

<b>IN RE: PETITIONS FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>AND SPECIAL EXCEPTION</b>		
SW side of Monkton Road; 220 feet SE of	*	OFFICE OF
the c/l of Monkton Road and Sherwood Road		
10 <sup>th</sup> Election District	*	ADMINISTRATIVE HEARINGS
3 <sup>rd</sup> Councilmanic District		
<b>(2019 &amp; 2029 Monkton Road)</b>	*	FOR BALTIMORE COUNTY
Curtis E. Sherrer	*	<b>Case No. 2012-0183-SPHX</b>
<i>Petitioner</i>		

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings for consideration of Petitions for Special Hearing and Special Exception filed by Curtis E. Sherrer, the property owner. The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) and seeks the following relief:

- An amendment to the previously approved relief granted in Case No. 70-0237-X to permit additional uses in the existing historic structures (winery as an agricultural support use, farmer's roadside stand and produce stand, home occupation, residential art salon and horticultural nursery incidental to the principal use, an antique shop), and a determination as to which is the principal use and which are the accessory uses; and
- A modified parking plan per Section 409.12 of the B.C.Z.R. to confirm the location and configuration of the previously approved parking area; and
- Request to permit a previously approved parking area and existing 25 foot high out-building in a riverine floodplain pursuant to Section 500.6 of the B.C.Z.R. and Sections 3112.00 and 3112.2 of the Baltimore County Building Code and Sections 32-4-107, 32-4-404, 32-4-414 and 32-8-301 of the Baltimore County Code; and

- For such other and further relief as may be determined necessary by the Administrative Law Judge.

In addition, Petitioner requests Special Exception relief as follows:

- To permit an assortment of accessory uses to one principal use, all of which are to be located in the existing historic structures (with no additional permanent improvements), including but not limited to the existing antique shop (Case No. 70-237-X), a winery as an agricultural support use, including accessory retail and wholesale distribution of wine produced on premises, pursuant to Sections 1A08.3.B.13 and 502.1 of the B.C.Z.R., a residential art salon and a horticultural nursery, B.C.Z.R. 1A08.3.B.1(d) and 1A08.3.B.9, respectively (with B.C.Z.R. 502.1), as well as accessory uses permitted by right (a farmer's roadside stand and produce stand and a home occupation (B.C.Z.R. 1A08.3.A.7(a) and 1A08.3.A.7(b), respectively); and
- For such other and further relief as may be determined necessary by the Administrative Law Judge.

The subject property and requested relief are more fully described on the redlined site plan which was marked and accepted into evidence as Petitioner's Exhibit 1.

At the outset of the hearing, counsel for Petitioner indicated that the "home occupation," "residential art salon," and "horticultural nursery" uses were no longer being requested. As such, those aspects of the case will not be considered or discussed.

Appearing at the public hearing in support of the requests were Curtis E. Sherrer and Kenneth J. Wells with kj Wells, Inc., the professional engineer who prepared the site plan. Jason T. Vettori, Esquire, appeared as counsel and represented the Petitioner. Several citizens attended

the hearing, including: Doris Barnes, James H. Barnes, Jr., Randy Low, Karen Cimino, Mary Partridge, Mike Pierce, and Ralph Rigger.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Department of Planning dated March 2, 2012, which state:

“The Department of Planning has reviewed the petitioner’s request and accompanying site plan. This department does not oppose the petitioner’s special hearing or special exception request as the proposed use and relief does not appear to be detriment to the health, safety or general welfare of the locality involved.”

Comments were also received from the Department of Environmental Protection and Sustainability (DEPS), dated March 6, 2012, which indicate that the project would be required to comply with the County’s environmental and forest conservation regulations.

Testimony and evidence offered at the hearing revealed that the subject property is comprised of two parcels, totaling approximately 8 acres in the aggregate. The property is zoned RC 7 with an extremely small sliver of RC 4 zoned land at the southern boundary. Petitioner has begun restoration of the historic structures on the premises, and would like to open a boutique winery selling hard ciders and mead.

### **Petitioner’s Case**

Petitioner’s first witness was Kevin Atticks, who is President of the Maryland Winery Association. Mr. Atticks explained that he has been involved with the licensing of 26 wineries in the state, and explained that the operation proposed by the Petitioner would be a very small boutique winery. Mr. Atticks explained that from a zoning standpoint, wineries are a low impact use, and generate a small volume of traffic, perhaps 5 to 10 vehicle trips daily.

Curtis Sherrer, the Petitioner, was the next witness to testify. Mr. Sherrer explained that he purchased the property in 2004, at which time it was functioning as an antique shop. Mr. Sherrer explained that the property was at that time in severe disrepair, and that he has invested over \$1.5 million in the house and mill. Mr. Sherrer indicated that he only hoped to use the property to generate modest income, and conceded that he did not know exactly what use he would be making of the property. Mr. Sherrer explained that he has long had an interest in wine making, and in fact has a degree in the field from the University of California Davis. Mr. Sherrer explained that he would be interested in organizing small events on the property, possibly including small weddings and group meetings. He explained that as the winery becomes operational, he will have a better idea of what type of functions he will be able to accommodate. Mr. Sherrer explained that he would in no way support illegal parking by his patrons, and that state law limited the hours of operations for wineries.

