ensure that new buildings and projects are constructed in such a manner so as to reduce to the extent possible their impact upon the scenic view or route. Here, Petitioners’ witnesses testified there will be a significant buffer area with fencing and landscaping, which I believe is consistent with the scenic view requirements set forth in the CMDP.

In granting a special exception in the R.C.-2 zone, the ALJ must also find “that the use

would not be detrimental to the primary agricultural uses in the vicinity.” B.C.Z.R. §1A01.2.C. Testimony addressing this point was provided by Donald Lippy, who is arguably one of the best known and well regarded farmers in Baltimore County. In fact, it is the Lippy family that owns and conducts most of the “agricultural uses in the vicinity.” Mr. Lippy explained the solar farm would provide a reliable source of income that would help to subsidize his farming operations that face enormous economic pressures in the current climate. The solar farm would occupy only six (6) acres of agricultural land, but would yield significant benefits that would allow Mr. Lippy’s children to continue farming in this area.

I understand Protestants’ concerns about the large number of solar farms proposed in this area and throughout the County generally. But I am required to focus upon the facts of this case, and cannot consider the impact of other cases that may or may not be filed in the future seeking similar approvals. Such issues will of course be considered by the County Council as it determines whether or not to enact legislation governing solar farms.

SPECIAL HEARING

The petition for special hearing seeks approval of the solar array as accessory to the farm use. As indicated at the hearing, while solar panels are frequently located in rural agricultural settings, I do not believe the practice is so widespread that it can be said they are “customarily” found on farms. B.C.Z.R. §101.1 (definition of “accessory use or structure”). In addition, the proposed solar panels will occupy nearly all of the parcel on which they would be situated, as shown on Petitioners’ Exhibit 2B. There would be no farming operations on the parcel if the solar panels were installed, and thus there would not be a principal farm use to which the panels would be “accessory.” The principal--and only--use of the property would be a solar farm. As

such, I believe the petition for special hearing must be denied.

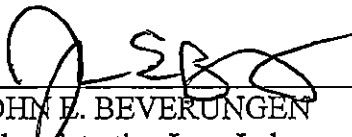
THEREFORE, IT IS ORDERED this 18th day of October 2016, by this Administrative Law Judge, that the Petition for Special Hearing to approve the proposed solar panel array field as a permitted accessory use or structure to the farm, be and is hereby DENIED.

IT IS FURTHER ORDERED that the Petition for Special Exception to approve the proposed solar panel array field as a "public utility use" 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. Prior to issuance of permits Petitioners must submit for approval by the Baltimore County landscape architect a landscape plan demonstrating the "solar farm" will be adequately screened from Hanover Pike consistent with the Scenic View guidelines in the CMDP.
3. No signage or lighting shall be permitted.
4. If the solar farm is not in continuous use and operation for a period of one (1) year or more, it shall be removed at the owners' or operator's sole expense. Should the owners or operators fail to do so, Baltimore County may engage a contractor to perform the work, and all costs and expenses associated therewith shall be a lien on the property and collected in the same manner as real estate taxes.
5. The solar farm shall be enclosed by perimeter fencing to prevent unauthorized access to the site and screen the view from off-site.
6. All power lines at the site, to the extent practicable, shall be placed underground.

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



JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/sln

✓JB 10-5-17

IN RE: PETITIONS FOR SPECIAL
EXCEPTION AND VARIANCE
(Hanover Road)
4th Election District
3rd Council District
Donald E. & Kathleen Lippy
Legal Owners
New Source Generation, LLC
Lessee
Petitioners

* BEFORE THE
* OFFICE OF
* ADMINISTRATIVE HEARINGS
* FOR BALTIMORE COUNTY
* Case No. 2018-0052-XA

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) as Petitions for Special Exception and Variance filed for property located on Hanover Road in northwest Baltimore County, not far from the Carroll County line. The Petitions were filed on behalf of Donald E. and Kathleen Lippy, legal owners of the subject property and New Source Generation, LLC, lessee. The Special Exception petition seeks approval for a solar facility. The Petition for Variance seeks to approve a minimum setback of 35 ft. in lieu of the 50 ft. setback imposed by Article 4E of the B.C.Z.R. A site plan was marked as Petitioners' Exhibit 2.

Appearing at the hearing in support of the petitions were Ken Donithan, Donald Lippy and professional land surveyor John Lemmerman. Lawrence E. Schmidt, Esq. represented Petitioners. The Hanover Road Community Association, represented by Mike McCann, Esq. opposed the request. The Petition was advertised and posted as required by the B.C.Z.R. A substantive Zoning Advisory Committee (ZAC) comment was received from the Department of Planning (DOP). That agency did not oppose the request.

The subject property is approximately 6.454 acres in size and is zoned RC 2. The property is unimproved and is currently in agricultural use. Petitioners propose to install solar panels on the property which would generate approximately one megawatt of electricity. Mr. Donithan testified

at least 60% of the power generated would be used by the Lippy brothers in their farming operations in Baltimore and Carroll Counties.

