

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
(21300 Heathcote Road)		
7 th Election District	*	OFFICE OF
2 nd Council District		
School of Living	*	ADMINISTRATIVE HEARINGS
<i>Legal Owner</i>		
Petitioner	*	FOR BALTIMORE COUNTY
	*	Case No. 2018-0308-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 School of Living, legal owner (“Petitioner”). The petition was filed pursuant to the Baltimore County Zoning Regulations (“BCZR”) as follows: (1) To permit a camp including day camps; (2) To permit a community building owned by a nonprofit civic or improvement association and used by its members and guests for recreational, social, educational, or cultural activities; and (3) To permit schools, including schools for agricultural training, private preparatory schools, business or trade schools, conservatories or colleges.

Karen Stupski and surveyor Bruce Doak appeared in support of the petition. Michael McCann, Esq. represented the Petitioner. Two neighbors attended the hearing to express concern with certain aspects of the proposal. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Environmental Protection and Sustainability (“DEPS”), the Bureau of Development Plans Review (“DPR”) and the Department of Public Works (“DPW”). None of the reviewing agencies opposed the requests.

The subject property is approximately 34.961 acres in size and is zoned RC-2. The property is improved with several dwellings and/or cabins, and according to state tax records the

primary use of the property is “agriculture.” Petitioner conducts throughout the year workshops and seminars covering topics such as organic farming, gardening and permaculture. Petitioner has conducted these activities on site for many years, and the current petition seeks to “legitimize” under the zoning regulations the proposed operation of the property.

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. Doak opined (via proffer) Petitioner satisfied the requirements set forth in BCZR §502.1 and the case law interpreting that provision. In light of the presumption provided by Maryland law, and in the absence of any evidence to the contrary, I will grant the petition for special exception. As discussed at the hearing however, I do not believe an owner may have on the same parcel multiple or overlapping special exception uses. Although Petitioner’s counsel did not believe there was such a prohibition, that has certainly been the long-standing and consistent interpretation of the regulation by the Office of Zoning Review, and I believe that interpretation makes logical and intuitive sense and is entitled to deference.

Based on the testimony and exhibits submitted at the hearing, a school would best describe the predominant use of the subject property. Schools are permitted by special exception in the RC-2 zone, and dormitories and housing for faculty/students are permitted accessory uses. *Smith*

v. Wisconsin Institute for Torah Study, Inc., 578 N.W.2d 208 (Wis. 1998); *New York Inst. of Tech. v. Ruckgaber*, 317 N.Y.S.2d 89 (1970).

In addition to dwellings and cabins, the plan contains an area at the south of the site for “proposed tent/trailer camping area (10 spaces).” Petitioner seeks special exception approval to operate a camp, but as noted above I do not believe multiple special exception uses are permitted on the same parcel. In addition, I do not believe tent or trailer camping can be considered a use which is accessory to the operation of the school. As such, the camping area shall not be permitted as an aspect of the special exception approval for the school.

The neighbors in attendance expressed concern with whether the water supply and waste disposal facilities on site would be sufficient to accommodate the projected number of students and overnight guests. As noted at the hearing DEPS expressed a similar concern in its ZAC comment, and that agency will investigate that issue before occupancy permits will be issued. The neighbors also questioned whether the site was large enough to accommodate students and guests without having a detrimental impact upon the community. Several conditions will be included in the order below, one of which will restrict to 26 the number of program participants that may be on the property at any one time. In my opinion this number of people can easily be accommodated on a 35 acre rural parcel, and County reviewers will also examine this issue as part of the occupancy permit process.

THEREFORE, IT IS ORDERED this 25th day of **July, 2018**, by this Administrative Law Judge, that the Petition for Special Exception to permit a school, including a school for agricultural training, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Special Exception: (1) To permit a camp including day camps; and (2) To permit a community building owned by a nonprofit civic or

improvement association and used by its members and guests for recreational, social, educational, or cultural activities, be and is hereby DENIED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at its 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, Petitioner would be required to return the subject property to its original condition.
2. Petitioner will orient program participants to the property boundaries and post signs on the boundaries to ensure that they stay on subject property.
3. There will be a maximum of 26 program participants on the property at any one time.
4. Petitioner will have no more than 6 interns and/or volunteers staying overnight at one time. They may stay for up to 6 months in the Mill bunkroom or in one of the other residential buildings.
5. Petitioner agrees to the following limits on the number of workshops/courses and participants:
 - a. Petitioner will hold a maximum of 10 workshops/courses per year.
 - b. Petitioner will hold no more than 40 days total of workshops/courses each year.
 - c. The 40 days of workshops/courses may occur as 1-day or multi-day events lasting up to 5 consecutive days.
 - d. Petitioner will have no more than 1 workshop/course in one month.
 - e. There will be no more than 26 participants per workshop/course. (This includes the 6 interns and/or volunteers.)
 - f. Workshop participants who stay overnight will stay in the Mill bunkroom or the rustic cabins.
6. Workshop participants will be allowed to stay in the rustic cabins for no more than 1 week (7 days) at one time.
7. All of the overnight program participants will be registered and Petitioner agrees to perform a background check on each participant to screen out violent offenders and sex offenders. Background checks will not be conducted on personal guests and/or for social events.
8. The above conditions shall apply only during the time Matt and Valerie Hubbard and/or Ed and Connie Fronden reside on Heathcote Road.
9. The special exception is valid for this petitioner only.
10. No overnight tent and/or trailer camping shall be permitted at the site.
11. Prior to issuance of permits Petitioner must comply with the ZAC comments submitted by the DEPS and DPW, copies of which are 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