The next witness in Petitioner's case was Neil Ruther, an attorney with offices in Towson. Mr. Ruther explained that he lives in the center of Monkton Village, and that he is supportive of Mr. Sherrer's proposal. Mr. Ruther believes that Mr. Sherrer has saved a very important structure, and testified that in his opinion the proposed winery has widespread community support. Mr. Ruther explained that he has in the past had up to 90 people in his home for events, and when he has done so he has engaged a parking service to shuttle visitors from the nearby church. Mr. Ruther explained that nearly a half million people use the NCR trail on an annual basis, and he thinks that creative ideas like the winery are appropriate for an historic village, and that the authorities must use appropriate management tools – such as police enforcement of parking regulations – rather than to forbid outright the activity.

The final witness in Petitioner's case was Kenneth Wells, who was qualified as an expert in Baltimore County zoning and development regulations. Mr. Wells explained that the subject property has extremely steep terrain, and also has a floodplain on site. Mr. Wells stated that the parking on site is limited to where it is shown on Petitioner's plan (Exhibit 1), and that it would be physically impossible to park any additional cars on the site.

With regard to the floodplain issue, Mr. Wells indicated that he spoke with Dave Thomas at the Department of Public Works, who indicated that since the parking area is an existing condition (apparently approved in connection with the 1970 antique shop special exception case) no waiver was needed from the floodplain regulations. Mr. Wells indicated that he was familiar with B.C.Z.R. § 502.1 governing special exceptions, and believed that the Petitioner's proposal satisfied each of the factors mentioned in that regulation. In response to questions from Protestant's counsel, Mr. Wells conceded that the parking calculation on Exhibit 1 was based on the anticipated number of winery employees. In addition, he stated that the floodplain on the subject property impacts five of the parking spaces, and he also explained that the floodplain would have been mapped after 1970, when the special exception for the antique shop and parking area was approved.

### **Protestant's Case**

Doris Barnes, an adjacent property owner who moved to Monkton in 2006, indicated that she is opposed to the relief sought by the Petitioner. She believes that the Petitioner has taken a "shotgun approach" and that his lack of details and cavalier attitude raise her level of concern about the proposal. She indicated that the parking would be woefully inadequate, and was also concerned that the winery could generate late night traffic which would destroy the serene rural setting. Ms. Barnes indicated that she did not oppose the winery in concept, but feels that

Petitioner's proposals are merely a "pipe dream". Ms. Barnes testified that if the winery was approved, she would like to see limitations as to the hours of operation, type of events hosted on the premises, and the number of people which could attend those events.

The next witness in Protestant's case was Jim Barnes, the husband of Doris Barnes and a former Baltimore County Fire Chief. Mr. Barnes not only echoed his wife's concerns, but also stated that he was concerned with the safety of the neighborhood and occupants in this historic structure. Mr. Barnes explained that his major concerns would be if outdoor events were permitted on the premises, as well as events that could operate well into the evening that could disrupt the peace and quiet of the area.

Thereafter, several nearby residents testified, and each indicated that they were strongly opposed to any late night events at the premises, and were also concerned with parking, traffic and safety issues. Many of the residents also were concerned with Petitioner's testimony, especially the lack of details concerning the proposed operation and events which Mr. Sherrer would anticipate hosting.

Petitioner deserves credit for his efforts to restore the historic mill on the subject premises, and based on his testimony, it is obvious that he has put a great deal of money, time and effort into this project, which is no doubt a "labor of love." At the same time, I am also sympathetic to the concerns and anxiety of the community, who justifiably fear what type of activities may take place on the premises. The Petitioner conceded that he was not a "detail person" and frankly did not know what his operation would look like two years from now. Unfortunately, in zoning and land use matters, the devil is in the details, and I will attempt to provide some clarification on the issues raised at the hearing.

### **Petition for Special Exception**

The Petitioner seeks special exception relief under § 502 of the B.C.Z.R., to operate a winery as an agricultural support use, including accessory retail and wholesale distribution of wine produced on the premises. B.C.Z.R. § 1A08.3.B.13. Under Maryland law, a special exception use is presumed to be a proper use of the property in that zone, and in this case there was no testimony or evidence produced that would rebut that presumption. *People's Counsel v. Loyola College*, 406 Md. 54, 77 n. 23 (2008). Indeed, most of the Protestants testified that they were not opposed to the operation of a winery, but sought certain clarifications and restrictions to ensure that the peaceful and bucolic nature of the area was preserved. Thus, the special exception will be granted for the operation of a winery, subject to the conditions and restrictions set forth below.

As noted above, a special exception was granted in 1970 for the operation of an antique store, and I am of the opinion that relief must be abandoned before the special exception for the winery is granted. Counsel for Petitioner likened the scenario to where used car sales by special exception are permitted at the same site where new cars are also sold by special exception. I think that analogy fails in this setting, because the sale of antiques is in no way akin to the operation of a winery, nor could it be considered as an accessory use to the winery in the same way that used cars are sold at new car dealerships.

