

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND SPECIAL EXCEPTION		
N/Side of Hydes Road, 2,000' E of	*	ZONING COMMISSIONER
Elder Road		
(5300 Hydes Road)	*	FOR
11 th Election District	*	BALTIMORE COUNTY
3 rd Council District		
	*	
John Wilkerson, Trustee of the John K.		
Wilkerson Revocable Trust	*	Case No. 2009-0276-SPHX
<i>Petitioner</i>	*	

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of Petitions for Special Hearing and Special Exception filed by John K Wilkerson, Trustee of the John K. Wilkerson Revocable Trust, legal owner, through his attorney, Lawrence E. Schmidt, Esquire. The Petitioner requests a Special Hearing, pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to approve a modified parking plan as provided for in Section 409.12B of the B.C.Z.R and allow parking on an unpaved surface without striping in lieu of the requirements set forth in Sections 409.8A.2 and 409.8A.6¹. In addition, special exception relief is requested pursuant to B.C.Z.R. Section 502.1 and Section 1A01.2.C.29(h) to permit a winery on the subject property, including accessory retail and wholesale distribution of wine produced on the premises, and including temporary promotional events, such as wine tasting and public gatherings associated with the winery. The subject property and requested relief are more particularly described on the site plan, which was accepted into evidence and marked as Petitioner's Exhibit 1.

¹ Section 409.8A.2 requires a durable and dustless parking surface and Section 409.8A.6 requires that all parking spaces be striped and that such striping be maintained so as to remain visible.

Appearing at the requisite public hearing in support of the requests were John Wilkerson, property owner, and his wife Denise, James Matis, a Professional Engineer, with Matis Warfield Inc., and Petitioner's attorney, Lawrence E. Schmidt, Esquire, of Gildea & Schmidt, LLC. Also appearing in support of Petitioner's request were Roger B. Hayden, the Long Green Community Association's elected spokesman², Kevin Atticks, Executive Director of the Maryland Wineries Association, John Canoles, former President of the Long Green Valley Conservancy, and Gerald F. McCloskey, a nearby neighbor of the Petitioner. The issues presented in this case generated significant public interest, and a number of individuals from the surrounding community appeared and/or testified concerning the extent of the retail operations encompassed by this proposal, namely Deborah L. White, Thomas and Elizabeth Kelly, Paul and Deborah Weber, Michael A. Pierce, and Scott Corey, the current President of the Long Green Valley Conservancy and co-holder of the Rural Legacy Conservation Easement that pertains to the Petitioner's land.

Testimony and evidence revealed that the subject property is a triangular shaped parcel containing 42.5 acres on the north side of Hydes Road, approximately 1,000 feet west of Long Green Pike in the Hydes/Long Green Valley area of Baltimore County. The property, zoned R.C.2, is improved with a two-story dwelling, one-story barn, and a 32' x 45' run-in barn. *See* Petitioner's Exhibit 1. The property is environmentally constrained as the Long Green Creek runs through the middle of the tract with its accompanying 100-Year Floodplain and a Forest Buffer Easement as illustrated by the light blue shaded area on the site plan. *See* Petitioner's Exhibit 1. The surrounding area, also zoned mostly R.C.2, contains a dairy farm, horse training and breeding facilities, a Baltimore County maintenance center, cattle and beef farm, and Baltimore County recreation fields. Testimony revealed that Mr. and Mrs. Wilkerson reside on the property and desire to operate a small Maryland winery to be known as Dejon Vineyards.

² Mr. Hayden served as Baltimore County Executive from 1990-1994.

The area colored in yellow on Exhibit 1 is to be set aside for the proposed special exception use area and encompasses only a small portion of the property, approximately 2.66 acres, and includes the two existing barn structures as well as a parking area. *See* also Aerial GIS Map, Petitioner's Exhibit 2. It is to be noted that the two-story dwelling and surrounding farm land was specifically left outside the special exception area and will not be (other than the planting of grape vines in the westerly fields) included as part of the winery operation. The dwelling is accessed via a separate driveway off of Hydes Road near the westernmost border of the Petitioner's property. *See* Petitioner's Exhibit 1. Ingress/egress access to the proposed winery would be via an existing 12' wide macadam drive with a 30' wide entrance off of Hydes Road.

