



Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

October 11, 2018

Lawrence E. Schmidt, Esquire
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, Maryland 21204

J. Carroll Holzer, Esquire
508 Fairmount Avenue
Towson, Maryland 21286

RE: In the Matter of: *Roger L. Elliott*
Case No.: 17-332-SPHXA

Dear Counsel:

Enclosed please find a copy of the final Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT.** Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Sunny Cannington".

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Enclosure
Duplicate Original Cover Letter

c: Robert L. Elliott, Esquire
Sallie Waller
Mittal and Harnisha Parjapati
Bruce E. Doak
Lynne Jones, President/Sparks-Glencoe Community Planning Council
Tammie Monaco
Office of People's Counsel
Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Deputy Administrative Officer, and Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
Michael E. Field, County Attorney/Office of Law

IN THE MATTER OF

Roger L. Elliott
Property Owner

15815 Falls Road
Sparks, MD 21152

5th Election District
3rd Councilmanic District

* BEFORE THE

* BOARD OF APPEALS

* OF

* BALTIMORE COUNTY

* Case No.: 2017-0332-SPHXA

*

* * * * *

ORDER

This matter comes before the Board of Appeals of Baltimore County as a *de novo* appeal of the August 25, 2017 decision of Administrative Law Judge ("ALJ") John E. Beverungen of the Office of Administrative Hearings related to the above captioned matter. In his Opinion and Order, ALJ Beverungen granted a Motion to Dismiss the zoning petitions filed herein by Roger L. Elliott ("Petitioner" or "Property Owner") on res judicata grounds. The petitions at issue included a Petition for Special Exception to permit the entire property to be used as a riding stable. Also requested was relief via a Petition for Special Hearing to amend by expanding and clarifying a previously approved special exception in Case Number 2015-196-XA by allowing additional horses to be boarded/present on the property by striking a restriction (number 6) entered in the previous case which permitted a maximum of only five horses to be on the property and by modifying a zoning restriction entered in the prior case prohibiting trail riding in areas of the property encumbered by forest buffer and/or forest conservation easement. Finally, variance relief is requested to allow a parking lot to not be screened and buffered as otherwise required, to be of a non-durable and dustless surface and not to be striped.

The Petitioner and his daughter (Julia Elliott, who operates the existing riding stable on the property) through their attorneys, Lawrence E. Schmidt and Smith, Gildea, and Schmidt, LLC, filed an appeal of the ALJ's decision and appeared at the Board's hearing. Also appearing was Sallie Waller, a neighbor and her attorney J. Carroll Holzer. Also appearing and participating was Peter Max Zimmerman of the Office of People's Counsel. Other interested persons who attended the hearing were Wendy McIver, C. Ross Menchey and Marge Menchey.

The proffered testimony and evidence was that the subject property is approximately 33.829 acres in area, zoned R.C. 2. As shown on a site plan submitted at the hearing and prepared by surveyor Bruce Doak, the property is improved with a dwelling (Julia Elliott's residence) and a series of outbuildings. It is to be noted that the Petitioner and his wife reside on an adjacent tract known as 15817 Falls Road and Mr. Elliott's brother, Gregory Elliott, also owns a separate adjacent property. Ms. Waller also owns adjacent property and resides thereon at 18513 Falls Road.

The zoning history of the property is of note. In case number 2013-0052-A, a variance was granted to allow an existing shed (accessory structure) to be located in the front yard of the property in lieu of the required rear yard and a barn was permitted with a height of 42 feet in lieu of the maximum permitted 15 feet. These improvements currently exist on the property. A second case, case number 2015-196-X, is of particular relevance. In that matter, special exception relief was granted to permit a riding stable operation on the property. Further, certain variances were approved as to the County's parking requirements, specifically as to the dimension, composition and landscaping of a parking area adjacent to the barn and shed.

Since the approval of the riding stable in the prior case, the property has been used in that manner by Petitioner's daughter, Julia Elliott. Ms. Elliott now desires to modify and modestly

expand the use through the instant petitions. Ms. Waller is concerned about the proposed expansion and its impact on her property and the area, as is the Office of People's Counsel. Fortunately, at the Board's hearing, the parties advised that they had reached a settlement insofar as their differences and concerns which are reflected in a written agreement accepted into evidence by the Board as Petitioner's Exhibit 1. Although the agreement clearly speaks for itself, it generally restricts the number of horses allowed on the property, regulates the location and use of a proposed new barn on the property and provides similar restrictions and understandings as to the use of the property and riding stable operation. The parties ask that the terms and conditions of their agreement be incorporated in any order issued by the Board approving the instant petitions and the Board concurs and will do so.

