

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
(9500 Old Court Road)		
2 nd Election District	*	OFFICE OF
7 th Council District		
Edrich Farm, Inc.	*	ADMINISTRATIVE HEARINGS
<i>Legal Owner</i>		
	*	FOR BALTIMORE COUNTY
Petitioner		
	*	Case No. 2019-0263-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 Edrich Farm, Inc., legal owner (“Petitioner”). The special exception petition was filed pursuant to the Baltimore County Zoning Regulations (“BCZR”) for a landscaping business and to amend the previously approved site plan for Case No. 2007-0234-SPH.

Doug Wolinski and Craig Rodgers appeared in support of the petition. Timothy Kotroco, Esq. represented the Petitioner. Cathy Wolfson attended the hearing to obtain additional information regarding the request. Substantive Zoning Advisory Committee (“ZAC”) comments were received from the Department of Environmental Protection and Sustainability (“DEPS”) and the Department of Planning (“DOP”). Neither agency opposed the request.

The specific property at issue is approximately 1.712 acres in size and is zoned RC-2, although it is part of a 192 acre tract which has agricultural and lumber operations. The property is improved with a 1,600 sq. ft. structure which Petitioner proposes to use for a landscape service operation, a use permitted by special exception in the RC-2 zone.

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. Rodgers testified (via proffer) Petitioner satisfied all requirements for special exception relief, and no evidence to the contrary was presented. He also described the red line changes on the site plan which were made in response to the DOP's ZAC comment. I reviewed that plan (Pet. Ex. 1) and believe Petitioner satisfies not only BCZR §502.1 but also the particular requirements (*i.e.*, setbacks, no storage in front of building) found in Section 404 pertaining to landscape businesses. The plan also contains notes concerning no retail sales and restrictions on loading/unloading, as required by the aforementioned regulation. As such, the petition will be granted.

THEREFORE, IT IS ORDERED this **8th** day of **May, 2019**, by this Administrative Law Judge, that the Petition for Special Exception for a landscape service operation and to amend the previously approved site plan in Case No. 2007-0234-SPH, be and is hereby GRANTED.

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. The special exception area shall consist of only the 1.712 acre parcel shown on the site plan, and all operations of the landscaping business must be conducted within that area.

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