

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
E side of Sampson Road, 40 feet N of c/l of Jordan Sawmill Road	*	DEPUTY ZONING
17 th Election District	*	COMMISSIONER
3 rd Councilmanic District	*	FOR BALTIMORE COUNTY
(1090 Jordan Sawmill Road)	*	
Roy G. and Linda Albin	*	
<i>Petitioners</i>	*	
	*	Case No. 2009-0017-X

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Special Exception filed by the legal owners of the subject property, Roy and Linda Albin. Petitioners are requesting a special exception pursuant to Section 1A01.2.C.29.h of the Baltimore County Zoning Regulations (B.C.Z.R.) for a winery in an R.C.2 Zone. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioners' Exhibit 1.

The case initially came before the undersigned on September 17, 2008 and appearing at the requisite public hearing in support of the requested special exception were Petitioners Roy and Linda Albin and their attorney, Patrick Roddy, Esquire. Also appearing in support of the requested relief was Mitch Kellman, Petitioners' land use and zoning consultant with the engineering firm of Daft McCune Walker, Inc. Mr. Kellman was previously employed with Century Engineering, the firm that prepared the site plan. Also attending the hearing as County agency representatives were David Lykens and Tom Panzarella with the Department of Environmental Protection and Resource Management (DEPRM). There were no Protestants or other interested persons in attendance at the hearing.

The testimony and evidence offered at that time revealed that the subject property is an irregular-shaped property consisting of approximately 247,288 square feet or 5.677 acres, more or less, zoned R.C.2. The property is located on the north side of Jordan Sawmill Road at its intersection with Sampson Road, just east of Interstate 83 in the Parkton area of Baltimore County. As shown on the site plan, the subject property is adjacent to what was once a larger parcel known as Lot 1. Lot 1 now consists of approximately 23.052 acres and is located to the north and east of the subject property. The subject property, known as Lot 2, was acquired by Petitioners in 2005 by way of an intra-family transfer from Mr. Albin's father. The property is improved with an existing single-family dwelling situated at the northeast corner of the property.

At the time of the first hearing, Petitioners desired to utilize their property as a winery. In support of the requested relief, Petitioner's attorney, Mr. Roddy, pointed out that Section 1A01.2.C.29.h characterizes a winery as an agricultural-support use and permits a winery as a principal commercial use in the R.C.2 Zone by special exception. Taken a step further, Mr. Roddy characterized a winery as a "value added" agricultural activity. Put simply, merely growing grapes would not likely be, in and of itself, a profitable agricultural activity in this area, but growing the grapes and processing them into wine makes this agricultural activity profitable. Petitioners' plan is to produce approximately 3,000 to 4,000 cases -- or about 6,000 to 8,000 gallons -- of wine per year. For perspective, Mr. Roddy indicated that the well-known Boordy Vineyard produces approximately 80,000 gallons or more of wine per year.

In addition, Mr. Kellman, Petitioner's land use and zoning consultant, presented testimony in support of the special exception request. Mr. Kellman was offered and accepted as an expert in the areas of planning, zoning, the permitting process, and interpretation of the Baltimore County Zoning Regulations. He indicated that he had inspected the property on several occasions and also

examined other nearby properties in the area. Mr. Kellman then discussed the various special exception criteria set forth in Section 502.1 of the B.C.Z.R. He offered his opinion that Petitioners' proposed use of the property for a winery and the estimated production levels would not be detrimental to the health, safety, or general welfare of the locale, and would not negatively impact the surrounding area. He also opined that the proposed use would have no detrimental impacts on any of the other enumerated criteria in Section 502.1, and that in particular, the use of the property for a winery is consistent with the property's zoning classification and would be within the spirit and intent of the zoning regulations.

In further support of the requested relief, Petitioners submitted letters of support from nearby neighbors, including: July 29, 2008 letter from Herbert Schafer of 20611 Sampson Road, July 24, 2008 letter from Carol H. Lonsdale of 20004 Kirkwood Shop Road, July 28, 2008 letter from Calvin Palmer of 20515 Sampson Road, July 28, 2008 letter from Joyce Hudson of 20411 Sampson Road, and July 24, 2008 letter from Mark and Robin Underwood who live across the street from Petitioners. These letters were marked and accepted into evidence as Petitioners' Exhibits 2A through 2E, respectively.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Baltimore County Fire Marshal's Office dated July 29, 2008 indicating that the site shall be made to comply with all applicable parts of the Baltimore County Fire Prevention Code prior to occupancy or beginning of operation. Comments were also received from the Department of Environmental Protection and Resource Management (DEPRM) dated September 4, 2008 indicating generally that the property must comply with the Forest Conservation Regulations. In addition, Thomas Panzarella of the Environmental Impact Review section of DEPRM indicated that the application is for an activity regulated under the

