

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND SPECIAL EXCEPTION		
NW/S of Long Green Pike, 1,007' W	*	ZONING COMMISSIONER
C/line of Long Green Road		
(12820 Long Green Pike)	*	FOR
11 th Election District	*	BALTIMORE COUNTY
3 rd Council District		
	*	Case No. 2009-0295-SPHX
Anne M. Deford		
<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 Anne M. Deford, legal owner of Boordy Vineyards, through her attorney, Patrick H. Roddy, 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.

* I am grateful for and would like to acknowledge the research and assistance of Eric Lickstein, law student, Villanova University School of Law, in the preparation of this Order.

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 Rob Deford, President of Boordy Vineyards, Mitch Kellman, a land use planner, with Daft, McCune, Walker, Inc., and Petitioner's attorney, Patrick H. Roddy, Esquire, of Rifkin, Livingston, Levitan & Silver, LLC. Also appearing in support of Petitioner's request were David W. Childs, Sr., Chairman of the Greater Long Green Valley Association, Kevin Atticks, Executive Director of the Maryland Wineries Association, Elaine H. Christ and Scott Corey, neighbors of the Petitioner, Chris McCollum, agricultural liaison from the Baltimore County Department of Economic Development, Wayne McGinnis², a member of the Planning Board, Les Richardson, Vice-President of the Baltimore County Farm Bureau³, and Bill Nelson, President of WineAmerica. In addition, many people attended the hearing in support of Petitioner but chose not to speak. The Petitioner sign-in sheet contained in the case file enumerates all these parties. Appearing as a concerned citizen, Carol Trela, spoke on behalf of the Long Green Valley Association. There were no Protestants or other interested persons present at the hearing.

Testimony and evidence disclosed that the subject property is an irregularly shaped parcel containing 240 acres located on the north side of Long Green Road, just 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 winery including wine making and selling structures and four (4) single-family dwellings. *See* Petitioner's Exhibit 3a and 3b. The property is environmentally constrained as the Long Green Creek runs through the middle of the tract with its associated 100-Year Floodplain as illustrated on Petitioner's Exhibit 3a.

² Mr. McGinnis was appointed to the Planning Board by the Baltimore County Council in 2006 and represents Councilmanic District 3. Mr. McGinnis also was an author of the R.C.2 zoning regulations found in Section 1A01.2 of the B.C.Z.R.

³ Mr. Richardson also has served as President of the Baltimore County Farm Bureau.

Testimony offered by Mr. Deford further illustrated the rich history of the subject property and the winery that Deford and his family run. The Deford family has long owned this 240-acre family farm. The family had attempted unsuccessfully to operate on separate occasions beef, turkey, and tomato farming operations. However, none of these ‘crops’ proved to be economically viable. The Deford family began growing grapes and establishing a small vineyard in the mid-1960’s. However, during the late 1970’s, with his father in ill health, Mr. Deford undertook to find a way to make the family farm and acreage economically viable. With this goal in mind, Mr. Deford attended the University of California-Davis and received formal training in enology, the academic study of winemaking. In 1980, the Deford family purchased⁴ the Boordy name from Phillip and Jocelyn Wagner, who had founded and operated the winery since 1945⁵, and began the arduous process of transforming the family farm into a winery. In that same year, the Deford’s were granted a Special Exception to operate a winery⁶ that was subject to several restrictions. *See* Petitioner’s Exhibit 3a. In order to amend the restrictions of the Special Exception, the Deford’s requested and received relief in 1983 in the form of a Special Hearing to permit retail sales of wine produced on the premises for consumption off the premises⁷. It was not until 2000 that Maryland law permitted the on-site consumption of wine⁸. The Deford’s experienced many hardships, burdens, and obstacles, in order to make the winery profitable and

⁴ Besides the rights to the Boordy name, the Deford’s also received two barrels of wine from the Wagner’s that are currently on display at Boordy Vineyards.

⁵ Boordy Vineyards is Maryland’s oldest commercial winery.

⁶ Zoning Case 1980-0238-X conditioned approval of the Special Exception such that there could be no on-site retail sale of Boordy wine and that the winemaking activities be contained within the specified 1.15 acre Special Exception area.