Mr. Donithan testified Petitioners have obtained conditional approval from both the PSC and BGE pursuant to the community solar energy program adopted by the State of Maryland. Baltimore County has approved a final landscape plan for the project (Exhibit 6) and there will be enhanced screening along both road frontages. The facility will also be enclosed by a security fence.

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.

Based on the testimony of Messrs. Donithan and Lemmerman, and mindful of the presumption supplied by Maryland case law, I believe Petitioners are entitled to the special exception. Both witnesses stressed the project would not generate traffic or noise and the facility will for the most part be monitored remotely. Mr. Donithan testified that after construction the only regular visits to the property would be for mowing the grass. Protestant did not call any witnesses in its case and did not submit any documents or other evidence which would refute or undermine in any way the testimony and evidence presented by Petitioners. As such, the special exception will be granted.

VARIANCE

A variance request involves a two-step process, summarized as follows:

1. It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
2. If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Cromwell v. Ward, 102 Md. App. 691 (1995).

John Lemmerman, a professional surveyor accepted as an expert, testified the property has a unique "L" shape and is bordered by agricultural properties protected by State easements. As such I agree with his opinion the property is unique. If the B.C.Z.R. were strictly interpreted Petitioners would suffer a practical difficulty since they would be unable to complete the proposed solar facility.

Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare. This is demonstrated by the lack of Baltimore County opposition. In addition, only one variance is sought and the relief requested is in my opinion modest, especially considering there will be enhanced landscaping along the road frontages that will mitigate the impact of the reduced setback (i.e., 35 feet in lieu of the required 50 feet).

LEGAL ISSUES

Protestant's counsel contends the petition should be dismissed since it was filed in violation of B.C.Z.R. §500.12, which concerns "subsequent petitions" after the denial of a petition for special exception. While it is true the previous petition for special exception (in Case No. 2016-0335-SPHX) was denied by the Board of Appeals, a petition for judicial review was filed and that matter is pending in the circuit court. As such, there has not been a final order denying

the earlier petition, which in my opinion renders B.C.Z.R. §500.12 inapplicable. In addition, the earlier petition sought to operate a “public utility” at the site while the special exception in this case is for a “solar facility.”

Even if this were not the case, I also believe that provision should not bar the Petitioners from seeking relief in this case. Section 500.12 is in my opinion meant to address a scenario where a litigant files successive petitions for special exception involving the same use and the same property after a final denial of his initial request.

In that sense I agree with Petitioners’ counsel that Section 500.12 is akin to a *res judicata* provision, and should be given a similar interpretation. This regulation appears to have been enacted in 1959, at which time Maryland law held that decisions of administrative bodies were not entitled to preclusive effect. *Seminary Galleria, LLC v. Dulaney Valley Improv. Ass’n, Inc.*, 192 Md. App. 719, 735-36 (2010). In this case specific legislation (Bill 37-17) was enacted by the County Council in June 2017, permitting solar facilities in the rural zones by special exception. A change in law will overcome a *res judicata* defense, and for similar reasons I believe it makes Section 500.12 inapplicable. In addition, it would be inequitable to require Petitioners to wait 18 months before seeking approval for a solar facility, especially since the law itself caps (at ten) the number of such facilities permitted in any council district, which makes time of the essence.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 13th day of October, 2017, that the Petition for Special Exception to approve a solar facility be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Variance pursuant to the Baltimore County Zoning Regulations (B.C.Z.R.) to approve a minimum setback of 35 ft. from the tract

boundary in lieu of the 50 ft. solar facility setback required by Article 4E of the B.C.Z.R., be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon 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. Petitioners must comply with the ZAC comment of the DOP dated September 13, 2017, a copy of which is attached.

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



JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/sln

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE MEMORANDUM

10-5
RECEIVED

SEP 26 2017

OFFICE OF
ADMINISTRATIVE HEARINGS

TO: Arnold Jablon
Deputy Administrative Officer and
Director of Permits, Approvals and Inspections

DATE: 9/13/2017

FROM: Andrea Van Arsdale
Director, Department of Planning

SUBJECT: ZONING ADVISORY COMMITTEE COMMENTS
Case Number: 18-052

INFORMATION:

Property Address: Hanover Road
Petitioner: Donald E. Lippy, Kathleen F. Lippy
Zoning: RC 2
Requested Action: Special Exception, Variance

The Department of Planning has reviewed the petition for a special exception to use the property for a solar facility (as established in Baltimore County Council Bill 37-17) and also the petition for variance to permit a minimum setback of 35 feet in lieu of the required 50 foot setback to the nearest tract boundary for solar facilities.

The site was the subject of zoning case #16-335. The Department recommended granting the petitioned zoning relief in that case with conditions. On October 18, 2016 the Administrative Law Judge granted said relief which was subsequently denied by the Baltimore County Board of Appeals on April 28, 2017. There are no substantive changes between the plan filed in the aforementioned case #16-335 and that filed in the instant case.