Mr. Wilkerson stated that he wishes to maintain a winery on the subject property to include the retail and wholesale distribution of wine he produces, hold accessory promotional events to build a connection with the public by conducting wine tasting and public gatherings associated with the winery. In this regard, a variety of grapes will be grown on the property including but not limited to, Chardonnay, Cabernet Franc, Merlot, Vidal, and Chambourcin. These grape varieties were chosen after extensive research and discussions with various wine makers in the region. Mr. Wilkerson would like to emulate the renaissance of regional wines that has been enjoyed in the Long Green Valley area by the nearby Boordy Vineyards. Mr. Wilkerson testified that the winery will utilize the existing building within the special exception area and that no new buildings are proposed. The larger barn will be used for wine production and fermentation, including the housing of two 1,000 gallon tanks, whereas the smaller run-in barn will be improved with insulation, flooring, and a wall to close in the structure so that it can hold wine-tastings and events associated with the sale of wine. Mr. Wilkerson stated that he and his family would be the main workers of the winery and vineyard and would likely only hire

additional workers seasonally in order to assist with the harvesting of the grapes from September through November. Mr. Wilkerson further stated that there would be parking sufficient for 105 vehicles on a grass lot bordered by a fence separating it from the creek, floodplain, and forest buffer areas. However, because the winery would operate mainly during the daylight hours of 10 AM to 6 PM., Mr. Wilkerson does not plan to install lighting in the parking lot. Moreover, Mr. Wilkerson plans to keep the winery open seven (7) days a week so that people may visit the winery, experience the wine making process, and taste and purchase bottles of wine. No bathrooms will be built; rather portable toilets will be available for visitors to the winery. Thus, no changes or modifications will need to be made to the existing septic system and wells to accommodate the winery. Mr. Wilkerson also said that events associated with the winery would be hosted on site mostly during the summer but also occasionally throughout the year. These events will normally consist of 50 to 100 people, but never more than 210. Mr. Wilkerson envisions that the winery will remain a rather small operation, producing approximately 1,000 cases of wine this year and 5,000 cases in five years. This wine will be sold both retail (90%) from the winery itself and also wholesale (10%) to restaurants and package stores. Bottling will occur on-site, as a custom truck, a mobile bottler, will come to the site a couple days at a time once or twice a year and will remove the fermented wine from the tanks and bottle the wine next to the storage barn. Parking for the winery will be on an unpaved, un-striped, grass area containing sufficient parking for 105 vehicles. The parking lot is bordered by a fence that separates the parking area from Long Green Creek, forest buffer easement, and 100-year floodplain. *See* Petitioner's Photographic Exhibits.

Mr. Matis, accepted as an expert in the field of civil engineering and zoning, testified that he was retained by the Petitioner to prepare the site plan, review the deed and zoning on the

property, conduct a site visit, and prepare aerial overlay photographic exhibits (Petitioner's Exhibits 2 and 3). He opined that a winery as an agricultural support use at this location is consistent with the Master Plan priority to retain and support agriculture as an important industry in the County. The proposed use will also protect and maintain the rural character of the Long Green Valley area and is in the spirit and intent of the R.C.2 zoning classification. Mr. Matis testified that in his expert opinion, the request for special exception would meet each of the criteria set forth in Section 502.1 of the B.C.Z.R. Moreover, it was indicated that no adverse conditions would be created by the proposed winery. For example, the winery would not be detrimental to the health, safety or general welfare of the Long Green Valley area, Hydes Road has sufficient capacity to handle the minimal traffic that would be added, and no additional hazards, overcrowding, or interference with adequate light and air would be created because of the small size of the special exception area in relation to the entire property (2.66 acres to 42.5 acres) and that no new improvements are proposed. Further, the proposed winery would not interfere with adequate provisions for schools, parks, water, sewerage, etc. because no new students would be generated, no public sewage facilities would be used, and the current well yield of 10 g./minute was sufficient to accommodate the winery. It was also noted that water is used only in wine production to clean the grapes and other materials associated with wine making and that such water would be recycled and used to irrigate the vineyard. Mr. Matis also indicated that growing grapes is compatible with the R.C.2 spirit and intent of preserving agriculture in this zone.

