

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
(194 Goose Harbor Road)		
15 th Election District	*	OFFICE OF
6 th Council District		
Anthony & Andrea Conrad	*	ADMINISTRATIVE HEARINGS
<i>Legal Owners</i>		
	*	FOR BALTIMORE COUNTY
Petitioners		
	*	Case No. 2019-0316-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 Anthony & Andrea Conrad, legal owners (“Petitioners”). The special exception petition was filed pursuant to Section 1A05.2.A.8 of the Baltimore County Zoning Regulations (“BCZR”) to allow a Commercial Fisheries Facility.

Anthony Conrad and David Billingsley appeared in support of the petition. Timothy Kotroco, Esq. represented the Petitioners. Several members of the community attended the hearing to obtain additional information and express concerns regarding the request. Substantive Zoning Advisory Committee (“ZAC”) comments were received from the Department of Environmental Protection and Sustainability (“DEPS”), the Department of Planning (“DOP”) and the Bureau of Development Plans Review (“DPR”). None of the reviewing agencies opposed the request.

The specific property at issue is approximately 9.89 acres in size and zoned RC-20. The property is unimproved and is located in the Bowleys Quarters area. Petitioners propose to conduct a small commercial crabbing operation at the site, a use permitted in the zone by special exception. The BCZR refers to the use as a “commercial fisheries facility,” even though Mr. Conrad explained he will not catch fish (only crabs) and that his business involves just one boat and two or three other employees. He explained he will construct on site a 30’x30’ pole barn as shown on the site

plan admitted as Petitioners' Ex. No. 1, for storage of crab pots and other equipment and materials used in the business.

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 this case both Mr. Conrad and Mr. Billingsley testified the use would not have a detrimental impact upon the community. They also both opined the use would have no greater impact at this location than at other similarly zoned properties in the County. Mr. Conrad explained only one boat would be used in the crabbing operation and he was amenable to certain restrictions requested by the community. In these circumstances I believe Petitioners are entitled to the grant of the requested special exception.

THEREFORE, IT IS ORDERED this 24th day of **July, 2019**, by this Administrative Law Judge, that the Petition for Special Exception to allow a Commercial Fisheries Facility, 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. No sales of any type shall be permitted on the subject property.
3. The existing driveway shown on the site plan shall not be paved or widened.
4. Petitioners shall maintain a 50' wide uncleared setback buffer on both sides of the subject property.
5. The special exception granted herein is personal to Petitioners and shall not run with the land. Should Petitioners sell or lease the property or otherwise discontinue the operation of the crabbing facility the special exception shall terminate immediately by operation of law.
6. Only one boat is permitted on the subject property (or the pier attached thereto) in connection with the special exception use.

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