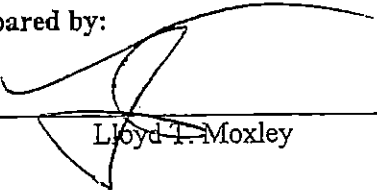
The Department has no objection to granting the petitioned zoning relief conditioned upon the following:

- Install vegetative screening consisting of mixed indigenous hardwood and evergreen trees and shrubs in a natural formation along the Fringer Road and Hanover Pike frontages to mitigate the visual impact of the public utility from the scenic route.
- All proposed lighting will be sited in such a way as to have minimal spillage unto neighboring properties.
- Proposed signage to be limited to that necessary for safety and security purposes.
- Prior to building permit application, the petitioners shall submit a solar glare analysis to the Department, to the attention of the contact person listed below, accompanied by a written statement confirming that the surrounding adjacent residential properties will not be adversely impacted by glare emanating from the facility.

Date: 9/13/2017
Subject: ZAC #18-052
Page 2

For further information concerning the matters stated herein, please contact Joseph Wiley at 410-887-3480.

Prepared by:



Lloyd T. Moxley

Division Chief:

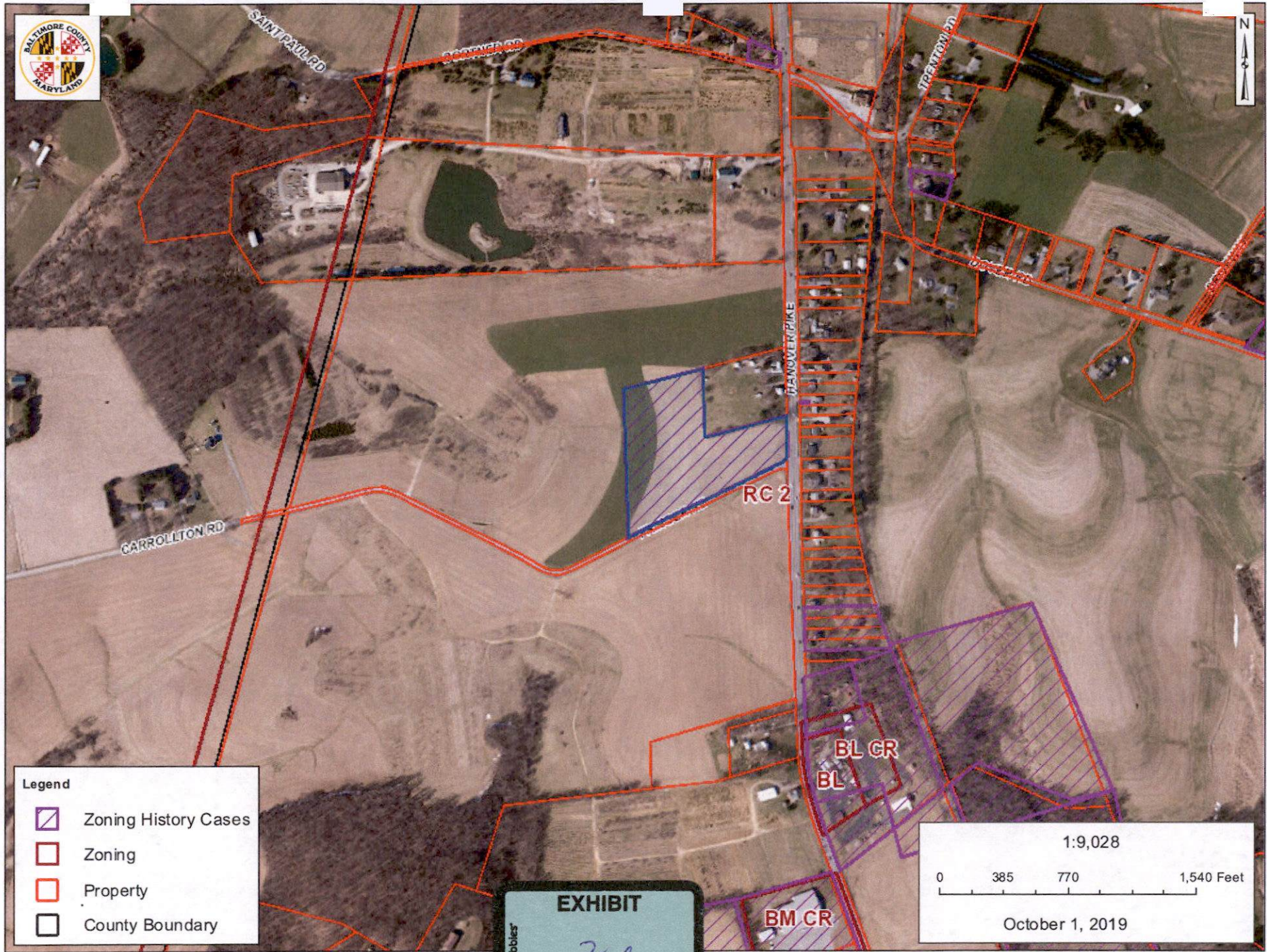


Kathy Schlabach

AVA/KS/LTM/ka

c: Joseph Wiley
James Hermann, R.L.A., Department of Permits, Approvals and Inspections
Lawrence E. Schmidt, Smith, Gildea & Schmidt, LLC
Office of the Administrative Hearings
People's Counsel for Baltimore County

