

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
(101 E. Chesapeake Avenue)		
9 th Election District	*	OFFICE OF
5 th Council District		
Chesdel Associates, L.P.	*	ADMINISTRATIVE HEARINGS
<i>Legal Owner</i>		
AGG Wellness, Inc.	*	FOR BALTIMORE COUNTY
<i>Lessee</i>		
Petitioners	*	Case No. 2018-0120-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 Chesdel Associates L.P., legal owner and AGG Wellness, Inc., lessee (“Petitioners”). The petition was filed pursuant to the Baltimore County Zoning Regulations (“B.C.Z.R.”) to approve a medical cannabis dispensary.

Mitch Kellman, C.B. Brechin, Charles Fink, Jon Azrael and Keith Franz appeared in support of the petition. Lawrence E. Schmidt, Esq. represented the Petitioners. One citizen attended the hearing to express support for the request. A substantive Zoning Advisory Committee (ZAC) comment was received from the Department of Planning (DOP).

The subject property is approximately 0.213 acres and is zoned BM-DT. The property is improved with a commercial office building located directly across from the District Court in Towson. The lessee proposes to lease approximately 2,700 sq. ft. of office space on the first floor of the building to operate the dispensary. Petitioners explained the nature of the operation and submitted a proposed floorplan (Exhibit 4) for the facility. Petitioners have received preliminary approval from the State of Maryland to operate a cannabis dispensary.

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.

Mr. Kellman testified via proffer the Petitioners satisfied the requirements set forth in B.C.Z.R. §502.1 and the case law interpreting that provision. He also noted the proposed facility was directly across the street from the courthouse, which in his opinion will provide an additional measure of security for the operation. Based on this testimony and the absence of any evidence to the contrary, the petition will be granted.

THEREFORE, IT IS ORDERED this 24th day of **January, 2018**, by this Administrative Law Judge, that the Petition for Special Exception to approve a medical cannabis dispensary 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 DOP, a copy of which is attached hereto and incorporated herein.

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