Essentially, as discussed within the settlement agreement and shown on the site plan (Petitioner's Exhibit 2B), the new barn (36 x 72 feet) will be constructed in the rear portion of the property. This construction will increase the capacity of the number of horses that can be boarded and/or maintained on the property. Specifically, no more than fifteen horses can be boarded and the Elliott family may keep no more than two additional horses (for their personal use) on the property. Near the garage is a proposed parking area to accommodate visitors. As was the case with the original parking area in the prior case, the parties desire that the parking surface be of a stone or non-impervious surface so as to maintain the rural character of the area and avoid the appearance and water runoff often associated with an asphalt or macadam parking surface. The variances requested in the instant case are designed to address these issues insofar as the proposed parking area adjacent to the new garage.

The Special Exception request was filed to simply clarify that the entire property will be used for the riding stable operation, and not simply the small area previously shown in the front

portion of the lot where the shed, barn and current parking area are located. As noted above, the new barn is located in the rear of the property and there are also riding areas shown on the site plan within that portion of the property.

The Special Hearing request has two components. One, obviously enough, is to increase the number of horse allowed from the five previously approved to fifteen (plus two for personal use) as stated in the settlement agreement. The second part of the Special Hearing relates to trail riding. The Petitioner acknowledges and agrees that Baltimore County's Department of Environmental Protection and Sustainability ("EPS") has jurisdiction over the County's environmental regulations and the environmental easements which bind the subject property. Those easements (i.e. forest conservation and forest buffer) prohibit certain activities within the easement areas. The Petitioner acknowledges the binding nature of those restrictions/conditions but filed the special hearing because the prior matter (case number 2015-196-XA) arguably (by restriction) conferred jurisdiction over this issue to the Zoning Office rather than EPS. That is, it is agreed that in the event any alteration is made to the easements and the permitted uses therein, such change must be approved and is within the jurisdiction of EPS but such alteration would not require zoning approval.

In addition to the issues identified within the petitions and the settlement agreement, another issue arose during the course of the Board's public hearing. Specifically, the site plan shows a proposed manure storage bin on the property near the new barn. BCZR §404.8 requires that such bin is located at least fifty feet of the property line and the bin (as shown) is less than that distance. A variance from this requirement was not specifically requested in the petition. Mr. Elliott testified during the hearing that the adjacent property (clearly most affected by the bin) is under new ownership and that the new owner (Fandharnishe Prajapati, M.D.) consented to the location

of the bin where shown. The Board held open the record of the case. Subsequent to the hearing the Board received written confirmation from Dr. Prajapati, confirming no objection to the location of the bin where shown on the site plan. Thus, the Board will grant relief herein to allow the bin to remain in the location as shown on the site plan.

Insofar as the requested relief, the Board finds (particularly in view of the agreement of the parties) that the petitions for special exception and special hearing should be granted. The evidence presented in that this proposal (as limited by the agreement) will not be detrimental to the health, safety and general welfare of the locale and meets the requirements in BCZR § 502. Further, variance relief shall also be granted for the proposed parking area as compliant with the requirements in BCZR § 307. It is to be noted that these criteria were found to be satisfied in the prior case and the Board finds that the changes to the operation as proposed are appropriate and consistent. The changes proposed herein are not significant to the character of the operation and represent a reasonable revision to the prior plan reflecting a modest update to the riding stable operation.

THEREFORE, IT IS THIS 17th day of October, 2018 by the Board of Appeals of Baltimore County,

ORDERED that the Petition for Special Exception is granted to allow a riding stable to be operated on the subject property as shown on Petitioner's Exhibit No. 2B and as further described herein; and it is further,

ORDERED that the Petition for Special Hearing is granted to permit a maximum a fifteen horses to be boarded/maintained on the Property (plus two additional for the Petitioner's personal use) and further to vest the jurisdiction to enforce and interpret the environmental easements (forest

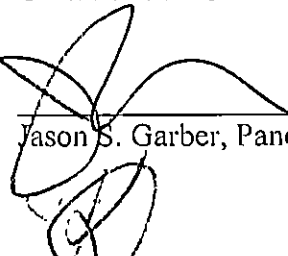
buffer and forest conservation) binding on the property exclusively in the Department of Environmental Protection and Sustainability; and it is further,

ORDERED the Petition for Variance is granted to allow a parking area (as shown on Exhibit 2B) to be on non-durable and dustless material, to not be striped, and not to be screened and landscaped except as shown on the site plan.

ALL SUBJECT TO THE FOLLOWING RESTRICTIONS:

1. The terms and conditions of the Settlement Agreement by and between the parties (Exhibit No. 1) shall be incorporated as if fully stated herein, including but not limited to the location and use of the proposed barn and related improvements, a limitation on the number of horses maintained on the property (i.e. fifteen plus two for the personal use of the Petitioner) and a prohibition on any trespassing on the Waller property..
2. Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through 7-210 of the *Maryland Rules*.