⁷ Zoning Case 1983-0207-SPH granted approval subject to restrictions limiting the hours of retail sales.

⁸ William Donald Schaefer, during his tenure as Maryland Comptroller, helped pass legislation in 2000 that permitted the on-site consumption of wine at vineyards.

successful. In fact, it was not until the late 1990's that the winery became a truly successful agricultural business. Currently, Boordy Vineyards produces 70,000 gallons of wine annually, cultivates approximately 40 acres of grapes, and grows a diverse array of grape varieties including Chardonnay, Cabernet sauvignon, Cabernet franc, Merlot, Petit Verdot, Seyval Blanc, and Vidal Blanc. Further, Boordy hosts an estimated 40,000 visitors annually for wine tastings, tours of the vineyard and winery, and special events associated with the winery. Mr. Deford testified that these events were significantly beneficial to wholesale wine sales, as the percentage of Boordy wine purchased from stores has increased since events were hosted. Moreover, Mr. Deford opined that these events are a legitimate promotional tool to build sales through several channels of distribution. Mr. Deford remarked that the long term goals of the Boordy Vineyards is to continue to operate a viable business, continue to serve as a good steward of the land⁹, and to provide for generational succession of the winery to his children. Mr. Deford further indicated that Boordy Vineyards was requesting only that the zoning records reflect Boordy's current state of operation and compliance with current Maryland law and Baltimore County Code (B.C.C.) and Zoning Regulations in order to update and legitimize Boordy's operation. In this regard, Boordy does not intend to add new structures, impervious surfaces; rather they intend to maintain the agricultural atmosphere and natural setting of the neighboring Long Green Valley area.

The Petitioner also submitted into evidence correspondence between Mr. Deford and the Baltimore County Police Department. *See* Petitioner's Exhibit 1. In the letter, Officer Jason Goorevitz states that there have been no incidents or calls in connection with traffic complaints concerning the events and activities conducted at Boordy Vineyards.

⁹ Boordy Vineyards has placed the entire 240 acres of its property under two Maryland Environmental Trust easements (Liber 14893 Folio 26 and Liber 14893 Folio 27).

Mr. Kellman¹⁰, a land use planner with Daft, McCune & Walker, Inc., accepted as an expert in the field of land use and zoning, 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. He further 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 use will 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. Kellman 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 modified parking plan, Mr. Kellman testified that the intent of Boordy Vineyards is to retain and maintain the agricultural nature of the property. Since the parking area would not be paved or striped, there would be no added impervious surfaces. Mr. Kellman indicated that by improving the parking lot with paving and other materials, the agricultural character of the area would be altered dramatically.

David W. Childs, Sr., Chairman of the Greater Long Green Community Association and a 33-year resident of the Long Green Valley, testified that the Association was in support of the special exception. Mr. Childs noted the excellent community citizenship of Mr. Deford and Boordy and gave his appreciation for the several appearances Mr. Deford made before the Association in regards to the Special Exception request. *See* Petitioner's Exhibit 2.

Directly contiguous neighbors of the Petitioner, Ms. Elaine Christ (12835 Long Green Pike) and Mr. Scott Corey (12657 Long Green Pike), noted their approval of the Special Exception request and of Boordy's positive presence in the Long Green Valley area. Ms. Christ, whose property has a 'bird's eye view' of Boordy Vineyards, testified that Mr. Deford often

¹⁰ Mr. Kellman was employed in the Baltimore County Zoning Review Office for 12 years and has been a land use consultant for 10 years.

opens up his property to community gatherings and meetings and even permits her to ride her horses on the Boordy property. She further opined the Mr. Deford and Boordy Vineyards are good neighbors and an asset to the community. Mr. Corey concurred that Mr. Deford and Boordy were good neighbors and members of the community and that Mr. Deford was exceedingly responsible to community concerns and respectful of his property and the agricultural nature of the region.

Chris McCollum, on behalf of the Department of Economic Development, testified that Boordy Vineyards serves as the prototypical model for successful rural businesses. Mr. McCollum further opined to the need for active farming of value added crops to preserve Maryland farmland and make it economically viable at the same time. In his opinion, Boordy Vineyards furthers these needs and supports the environmental character of the area.

