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| IN RE: PETITION FOR SPECIAL EXCEPTION | * | BEFORE THE |
| (5512 Ebenezer Road) | | |
| 11 th Election District | * | OFFICE OF |
| 6 th Council District | | |
| Compass, LLC | * | ADMINISTRATIVE HEARINGS |
| <i>Legal Owner</i> | | |
| 5512 Ebenezer Road, LLC | * | FOR BALTIMORE COUNTY |
| <i>Contract Purchaser</i> | | |
| Petitioners | * | Case No. 2017-0292-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 Compass, LLC, legal owner, and 5512 Ebenezer Road, LLC, contract purchaser (“Petitioners”). The Special Exception was filed pursuant to the Baltimore County Zoning Regulations (“B.C.Z.R.”) to use the herein described property for a medical cannabis dispensary.

Shannon Hexter and registered landscape architect David Martin appeared in support of the petition. Patricia A. Malone, Esq. represented the Petitioners. Two area residents opposed the request. A substantive Zoning Advisory Committee (ZAC) comment was received from the Department of Planning (DOP). That agency did not oppose the request, but indicated landscaping and lighting plans should be provided.

The subject property is approximately 33,068 square feet and is zoned BL. The property is situated at the intersection of Red Lion and Ebenezer Roads, and is improved with a one-story commercial building. A guitar and music store was most recently operated at the site, and Petitioners propose to operate a medical cannabis dispensary. Since the property is located within the Cowenton-Ebenezer Commercial Revitalization District (Petitioners’ Exhibit 2), a special exception is required for the use. B.C.Z.R. §4D-102.A.2.

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.

In this case, the special exception standards were primarily addressed by David Martin, a landscape architect accepted as an expert. Mr. Martin described in detail the site plan and the improvements proposed, which in his opinion would dramatically improve ingress and egress from the site. In terms of its impact on the community, Mr. Martin opined that the medical cannabis dispensary would have less of an impact than would other uses permitted by right in the BL zone. The witness indicated a medical clinic (*see* B.C.Z.R. §230.1.A.9) is permitted by right and would have a greater impact (in terms of traffic, etc.) than the proposed dispensary.

While I do not dispute the validity or accuracy of this testimony, it is insufficient as a matter of law to sustain the applicant's burden under the above case-law. In *Gowl v. Atlantic Richfield Co.*, 27 Md. App. 410 (1975), the court of special appeals held it was proper, in considering a petition for special exception, to compare the negative impacts of the proposed use with other uses permitted by right in the zone. *Id.* at 417. In *Schultz v. Pritts*, 291 Md. 1 (1981) the court of appeals held "the standard articulated in *Gowl* is inappropriate," and indicated the applicable test is the one set forth above, as recently articulated in *Attar*.

THEREFORE, IT IS ORDERED this **4th** day of **August, 2017**, by this Administrative Law Judge, that the Petition for Special Exception to use the herein described property for a medical cannabis dispensary, be and is hereby DENIED.

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