Baltimore County - 11 Neighborhood



- Legend
- Zoning History Cases
 - Zoning
 - Property
 - County Boundary

1:9,028

0 385 770 1,540 Feet

October 1, 2019

tabbies

EXHIBIT

2A

Baltimore County - My Neighborhood



Legend

- House Numbers
- Zoning History Cases
- Zoning
- Property
- County Boundary

RC 2

FRINGER RD

15715

15711

15709

15706

15703

15701

15631

15629

15627

15625

15623

15621

15619

15615

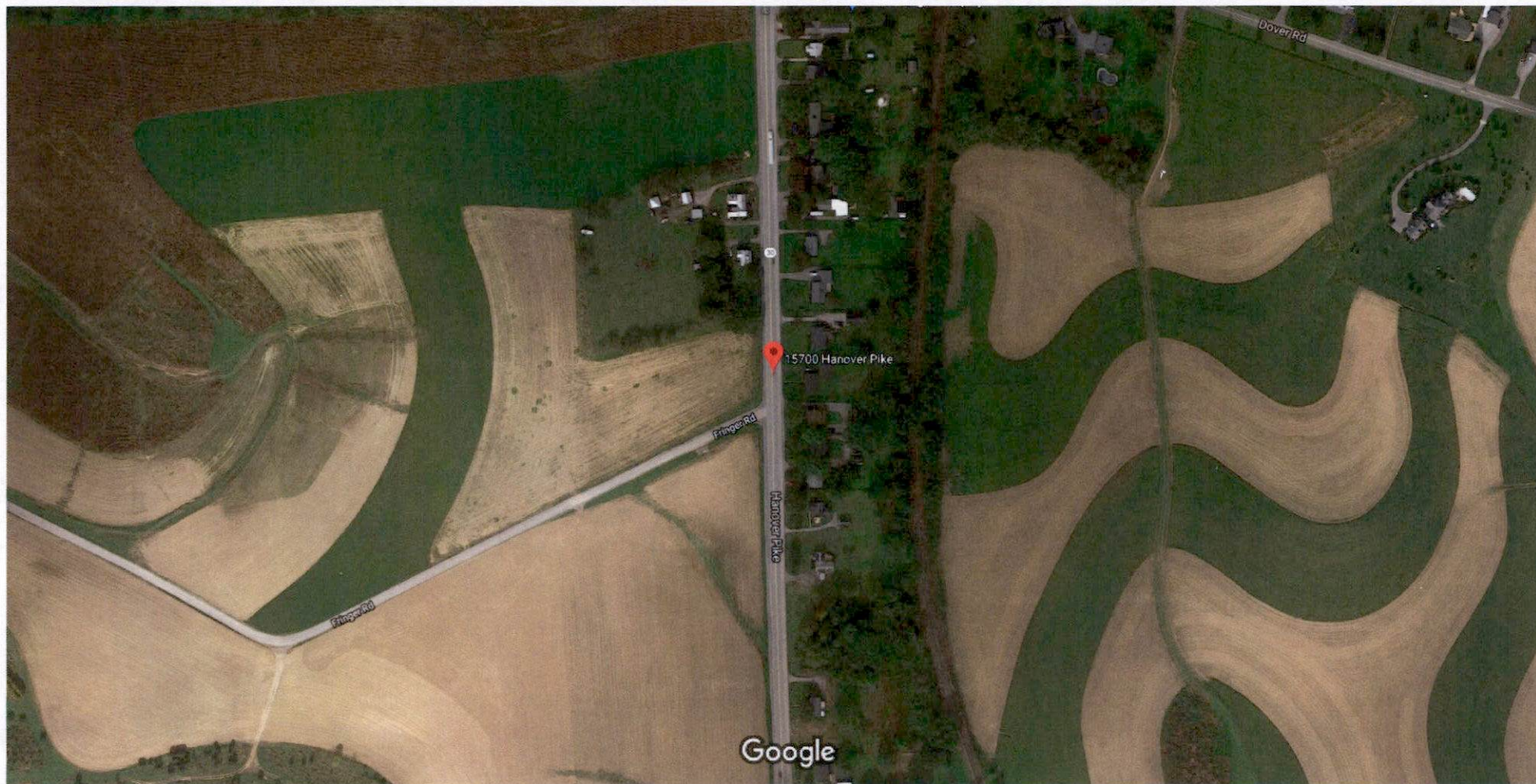
1:2,257

0 95 190 380 Feet

October 1, 2019

EXHIBIT

2B



Imagery ©2019 Google, Imagery ©2019 Maxar Technologies, U.S. Geological Survey, USDA Farm Service Agency, Map data ©2019 200 ft







