

**IN RE: PETITIONS FOR SPECIAL
EXCEPTION AND VARIANCE
(19919 Cameron Mill Road)**

7th Election District

3rd Council District

Fulks Farm, LLC

Legal Owner

Petitioner

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BEFORE THE

OFFICE OF

ADMINISTRATIVE HEARINGS

FOR BALTIMORE COUNTY

Case No. 2018-0324-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 19919 Cameron Mill Road. The Petitions were filed on behalf of Fulks Farm, LLC, legal owner of the subject property. The Special Exception petition seeks approval 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. The Petition for Variance seeks: (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 surfaces; (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 was marked as Petitioner's Exhibit 4.

Appearing at the hearing in support of the petitions were Koby Fulks and surveyor Bruce Doak. James H. West, Esq. represented Petitioner. Several neighbors, represented by Michael McCann, Esq., opposed the requests. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations (BCZR). Substantive Zoning Advisory Committee (ZAC)

comments were received from the Department of Planning (DOP) and the Department of Environmental Protection and Sustainability (DEPS). Neither agency opposed the requests.

The subject property is approximately 245.73 acres in size and is split-zoned RC-2, RC-4 and RC-5. The property is actively farmed and is improved with a large barn and an outdoor pavilion area. Petitioner seeks approval for a farm brewery, a use permitted by special exception in the RC-2 zone. BCZR §1A01.2.C.30.j. Public hearings in this case were held on September 17 and November 21, 2018, and the parties filed memorandums on December 7, 2018.

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, a surveyor accepted as an expert, described the site plan and noted the barn (45'x 96')—which was relocated from Indiana—would be used for the brewery. The witness testified the barn is approximately 100 feet from the property boundary and approximately 400 feet from the nearest dwelling. Mr. Doak opined Petitioner satisfied all requirements set forth at BCZR Section 502.1, and he believed the size of the site and the substantial setbacks would prevent the use from having a detrimental impact upon the community. With respect to the variance requests Mr. Doak testified crushed stone driveways and parking areas are very common

on farms in northern Baltimore County, and help to reduce the amount of impervious surface on rural properties.

Koby Fulks was the next witness in Petitioner's case, and he explained he is the farm manager for the subject property, which is approximately 50% tillable farm land and 50% forest. The witness explained corn, soybean and hay is grown on the farm, in addition to eight (8) acres of hops grown on a trellis system which he described. Mr. Fulks described the brewing process and indicated less than 1,000 barrels would be produced in the first year. He noted 300 trees (3-4 feet in height at planting) spaced every 5 feet would be installed to screen the views from the adjacent homes on Kali Court. In response to questions on cross-examination the witness testified he would like to grow hops on the farm for other local breweries. He indicated the pavilion could be used for brewery special events, and noted a separate driveway off of Cameron Mill Rd. provides direct access to that structure. Mr. Fulks testified he has no plans to serve food and does not anticipate requiring patrons to have reservations before coming to the farm brewery. Finally, he stated that seven (7) gallons of water is used to make each gallon of beer and that there would be no discharge of brewing byproducts on the farm.

The community is primarily concerned with noise, traffic, and the operation of a commercial facility in a rural area. Many neighbors testified they moved to the country for peace and quiet, and felt a commercial enterprise should not be located in this setting. Several citizens testified about the narrow and winding "country roads" which serve this community of approximately 85 single-family homes. Community members stated this is a residential area with a "farm in the middle." Residents explained their homes are in an RC-5 zone while the subject property is a small enclave of RC-2 zoned land, making it inappropriate for a farm brewery.

These are valid concerns, and the operation of this facility will no doubt result in an increase in noise and vehicular traffic. But at the same time, these issues would arise in connection with any Class 8 farm brewery in northern Baltimore County, and neighbors in similar cases have raised the very same concerns. Indeed, most if not all special exception uses have such adverse impacts. *Montgomery County v. Butler*, 417 Md. 271, 297 (2010) (“Most [uses for which a special exception is required] are regarded as potentially troublesome because of noise, traffic, congestion, or other associated problems”).

Many roads in northern Baltimore County are substandard; in many ways narrow and unmarked roadways are a defining characteristic of properties located outside of the Urban Rural Demarcation Line (URDL). In fact, the County has adopted, at the urging of the Valleys Planning Council and similar associations, rural road design guidelines which (among others things) discourage the County from widening rural roadways. The Design Manual adopted by the Department of Public Works states “it is no longer the intention of Public Works to widen roads.” Manual, p. 8-22. As such, I do not believe the roadways in these communities are unique or unlike the roads found throughout the rural areas of the County.

To the point raised about the R.C.-5 zoning, the County Council permitted farm breweries to be located in nearly all R.C. zones, including the R.C.-5 (Rural-Residential) zone. BCZR §1A04.2.B.24. Neighborhoods such as Cameron Mills are found only in the R.C.-5 zone, which permits a higher residential density than other RC zones. As such, by permitting this use in that zone, the County Council was surely aware that residential communities could be located in close proximity to a farm brewery. An opponent, after a petitioner has established a *prima facie* case, must rebut the presumption of validity of the special exception. *Butler*, 417 Md. at 276-77 (opponent must show “non-inherent adverse effect” to “undercut the presumption of compatibility

enjoyed by a proposed special exception use”). In a more recent special exception case Maryland’s highest court reached the same conclusion, although it employed slightly different language. *Clarksville Residents Against Mortuary Defense Fund, Inc. v. Donaldson Properties*, 453 Md. 516, 543 (2017)(“there is a presumption that the [special exception] use is in the interest of the general welfare, a presumption that may only be overcome by probative evidence of unique adverse effects”). I do not believe the evidence presented by the Protestants satisfied this standard.