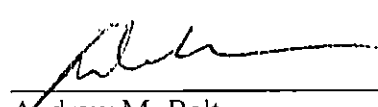
**BOARD OF APPEALS
OF BALTIMORE COUNTY**



Jason S. Garber, Panel Chairman



Kendra Randall Jolivet



Andrew M. Belt

Petitioner
1

SETTLEMENT AGREEMENT

WHEREAS, Roger Elliott (hereinafter "Elliott") is the owner of certain property located in northern Baltimore County and known as 15815 Falls Road; and,

WHEREAS, Sallie Waller (hereinafter "Waller") is the owner of property adjacent to the Elliot Property known as 15813 Falls Road; and,

WHEREAS, previously in Case No., 2015-196-XA, Elliott obtained certain special exception and variance relief in order to operate a riding stable on the Elliott property; and,

WHEREAS, Elliott has filed a second zoning petition, Case No. 2017-332-SPHXA, seeking special hearing, special exception and variance relief in order to amend and expand the approvals previously granted; and,

WHEREAS, Case No. 2017-332-SPHXA is pending at the Board of Appeals of Baltimore County; and,

WHEREAS, in order to avoid further litigation and reduce anticipated expense, the parties have reached an agreement to resolve the differences between them; and,

WHEREAS, the parties agree to memorialize their agreement herein and will request that the Board of Appeals incorporate this Settlement Agreement in their decision and Order and grant relief unto Elliott in accordance with the provisions herein; and,

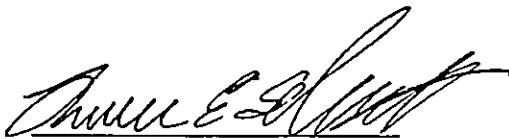
NOW THEREFORE, it is the 8th day of March, 2018 agreed by the parties as follows:

1. No more than fifteen (15) horses at any one time will be kept on the property for business purposes, except that Elliott his family may keep no more than two additional horses on the Property for their personal use;
2. No more than fifteen (15) people who are at the Property for riding or boarding purposes shall be permitted at the new ten (10) stall barn at any one time;
3. The proposed new ten (10) stall barn (approximately 36'X 72') shall be used for keeping/boarding horses and shall not be designed or used for public horse show purposes or competitions. Any fenced field/pasture enclosures shall not be used for public horse show purposes or competitions;
4. The proposed new (10) stall barn shall be built as shown on the site plan attached hereto as Exhibit 1 or not closer to the existing residence known as 15815 Falls Road;
5. No new /additional signage or other advertising shall be on or visible from Falls Road;

Petitioner
CBA Exhibit

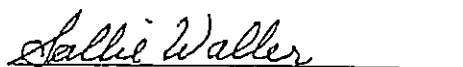
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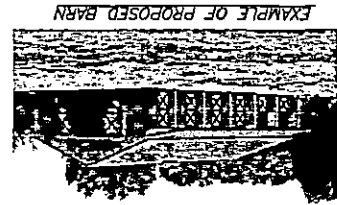
6. These conditions may only be modified by agreement between the record owners of 15813 and 15815/15817 Falls Rd or subsequent Order of the Office of Administrative Hearings or the Board of Appeals (on appeal);
7. The parties understand that any riding activity in the areas of the property encumbered with a Forest Buffer and/or Forest Conservation Easement shall only be if and as permitted by the Department of Environmental Protection and Sustainability;
8. Elliott shall advise all users/patrons of the riding stable that riding, hunting and/or trespassing is not permitted on any portion of the Waller property;
9. The provisions of this agreement are contingent upon, and shall become effective on the date of the final non-appealable approval of the attached site plan and requested zoning relief in Case No. 2017-332-SPHXA,
10. Presently, there is recorded in the Land Records of Baltimore County at Book 0029505, page 025 a "Private Easement Agreement" between the parties. This Private Easement Agreement generally governs access to the properties owned by the parties and/or their families. Nothing in this Settlement Agreement shall obstruct or interfere with the rights and obligations thereunder nor shall preclude either party from erecting a fence or barrier on property owned by them to prevent trespass or for other purposes.
11. The terms of this agreement shall be binding upon the successors and assignees of the parties hereto.


