

**IN RE: PETITIONS FOR SPECIAL  
EXCEPTION AND VARIANCE  
(21305 Heathcote Road)**

7<sup>th</sup> Election District  
3<sup>rd</sup> Council District  
Carol Elizabeth & Carey Lue Carton  
*Legal Owners*

Petitioners

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BEFORE THE

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OFFICE OF

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ADMINISTRATIVE HEARINGS

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FOR BALTIMORE COUNTY

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**Case No. 2016-0107-XA**

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**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) as Petitions for Special Exception and Variance filed for property located at 21305 Heathcote Road. The Petitions were filed on behalf of Carol and Carey Carton, legal owners of the subject property (“Petitioners”). The petition for special exception seeks approval for a Class 7 or Class 8 Brewery, 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. The Petition for Variance seeks relief per Baltimore County Zoning Regulations (B.C.Z.R.) as follows: (1) to permit a parking area with no screening or landscaping in lieu of the required screening and landscaping; (2) to permit a parking area to be surfaced with stone in lieu of the required durable and dustless surface; (3) to permit a parking area not to be striped in lieu of the striping requirement; and (4) to allow a two-way access driveway to have a width of 10 ft. in lieu of the required 20 ft. A site plan depicting the proposed improvements was marked and accepted into evidence as Petitioners’ Exhibit No. 1.

Appearing at the hearing in support of the petitions was Carol and Carey Carton. Bruce E. Doak, a licensed surveyor from Bruce E. Doak Consulting, LLC, assisted the Petitioners. The

Petition was advertised and posted as required by the B.C.Z.R. No protestants or interested citizens attended the hearing. 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 agencies opposed the requests, and their comments (except as discussed herein) will be included as conditions in the Order below.

The subject property is approximately 24 acres and is zoned RC 2. The property is improved with a single-family dwelling, and the Petitioners reside at the property with their children. Petitioners cultivate hops at the site, and explained they would like to operate a farm brewery on the premises. The Petitioners have at other locations grown and sold hops since 2006, and have grown hops at the subject property since 2013.

Petitioners explained at length the process for cultivating hops and brewing beer, and provided a detailed description of the brewery operation, including proposed hours of operation and projected number of barrels produced per year. Petitioners estimate that in the first year of operation they would produce less than 1,000 barrels, and that within a five year period output would increase to approximately 3,000 barrels. The Petitioners would operate the brewery by themselves without employees in the first year, but they anticipate hiring perhaps 2-4 additional employees over the next five years. Petitioners' Ex. 6. Petitioners also explained they will grow on site no less than 51% of the hops required for the several varieties of beer they plan to sell, and a note to that effect was added to the site plan per the DOP's request.

#### 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 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.

Mr. Doak opined the use would not be detrimental to the surrounding community, and would otherwise comply with B.C.Z.R. §502.1. In addition, Petitioners presented letters of support from each of their neighbors in this sparsely populated, rural area. Petitioners' Exs. 4 & 5. As such, the petition for special exception will be granted.

#### VARIANCE

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

*Cromwell v. Ward*, 102 Md. App. 691 (1995).

Petitioners have met this test. The large property is irregularly shaped and there is a significant topographical change throughout the site. As such the property is unique. If the B.C.Z.R. were strictly interpreted Petitioners would suffer a practical difficulty, in that they would be unable to operate the proposed brewery. Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare.

#### ZAC COMMENTS

In addition to several other conditions which are included in the Order below, both the DOP and the Bureau of DPR indicated that off-street parking at the site should comply with

BCZR §409, which would entail, among other things, a paved surface with striped parking spots, etc. Having reviewed the site plan, photos and hearing the Petitioners describe the nature of the proposed enterprise, I do not believe that such requirements should be imposed at this juncture. The proposed farm brewery is of modest size, and as Petitioners explained, customers and those attending special events can park on a gravel/stone area adjacent to the cultivated fields, as is frequently done at agricultural events and festivals. Should Petitioners' nascent business become successful, they will likely have to revisit this issue, but I do not believe that such a requirement is warranted at this time.

The only other outstanding issue concerns the promotional events which may be held at the property. Under state law, the holder of a Class 8 (farm brewery) license may on a yearly basis have twelve (12) promotional events; each such event is limited to three (3) days in duration. Md. Ann. Code Art. 2B, §2-209. The DOP expressed concern with regard to such promotional events, especially since this is the first "farm brewery" proposed in Baltimore County. As such, that agency does not have any experience or a template upon which to base its recommendations, and suggests that a cautious approach be taken, whereby the Petitioners must obtain separate approval from the County for any events in excess of six (twelve being the maximum permitted under state law). I concur with the DOP's suggestion, and a condition to that effect is included below. The DOP also mentioned in its comment the possibility of the Petitioners obtaining a "beer festival license" under Art. 2B §8-802 of the Annotated Code. After reviewing that provision, it does not appear as if such a license could be issued for the subject premises since the law prohibits the event at a location which holds an "alcoholic beverages license." Art. 2B, §8-802(f)(2).

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 6<sup>th</sup> day of January, 2016, that the Petition for Special Exception under the B.C.Z.R. for a Class

8 Brewery, 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; and

IT IS FURTHER ORDERED that the Petition for Variance: (1) to permit a parking area with no screening or landscaping in lieu of the required screening and landscaping; (2) to permit a parking area to be surfaced with stone in lieu of the required durable and dustless surface; (3) to permit a parking area not to be striped in lieu of the striping requirement; and (4) to allow a two-way access driveway to have a width of 10 ft. in lieu of the required 20 ft., be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon 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 (other than parking area landscaping and screening, for which variance relief was granted) and/or lighting for the site as determined in the sole discretion of the Baltimore County Landscape Architect.
3. Petitioners must comply with the ZAC comment of the DEPS, a copy of which is attached hereto.
4. Prior to issuance of permits Petitioners must obtain from the Fire Marshal's Office approval of the existing 10 ft. wide access driveway. Petitioners must also provide 10 ft. wide pull-over areas along the existing driveway, as discussed in the ZAC comment dated November 4, 2015 from the Bureau of DPR.
5. No illuminated signage shall be permitted in connection with the proposed farm brewery.
6. 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).

7. 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.
8. 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.
9. 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.

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/sln