Christopher Jakubiak, a land planner accepted as an expert, was the final witness in the Protestants’ case. Mr. Jakubiak testified he visited the subject property and other farm breweries (or at least the sites where they had been approved) in Baltimore County to determine how well each fits into its surroundings. The witness explained that a farm brewery would be expected to have adverse agricultural impacts (like truck traffic, noise and dust), odors associated with fermentation and vehicular traffic. In discussing these adverse effects the witness stated the ten (10) acre minimum size requirement in the BCZR for a farm brewery was designed to ameliorate the impacts upon the surrounding communities.

In conclusion Mr. Jakubiak opined the use at the location proposed would have the following non-inherent adverse impacts under BCZR Section 502.1.A & B:

1. Noise, made worse because the brewery would be just 100 feet from residential properties;
2. Special events without restrictions other than those imposed in the law;
3. Impacts will be made worse by topography, since the site is prominent and not level; and
4. An inadequate area road system not suited for this use, while other breweries are on state roadways.

As discussed above I believe these potential impacts are in fact inherent in the operation of a farm brewery in a rural zone. The court of appeals in *Butler* identified “noise, traffic, [and] congestion”

as inherent in most special exception uses. The fact that the noise might be louder at this site (due to topography or the 100 foot setback) or the traffic congestion worse because of the community roads is beside the point. These represent differences in the degree of impact, not the type of impact. In addition, many properties in rural Baltimore County have significant topographical features and are accessed by narrow roadways.

While the community's point about the proximity of the barn/structure to nearby homes is well-taken, especially considering the size of this site, Bill 64-15 did not impose any minimum setbacks or buffer requirements for farm breweries, and under the Regulations the barn would only need to be located 35 feet from the property boundary. BCZR §1A01.3.B.3. Thus, since the proposed setback is nearly three times the distance required by the BCZR I do not believe this can be considered a non-inherent adverse impact of this use. A farm brewery is defined as an "agricultural-support" commercial use, and the BCZR contains a provision indicating that residents living in or near RC-2 zones may experience "inconveniences or discomforts arising from agricultural operations, including but not limited to noise, odors, fumes, dust..." BCZR §1A01.5. In my opinion, this provision underscores that the impacts identified by the community and Mr. Jakubiak are anticipated or inherent in connection with the proposed agricultural-support use. Finally, the order below will impose several restrictions upon the operation of the brewery and the special events which may be held at the site. As such, this aspect of Mr. Jakubiak's testimony cannot be considered in evaluating whether Protestants have overcome the presumption of appropriateness in special exception cases.

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).

The sprawling property has irregular dimensions and significant topographical changes across the tract. It is therefore unique. If the BCZR were strictly interpreted Petitioner would suffer a practical difficulty since it would be required to pave a large parking area, which would significantly increase the amount of impervious surface in this rural area. Finally, I find that the variance can be granted in harmony with the spirit and intent of the BCZR and in such manner as to grant relief without injury to the public health, safety, and general welfare. Gravel or stone driveways are common in rural areas and no evidence was presented to suggest that allowing the driveway and parking areas to remain in this condition would in any way have a negative impact upon the community.

As originally filed the petition requested a variance for a 10 ft. wide driveway. Mr. Doak testified the driveway shown on the site plan is in fact 20 ft. wide, as required by the BCZR. As such this variance is unnecessary. Petitioner also requested a variance to permit a parking area with “no screening.” The DOP requested Petitioner to provide screening for the parking area and Mr. Doak revised the plan (Pet. Ex. 4) during the hearing to show where arborvitae trees would be planted. As such this variance request will not be granted and a condition will be included below requiring Petitioner to provide landscaping or fencing to screen the views of the barn/parking area from the homes on Kali Court.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 14th day of **December, 2018**, that the Petition for Special Exception 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 to be surfaced with stone in lieu of the required durable and dustless surfaces; and (2) to permit a parking area not to be striped in lieu of the striping requirement, be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon 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 must provide a vegetative buffer or fence (as determined in the sole discretion of the Baltimore County Landscape Architect) to screen views of the barn/parking area from homes on Kali Court.
3. Petitioner must comply with the ZAC comment submitted by DEPS, a copy of which is attached and incorporated herein.
4. The brewery shall be permitted to produce, sell or distribute no more than 5,000 barrels of beer per year.
5. The hours of operation shall be restricted to Thursday-Sunday from 12 noon to 8:00 p.m., although certain special events (discussed below) may be held Thursday-Sunday from 12 noon to 10:00 p.m.
6. Petitioner may hold no more than eight (8) temporary promotional events or gatherings associated with the brewery per year.
7. After the proposed brewery has been in operation for one year, the restrictions contained hereinabove at paragraphs 4, 5 & 6 are subject to modification following a public hearing, upon a showing of good cause.
8. The brewery shall not host any weddings or other catered receptions/parties other than a private event for a member of the family of the owners of Fulks Farm, LLC.

9. No liquid remnants or byproducts of the brewing process may be discharged onto the subject property. These liquids must be stored in a holding tank and pumped for removal by an authorized hauling contractor.
10. The brewery shall not have live or amplified music outside the 45'x96' existing barn shown on the site plan admitted as Petitioner's Ex. 4.
11. Other than for special events as permitted herein, Petitioner shall not have porta-potties on the subject property.
12. Other than for special events as permitted herein (which may take place anywhere on the farm subject to any environmental restrictions imposed by DEPS), the approved special exception area shall include the existing stone driveway, parking area, and the 45'x96' barn along with an outdoor area adjacent thereto not to exceed one (1) acre in size. No part of the special exception area may extend to the north of the existing barn.

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/dlw