In regards to the driveway and parking area, Mr. Matis testified that the driveway is suitable for use as is and that the proposed parking lot would not change the character of the land. Since the parking area would not be paved or striped, there would be no added impervious

surfaces. Further, a fence separates the parking from the forest buffer area and creek to protect it from parking. Additionally, the driveway width of 30' at the throat with Hydes Road and with distances of over 400' to the east and 400' to the west, is more than adequate for effective ingress/egress from the subject property. *See* Petitioner's Exhibits 4 A through M. Mr. Matis also indicated that improving the driveway and parking lot with paving and other materials would change the agricultural character of the area and would require the addition of significant impervious surfaces.

Kevin Atticks, Executive Director of the Maryland Wineries Association, testified regarding the general impact of wineries on their surrounding areas. He stated that in his opinion, the subject property was an appropriate locale for a winery to exist. Further, that in his experience, including participation in the licensing of twenty (20) local wineries, wineries are a relatively light use of agricultural land because they are a long-term sustainable crop that does not require large tools or intrusive vehicles for maintenance. He stated that as a result of no additional buildings being added and the intended small scale and scope of the winery, its impact on the land and surrounding area would be minimal. It was also noted that a winery supports and advances the agricultural nature of the Long Green Valley area and promotes agritourism.

Mr. Hayden testified that the Long Green Valley Community Association was in favor of the winery. He further opined that the winery was an extension of the process to retain the agricultural character of the Long Green Valley while making the land economically viable. He further believes that traffic will not be impeded by granting the special exception.

Mr. Canoles, an environmental expert and consultant to the project, testified that the winery would have no detrimental impact on the surrounding land and actually supports the environmental character of the area. He further indicated that paving the parking lot would

waste the property by creating significant impervious surface area and that minimizing construction promotes effective environmental conservancy.

Mr. McCloskey, a nearby neighbor at 5613 Hydes Road, testified in support of the winery. He stated that the winery would likely add only “minor blips” in traffic but that because of the rural nature of the area, residents were used to dairy trucks, tractors, and other agricultural vehicles temporarily slowing down traffic. He indicated that because Hydes Road is a major thoroughfare for commercial agricultural traffic, any use added by the winery would be consistent with the current nature of the road.

It is also noted that representatives of the Baltimore County and Long Green Valley Conservancy, as co-holders of the Rural Legacy Conservation Easement, approved the proposed winery as consistent with the limitations of the conservation easement. The Conservancy conditioned their approval by permitting a total production limit of 1,500 gallons of wine per planted acre of grapes per year. *See* Petitioner’s Exhibit 5. The Petitioner assured the Hearing Officer that he would operate well within this limit.

Although many citizens were in attendance, only Mrs. Deborah White (5319 Hydes Road) expressed reservations regarding the winery. Mrs. White stated that she was not necessarily against the granting of the special exception for the winery, but indicated that her concerns surrounded the amount of people that would attend events at the winery and the noise associated with those events. Further, she was concerned about the effects that the cultivation and maintenance of the grape vines would have on the dairy farm her family runs³. Mr. Wilkerson and Mr. Schmidt assured Mrs. White that the limited space provided for in the special exception would serve as a de facto monitor of the number of people attended events. Additionally, because the winery would operate mostly during the daytime hours, after-hours

³ Mrs. White’s family owns and runs Whitelyn Dairy Farm adjacent to the proposed winery.

music would be practically non-existent. Furthermore, the lack of a kitchen or permanent restrooms in the winery would practically preclude extremely large gatherings like weddings from occurring. Mr. Schmidt and Mr. Atticks also noted that there is far less spraying of chemicals involved with the maintenance of a winery than a dairy farm.