### **Petition for Special Hearing**

Petitioner has filed a request for special hearing under Section 500.7 of the B.C.Z.R., seeking approval of a modified parking plan, and waiver under the Baltimore County Code (B.C.C.) to permit the previously approved parking area and outbuilding to be located in a riverine floodplain. With respect to the floodplain waiver, I find that the request is unnecessary,

or in the alternative has been rendered moot by the comments of Messrs. Thomas and Kennedy. *See* Petitioner's Exhibit 24. Both Messrs. Thomas and Kennedy are professional engineers, and together have well over 40 years of experience in handling floodplain issues and the laws and regulations pertaining thereto. In these circumstances, I am not willing to gainsay their opinions, and will therefore not make a finding, one way or the other, concerning the requested floodplain waiver. Both Messrs. Thomas and Kennedy opined that the parking lot was approved long ago in the antique shop special exception case, and that since the Petitioner was not proposing any expansion or modification of the parking lot, that a floodplain waiver was not necessary. In these circumstances, I do not believe that the issue is properly before me, and I will therefore refrain from ruling on the matter.

The parking issue is less clear cut. As noted, Petitioner's plan proposes 24 parking spaces, which was the identical arrangement approved in the 1970 special exception case. The difficulty here arises from two factors: first, the B.C.Z.R. does not specify the requisite number of parking spaces to be provided for a winery operation. Secondly, the Petitioner's testimony concerning his anticipated operation and business model was decidedly vague, which also muddies the analysis.

One thing is clear, and that is that the Petitioner has nowhere else on site to add parking, so the 24 spaces reflected on Exhibit 1 is therefore not subject to change. Given that the operation proposed by the Petitioner would qualify as a small, boutique winery, I do not believe that the 24 parking spaces provided would be inadequate on a day-to-day basis. Indeed, Mr. Atticks testified he would expect no more than 5 to 10 vehicle trips daily. As such, and other than for special events (which will be discussed below), I do not believe that the volume of

business during normal operations would generate more than 24 vehicles arriving at any one time. As such, I believe this aspect of the modified parking plan is uncontroversial.

However, it is at the same time obvious that such parking would be woefully inadequate for larger events and/or gatherings. In fact, the Petitioner estimated that he could host 150 patrons at the site. While it is unclear whether the applicable fire and safety regulations would permit such a gathering, I do not believe that the parking or neighborhood could accommodate such a use. As such, and in the absence of any joint use or shared parking arrangements, I believe that 50 patrons would be the maximum number that could be safely accommodated on site.

At the hearing, Petitioner suggested a wide range of possible gatherings at the site: i.e., small weddings, Trout Unlimited gatherings and community groups and educational presentations. Mr. Atticks indicated his Association “had not taken a position” with regard to whether a winery can properly hold community gatherings such as a meeting of Trout Unlimited. Though I am sure this historical structure would be a desirable venue for such things, I do not believe that weddings or community group meetings can be considered gatherings “associated with the winery,” as required by the B.C.Z.R. It would be difficult – if not impossible – to enumerate with precision the exact type and nature of gatherings permitted under the regulations. The pragmatic answer is therefore that they should be the types of events hosted by wineries in this area: i.e., seasonal festivals, music and wine festivals, winemaking lectures and tours, open mic nights and art/wine tasting events.

Pursuant to the advertisement, posting of the property, and public hearing, and after considering the testimony and evidence offered, I find that Petitioner’s Special Exception and Special Hearing requests should be granted.

THEREFORE, IT IS ORDERED this 10<sup>th</sup> day of April, 2012, by this Administrative Law Judge, that Petitioner's request for Special Hearing filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R."), seeking approval of a modified parking plan per Section 409.12 of the B.C.Z.R. to confirm the location and configuration of the previously approved parking area, as shown on Petitioner's Exhibit 1, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Special Exception to permit a winery as an agricultural support use, including accessory retail and wholesale distribution of wine produced on premises, pursuant to Sections 1A08.3.B.13 and 502.1 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. Petitioner may apply for his building permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioner would be required to return, and be responsible for returning, said property to its original condition.
2. Compliance with the ZAC comments made by the Department of Environmental Protection and Sustainability dated March 6, 2012, a copy of which is attached hereto and made a part hereof.
3. Abandonment, in writing, of the special exception for the antique shop use granted in Case No. 70-237-X.
4. The parking lot and layout is restricted to the 24 spaces shown on the plan (Exhibit 1). There is to be no parking outside of this designated area.
5. Petitioner is permitted to host on site temporary promotional events such as wine tastings or public gatherings associated with the winery. Any such event must end no later than 10 PM, and the playing of music is limited to daylight hours only.
6. Such promotional events shall also be limited to 50 people per event, although if Petitioner presented evidence of a joint use or shared parking arrangement to safely accommodate off site parking, Petitioner could seek reconsideration or modification of this aspect of the Order.

7. The Petitioner shall be limited to two (2) portable toilets (spot-a-pots) on site, which shall be screened from view of Monkton Road by lattice, vegetation or other appropriate material.

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

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County

JEB/dlw