Image capture: Aug 2018 © 2019 Google

Upperco, Maryland



Street View - Aug 2018





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EXTERIOR RENDERING 01
UPPERCO VOLUNTEER FIRE COMPANY

10/07/19

MANNS WOODWARD STUDIOS

PUBLIC SAFETY ARCHITECTURE + PLANNING

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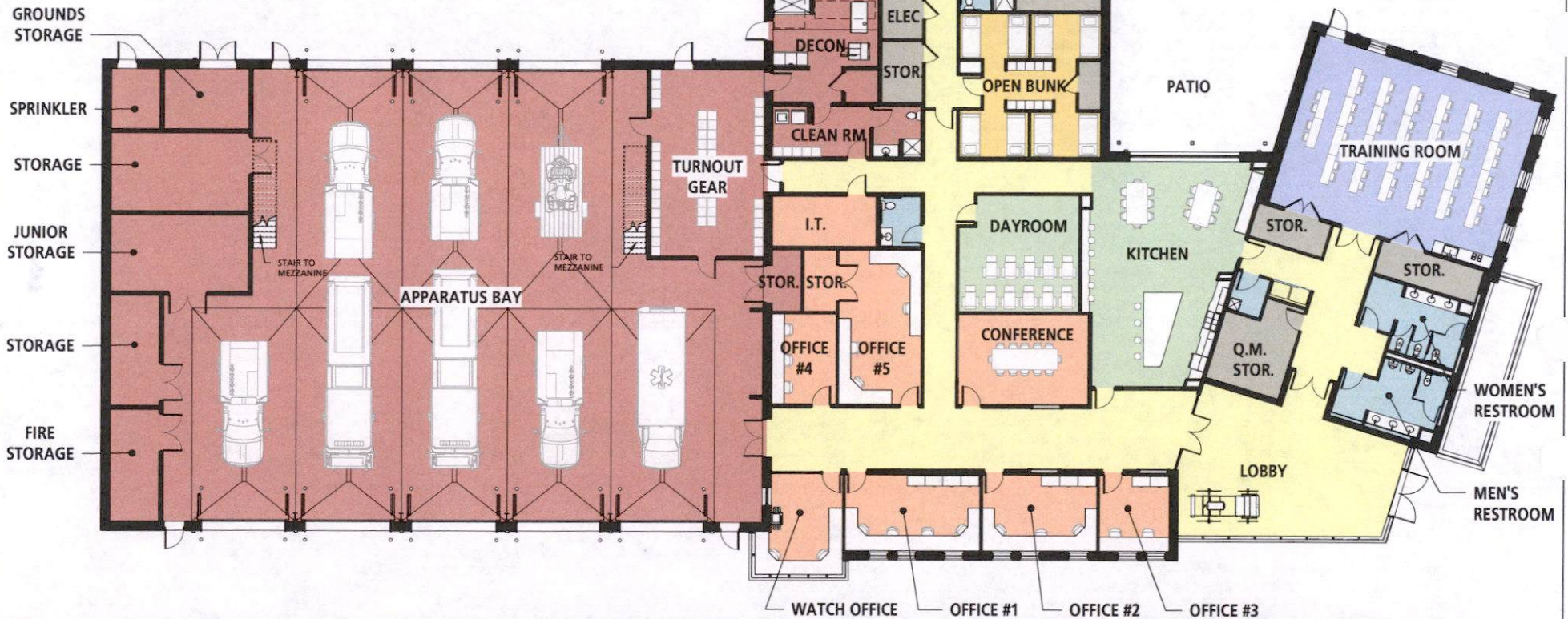
PROJECT INFORMATION

GROSS SQUARE FOOTAGE: 20,109 GSF

NET SQUARE FOOTAGE: 15,065 NSF
 8,010 SF - APPARATUS &
 APPARATUS SUPPORT
 2,100 SF - ADMINISTRATION
 1,300 SF - LIVING
 1,270 SF - BUNK
 1,610 SF - TRAINING
 775 SF - LOBBY

52 CHAIR @ DESK IN TRAINING ROOM
 52 TURNOUT GEAR LOCKERS
 11 SEATS IN DAYROOM
 5 INDIVIDUAL PRIVATE BUNKS
 8 / 16 OPEN BUNK SLEEPING CAPACITY
 26 FULL & 20 HALF HEIGHT PERSONAL LOCKERS
 75'-0" APPARATUS BAY DEPTH