County's Forest Conservation Program and, therefore, is in violation of the approved Intra-family Transfer Declaration of Intent. Any plans and/or permits for the proposed activity cannot be approved until the applicant comes into compliance with the Baltimore County Code, Article 33, Title 6, entitled "Forest Conservation." These requirements must be addressed for Lots 1 and 2. In addition, Susan Farinetti of the Ground Water Management section of DEPRM indicated that prior to the approval for the use of the existing house for a winery, additional information must be submitted on the winery process to determine the impact on the existing sewage disposal system. Prior to the approval of a new building, plans must be submitted showing the proposed location of the building and septic reserve area. Soil evaluations must be conducted. A usage letter must be submitted which includes detailed information on functions open to the public.

The case file also contains a memorandum from Wallace S. Lippincott, Manager, Agricultural Land Preservation with DEPRM dated May 21, 2008. This memorandum indicates that Mr. Albin requested the Baltimore County Land Preservation Advisory Board's consideration of a reduced acreage farm designation for his property. Mr. Albin indicated in his request that he would like to construct a barn for equipment storage, livestock stalls and feed storage. The dimensions of the barn would be 16 feet by 28 feet by 16 feet. The Baltimore County Department of Zoning has requested the Board's verification of the legitimacy of a farm use before a permit will be issued for a barn. The Baltimore County Land Preservation Advisory Board met on May 20, 2008 and voted to recommend approval of the reduced acreage farm/barn request.

In order to elaborate on the comments submitted by DEPRM, Mr. Lykens and Mr. Panzarella appeared at the September 17th hearing on behalf of that agency. Essentially, Mr. Lykens indicated that when Petitioners executed the Intra-family Transfer Declaration of Intent on July 15, 2005 -- which facilitated their acquisition of the subject property and their construction of

a dwelling thereon -- they requested an exemption from the requirements of the Baltimore County Forest Conservation Program. In being granted the exemption, Petitioners agreed to utilize the property for the purpose of the exempted activity for a period of five years. As stated in the Declaration of Intent, in the event an application is submitted by the owner for a regulated activity under the Forest Conservation Program within the five year period, the County may require the owner to meet the forest conservation threshold and may also assess a noncompliance fee. Mr. Lykens and Mr. Panzarella indicated that this issue, as well as the ground water management comment, needed to be addressed and resolved prior to the granting of the requested relief.

Based on my agreement with the DEPRM officials, at the conclusion of the hearing, the undersigned agreed to keep the record open in order to allow Petitioner and DEPRM officials to review the aforementioned issues and attempt to resolve them.

Moving forward in the case, on May 26, 2010, the undersigned received a copy of an email from Mr. Roddy to Mr. Lykens with DEPRM inquiring as to whether DEPRM might revise its comments from 2008. Specifically, Mr. Roddy wrote:

[M]y client, Roy Albin, had filed a Intrafamily Transfer Declaration of Intent on July 15, 2005 for the property at 1090 Jordan Sawmill Road. That Declaration included a provision allowing application of forest conservation thresholds for five years from the date of the Declaration. On July 15, 2010 that provision expires as to this property. As you can see, Deputy Zoning Commissioner Bostwick has held the special exception matter open pending further proceedings. Would it be appropriate for DEPRM to revise its comment so that a new comment could be considered if the proceedings were renewed after July 15th 2010?

On May 28, 2010, Mr. Lykens responded to Mr. Roddy's email and wrote:

You should also touch base with the manager of our Groundwater Management Section, Kevin Koepenick (410-887-2762), to ensure that you have covered all of his potential issues related to the zoning case. We have had several properties proposed as potential wine related businesses since you started the Albin Property in 2008. It might be helpful to get Kevin a current plan and explain in more detail what your client plans to do and where it will be located on the property.