No other Protestants testified in opposition to the Petitioner's request for Special Exception or Special Hearing.

The Department of Environmental Protection and Resource Management (DEPRM) indicated that the development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 33-3-101 through 33-3-120 of the Baltimore County Code) and the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).⁴ Further, quarterly monitoring of the water supply may be required. All additional comments from DEPRM have been complied with. Moreover, all concerns of the Division of Traffic Engineering have been addressed. There is no other Zoning Advisory Committee (ZAC) comments or objections to the request for Special Exception or Special Hearing.

I have considered all of the testimony and evidence presented by Petitioner as well as the concerns of the citizens in attendance. I do not take lightly the concerns raised by the neighbors in attendance that live in the surrounding area and gave up their time to appear before me. Based upon the testimony and evidence offered, I am persuaded to grant the special exception relief requested. Special exception uses are regulated in the B.C.Z.R. under Section 502.1. In my judgment, the proposed use will not be detrimental to the health, safety, or general welfare of the surrounding locale and satisfies the requirements of Section 502.1 of the regulations. Moreover,

⁴ Forest Conservation and Protection of Water Resources regulations are relevant if the Petitioner "develops" the property. The undisputed facts disclose that there is no *subdividing, building, or otherwise "developing" taking place* on the subject property.

there are no “facts or circumstances that show that the particular use proposed at the particular location proposed would 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, 15 (1981); *See also People’s Counsel for Baltimore County, et al v. Loyola College in Maryland*, 406 Md. 54, 956 A2d 166 (2008). Moreover, the winery should be a welcomed addition to the community and compatible with the spirit and intent of the rural-resource conservation zone regulations and will preserve and promote productive agricultural uses. Again, for the aforementioned evidence and testimony, I am persuaded to approve a modified parking plan as provided for in Section 409.12B of the B.C.Z.R and allow parking on an unpaved surface without striping in lieu of the requirements set forth in Sections 409.8A.2 and 409.8A.6. Therefore, I find that the requested relief is appropriate and should, therefore, be granted.

Pursuant to the advertisement, posting of the property and public hearing on these petitions held, and for the reasons set forth above, the relief requested shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 30th day of June 2009, that the Petition for Special Exception to permit a winery on the subject property, including retail and wholesale distribution of wine produced on the premises, and including temporary promotional events, such as wine tasting and public gatherings associated with the winery pursuant to Baltimore County Zoning Regulations (B.C.Z.R.) Sections 502.1 and 1A01.2.C.29(h), in accordance with Petitioner’s Exhibit 1, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Special Hearing seeking relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to approve a modified parking plan as provided for in Section 409.12B of the B.C.Z.R and to allow parking on an

unpaved surface without striping in lieu of the requirements set forth in B.C.Z.R. Sections 409.8A.2 and 409.8A.6, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restrictions:

1. The Petitioner may apply for any necessary permit and be granted same upon receipt of this Order; however, the Petitioner is hereby made aware that proceeding at this time is at his own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.
2. Compliance with the Regulation for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 33-3-101 through 33-3-120 of the Baltimore County Code) and the Forest Conservation Regulations, *if applicable*, (Sections 33-6-101 through 33-6-122 of the Baltimore County Code) as well as quarterly monitoring of the water supply, if deemed appropriate, in accordance with comments submitted by DEPRM.
3. Only one (1) freestanding sign shall be permitted along the driveway to advertise the winery, and no large temporary signs advertising events should be allowed on the property.
4. The parking lot and layout is restricted to the 105 vehicle spaces shown on the site plan. There is to be no parking outside of this designated parking area.
5. On-site promotional events are to be attendant to and related to the sale and production of wine and shall be limited in number to a maximum of 210 people per event.
6. The playing of music is limited to daylight hours only and all events must end by 11:00 PM.
7. Dejon Winery must operate in compliance with the requirements of the Rural Legacy Conservation Easement (Liber 16837, Folio 448).

Any appeal of this decision must be taken in accordance with Section 32-3-401 of the Baltimore County Code.

WJW/esl

____ORIGINAL SIGNED____
WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County