BUNK #1 BUNK #2 BUNK #3 BUNK #4 BUNK #5



PRESENTATION FLOOR PLAN UPPERCO VOLUNTEER FIRE COMPANY

10/07/19

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EXHIBIT

tabbies

4

1700004159

700000355

Pt. Bk. 0000014, Folio 0024

Lot # 7 0419052670

Lot # 10 0423002250

Lot # 11 0419052490

15721 0408002300

15719 0405043050

Lot # 13

15715 0408001850

15711 0403037150

15709 1800013609

0426020125

0426020126

1963-2524-X

0426020127

Lot # 24 15703

0426020128 PAI # 048001

15701 0411016270

Pt. Bk./Folio # 014024 PAI # 048001

15631 1600012823

15629

15625 0408000351

15623 0408000350

15621

15619

0419072150

Lot # 31

15615 Lot # 32

0417011130

Lot # 34

Lot # 34

0412040772

0419008471

15605 Lot # 37

0403024990

R-1949-1595
R-1949-1595

15601 0402001427

0411035750

0411035751

0411035752

0402058770

99999 15712

0402058771

15708

2016-0335-SPHX
2018-0052-XA

1900007892

GROWTH TIER 4
(No New Subdivisions of 4
or More Additional Lots)

3 CD

025B3 RC 2

4 ED

NW 24-K

FRINGER RD
FRINGER RD

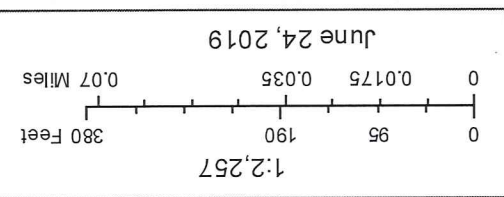
HANOVER PIKE

0412040770

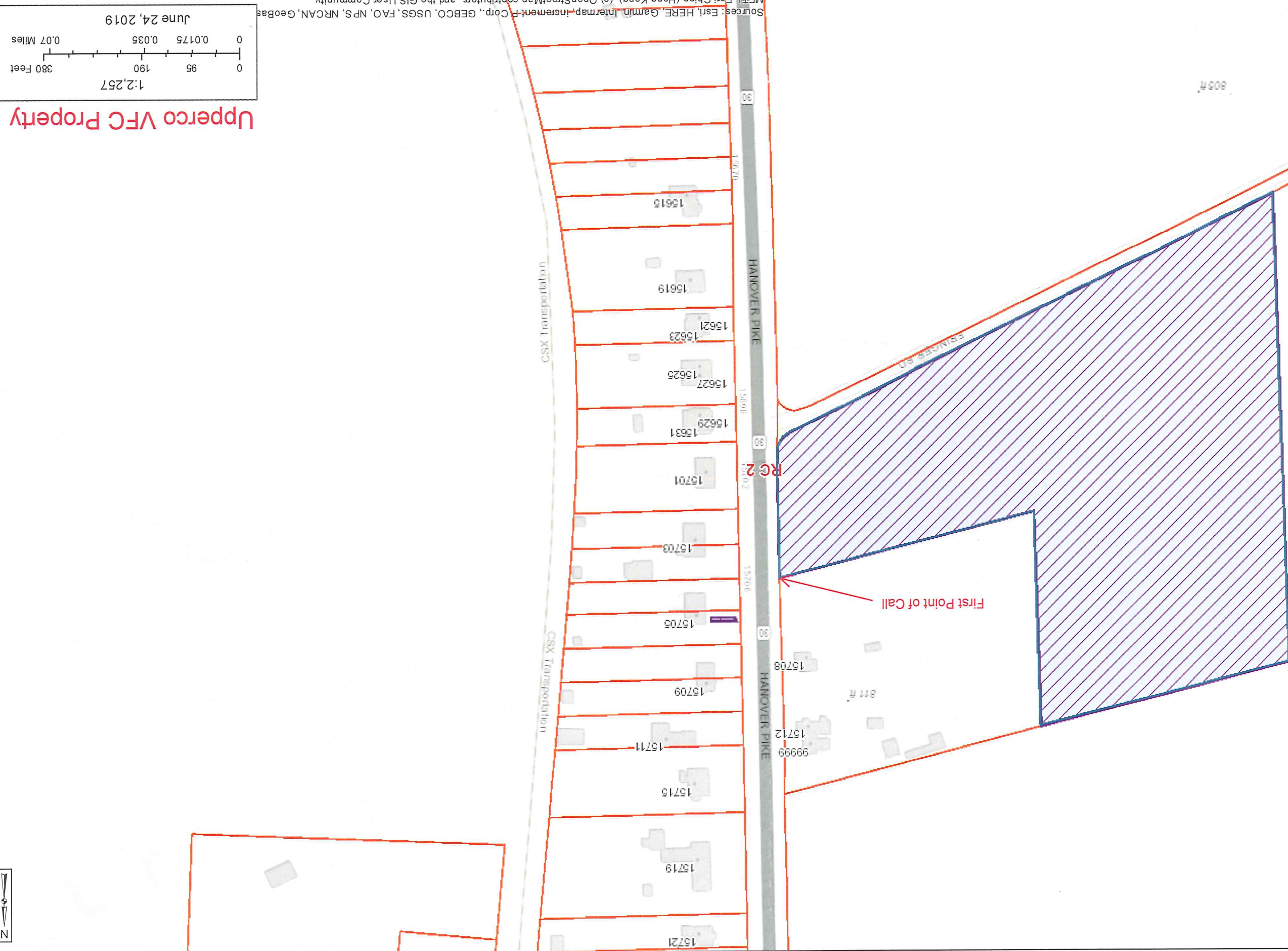
2500003982



- Legend
- County Boundary
 - Property
 - Zoning
 - Zoning History Cases
 - House Numbers



Upperco VFC Property



Baltimore County - My Neighborhood

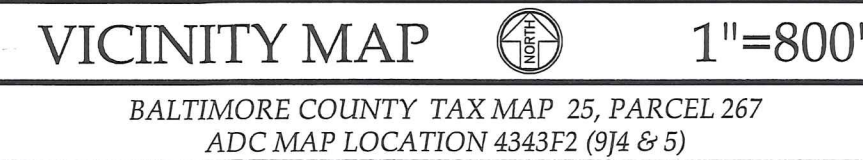
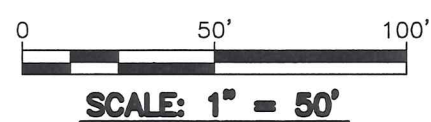
2019-0384-X

Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, Geobase, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community

Baltimore County Government, Carroll County, Esri, HERE, Garmin, INCREMENT P, USGS, EPA, USDA



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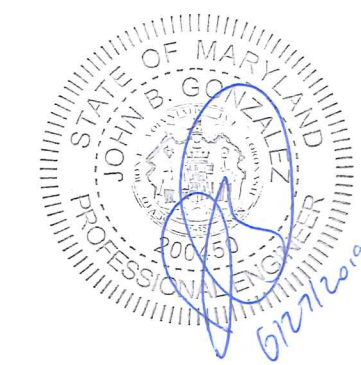
GENERAL NOTES

