

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
(619 Westminster Pike)		
4 th Election District	*	OFFICE OF
4 th Council District		
Livegreen Landscape Associates, LLC	*	ADMINISTRATIVE HEARINGS
<i>Contract Purchaser</i>		
Petitioner	*	FOR BALTIMORE COUNTY
	*	Case No. 2016-0324-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 619 Westminster Pike. The Petition was filed on behalf of the contract purchaser of the subject property, Livegreen Landscape Associates, LLC. The Special Exception petition seeks approval pursuant to §§1A03.3.B.11, 101.1, 404.1 & 404.3 to operate a landscape service business at the site. A site plan containing additional details regarding the property was marked as Petitioner’s Exhibit No. 1.

Appearing in support of the request was Michael Martin on behalf of the contract purchaser and landscape architect Michael Fisher. Jason T. Vettori, Esq. represented the Petitioner. George Harmon attended the hearing to obtain additional information concerning the request. The Petition was advertised and posted as required by the B.C.Z.R.

Substantive Zoning Advisory Committee (ZAC) comments were received from the Bureau of Development Plans Review (DPR), the Department of Environmental Protection and Sustainability (DEPS), the Department of Planning (DOP) and the State Highway Administration (SHA). None of the agencies objected to the request and conditions will be included below to address the concerns identified in these comments.

The subject property is approximately 20.876 acres and is zoned RC-4. The property is currently improved with an older single family dwelling which is unoccupied. Petitioner proposes to construct a commercial building to function as the business headquarters of its landscaping business, a use permitted by special exception in the RC-4 zone, per B.C.Z.R. §1A03.3.B.11.

Special Exception Law in Maryland

Under Maryland law, a special exception use (in this case, a landscape service operation) 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 evidence was presented in this case regarding that issue, and the petition will therefore be granted.

Mr. Harman identified several issues he believed could prove problematic in the operation of this facility. He did not object to the request, but felt certain conditions should be imposed to safeguard the community. I agree, and B.C.Z.R. §502.2 specifically envisions conditions to protect surrounding properties being attached to the grant of a special exception. Indeed, a “special exception” is synonymous with a “conditional use,” and both terms are used interchangeably throughout Maryland case law. As such, the proposed use shall be permitted, subject to the conditions noted below.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 15th day of September, 2016, that the Petition for Special Exception for a landscape service operation, 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. Petitioner must obtain from the SHA an entrance permit for access to Maryland Route 140.
3. Prior to issuance of permits Petitioner must submit for approval by Baltimore County landscape and lighting plans for the site.
4. Outside storage of materials used in the landscape operation must comply with B.C.Z.R. §§ 404.1.C and 404.3.A.
5. Petitioner must comply with the ZAC comment of DEPS, a copy of which is attached hereto.
6. No retail sales shall be permitted at the subject property in connection with the landscape service operation.
7. No grinding or production of mulch, or the cutting, storage and/or sales of firewood shall be permitted at the subject property.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

JEB/sln

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County