

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
(2800 Monkton Road)		
10 th Election District	*	OFFICE OF
3 rd Council District		
Raymond V. & Sandra P. Frank	*	ADMINISTRATIVE HEARINGS
<i>Legal Owners</i>		
Inverness Brewing, LLC	*	FOR BALTIMORE COUNTY
<i>Lessee</i>		
Petitioners	*	Case No. 2017-0327-X

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of a Petition for Special Exception filed on behalf of Raymond V. & Sandra P. Frank, legal owners and Inverness Brewing, LLC, lessee (“Petitioners”). The Special Exception was filed pursuant to the Baltimore County Zoning Regulations (“B.C.Z.R.”) to operate a Brewery, Class 8, including accessory retail and wholesale distribution of beer produced on the premises, and temporary promotional events, such as beer tasting or public gatherings associated with the brewery.

Raymond and Sandra Frank appeared in support of the petition. Christopher D. Mudd, Esq. represented the Petitioners. Several members of the community opposed the request. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP), the Bureau of Development Plans Review (DPR) and the Department of Environmental Protection and Sustainability (DEPS). None of the reviewing agencies opposed the request.

The subject property is approximately 92.325 acres and is zoned RC-2. The property is located in northern Baltimore County in the Monkton community, and is within the My Lady’s Manor federal historic district established in 1975. It is undisputed the historic district designation does not impose any special rules or regulations concerning the use of the property.

Raymond and Sandra Frank purchased the property in 2001, and several neighbors stated the property was at that time in deplorable condition. The owners have made substantial improvements to the property, which contains a dwelling, barns and several other farm buildings. Witnesses described the property as having a park-like setting. Petitioners propose to operate a small farm brewery at the site, which requires a special exception.

Special Exception

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 *Attar v. DMS Tollgate, LLC*, 451 Md. 272 (2017), where the court of appeals discussed the nature of the evidentiary presumption in special exception cases. The court again emphasized 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.

Petitioners presented two witnesses in their case. First was Sandra Frank, who described in detail the operations of her farm, including the proposed brewery. Ms. Franks stated all of the equipment needed in the operation of the brewery would be located in several of the stalls inside one of the barns on the property. She described the process of growing hops, and has dedicated several acres of the farm to produce hops which would be used in the beer. Petitioners do not propose any new construction in connection with the proposed brewery. The witness testified there would be few if any delivery trucks used in connection with the brewery, which she explained would be a “small system.” The witness also described the type of special promotional events she would like to hold, all of which she indicated would be family friendly.

The next witness was David Martin, a landscape architect accepted as an expert. Mr. Martin explained the site plan he prepared for the case, and indicated he visited the property on several occasions. The witness reviewed each of the factors listed in B.C.Z.R. §502.1, and testified Petitioners have satisfied each of those requirements. He also opined the use would have no greater adverse impact at this location than on any other RC 2 zoned tract. Mr. Martin testified the brewery is an adjunct operation to the agricultural uses on the property, which will provide much needed income for the owners/farmers. This concluded Petitioners' case, and under *Attar* I believe they established a *prima facie* case entitling them to the special exception.

Eleven community members testified; several expressed strong support for the proposal while other vehemently opposed the brewery. Two of the opponents contended the brewery use would violate the terms of a Baltimore County agricultural easement which covers Petitioners' property, although that assertion is demonstrably false. The DOP noted in its zoning comment the Baltimore County Agricultural Land Preservation Advisory Board "approved the proposed use to be farm related" under the terms of the agricultural easement. In addition, the court of appeals has recently held non-party "interested persons" do not have standing to enforce provisions of an agricultural easement. *Long Green Valley Ass'n. v. Bellevale Farms, Inc.*, 432 Md. 292 (2013).

The opponents are primarily concerned with noise, traffic, odors and a commercial operation in a rural, pastoral setting. While these are legitimate concerns, I believe they are inherent in the operation of a farm brewery. The obvious truth (a point conceded by Mr. Martin on cross-examination) is that a farm brewery will cause an increase in noise and traffic. But as recognized by Maryland's highest court, most if not all special exception uses have such adverse impacts. *Montgomery County v. Butler*, 417 Md. 271, 297 (2010) ("Most [uses for which a special exception is required] are regarded as potentially troublesome because of noise, traffic, congestion,

or other associated problems”). An opponent’s burden, after a petitioner has established a *prima facie* case, is to rebut the presumption of validity of the special exception. I do not believe the evidence presented by the protestants satisfied this standard.

THEREFORE, IT IS ORDERED this 8th day of **August, 2017**, by this Administrative Law Judge, that the Petition for Special Exception to use the herein described property for a Brewery, Class 8, including accessory retail and wholesale distribution of beer produced on the premises, and temporary promotional events, such as beer tasting or public gatherings associated with the brewery, 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 comply with the ZAC comment of DEPS, a copy of which is attached hereto.
3. Prior to issuance of permits Petitioners must submit for approval by the DOP a schematic plan showing the location of any dumpster used for this facility, which must be screened in accordance with the requirements of the landscape manual.
4. The brewery shall be permitted to produce, sell and/or distribute no more than 5,000 barrels of malt beverage per year.
5. The hours of operation shall be restricted to Thursday-Sunday from 12 noon to 8:00 p.m., although certain special events (discussed below) may be held Thursday-Sunday from 12 noon to 10:00 p.m.
6. Petitioners may hold no more than eight (8) temporary promotional events or gatherings associated with the brewery per year.
7. After the proposed brewery has been in operation for one year, the restrictions contained herein are subject to modification following a public hearing, upon a showing of good cause.

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

____Signed_____
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/sln