Wayne McGinnis, himself a 4th generation farmer and an activist for preserving Maryland farmland¹¹, approves of and applauds Boordy Vineyards stewardship of their land. Mr. McGinnis testified that the preservation of Maryland's rural land is essential, however, he acknowledges that this preservation must be profitable. The advancement of agritourism, promoting people visiting rural farmlands to learn and appreciate where their food and drink comes from, furthers the preservation of Maryland farmland, by making such preservation profitable. In his opinion, Boordy Vineyards is a prime example of a good balance between preservation and profit.

Les Richardson, Vice President of the Baltimore County Farm Bureau and who actively farms 300 acres including 100 in the Long Green Valley, attested to the demand for agritourism and local agriculture and the importance of direct marketing to meet that demand.

¹¹ Mr. McGinnis operates the 1,400-acre McGinnis Family Farm that raises corn, soybeans, wheat, hay, and angus cattle. Mr. McGinnis was the recipient of the first National Steward of the Land award in 1997 and more importantly was a member of the 1958 University of Maryland basketball team.

Bill Nelson, President of WineAmerica, a company that represents over 800 wineries in 48 states, testified to the importance of wineries as a means of preserving farmland. He stated that local wineries have grown dramatically, from 700 wineries in 1975, mostly located in California, to the 6,000 wineries in operation today in all 50 states. Further, he noted that the success of these vineyards depends on the support of the local populations, and Boordy Vineyards exemplifies how to successfully garner that local support in order to preserve the land in concert with being economically viable.

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 and that the history of its success in the local community is evidence of that appropriateness. 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. It was also noted that Boordy Vineyards supports and advances the agricultural nature of the Long Green Valley area and promotes agritourism.

Ms. Carol Trela submitted into evidence a statement from the Long Green Valley Association (LGVA) not opposing the Special Exception request, but asking that Boordy Vineyards continue to follow the Baltimore County Code and Zoning Regulations. *See* Petitioner's Exhibit 4.

Subsequent to the hearing, Mr. Peter M. Zimmerman, People's Counsel for Baltimore County, and Mr. Stephen E. Weber, Chief of the Division of Traffic Engineering for Baltimore County, submitted to this Commissioner concerns regarding the modified parking plan.

Specifically, these concerns involve the maximum number of vehicles that will be permitted within the general and overflow parking areas and the subsequent adequacy of the nearby roadways to accommodate such vehicles. As a result of discussions between Petitioner's counsel, Mr. Roddy, and Mr. Weber, these aforementioned concerns were alleviated, as Mr. Weber indicated in a letter to the undersigned Commissioner that in his opinion the roadways would adequately accommodate the Special Hearing and Special Exception requests.

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).¹² There are no other Zoning Advisory Committee (ZAC) comments or objections pertaining to the instant request for special exception or special hearing.

I have considered all of the testimony and evidence presented by Petitioner. 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, there are no "facts or circumstances that show that the particular use at this location 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,

¹² 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.

956 A2d 166 (2008). Moreover, as testimony presented indicated, Boordy Vineyards is an asset to the community and compatible with the spirit and intent of the rural-resource conservation zone regulations as it preserves and promotes productive agricultural uses. Additionally, in accordance with 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 5th day of August 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 3a, 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 B.C.Z.R., to approve a modified parking plan as provided for in Section 409.12B of the regulations to allow parking on an unpaved surface without striping in lieu of the requirements set forth in Sections 409.8A.2 and 409.8A.6, in accordance with Petitioner's Exhibit 3a, 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 determined to be applicable*, (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).
3. Parking shall be confined to the parking fields as shown on the site plan. Parking shall be further confined so no more than 1,950 individuals can be on site at any one time. There is to be no parking outside of this designated parking area or on other properties adjacent to the site.
4. On-site promotional events are to be attendant to and related to the sale and production of wine.
5. During events associated with Boordy Vineyards, the playing of outdoor music must end by 11:00 PM.
6. Boordy Vineyards must operate in compliance with the requirements of the Maryland Environmental Trust Easements (Liber 14893 Folio 26 and Liber 14893 Folio 27).

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

WJW/esl

SIGNED
WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County