

IN RE: PETITIONS FOR SPECIAL HEARING,	*	BEFORE THE
SPECIAL EXCEPTION & VARIANCE		
(2950 Garrett Road)	*	OFFICE OF
7 th Election District		
3 rd Council District	*	ADMINISTRATIVE HEARINGS
Stephen Mark & Helen Norman Elmore		
<i>Legal Owners</i>	*	FOR BALTIMORE COUNTY
Star Bright Farm, LLC		
<i>Lessee</i>	*	Case No. 2018-0111-SPHXA
Petitioners		

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County for consideration of Petitions for Special Hearing, Special Exception and Variance filed on behalf of Stephen Mark and Helen Norman Elmore, legal owners, and Star Bright Farm, LLC, lessee (“Petitioners”).

The Petition for Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R”) as follows: (1) to confirm that various activities conducted on the subject property, including public field visits, pick-your-own produce, field-to-table picnics/suppers, and harvest and seasonal-related programs, are permitted as accessory uses to the principal farm, farm market, and agricultural training and trade school uses; (2) under Section 500.7 of the B.C.Z.R. or in the alternative a variance from Section 409.8.A.1 of the B.C.Z.R., to permit an off-street parking area in a field without screening or landscaping; (3) under Section 500.7 of the B.C.Z.R. or in the alternative a variance from Section 409.8.A.2 of the B.C.Z.R., to permit an off-street parking area in a field without a durable and dustless surface; (4) under Section 500.7 of the B.C.Z.R. or in the alternative a variance from Section 409.8.A.6 of the B.C.Z.R., to permit an off-street parking area in a field without striping; and (5) to confirm there is a sufficient parking area for the proposed farm market and agricultural training and trade school uses.

In addition, a Petition for Special Exception was filed as follows: (1) for a farm market; and (2) for an agricultural training and trade school.

Appearing at the public hearing in support of the requests was Peter Elmore and landscape architect David Martin. Christopher D. Mudd, Esq., represented the Petitioners. Mike Pierce attended the hearing to obtain additional information regarding the requests. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. A substantive Zoning Advisory Committee (ZAC) comment was submitted by the Department of Planning (DOP). That agency did not oppose the requests.

The subject property is approximately 127.04 acres in size and is zoned RC-2. The large rural property is improved with a dwelling constructed in 1853, a bank barn and several other outbuildings. The vast majority of the site is unimproved and several fields are used for planting crops including lavender, blueberries and vegetables. The property is subject to and governed by an easement held by the Maryland Agricultural Land Preservation Foundation (MALPF).

The Petitioners are not proposing any new structures or development at this time. Instead, the case for the most part involves an interpretation of the zoning regulations to determine if certain uses as proposed are permitted in an RC-2 zone. A special hearing is the appropriate mechanism to undertake this inquiry. *Antwerpen v. Balto. Co.*, 163 Md. App. 194, 209 (2005) (“A request for special hearing is, in legal effect, a request for a declaratory judgment”).

As discussed at the hearing, the variance requests pertain to off-street parking. Petitioners propose parking on a field adjacent to an existing driveway. Petitioners contend that paving, striping and “improving” the parking area, arguably required under B.C.Z.R. §409, would be antithetical to the goals of the RC-2 zone. I concur, but rather than granting a variance to dispense

with these requirements, I believe the special hearing is the proper procedure to address this issue. As such, the petition for variance will be dismissed without prejudice.

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 the RC-2 zone, both farm markets and schools for agricultural training are permitted by special exception. B.C.Z.R. §1A01.2.C.9 & C.24. But two special exception uses cannot be permitted on the same property. Even so, and as discussed at the hearing, I do not believe the types of educational seminars and workshops proposed by Petitioners would constitute the operation of a “school for agricultural training” as listed in B.C.Z.R. §1A01.2.C.24. Seminars and hands-on workshops of this type are often offered on farms and agricultural sites. I believe they are properly categorized as accessory or ancillary uses to the farm, which of course is permitted by right in the RC-2 zone. B.C.Z.R. §1A01.2.B.2. Mr. Martin, who was accepted as an expert, opined Petitioners satisfied B.C.Z.R. §502.1, and no testimony or evidence was offered to rebut this conclusion. As such the petition for special exception to approve a farm market will be granted.

Special Hearing

As noted above, the first aspect of the special hearing pertains to parking at the site. The site plan identifies an area for vehicle parking on a flat, grassy field adjacent to the bank barn,

where many of the proposed farm activities would be held. Mr. Martin testified that at least 60 cars could be accommodated in this area which both he and Peter Elmore believed would be more than sufficient. It would be unthinkable to pave this area and in any event it would violate the MALPF easement on the property. *See* Ex. 5. The Regulations do not specify the number of spaces required for uses such as those proposed herein, and in that circumstance the ALJ is authorized to determine whether the parking shown on the plan would be sufficient. B.C.Z.R. §409.6.A. I am convinced by the testimony of Messrs. Martin and Elmore that the parking shown on the site plan would be more than sufficient for the intermittent types of uses proposed. As such this portion of the special hearing will be granted.

The other aspect of the petition for special hearing concerns the accessory and ancillary uses proposed, including public tours, pick-your-own produce and seasonal programs. Mr. Elmore described in some detail his vision for the farm, and stated he would like to offer farming workshops to teach people to cultivate and use crops. The bank barn would be used for a farmers market where Petitioners would sell the crops grown on site. Mr. Elmore explained the plan is to incorporate elements of permaculture, a concept which promotes holistic and sustainable agriculture that is in harmony with the surrounding area and natural ecosystems.

The subject property is zoned RC-2. The purpose of this zoning classification is to “foster conditions favorable to a continued agricultural use of the productive agricultural areas of Baltimore County.” B.C.Z.R. §1A01.1.B. In addition, the Master Plan specifically encourages such activities in the RC-2 zone which will “foster a sustainable agricultural industry.” The plan also notes consumers desire “experiences related to agricultural production...such as wineries, pumpkin festivals, community supported agriculture and direct market business operations.” *See* Master Plan 2020, pp. 142-44. These are precisely the types of activities proposed by the

Petitioners herein, which I believe are especially appropriate for large RC-2 zoned tracts. As such this portion of the special hearing request will also be granted.

THEREFORE, IT IS ORDERED this 13th day of **December, 2017**, by this Administrative Law Judge, that the Petition for Special Hearing filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”): (1) to confirm that various activities conducted on the subject property, including public field visits, pick-your-own produce, field-to-table picnics/suppers, educational seminars/workshops, and harvest and seasonal-related programs, are permitted as accessory uses to the principal farm use; (2) to permit an off-street parking area in a field without screening or landscaping; (3) to permit an off-street parking area in a field without a durable and dustless surface; (4) to permit an off-street parking area in a field without striping; and (5) to confirm there is a sufficient parking area for the proposed farm market and proposed accessory uses, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Special Exception to operate a farm market on the subject property be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance under B.C.Z.R. §409.8.A be and is hereby DISMISSED WITHOUT PREJUDICE..

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 shall be subject to the conditions and restrictions set forth in the December 5, 2017 letter from the Maryland Department of Agriculture, a copy of which is attached hereto and incorporated herein. Any changes or modifications of these restrictions requires written

permission from the Maryland Agricultural Land Preservation Foundation.

3. The farmer's market at the site shall operate between the hours of 10 a.m. and 5 p.m., and any special events at the property (including dinners, educational seminars, etc.) must conclude no later than 10 p.m.
4. No wedding ceremonies or receptions may be held at the site.

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