

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
(21213 York Road)		
7 th Election District	*	OFFICE OF
3 rd Council District		
George & Virginia Wampler	*	ADMINISTRATIVE HEARINGS
<i>Legal Owners</i>		
Les White	*	FOR BALTIMORE COUNTY
<i>Contract Purchaser</i>		
Petitioners	*	Case No. 2016-0112-X
* * * * *		

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Special Exception filed for property located at 21213 York Road. The Petition was filed on behalf of the legal owners of the subject property, George and Virginia Wampler, and Les White, contract purchaser. The Special Exception petition pursuant to §1A04.2.B.2.4 of the Baltimore County Zoning Regulations (B.C.Z.R) seeks to use the property for a brewery, Class 8, in an RC 5 zone. A site plan containing additional details regarding the proposal was marked as Petitioners’ Exhibit No. 1.

Appearing in support of the request was Thomas J. Hoff and Les White. Abraham L. Hurdle, Esq., represented the Petitioners. Two adjoining neighbors signed in for the hearing but did not stay for the proceeding. The Petition was advertised and posted as required by the B.C.Z.R. Substantive Zoning Advisory Committee (ZAC) comments were received from the Bureau of Development Plans Review (DPR), Department of Planning (DOP) and the State Highway Administration (SHA). The concerns raised by those agencies will be included as conditions in the Order below.

The subject property is approximately 12 acres and is zoned RC 5. The property is improved with a single-family dwelling (1,651 sq. ft.) and detached garage. Mr. White is under contract to

purchase the property, and he indicated the purchase is contingent upon the grant of zoning relief. He proposes to operate on the property a Class 8 “farm brewery,” as permitted by special exception in the RC 5 zone pursuant to recent County Council legislation. See Bill 64-15. Mr. White will reside in the existing single-family dwelling, and plans to have perhaps five employees to assist with the brewery operation.

Following the hearing, Petitioners submitted a revised and sealed site plan (Ex. 2) which reduced the number of parking spaces and added notes to address certain DOP comments. According to the plan, a 9,600 sq. ft. one-story building is proposed, and it would contain a tap room, storage/shipping area, and a brewhaus. Adjacent thereto would be a delivery area, grain silo for storage of barley (an ingredient used in beer) and a parking lot with 20 spaces. (Ex. 2). The DOP expressed concern about the size of the proposed structure, although Mr. Hoff noted that similarly-sized barns are commonplace on farms in northern Baltimore County. The original plan proposed 30 off-street parking spaces, which the DOP considered an “extensive parking lot.” I concurred with that comment, and Petitioners agreed to a smaller parking lot with fewer spaces, which will still meet the requirements of B.C.Z.R. §409 as interpreted by the DOP in its comment.

Mr. White has been a home brewer for over 20 years and testified that he will grow hops on the property which will be used in the brewing process. The revised site plan contains a note to this effect, as requested by the DOP. Ex. 2, note 12. While not certain at this juncture, Mr. White anticipates producing perhaps 3,000-5,000 barrels of beer per year.

Special Exception Law in Maryland

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.

Thomas Hoff, a landscape architect accepted as an expert, opined the use would not have a detrimental impact upon the community and would otherwise satisfy B.C.Z.R. §502.1. He noted the site is large, rural and adjacent to the I-83 expressway and York Road, both heavily travelled roadways that would attenuate any noise generated by the brewery operation. The area is sparsely populated and the large property (which has a topographical change in excess of 25 ft. across the site) will provide an adequate buffer for the few single-family dwellings in the immediate vicinity. In light of these factors and in the absence of evidence to the contrary, the petition for special exception will be granted.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 6th day of January, 2016, that the Petition for Special Exception to allow a brewery, Class 8, in an RC 5 zone, 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. Petitioners must provide landscaping and lighting for the site as determined in the sole discretion of the Baltimore County Landscape Architect.

3. Lighting at the site shall be in operation from dusk until no later than 7 p.m. (for the consumption of beer and sales and service of food) or from dusk until no later than 11 p.m. (in the case of a brewery temporary promotional event).
4. Petitioners shall obtain from the Office of the Comptroller a permit for each of the “special brewery promotional events” held at the subject property. Petitioners shall at least 15 days before any promotional event provide to the DOP and the Office of Zoning a copy of the permit application required by the Office of the Comptroller.
5. During the first calendar year of the brewery’s operation, Petitioners shall be entitled to hold six (6) “special brewery promotional events” (each of which shall be limited in duration to two (2) consecutive days, from 10 a.m. to 10 p.m.). The DOP shall be permitted to approve up to six (6) additional promotional events during the first calendar year of the brewery’s operation. Such approval(s) shall not be unreasonably withheld provided Petitioners demonstrate to the satisfaction of the DOP that the initial six (6) promotional events were conducted in a safe and responsible fashion, and that no zoning or County Code violations exist with respect to the subject property.
6. The restrictions regarding the number of promotional events as set forth in the foregoing paragraph shall apply only during the first calendar year of the brewery’s operation. Thereafter, assuming there exist no zoning and/or County Code violations with respect to the subject property and/or the operation of the farm brewery, and upon consultation with the DOP and the Office of Zoning, Petitioners shall be entitled to obtain a “spirit and intent” letter from the County indicating the brewery may thereafter hold each calendar year the number of promotional events permitted under state law, and that such a determination is within the “spirit and intent” of this Order granting special exception relief.
7. Petitioners must obtain from the State Highway Administration an entrance permit.
8. Prior to issuance of permits Petitioners must submit for approval by the DOP architectural elevations of the proposed structure.

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

JEB/sln

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County