1. SITE ADDRESS: NORTHWEST CORNER OF THE INTERSECTION OF FRINGER ROAD AND ROUTE 30 (HANOVER PIKE), 15700 HANOVER PIKE UPPERCO, MD 21155
2. PROPERTY OWNER: UPPERCO VOLUNTEER FIRE COMPANY, INC. 5415 ARCADIA AVENUE UPPERCO, MD 21155
3. SITE AREAS:
 - A. NET SITE AREA: 281,089± S.F. (6.453± ACRES)
 - B. GROSS SITE AREA: 300,802± S.F. (6.905± ACRES)
4. SITE ZONING: RC-2 (AGRICULTURAL)
5. TIER DESIGNATION: 4
6. TAX MAP 25, GRID 21, PARCEL 267
7. TAX ACCOUNT #: 1900007892
8. DEED REFERENCE: 41104/319
9. BOUNDARY AND TOPOGRAPHIC SURVEY WAS PERFORMED BY RTF ASSOCIATES, INC. ON 6/27/2018.
10. SOIL TYPES:
 - A. GdA- GLENELG LOAM, 0 TO 3 PERCENT SLOPES
 - B. GdB- GLENELG LOAM, 3 TO 8 PERCENT SLOPES
 - C. GdB- GLENELG CHANNERY LOAM, 3 TO 8 PERCENT SLOPES
 - D. SOURCE: NRCS WEB SOIL SURVEY
11. THERE ARE TWO HOUSES NORTH OF THE SITE. THE LOCATIONS OF THEIR SEWAGE DISPOSAL AREA WERE OBTAINED FROM BALTIMORE COUNTY RECORDS. PROPERTIES ON THE EAST SIDE OF HANOVER ROAD ARE OVER 100 FEET FROM THE PROPOSED PRIMARY SEWAGE DISPOSAL AREA, AND DRAIN TO THE EAST, IN THE OPPOSITE DIRECTION OF WHERE THE SUBJECT SITE DRAINS. (SOURCE- BALTIMORE COUNTY- MY NEIGHBORHOOD GIS MAP)
12. A FIELD OBSERVATION OF THE SITE AND SURROUNDING PROPERTIES WAS MADE TO CHECK FOR EVIDENCE OF EXISTING SEPTIC RESERVE AREAS ON AND AROUND THE SITE. THERE APPEARED TO BE NO SEPTIC RESERVE AREAS ON ADJOINING PROPERTIES ADJACENT TO THE SITE, WITH THE EXCEPTION OF THE PROPERTY TO THE NORTH, AS SHOWN ON THE PLAN.
13. NO 100-YEAR FLOOD PLAIN EXISTS ON THIS PARCEL, IN ACCORDANCE WITH FLOOD INSURANCE RATE MAP, 2400100090F, PANEL 90 OF 580, DATED SEPTEMBER 26, 2008.
14. THE SITE DOES NOT LIE WITHIN THE CHESAPEAKE BAY CRITICAL AREA.
15. THE SITE LIES OUTSIDE THE BALTIMORE MASTER WATER AND SEWERAGE PLAN AREA. THE TIER DESIGNATION IS TIER IV- NO MAJOR DISBURSIONS ALLOWED.
16. EXISTING USE OF THE SITE: AGRICULTURE
17. PROPOSED USE OF THE SITE: FIRE STATION
18. PROPOSED BUILDING HEIGHT: 23'-0" (ONE STORY)
19. ELECTION DISTRICT: 4
20. COUNCILMANIC DISTRICT: 3
21. ZONING HEARINGS:
 - A. CASE NO. 16-0335-SPHX - THE ADMINISTRATIVE LAW JUDGE BY ORDER DATED OCTOBER 18, 2016 GRANTED THE SPECIAL EXCEPTION TO APPROVE A PROPOSED SOLAR PANEL ARRAY AS A PUBLIC UTILITY USE. THE BOARD OF APPEALS ON APPEAL DENIED THE SPECIAL EXCEPTION BOTH AS A PUBLIC UTILITY USE AND AS AN ACCESSORY USE BY ORDER DATED APRIL 28, 2017. THE DENIAL AND DECISION OF THE BOARD OF APPEALS WAS AFFIRMED AFTER REVIEW BY THE CIRCUIT COURT ON DECEMBER15, 2017 IN CIRCUIT COURT CASE NO. 03-CV-17-005187.
 - B. CASE NO. 18-0082-XA - THE ADMINISTRATIVE LAW JUDGE BY ORDER DATED OCTOBER 13, 2017, GRANTED THE SPECIAL EXCEPTION AND VARIANCE TO APPROVE A PROPOSED SOLAR PANEL ARRAY. THE BOARD OF APPEALS ON APPEAL GRANTED A MOTION BY PETITIONER TO WITHDRAW AND DISMISS THE PETITIONS ON SEPTEMBER 27, 2018 AND SO ORDERED THAT THEY BE WITHDRAWN AND DISMISSED WITH PREJUDICE.
22. GROSS FLOOR AREA: 20,120± S.F.
23. GROSS FLOOR AREA RATIO: 20,120 ± S.F. / 300,802± S.F. = 0.07
24. THERE ARE NO FIRE HYDRANTS NEAR THE SITE.
25. THE SITE IS NOT LOCATED IN A FAILED BASIC SERVICES AREA.
26. PARKING CALCULATIONS:
 - A. REQUIRED PARKING: (3.3 SPACES/1,000 S.F.)(20,120 S.F.) = 67 SPACES
 - B. PROVIDED PARKING: 67 (INCLUDING 3 HANDICAP SPACES)
27. SITE LANDSCAPING WILL BE PROVIDED IN ACCORDANCE WITH THE BALTIMORE COUNTY LANDSCAPE MANUAL AND ORDINANCE.
28. SITE LIGHTING: ANY FIXTURE USED TO ILLUMINATE AN OFF-STREET PARKING AREA SHALL BE SO ARRANGED AS TO REFLECT THE LIGHT AWAY FROM ADJACENT RESIDENTIAL SITE AND PUBLIC STREETS.
29. THE SITE WILL BE SERVED BY ON-SITE WELL AND SEPTIC. PERCOLATION TESTS WERE PERFORMED ON NOVEMBER 9, 2018.

CONSULTANT:



SEAL:



ENGINEER
PROFESSIONAL CERTIFICATION: I HEREBY
CERTIFY THAT THESE DOCUMENTS WERE
PREPARED OR APPROVED BY ME, AND
THAT I AM A DULY LICENSED
PROFESSIONAL ENGINEER UNDER THE LAWS
OF THE STATE OF MARYLAND. LICENSE NO.
200450, EXPIRATION DATE: 10/14/2019

MANNS WOODWARD STUDIOS
ARCHITECTURE | INTERIORS | MASTER PLANNING

10839-D PHILADELPHIA RD
WHITE MARSH, MD 21162
WWW.MWSARCH.COM
(P) 410-344-1460
(F) 443-403-2460

**PLAN TO ACCOMPANY SPECIAL EXCEPTION
FOR VOLUNTEER FIRE COMPANY &
AMBULANCE - RESCUE FACILITIES**

UPPERCO VFC
15700 HANOVER PIKE
UPPERCO MARYLAND 21155

NO.	DESCRIPTION	DATE
PROJECT NUMBER: C2829		
PROJECT SET: PLAN TO ACCOMPANY SPECIAL EXCEPTION		
DATE ISSUED: 6/29/19		
DRAWING TITLE: SITE PLAN		
SHEET NUMBER:		