Witness

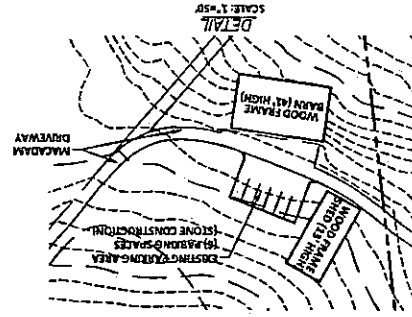

Roger Elliott


Witness


Sallie Waller



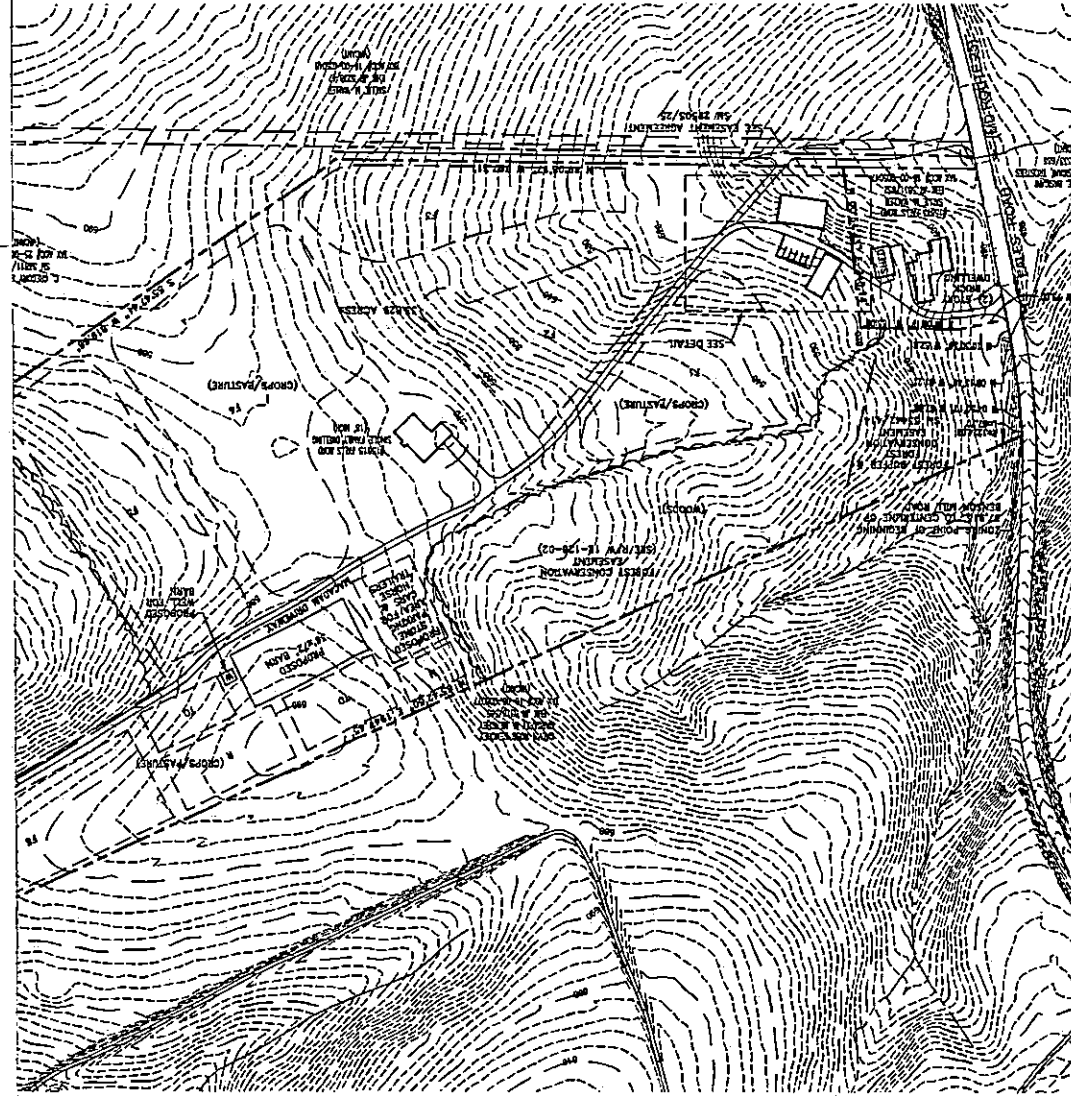
EXAMPLE OF PROPOSED BARN



SCALE: 1"=50'

SCALE: 1"=100'

PLAN LEGEND
 E1-16 FIELDS FOR PASTURE
 T10 FRONT YARD PASTURE
 B1 MANURE STORAGE



PROPOSED DEVELOPMENT

To construct an additional barn and add more parking and pastures for the facility.
 continued use of the subject property as a riding stable and a boarding facility.

1. The subject dwelling is not historic. The subject property is not in a historic district.

OFFICE OF PLANNING

Regional Planning District: Precinct: District Code: 202
 1. The subject dwelling is currently serviced by a private well and septic system.
 2. There are no underground storage tanks on the subject property.
 3. The subject property is not in the Chesapeake Bay Critical Area.
 4. The subject property is not located within a 100 year flood plain.
 5. The proposed barn will be serviced by a private well.

ENVIRONMENTAL IMPACT

Waterways: Loch Raven Reservoir. UNCL Land Type: 1
 1. The subject dwelling is currently serviced by a private well and septic system.
 2. There are no underground storage tanks on the subject property.
 3. The subject property is not in the Chesapeake Bay Critical Area.
 4. The subject property is not located within a 100 year flood plain.
 5. The proposed barn will be serviced by a private well.

OFFICE OF ZONING

Zoning: R.C. 2
 1. The subject dwelling is currently serviced by a private well and septic system.
 2. There are no underground storage tanks on the subject property.
 3. The subject property is not in the Chesapeake Bay Critical Area.
 4. The subject property is not located within a 100 year flood plain.
 5. The proposed barn will be serviced by a private well.

SITE INFORMATION

1. Owner: Robert L. Elliott
 15117 Falls Road Sparks, MD 21152
 2. Address: 15117 Falls Road Sparks, MD 21152
 3. Parcel: 3A 12111 / 414
 4. Acre: 33.829 acres (34.1211 / 414)
 5. Tax Map / Parcel / Tax account: 27 / 13 / 207 / 14-00-05049
 6. Elevation: 5
 7. The boundary shown hereon is from the deed recorded in the land records of Baltimore County, MD. Other information shown hereon was taken from Baltimore County GIS 1011 02423 & 02742 and the information is provided by Baltimore County on the internet.
 8. Improvement: Single family dwelling, barn, shed & parking lot. All of the improvements will remain.
 9. The subject dwelling is currently serviced by a private well and septic system.
 10. There are no underground storage tanks on the subject property.
 11. The subject property is not in the Chesapeake Bay Critical Area.
 12. The subject property is not located within a 100 year flood plain.
 13. The proposed barn will be serviced by a private well.

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: Roger L. Elliott

17-332-SPHXA

DATE: August 21, 2018

BOARD/PANEL: Jason S. Garber, Chairman
Kendra Randall Jolivet
Andrew M. Belt

RECORDED BY: Tammy A. Zahner, Legal Secretary

PURPOSE: To deliberate the Settlement Agreement of the parties and acceptance by new adjacent neighbor.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

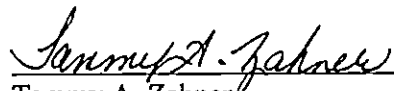
STANDING

- The Board convened for a short hearing to supplement the facts on the record, then immediately held a Public Deliberation.
- The Board found that the adjacent neighbor, who recently purchased the property, was on notice of the proceedings, and in fact, reviewed the Plan with the manure pit location and signed the Plan indicating acceptance.
- The Board members are satisfied with the Settlement Agreement in place between the parties.
- Counsel for the Petitioner will prepare and submit a proposed Order to the Board, after review by Protestants' counsel and People's Counsel.

CONCLUSION: After thorough review of the facts, testimony and law governing this matter, the Board unanimously agreed to accept the Settlement Agreement.

NOTE: These minutes, which will become part of the case file, are intended to indicate for the record that a public deliberation took place on the above date regarding this matter. The Board's final decision and the facts and findings thereto will be set out in the written Opinion and Order to be issued by the Board.

Respectfully Submitted,


Tammy A. Zahner

SMITH, GILDEA & SCHMIDT LLC

MICHAEL PAUL SMITH
DAVID K. GILDEA
LAWRENCE E. SCHMIDT
MICHAEL G. DEHAVEN
JASON T. VETTORI

MARIELA C. D'ALESSIO*
MELISSA L. ENGLISH
DUKE MAY, V
CARMELO D. MORABITO
SARAH A. ZADROZNY
of counsel:
EUGENE A. ARBAUGH, JR.
DAVID T. LAMPTON
MARY G. LOKER
*Admitted in MD, FL, PA

August 13, 2018

Sent Via Email

Krysundra Cannington, Administrator
Board of Appeals of Baltimore County
Jefferson Building
105 W. Chesapeake Avenue, Suite 203
Towson, MD 21204

**Re: In the Matter of: Roger L. Elliot
15815 Falls Road
Case No. 2017-0332-SPHXA**



Dear Ms. Cannington:

I am writing this letter for inclusion in the Board's file and in advance of the deliberation which is scheduled for August 21, 2018.

By way of background, when the parties appeared before the Board in open hearing on March 8, 2018, I presented to the Board an executed settlement agreement signed by my client (Elliott) and Mr. Holzer's client (Waller). I believe that that agreement fully resolved the issues between those two parties and that Mr. Zimmerman (on behalf of the Office of People's Counsel) expressed the sentiment that his office did not object to a resolution of the matter in accordance with that agreement.

The only open issue remaining at the conclusion of the hearing related to a proposed manure pit shown on the site plan. That pit was shown to be located approximately 30 feet from the property line of an adjacent neighbor (not Ms. Waller), Mittal and Harnisha Prajapati. As was discussed, BCZR § 404.8 requires a setback of 150 feet and no variance had been requested from that requirement. At the time of the hearing, Dr. and Mrs. Prajapati had recently acquired their property.

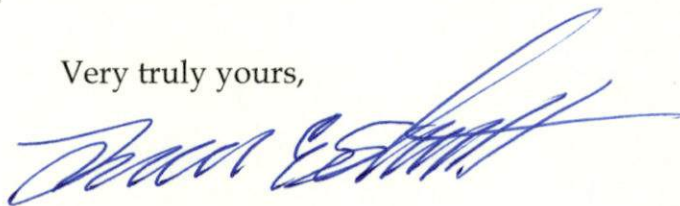
Krysundra Cannington, Administrator
Board of Appeals of Baltimore County
August 13, 2018
Page 2

As I see it, there are two potential resolutions to this issue; either of which are acceptable to my client. First, the Board can approve the requested special exception and impose/attach a condition that the pit be re-located elsewhere on the site, so long as it meets the required setback and any other relevant regulations. In the alternative, the Board can approve the site plan (as is) and permit the pit where shown. I had previously forwarded an email (which was copied to Mr. Zimmerman and Mr. Holzer) which attached a statement from the Prajapatis' indicating that they had no objection to the pit remaining where shown on the plan. As was discussed at the hearing, the Prajapati's property is quite large (approximately 23 acres) and their house sits a significant distance from the property line.

I wanted to write this letter as I am not certain if my email is part of the Board's file (as this letter will be) and to again advise that my client is agreeable to either alternative. I understand that the Board and other parties may have concerns about whether/how the pit should be addressed but I am hopeful that the Board can reach a practical and reasonable resolution, particularly in view of the agreement of all of the affected neighbors.

I attach again Dr. Prajapati's statement to ensure it is part of the file. Of course, Mr. Holzer and Mr. Zimmerman may respond as they would like. I submit this letter only to advise of my client's position and ensure it is part of the record.

Very truly yours,

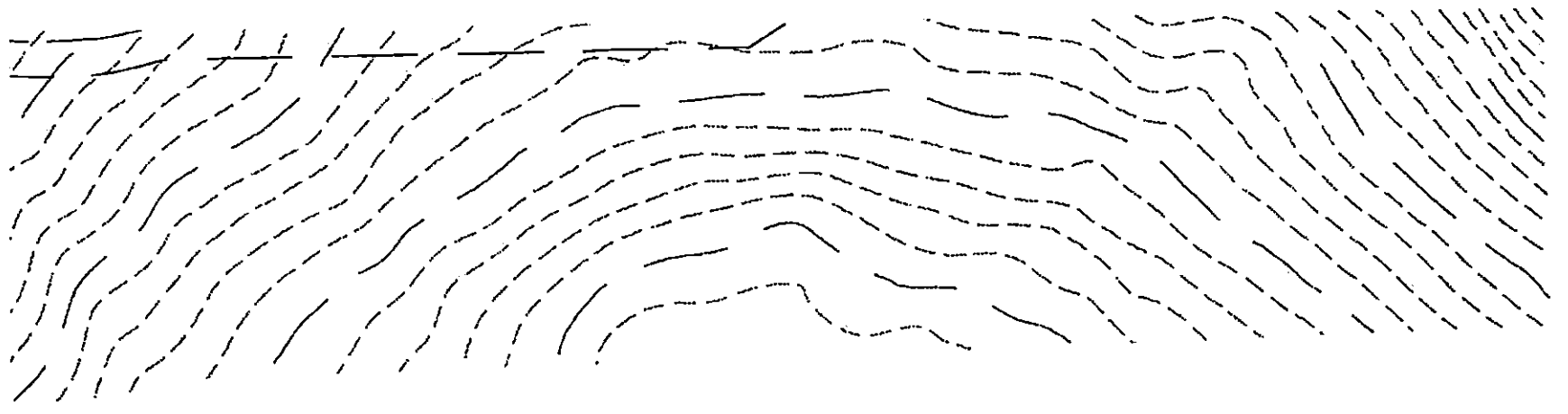


Lawrence E. Schmidt

LES/amf

Enclosure

cc: Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County
J. Carroll Holzer, Esquire
Roger Elliott, Esquire



PLAN LEGEND

F1 - F6 FIELDS FOR PASTURING HORSES
TO SHORT TERM PASTURING FOR HORSES
R RIDING ARENA
M MANURE STORAGE

Elliott has requested A Special
Exception + special Hearing to allow
proposed improvements as shown hereon
to allow riding stable (maximum 15 horses
for boarding) + variances to allow a
non-drive, non-distress, non stripped parking
area AND a manure storage area
within 30 feet of the property line
Section 404.8 ACCEPTED AS TO MANURE STORAGE WITHIN
30 FEET OF MY PROPERTY LINE. MITTAL PRAJAPATI
FOR HIMSELF AND HARNISHA PRAJAPATI

6/5/15

[Signature]
3/27/18

SMITH, GILDEA & SCHMIDT_{LLC}

600 Washington Avenue
Suite 200
Towson, Maryland 21204

Hasler

FIRST-CLASS MAIL

08/15/2018

US POSTAGE

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ZIP 21204
011D10648929

Krysundra L. Cannington
Board of Appeals of Baltimore County
105 W. Chesapeake Avenue, Suite 203
Towson, MD 21204

21204\$4711 0054





Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

August 2, 2018

NOTICE OF DELIBERATION

IN THE MATTER OF: Roger L. Elliott – Legal Owner
15815 Falls Road
17-332-SPHXA 5th Election District; 3rd Councilmanic District

- Re: Petition for Special Hearing pursuant to § 500.7 of the BCZR to:
1. To amend the approved Special Exception in Case No. 2015-0196-XA; and
 2. To amend by expanding and clarifying the previously approved Special Exception by:
 - 1) Allowing for additional horses for boarding and other lawful purposes and striking the previous condition #6 of only allowing 5 horses; and
 - 2) Adding to or modifying the previous condition #5 with language prohibiting trail riding in the Forest Buffer and Forest Conservation areas unless and/or as permitted by the Director of the DEPS or other governing agency.

Petition for Special Exception to permit a riding stable/boarding table on an existing AG farm, as a riding stable is defined in BCZR Section 101.1, per Section 1A01.2.C.22 of the BCZR.

Petition for Variances pursuant to the BCZR as follows:

1. To permit a parking area with no screening or landscaping in lieu of the required screening and landscaping per Section 409.8.A.1; and
2. To permit a parking area to be surfaced with stone in lieu of the required durable and dustless surface per Section 409.8.A.2; and
3. To permit a parking area not to be striped in lieu of the striping requirement per Section 409.8.A.6.

8/25/17 Order on Motion to Dismiss issued by the Administrative Law Judge wherein the Motion to Dismiss was GRANTED, and the case was DISMISSED without prejudice.

AGENDA: The Board convened for hearing in the above referenced matter on March 8, 2018. At that time, a settlement agreement was offered by the parties, however, it came to the Board's attention that an adjacent property had changed ownership, resulting in a new neighbor who has had no notice of this matter. The Board held the record of this matter open for 30 days to receive further evidence and further settlement with the new neighbor. At this time, a public deliberation in this matter is being scheduled for the following

DATE AND TIME: AUGUST 21, 2018 at 9:30 a.m.

LOCATION: Jefferson Building - Second Floor
Hearing Room #2 - Suite 206
105 W. Chesapeake Avenue

Notice of Public Deliberation
In the matter of: Roger Elliott
Case No: 17-332-SPHXA
August 2, 2018
Page 2

NOTE: PUBLIC DELIBERATIONS ARE OPEN WORK SESSIONS WHICH ALLOW THE PUBLIC TO WITNESS THE DECISION-MAKING PROCESS. ATTENDANCE IS NOT REQUIRED AND PARTICIPATION IS NOT ALLOWED. A WRITTEN OPINION AND ORDER WILL BE ISSUED BY THE BOARD WITHIN A REASONABLE TIMEFRAME AFTER THE CONCLUSION OF THE DELIBERATION. A COPY OF THAT OPINION AND ORDER WILL BE SENT TO ALL PARTIES.

