

IN RE: PETITION FOR SPECIAL EXCEPTION* BEFORE THE

(5132 Long Green Road)

11th Election District

3rd Councilman District

Matilda L. Albrecht

Legal Owner

Petitioner

* OFFICE OF

* ADMINISTRATIVE HEARINGS

* FOR BALTIMORE COUNTY

* **Case No. 2013-0291-X**

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Special Exception filed for property located at 5132 Long Green Road. The Petition was filed by David H. Karceski, Esquire, on behalf of the legal owner of the subject property, Matilda M. Albrecht. The Special Exception Petition seeks relief pursuant to §1A01.2.C.29e of the Baltimore County Zoning Regulations (B.C.Z.R.), to use the herein described property for a slaughterhouse. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the hearing was Matilda Albrecht and David Martin, whose firm prepared the site plan. David H. Karceski, Esquire attended and represented the Petitioner. Several concerned citizens attended the hearing, and their names are listed in the case file. The file reveals that the Petition was properly advertised and the site was properly posted as required by the B.C.Z.R.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. The Department of Planning (DOP) expressed support for the petition, and the Department of Environmental Protection and Sustainability (DEPS)

noted certain requirements that must be satisfied before operations could commence at the site.

Testimony and evidence offered at the hearing revealed that the subject property is 20+/- acres and is zoned RC 2. The Petitioner proposes to operate on a small portion (approximately .6 acres) of the property a slaughterhouse. The Petitioner and her husband previously operated from 1960 to approximately 1992 a slaughterhouse in the same facility proposed to be used in this case. The Petitioner testified her family has owned this land since the 1920's, and that she has lived on site for 51 years.

The Petitioner's proposed business partner, Shah Islam, testified and described some of the specifics of the proposed operation. Mr. Islam indicated that given the size of the facility - - which is not proposed to be enlarged - - the Petitioner would be able to slaughter and process a maximum of 8-12 steer per week or 50-60 smaller animals (lamb, goat) per week.

Mr. Martin, a landscape architect accepted as an expert, was the final witness in Petitioner's case. He indicated that he prepared the site plan in the case, and described the property in some detail. Mr. Martin stressed that no new construction or "development" of any kind was taking place, and he opined that the proposal satisfied the standards in B.C.Z.R. §502.1 and that the facility was "absolutely appropriate" for an RC 2 zone.

Carol Trela testified that the Long Green Valley Association was not opposed to the petition but had certain concerns (primarily with the scope and scale of the operation and potential environmental impacts), and Richard Hess, a neighbor, supported the petition but requested that privacy trees be planted to shield the operation from his

property. See citizen's exhibit #1. Those concerns will be addressed in the Order which follows.

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 People's Counsel v. Loyola College, 406 Md. 54 (2008), where the court emphasized that 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. No such evidence was presented in this case.

In addition, and based on the evidence presented, I find the proposed use would support the primary agricultural use in the vicinity and that the land proposed for the slaughterhouse use would not more appropriately be used for agricultural uses. As such, the Petitioner has satisfied B.C.Z.R. §1A01.2.C.

Pursuant to the advertisement, posting of the property, and the public hearing on this petition, and after considering the testimony and evidence offered, I find that Petitioners' Special Exception request should be granted, subject to the conditions noted below.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 30th day of August, 2013, that the Petition for Special Exception relief under §1A01.2.C.29.3 of the Baltimore County Zoning Regulations ("B.C.Z.R."), to use the herein described property for a slaughterhouse, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for appropriate permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at her own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioner would be required to return, and be responsible for returning, said property to its original condition.
2. Petitioner must utilize the Special Exception granted herein within two years of the date of this Order.
3. The slaughterhouse operation shall be subject to the “use Limitations” noted on the site plan.
4. The slaughterhouse shall operate Monday-Friday between the hours of 9AM-5PM. The Petitioner shall be permitted to conduct operations on one weekend per year, provided 30 days notice is provided to adjoining owners.
5. The slaughterhouse may kill and/or process a maximum of fifty (50) animals per week regardless of breed or size of the animal/livestock.
6. The Petitioner shall, at her sole expense prior to commencing operations, purchase and install on her property where it adjoins the parcel owned by Mr. Hess (more particularly, in the areas marked by “Xs” in Citizen’s Exhibit 1) three or four trees. The number and type of trees required shall be determined in the sole discretion of the Baltimore County Landscape Architect.
7. The Petitioner shall comply with the ZAC comments of DEPS, a copy of which is attached hereto.

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