The case was rescheduled for July 20, 2010 in Room 104 of the Jefferson Building located at 103 West Chesapeake Avenue in Towson. Due to the passage of time, notice of the hearing was also re-posted on the property and re-advertised in *The Jeffersonian* newspaper. Appearing at the public hearing in support of the requested special exception relief were Petitioners Roy and Linda Albin and their attorney, Patrick H. Roddy, Esquire. Also appearing as interested citizens were nearby neighbors Nadia Mohamed of 1101 Jordan Sawmill Road and Zachary Mattix of 1314 Jordan Sawmill Road. There were no Protestants in attendance.

The undersigned recited a summary of the extent of the proceedings up to this point, and additional evidence was offered by Mr. Roddy and revealed that Petitioners built their approximately 2,300 square foot home in 2007. Petitioners are proposing to operate the winery from the basement level of their home. A floor plan of the proposed layout was marked and accepted into evidence as Petitioners' Exhibit 3. Mr. Roddy explained that a traditional winery is broken down into three separate areas of operation: (1) the production of wine, (2) the sale of wine for off-premises consumption, and (3) the sale of wine and sampling of wine on site as well as on-premises consumption. As shown on the floor plan, almost the entire basement area would be devoted to wine production and storing, and tasting. There would be a separate area for a bathroom. Mr. Roddy further stated that normal methods of wine distribution include (1) direct sales to distributors, (2) sales to restaurants and retail stores, and (3) direct sales to individuals on the winery property. In the instant matter, Petitioners plan to distribute their wine directly to restaurants and stores, to customers who purchase sealed containers for consumption off the premises, and to individuals for sampling and by-the-glass tastings on the winery property. Mr. Roddy also added that the current proposal is virtually the same as what was presented before me in 2008. There have been no noteworthy changes since that time. Testifying as interested

citizens, Ms. Mohamed and Mr. Mattix each expressed their support of Petitioners' proposal, believing the winery will be an asset to the area.

In anticipation of the July 20th hearing, Mr. Lykens with DEPRM submitted an updated ZAC comment in reference to Petitioners' proposal and request for special exception relief. The comment dated July 20, 2010 states that for several months, members of the Department of Environmental Protection and Resource Management have had discussions with Mr. Roddy in an attempt to resolve the outstanding issues related to this zoning case. All of our issues have been address except for those related to the Groundwater Management Section. Attached to the comment was a memorandum dated July 20, 2010 from Groundwater Management requesting additional information from Petitioners, particularly as to water usage and wastewater requirements. Thereafter in a letter dated July 23, 2010 from Mr. Roddy to the Groundwater Management officials, a copy of which is contained in the file, he provided a laundry list of information related to the operation and capacity.

Turning to the requested special exception, subject to the criteria set forth in Section 502.1 of the B.C.Z.R., such "agricultural-support" uses as described in Section 1A01.2.C.29 of the B.C.Z.R. are permitted by special exception, including a winery under subparagraph (h). After considering all of the customary special exception criteria outlined in Section 502.1 of the B.C.Z.R., I am persuaded to granted the requested special exception relief to use the subject property for a winery. The uncontroverted testimony from Mr. Kellman indicates that the proposed use would not have any detrimental impacts on the required 502.1 criteria. Further consideration of the evidence shows that this use would not have a negative impact on the rural-residential and agricultural character of this area of northern Baltimore County. On the contrary, I am persuaded this use would be complementary to the land uses in this area with little to no

adverse effects. Therefore, I am convinced that the use proposed at the subject location would not have any adverse effects above and beyond those inherently associated with such a special exception use, irrespective of its location within the zone. *See, Schultz v. Pritts*, 291 Md. 1 (1981); *see also People's Counsel v. Loyola College*, 406 Md. 54 (2008).

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered by Petitioners, I find that Petitioners' special exception request should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County, this 17th day of August, 2010 that Petitioners' request for a Special Exception pursuant to Section 1A01.2.C.29.h of the Baltimore County Zoning Regulations (B.C.Z.R.) for a winery in an R.C.2 Zone be and is hereby **GRANTED** in accordance with the site plan and floor plan accepted into evidence as Petitioners' Exhibits 1 and 3, respectively, and consistent with the usage letter from Mr. Roddy to the Groundwater Management Section of DEPRM dated July 23, 2010 (attached) concerning the operation and capacity of the proposed winery. The relief granted herein is also subject to the following conditions:

1. Petitioners may apply for their necessary building or use permits, as applicable, and be granted same upon receipt this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).
3. Petitioner shall continue to cooperate with DEPRM and provide timely and accurate information in response to the Department's requests related to the proposed winery.

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

 SIGNED
THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz