

IN RE: <b>PETITION FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>(2800 Monkton Road)</b>		
10th Election District	*	OFFICE OF
3rd Council District		
Samuel and Michaeline Yaffee	*	ADMINISTRATIVE HEARINGS
	*	FOR BALTIMORE COUNTY
<b>Petitioners</b>	*	<b>Case No. 2019-0541-SPH</b>

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**ORDER ON MOTION FOR RECONSIDERATION**

NOW pending is a Motion for Reconsideration filed by Christopher Mudd, Esq., on behalf of Respondents, and Oppositions and Cross-Motions for Reconsideration filed by Michael McCann, Esq. on behalf of Petitioners, and by Mark Dachille, Esq., on behalf of Caroline Owens, a neighbor and interested party.

This matter originally came before the Office of Administrative Hearings (“OAH”) as a Petition for Special Hearing filed by Samuel and Michaeline Yaffee. The Special Hearing was filed pursuant to § 507 of the Baltimore County Zoning Regulations (“BCZR”) seeking an interpretation of the Opinion and Order of Administrative Law Judge John Beverungen in Case No. 2017-327-X.

For the reasons set forth in **bold** below, the Respondents’ Motion is denied, the Petitioners Cross-Motion is denied, and the Owens Cross-Motion is granted.

**BACKGROUND**

The petitioners live adjacent to the subject property, on which is located a “Class 8 Farm Brewery” known as Inverness Brewery (“Inverness”) in the Lady’s Manor Historic District of Monkton. This brewery operation was approved as a special exception use in this RC 2 zone by an Order of ALJ Beverungen on August 8, 2017. The Order placed several restrictions on

Inverness, which will be discussed in more detail below. The petitioners claim that the Inverness operations have exceeded the bounds of what was authorized in the Order, and what is permitted – or should be permitted – under State and County law. The petition asks for a determination of the following questions:

1. Whether the events/gatherings that have been held at the subject property constitute “temporary promotional events or gatherings” under the Administrative Law Judge's (“ALJ”) Opinion and Order dated August 8, 2018?

2. Whether the property owner has held more than the eight (8) "temporary promotional events or gatherings associated with the brewery per year" permitted under the Opinion and Order dated August 8, 2018?

3. Whether the use of the subject property otherwise complies with the Opinion and Order dated August 8, 2018?

4. Whether good cause exists to modify the restrictions in the Opinion and Order dated August 8, 2018?

5. Whether the use of the subject property is a “Brewery, Class 8” as defined in § 101.1 of the BCZR?

6. Whether the use of the subject property is "agricultural support use" under § 1A01.2.C.30 of the BCZR?

7. Whether the use of the subject is a "Brewery, Class 7 or 8" under § 1A01.2.C.30.j of the BCZR?

8. Whether the events/gatherings that have been held at the subject property constitute "temporary promotional events, such as beer tasting or public gathering associated with the

brewery" under § 1A041.2.C.30.j of the BCZR?

9. Whether the use of the subject property otherwise complies with the BCZR?

10. Whether the use of the subject property otherwise complies with applicable policies, laws and regulations?

Upon receipt of this Petition, the Franks, by counsel, filed a Motion to Dismiss on *res judicata* grounds. Counsel for petitioners opposed the motion and, among other things, argued that *res judicata* was not applicable because “the facts and circumstances giving rise to the Petition did not exist. The Franks had not yet begun operation of the brewery and the issues raised by their operation of the business had not arisen.” Counsel urged that the instant Petition “is not a request to modify Judge Beverungen’s Order but rather, again, a request for an *interpretation* of that Order and the regulations on which it is based.” (emphasis in original). Based on these arguments I denied the Motion to Dismiss, stating, “I am persuaded that a Special Hearing under BCZR §§ 506 and 507 is appropriate for the limited purpose, as stated by the Petitioners, ‘for an *interpretation* of that Order [in Case No. 2017-0327-X] and the regulations on which it is based.’”

With that limited focus, a two day public hearing was held on October 27 and October 28, 2020. Due to COVID-19 restrictions the hearing was conducted virtually via Webex in lieu of an in-person hearing. The petitioners were represented by Michael R. McCann, Esquire. The owners of the subject property, Raymond and Sandra Frank, were represented by Christopher Mudd, Esquire and Adam Rosenblatt, Esquire. Numerous persons testified and voluminous exhibits were filed by both sides. At the close of the hearing it was agreed that counsel would submit legal briefs summarizing their positions.<sup>1</sup> In reaching my decision I will first set forth the necessary facts and

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<sup>1</sup> After the Hearing, one of the hearing witnesses, Carol Owens, asked that she also be allowed to submit a post-hearing brief. With the agreement of counsel for the petitioners and the Franks, the undersigned granted her request. Through counsel she has submitted a brief and reply brief which have been fully considered.

then apply the applicable law.

### **MATERIAL FACTS**

The Class 8 Inverness Brewery operations were approved in 2017 as a special exception use in this RC 2 zone. In approving this special exception ALJ Beverungen made the following relevant findings of fact based on the evidence that was before him:

“Petitioners presented two witnesses in their case. First was Sandra Frank, who described in detail the operations of her farm, including the proposed brewery? Ms. Franks stated all of the equipment needed in the operation of the brewery would be located in several of the stalls inside one of the barns on the property. She described the process of growing hops, and has dedicated several acres of the farm to produce hops which would be used in the beer. Petitioners do not propose any new construction in connection with the proposed brewery. The witness testified there would be few if any delivery trucks used in connection with the brewery, which she explained would be a ‘small system.’ The witness also described the type of special promotional events she would like to hold, all of which she indicated would be family friendly.

The next witness was David Martin, a landscape architect accepted as an expert. Mr. Martin explained the site plan he prepared for the case, and indicated he visited the property on several occasions. The witness reviewed each of the factors listed in B.C.Z.R. §502.1, and testified Petitioners have satisfied each of those requirements. He also opined the use would have no greater adverse impact at this location than on any other RC 2 zoned tract. Mr. Martin testified the brewery is an adjunct operation to the agricultural uses on the property, which will provide much needed income for the owners/farmers. This concluded Petitioners’ case, and under *Attar* I believe they established a *prima facie* case entitling them to the special exception.

Eleven community members testified; several expressed strong support for the proposal while other vehemently opposed the brewery. The Opponents are primarily concerned with noise, traffic, odors and a commercial operation in a rural, pastoral setting. While these are legitimate concerns, I believe they are inherent in the operation of a farm brewery. The obvious truth (a point conceded by Mr. Martin on cross-examination) is that a farm brewery will cause an increase in noise and traffic. But as recognized by Maryland’s highest court, most if not all special exception uses have such adverse impacts. *Montgomery County v. Butler*, 417 Md. 271, 297 (2010).

Case No. 2017-0327-X, Opinion and Order pps. 3-4.<sup>2</sup>

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<sup>2</sup> On July 12, 2017, prior to their Special Exception Hearing, the Franks had a “field meeting” and subsequent Board meeting with members of the Baltimore County Agricultural Advisory Board regarding the Franks’ request to operate

ALJ Beverungen then granted the special exception, subject to the following conditions:

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. Petitioners must comply with the ZAC comment of DEPS, a copy of which is attached hereto.
3. Prior to issuance of permits Petitioners must submit for approval by the DOP a schematic plan showing the location of any dumpster used for this facility, which must be screened in accordance with the requirements of the landscape manual.
4. The brewery shall be permitted to produce, sell and/or distribute no more than 5,000 barrels of malt beverage 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. Petitioners 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 herein are subject to modification following a public hearing, upon a showing of good cause.

The instant controversy implicates, to varying degrees, conditions 4 through 7. Of note, during opening argument concerning the scope of the hearing, counsel for the Franks acknowledged that at the prior special exception hearing Inverness had voluntarily agreed to limit their normal hours of operation to Thursday through Sunday from noon to 8 p.m. – except for the

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this farm brewery on their farm. The Board's permission was required because the property is subject to an agricultural conservation easement. According to the Board's Meeting Minutes, Mr. and Mrs. Frank gave the Board members a tour of the farm and explained their proposed brewery operations. Ms. Frank informed the Board that they planned to have "farm to table" events, and that "the brewery will utilize existing structures for the hop processing room, brewery room, and tasting room. The proposed brewery (approx. 39' x 26') and tasting room (approx. 68' x 36') will be located in existing barns. Crops will be grown on site to support the brewery and include: hops, barley (next year). *Large events will not exceed 12 per year to promote brewery products. The existing parking area will be used to accommodate 35 spaces with handicapped designated parking.*" (emphasis added). Based on these parameters the Agricultural Board approved the Franks' request.

8 “temporary promotional events or gatherings” each year, during which they could be open until 10 p.m. Counsel further acknowledged that this concession was made in order to obtain the special exception approval, and agreed that it remains binding on Inverness, notwithstanding the fact that the state farm brewery law allows these breweries to operate 7 days a week from 10 a.m. to 10 p.m. As People’s Counsel correctly state in their brief, “[w]hen Inverness declined to appeal ALJ Beverungen’s decision, they accepted the conditions along with the grant. They are bound by it, regardless of any objections they raised, or might have raised, as to preemption or anything else.” Brief of People’s Counsel at p. 2, *citing, Bd. of Liquor License Commr’s v. Fells Point Café*, 344 Md. 120, 137-41 (1996).

#### PETITIONERS’ CASE

Petitioners first called Renee Hamidi. She testified that she is the Executive Director of the Manor Conservancy, a land trust in Baltimore and Harford counties. However, she stated that she was appearing in her personal capacity. On cross-examination she stated that she lives about four miles from Inverness. She described doing extensive internet research concerning the Inverness operations, focusing on the size and frequency of the events that have been occurring there. She did this primarily by following Inverness’ website and its Facebook and Instagram accounts. She identified Petitioners’ Exhibit 7 as a collection of “screenshots” she took of the “2019 Events” listed on the Inverness website. She noted that Inverness always referred to them as “events” until sometime in mid-2020 when they began calling them “happenings.” *See, e.g.,* Exh. 7, p. 22. She identified Petitioner’s Exhibit 8 as screenshots from the Inverness Facebook page advertising various events and festivals, and soliciting persons to “book your holiday get together today!” She identified Petitioner’s Exhibit 10 as Inverness posts advertising their capacity to host private

parties from 25-100 people, and notices that other area businesses would be doing “pop up” events at Inverness. She identified Petitioner’s Exhibit 9 as a series of aerial drone photos purportedly taken in October 2019. She testified that she counted 518 cars parked at Inverness in one of the photos.<sup>3</sup> Ms. Hamidi testified that she went to Inverness on October 17, 2020 and observed a large crowd and a band playing amplified rock music. She observed that there were three separate bar areas – one in the Horse Stall, and one upstairs and one downstairs in the Barn. She estimated that there were around 400 cars parked in the adjoining field. She identified Petitioner’s Exhibit 11 as videos posted on Inverness’ Facebook page showing events at Inverness on four dates in July and August of 2019. She identified Petitioner’s Exhibit 13 as “special event” applications Inverness submitted to the state Comptroller, and the resulting “special event permits” that were issued. She then identified and explained Petitioner’s Exhibit 14, a chart she had created showing all of the activities Inverness had hosted, from its “Grand Opening” on September 22, 2018 through a “Field of Dreams Cowpie Fundraiser Event” on November 15, 2020. She explained that she had compiled this chart from posts on Inverness’s Facebook and Instagram accounts. The chart has 8 columns: “date” “event” “live music” “beer release” “charge/ticket” “event” (occasions when Inverness had actually referred to the occasion as an “event”) “past 8 p.m.” and “permit.”

According to this chart, Inverness hosted 12 gatherings in 2018, 117 in 2019, and 114 through November 15, 2020. The chart further indicates that Inverness was open past 8 p.m. on 15 dates in 2019 and 15 dates in 2020. Ms. Hamidi acknowledged on cross-examination that Inverness had obtained state “special event permits” for all but two of the dates that they were open past 8. The chart indicates that there was live music at virtually all these gatherings, and that an admission

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<sup>3</sup> Ryan Frank testified that these photos must actually have been taken in October **2020** during the Inverness “Fall Fest” event, an event for which they obtained the required state permit, and which Inverness considered to be one of the 8 events that ALJ Beverungen had permitted in his Order.

fee was charged on 21 occasions. The accuracy of the chart was not challenged by Inverness. In fact, Ryan Frank said that this exhibit was “a nicely compiled list but most of it is just normal operations.”

Petitioner, Samuel Yaffee, testified next. He explained that he and his wife live directly across Markoe Road from Inverness. He identified the Site Plan from the prior Special Exception hearing, which was admitted as Petitioners’ Exhibit 18. Of note, this Plan shows 37 parking spaces adjacent to the Stall structure, and a small additional parking area identified as a “farm equipment parking paddock.” The rest of the property is identified as “agricultural fields,” in accordance with the agricultural easement, and does not indicate that cars would be parked on these fields. He stated that “150 times a year we have a rock and roll concert across the street.” He claimed that “three days a week our quality of life is stolen from us.” He estimated that an average of 150 to 500 cars are drawn to Inverness every weekend day. He identified aerial photos taken of the Inverness operations on September 28, 2019 (Petitioner’s Exhibit 21), February 20, 2020 (Petitioner’s Exhibit 22), and June 13, 2020 (Petitioner’s Exhibit 23). These photos document his testimony concerning the volume of cars and people at Inverness, and show hundreds of cars parked in the “agricultural fields.” Mr. Yaffee testified that he downloaded an app on his phone that measures decibel levels and he claimed that it registered excessive noise levels during Inverness operations. He identified Petitioner’s Exhibit 27, which is a photo of a Sysco tractor trailer delivering food supplies to Inverness.

On cross examination Yaffe conceded that he and others had raised concerns about noise and traffic at the earlier hearing before ALJ Beverungen and that his Order placed no express restrictions on music or crowd levels.

Numerous other neighbors and community members also testified about the noise and



traffic generated by Inverness. Caroline Owens, who lives about a quarter of a mile away on Jim Pearce Road, testified that she clearly hears the music every weekend and said she feels like she is living near a “music festival venue.” She explained that she too participated in the first hearing and that based on Ms. Frank’s testimony she thought Inverness would be a small operation and that large music events would occur only 8 times a year – not every weekend. She stated that the general consensus in the community is that the Inverness operations have gotten “out of hand.” Numerous other witnesses echoed these sentiments and also described dangerous traffic conditions due to the sheer volume of cars at Inverness and suspected drunk drivers leaving the facility. One of these witnesses said Inverness sounds like a “county fair” every weekend.

Finally, there are a slew of letters from surrounding property owners describing the problems caused by the Inverness operations, including excessive noise from the amplified music, excessive and speeding traffic, and littering from vehicles leaving Inverness. These letters echo Mr. Yaffee’s and Ms. Owens’ testimony in that they describe crowds of several hundred, and expansion of operations well beyond what Ms. Frank described in the prior hearing - including the use of Port a Pots that are visible from Monkton and Markoe Roads, brewery equipment outside the stall structure, and tractor trailer delivery trucks. One of the letters likens a typical weekend day at Inverness to the Timonium Fairgrounds or the Preakness infield. These letters complain that events like car shows, and the hosting of “pop up” events for other businesses are not agriculturally related, and are not in keeping with the RC 2 zone or the agricultural easement. These letters from neighboring property owners lament the loss of quiet enjoyment of their property and ask that Inverness be required to abide by the limits of the prior Order – primarily the limitation of 8 live music events a year.

#### INVERNESS’ CASE

Inverness first called a Mr. Tom Barse, the owner of “Milkhouse” farm brewery in Frederick County. Over objection by Mr. McCann<sup>4</sup> he testified that he is an attorney and has also been a farmer and brewer for many years. He explained that he was involved in the drafting and passage of the state farm brewery bill, which he said was patterned on the law permitting farm wineries. He explained that the original farm brewery law was enacted in 2012 and only allowed these breweries to be open until 6 p.m. He testified that the law was amended in 2018 to extend the hours until 10 p.m. He testified that he regularly has live amplified bluegrass bands at his Milkhouse brewery, as well as other events associated with the sheep raising and other farming activities that are the primary focus of the farm. He explained that he does not apply for state “promotional event permits” for the regular bluegrass concerts as he considers them just a normal part of the brewery’s operations. He noted that wineries – the model for these farm breweries- often have music on the premises to enhance the customer experience. He testified that there are only about 15 residences within several miles of Milkhouse brewery and that on a busy Saturday they may have 200 people there.

Upon questioning from Mr. McCann he described the various agricultural uses on his farm that the Milkhouse brewery helps support, including: sheep breeding and raising, cattle raising, hop and wheat growing, honey production, and a community garden. He stressed that the brewery merely supports the agricultural operations. When asked, Barse had difficulty distinguishing between normal brewery operations and the type of event which would require a state permit. Mr. McCann asked him “are you suggesting that a farm brewery could hold an event 365 days a year

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<sup>4</sup> Mr. McCann objected to allowing Barse to testify about the legislative history or proper interpretation of the state farm brewery law on the grounds that it was not relevant, and that the legal interpretation was for the court. I sustained the objection as to testimony concerning the legal interpretation of the statute but allowed Barse to give some background on the farm brewery business in Maryland and to describe the nature of his farm brewery operations as a comparator to what Inverness is doing.

but would only need to get a state permit for 12 such events?” Barse said that he was making no such suggestion. He then offered that “In my mind an ‘event’ is when you do something you don’t normally do, like a fall hayride event or something like that.”

The Respondents also called Kevin Atticks, the Executive Director of the Brewers Association of Maryland and the Maryland Wineries Association. Atticks testified that he regularly provides marketing and operational advice to these breweries and wineries. He testified that he has personally visited more than 20 farm breweries statewide, including Inverness on three occasions. He testified that live music is a regular part of most of these breweries’ operations. He testified that he was involved in drafting both the state brewery law amendments and also the Baltimore County farm brewery law. He stated that the provisions of the state law concerning “promotional event permits” (Md. Code. Ann., Alcoholic Beverages, § 2-210 (j)) are mere surplusage. This is so, he said, because a licensed farm brewery is at all times allowed to do all of the things that are allowed under a “promotional event permit,” including the sale of beer, and the hosting of live music and large crowds. He testified that in his experience farm breweries rarely obtain these state permits for any of their events. He further testified that prior to the Covid crisis there was a strong lobbying effort in the General Assembly to repeal subsection (j) of the farm brewery law. Finally, he testified that Inverness’s operations are similar to many other Maryland farm breweries, although he stated that the scale of the Inverness operations in terms of live music and crowd size was on the “medium to high side.” On cross examination he acknowledged that subsection (j) has not yet been repealed and is still law. And on questioning by the undersigned Atticks acknowledged that “promotional events” are not defined in the state law, and that the County was therefore free to define the meaning of “temporary promotional events” in the BCZR. He also acknowledged that the ALJ’s interpretation of “event” is what controls in this Special Hearing

case.

Respondents also called a number of neighborhood residents who sang the praises of Inverness. They described it as a wonderful, family-friendly addition to the neighborhood, and denied that there were problems with excessive noise and traffic. Frank Marchant, who lives directly across the street from Inverness, vehemently denied any noise or traffic problems there. In short, his testimony was diametrically opposed to Mr. Yaffee's and Ms. Owens' testimony; and to the numerous letters in opposition to the Inverness operations.

Ryan Frank was Respondents' last witness. He testified that his parents own the Inverness farm brewery. He explained that it is a family run business, and that he and his brother are heavily involved despite having full time occupations – he as a financial adviser. He described the Inverness operations, explaining that, per ALJ Beverungen's Order, they are only open Thursday thru Sunday from noon to 8 p.m. He testified that there is no live music on Thursdays but that there usually is on Friday, Saturday and Sunday, weather permitting. He disputed that the music is excessively loud. He identified two videotapes made on separate occasions that show him or his brother in close proximity to a live amplified band holding a handheld decimeter showing readings in the 60s and 70s. However, as with the Petitioner, the Respondents offered no expert testimony to adequately explain or quantify the import of these decimeter readings. He testified that Inverness has been busier during the Covid crisis because their outdoor setting allows for public gatherings with adequate social distancing. He stated that the County has inspected Inverness' compliance with Covid protocols on several occasions and has found no problems. He testified that he believes that under ALJ Beverungen's Order they are allowed to have large crowds and live amplified music whenever they are open. He stated that they "were fine" with the 8 event limit in the Order. He stated that he doesn't understand how some of the neighbors seemed to believe that this meant

that Inverness could only have gatherings of people 8 times a year. He stated it would be impossible for Inverness to make it financially if that were the case. He questioned why the Order allows them to brew 5,000 barrels a year if they were only allowed to have gatherings 8 times a year. He explained that they have only applied for the state permits on the occasions when they have exercised their rights under the Order to remain open until 10 p.m. – and that these are what he considers the “temporary promotional events or gatherings” permitted under the Order. He identified Respondents’ Exhibit 15, which is a list of seven of these 3 day state permitted events in 2019, and five in 2020. He also identified and explained Respondents’ Exhibit 17, which are the Inverness “Brewery Tax Returns” showing that they produced 664 barrels of beer in 2019, and he noted that the Order allows them to produce up to 5,000 barrels a year.

On cross-examination Mr. McCann asked Ryan Frank why his mother, Sandra Frank, was not testifying at this hearing since she was the primary witness in the hearing before ALJ Beverungen. Ryan Frank explained that the first hearing had been very stressful for his mother and he wanted to spare her that stress this time. Mr. Frank stated that he had attended the prior hearing. Mr. McCann asked him if he was aware that Petitioners had tried, unsuccessfully, to serve Sandra Frank with a subpoena for this hearing and Mr. Frank acknowledged he was aware of this. He stated that he was unaware that counsel for the Franks had declined Mr. McCann’s requests to accept service of the subpoena on behalf of Sandra Frank. He acknowledged that in the prior hearing his mother had described their plans to have only a “small tasting room.” He testified that he did not remember his mother stating that they planned to produce only about 260 barrels a year, and that they did not intend to have cover charges. He did recall his mother testifying that they only intended to have “small neighborhood events.” He acknowledged that their state farm brewery license requires them to use at least one ingredient grown on the farm in their brewing

operations. But he stated that they grow both hops and barley on the premises for use in their brewing. He did not, however, state what quantities of these ingredients are grown there.<sup>5</sup> He stated that they host approximately 30 new beer release parties a year.

The case file also contains numerous letters of support from Inverness patrons. These letters describe a nice outdoor gathering space that has been especially welcome during the Covid crisis.

### DECISION

As noted by People’s Counsel, a special hearing under BCZR § 500.7 is in the nature of a declaratory judgment action. *Antwerpen v. Baltimore County*, 163 Md. App. 194, 209 (2005). The purpose of this hearing was to interpret ALJ Beverungen’s prior Order and to determine whether or not Inverness is abiding by the terms of it.

#### The State Law – Md. Code Ann., Alcoholic Beverages, § 2-210

As is too often the case, the state “Class 8 farm brewery” law is not a model of clarity. However, the relevant provisions of the law allow the Class 8 licensee to do a variety of things, including: produce, sell, and deliver beer to a licensed wholesaler § 2-210(b)(1)(i)(ii); and to produce and sell beer for on premises consumption § 2-210(c)(1)(i), from 10 a.m. to 10 p.m. § 2-210(f), seven days a week. § 2-210(g). In addition, the licensee is permitted to host a 3 day “Brewery Promotional Event” up to 12 times a year if they obtain a state permit. § 2-210(j). Finally, the state law provides that “notwithstanding any local law, a license holder may exercise the privileges of a Class 8 farm brewery license.” § 2-210(e)(1).

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<sup>5</sup> At the prior hearing Ms. Franks testified that they have planted “several acres” of hops on the 92 acre farm. In this hearing there was some limited testimony concerning beef raising on the farm but this was not quantified and none of the aerial photos show any livestock.

The County Law – The RC 2 Zone – BCZR §1A01

§1A01.1.B

Purposes. The R.C.2 zoning classification is established pursuant to the legislative findings above in order to foster conditions favorable to a continued agricultural use of the productive agricultural areas of Baltimore County by preventing incompatible forms and degrees of urban uses.

§ 1A01.2. - Use regulations.

Preferred use permitted as of right. Agricultural operations, when conducted in accordance with good and reasonable husbandry practices, shall be afforded preferential treatment over and above all other permitted uses in R.C.2 Zones.

§ 1A01.2.C Uses permitted by special exception.

§ 1A01.2.C.31 Agricultural support uses

j. Brewery, Class 7 or Class 8, including accessory retail and wholesale distribution of beer produced on the premises. Temporary promotional events, such as beer tasting or public gatherings associated with the brewery, are permitted subject to approval by the Administrative Law Judge or Board of Appeals on appeal.

According to the Order in the prior Special Exception case, Ms. Frank testified that they intended to operate a “small system” brewery. She testified that they would have only one “small tasting room,” that all the brewery equipment would be located inside the Stall structure, and that there would be “few, if any delivery trucks.” She also described the “family friendly” neighborhood special events they planned to hold. When asked whether there would be live music at these events Ms. Franks responded yes, but “probably not loud music, [just] people walking around.” The landscape architect who described the Site Plan testified that the brewery would be “an adjunct operation to the agricultural uses on the property.” The DOP noted in its ZAC comment in the prior case that the Baltimore County Agricultural Land Preservation Advisory Board had “approved the proposed use to be farm related under the terms of the agricultural easement.”

As noted above, the Site Plan submitted in the prior hearing shows only 37 parking spaces directly adjacent to the Stall structure, and a small auxiliary parking lot described as “existing farm

equipment parking paddock.” There is no indication on the Site Plan that the “agricultural fields” would be used to park hundreds of vehicles. BCZR § 1A01.2.C.31.j, which allows Class 8 farm breweries by special exception as an “agricultural support use” provides that “temporary promotional events, such as beer tasting or public gatherings associated with the brewery, are permitted subject to approval by the Administrative Law Judge or Board of Appeals on appeal.” And the state law allows Class 8 farm breweries to host up to 12 three-day “Brewery Promotional Events” each year if they obtain the necessary permits. Based on the evidence before him ALJ Beverungen authorized Inverness to host 8 such events or gatherings each year, and permitted Inverness to remain open an additional two hours on these occasions.

Neither the state nor the county law define what is meant by a “brewery promotional event,” or a “temporary promotional event,” but the terms must mean *something*. In their post-hearing brief Respondents note that one of the cardinal rules of statutory construction is that courts should “adopt that construction which avoids an unreasonable result,” quoting, *Curran v. Price*, 334 Md. 149, 172 (1994). And further, that courts should “neither add nor delete language so as to reflect an intent not evidenced in the plain and unambiguous language of the statute, and we do not construe a statute with forced or subtle interpretations that limit or extend its application.” *In re J.J.*, 456 Md. 428, 449 (2017).

Yet Respondents would have me do just that; because according to their interpretation of the state and county laws, the activities permitted at these “special events,” are no different than that which are allowed every day these farm breweries are open. Under that interpretation of these laws, the language in the state law requiring “brewery promotional event” permits, and the language in the BCZR requiring ALJ approval for “temporary promotional events” becomes mere surplusage. And it is well established that courts must “interpret the statute as a whole to ensure



that no word, clause, sentence or phrase is rendered surplusage, superfluous, meaningless or nugatory.” *Johnson v. State*, 467 Md. 362, 372, 225 A.3d 44 (2020) (quoting *Phillips v. State*, 451 Md. 180, 196-97, 152 A.3d 712 (2017)).

Respondents’ position, distilled to its essence, is that their state license allows them to host large crowds and live amplified music every day of the year, and their only limitations are the limitations they agreed to in the special exception case – which they say are subject to modification by them and them alone.<sup>6</sup> But this interpretation completely ignores subsection § 2-210(j) of the state law, which limits “brewery promotional events” to 12 a year. And it also writes the phrase “temporary promotional event” out of the county law. Indeed, if Inverness hosts a music festival virtually every day they are open then it is not *temporary*, and it is not an *event*. Perversely, it is just what Ryan Frank said it is: “just normal operations.” Indeed, as noted above, Mr. Atticks testified that if a farm brewery such as Inverness regularly hosts large crowds and amplified rock bands then this just becomes their regular business model and these mini-Woodstock festivals do not count as special events. Therefore, in his view, they do not require permits, and there is no limit on the number that can be held each year.

This interpretation completely warps the plain meaning of both the state and county laws, and also makes the 8 event limit in the prior Order meaningless. The strained logic of this interpretation is evidenced by the fact that both Mr. Barse and Mr. Atticks conceded on cross examination that there *are* in fact gatherings and occasions that should be classified as special

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<sup>6</sup> Respondents’ post trial brief argues that only the Franks are permitted to seek modification of ALJ Beverungen’s Order. This is contrary to the plain language of the Order, which simply states that “[a]fter the proposed brewery has been in operation for one year the restrictions contained herein are subject to modification following a public hearing, upon a showing of good cause.” And, as People’s Counsel note at page 3 of their brief, “BCZR § 500.7 is broad in scope. It would be arbitrary and capricious to allow Inverness to request modification, but bar the area citizens.”

events. Mr. Barse testified that the annual autumn “hayride” event that is held at Milkhouse Brewery could be considered a “brewery promotional event” under the state law. And on cross-examination Mr. McCann asked Mr. Atticks “you said an event would be something that’s themed, sometimes related to a holiday. Something that provides a specific or different reason to come to the brewery. Is that, did I accurately scribe down your testimony in that regard? Atticks responded “sure, yeah.”

In the prior Special Exception case Ms. Frank testified that Inverness would be a small, family friendly farm brewery and the Franks accepted the limitation of hosting only 8 “temporary promotional events.” The Site Plan shows only 37 parking spaces with limited additional parking. Ms. Frank further testified that they did not plan on having loud music. As noted above, the Franks also told the Agricultural Board that there would be only 35 parking spaces.

Counsel for the Franks argue that ALJ Beverungen heard and considered the neighbors’ concerns about increased noise and traffic and that he still did not place any restrictions on crowd size and did not prohibit live music. This is true. But I believe this is because of the way Ms. Franks described their intended operations, and because of the Site Plan showing only 37 parking spaces. In short, I do not believe ALJ Beverungen was given any reason to believe that there would be hundreds of cars parked in the “agricultural fields” each weekend, and live amplified rock bands. Neither did the Agricultural Board. Nor did either envision Port-a-Pots in the open fields, or supplies delivered by the tractor-trailer load. In my view, the prior Order must be interpreted in light of the County zoning law and conservation easement that ALJ Beverungen was considering. That law, BCZR § 1A01.2.C.31.j, allows farm breweries in RC 2 zones by special exception as “agricultural support uses.” Based on the record evidence it is clear that the Inverness brewery operations have become the primary, if not sole, use of the farm. I do not believe that this is what

either the Agricultural Advisory Board or ALJ Beverungen envisioned. Although the witness testimony before me was almost comically contradictory, the photographic and video evidence clearly document huge crowds and loud music on a regular basis, as does the Chart admitted as Petitioners' Exhibit 14. I find that this is contrary to the spirit and intent of the prior Order and the "agricultural support" special exception use. The Inverness brewery operations do not appear to be an agricultural *support* – they appear to be the principal business of the Franks' farm.

Ryan Frank suggested that ALJ Beverungen must have anticipated operations of this scale because he allowed Inverness to produce up to 5,000 barrels a year. I do not make that inference because it is equally likely that the Judge was considering that Inverness would produce beer for wholesale off-premises distribution, as is also permitted by its state license.

Although ALJ Beverungen envisioned some increase in noise and traffic I don't believe he envisioned the "Timonium fairgrounds," or the "Preakness infield" every weekend. I am not suggesting that Ms. Frank was untruthful in describing her plans for the brewery. Rather, I believe, as several of the neighbors said, that the scale of the Inverness operation has just gradually gotten "out of hand," and that the Covid crisis has increased crowd sizes this past year. But if these large, live music events were allowed to continue every weekend it would render the 8 "temporary promotional event" limit in the Order a nullity.<sup>7</sup>

**In their Motion for Reconsideration the Petitioners urge that Sandra Frank testified at the first hearing that for the "day to day" operations at Inverness that in addition to the existing 35 space lot depicted on the Site Plan, that they intended to have cars park in all four**

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<sup>7</sup> Respondents also urge that the state brewery law totally pre-empts the County from placing any limits on a state licensee's rights. First, this is a spurious argument in the instant case because Inverness voluntarily agreed to certain restrictions on their operations in the first hearing. Second, although the state law provides a licensee certain defined rights, counties are not preempted from enacting local laws under the Express Powers Act, as long as they don't conflict with the provisions of the state law. *See*, People's Counsel brief at pps. 4-5. And Mr. Atticks acknowledged that the Baltimore County farm brewery law and ALJ Beverungen's Order are valid and binding.

of the paddocks north of that existing parking area. *See*, Respondents' Motion at paragraph 6.

After examining the excerpts of Ms. Frank's testimony that are attached to the Motion, and considering the arguments of all counsel, I believe a more accurate interpretation, when viewed with the rest of the evidence, is that Ms. Franks testified that they would use the two nearest paddock areas for overflow parking during special events. And that during normal operations at this small scale farm brewery the existing lot would accommodate all the necessary parking.

THEREFORE, IT IS ORDERED this 16<sup>th</sup> day of February, 2021 by this Administrative Law Judge, that the Opinion and Order in Case No. 2017-0327-X is interpreted as follows:

1. That Inverness is permitted to be open from noon until 8 p.m. Thursday through Sunday.
2. That Inverness is permitted to host eight (8) "temporary promotional events or gatherings associated with the brewery per year," and that during these events they can be open from noon until 10 p.m.
3. That based on state law these events can each last up to three (3) days, for a total of twenty four (24) "event" days per year.
4. That Inverness is permitted to have live, amplified electric music at these temporary promotional events, and is permitted to have unamplified, acoustic music at all other times.
5. That, (i) during regular business days, Inverness is permitted to park cars only in the pre-existing parking lot area depicted on the site plan introduced in Case No. 2017-0327-X (i.e., the area behind the existing barn structure containing room for +/- 35 parking spaces), and (ii) during temporary promotional events, Inverness is also

**permitted to park cars in the two horse paddocks immediately north of that lot, and nowhere else.”**

6. No further structures shall be constructed to house Inverness brewery operations, and no additional brewery equipment shall be permitted outside the stall and barn structures. No Port-a-Pot type bathroom facilities shall be used except during the 8 temporary promotional events.
7. Inverness shall remain limited to the production of no more than 5,000 barrels of beer per year.

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

\_\_\_\_ Signed \_\_\_\_\_  
PAUL M. MAYHEW  
Managing Administrative Law Judge  
for Baltimore County

PMM/dlm