For further information, including our inclement weather policy, please visit our website www.baltimorecountymd.gov/Agencies/appeals/index.html

Krysundra "Sunny" Cannington
Administrator

c: Counsel for Petitioner
Petitioner

: Lawrence E. Schmidt, Esquire
: Roger Elliott, Esquire

Counsel for Protestant
Protestant

: J. Carroll Holzer, Esquire
: Sallie Waller

Bruce E. Doak
Lynne Jones, President/Sparks-Glencoe Community Planning Council.
Tammie Monaco
Mittal and Harnisha Parjapati

Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Director/PAI
Lawrence M. Stahl, Managing Administrative Law Judge
Michael Field, County Attorney, Office of Law
Nancy West, Assistant County Attorney
Office of People's Counsel

SMITH, GILDEA & SCHMIDT
LLC

MICHAEL PAUL SMITH
DAVID K. GILDEA
LAWRENCE E. SCHMIDT
MICHAEL G. DEHAVEN
JASON T. VETTORI

MARIELA C. D'ALESSIO*
MELISSA L. ENGLISH
DUKE MAY, V
CARMELO D. MORABITO
SARAH A. ZADROZNY
of counsel
EUGENE A. ARBAUGH, JR.
DAVID T. LAMPTON
MARY C. LOKER
*Admitted in MD, FL, PA

August 13, 2018

Sent Via Email

Krysundra Cannington, Administrator
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Towson, MD 21204

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15815 Falls Road
Case No. 2017-0332-SPHXA

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I am writing this letter for inclusion in the Board's file and in advance of the deliberation which is scheduled for August 21, 2018.

By way of background, when the parties appeared before the Board in open hearing on March 8, 2018, I presented to the Board an executed settlement agreement signed by my client (Elliott) and Mr. Holzer's client (Waller). I believe that that agreement fully resolved the issues between those two parties and that Mr. Zimmerman (on behalf of the Office of People's Counsel) expressed the sentiment that his office did not object to a resolution of the matter in accordance with that agreement.

The only open issue remaining at the conclusion of the hearing related to a proposed manure pit shown on the site plan. That pit was shown to be located approximately 30 feet from the property line of an adjacent neighbor (not Ms. Waller), Mittal and Harnisha Prajapati. As was discussed, BCZR § 404.8 requires a setback of 150 feet and no variance had been requested from that requirement. At the time of the hearing, Dr. and Mrs. Prajapati had recently acquired their property.

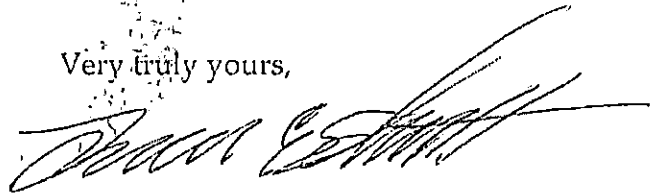
Krysundra Cannington, Administrator
Board of Appeals of Baltimore County
August 13, 2018
Page 2

As I see it, there are two potential resolutions to this issue; either of which are acceptable to my client. First, the Board can approve the requested special exception and impose/attach a condition that the pit be re-located elsewhere on the site, so long as it meets the required setback and any other relevant regulations. In the alternative, the Board can approve the site plan (as is) and permit the pit where shown. I had previously forwarded an email (which was copied to Mr. Zimmerman and Mr. Holzer) which attached a statement from the Prajapatis' indicating that they had no objection to the pit remaining where shown on the plan. As was discussed at the hearing, the Prajapati's property is quite large (approximately 23 acres) and their house sits a significant distance from the property line.

I wanted to write this letter as I am not certain if my email is part of the Board's file (as this letter will be) and to again advise that my client is agreeable to either alternative. I understand that the Board and other parties may have concerns about whether/how the pit should be addressed but I am hopeful that the Board can reach a practical and reasonable resolution, particularly in view of the agreement of all of the affected neighbors.

I attach again Dr. Prajapati's statement to ensure it is part of the file. Of course, Mr. Holzer and Mr. Zimmerman may respond as they would like. I submit this letter only to advise of my client's position and ensure it is part of the record.

Very truly yours,



Lawrence E. Schmidt

LES/amf
Enclosure

cc: Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County
J. Carroll Holzer, Esquire
Roger Elliott, Esquire

PLAN LEGEND

F1 - F6	FIELDS FOR PASTURING HORSES
TO	SHORT TERM PASTURING FOR HORSES
R	RIDING ARENA
M	MANURE STORAGE

Elliott has requested a Special Exception & Special Hearing to allow proposed improvements as shown hereon to allow riding stable (maximum 15 horses for boarding) & variances to allow a non-durable, non-distress, now stripped parking area and a manure storage area within 30 feet of the property line.

6/5/15

3021 Section 404.8 ACCEPTED AS TO MANURE STORAGE WITHIN 30 FEET OF MY PROPERTY LINE. MITAL PRAJAPATI FOR HIMSELF AND HARNISHA PRAJAPATI

Just Singh
3/27/18

Krysundra Cannington

From: Alyssa Moyers <amoyers@sgs-law.com>
Sent: Monday, August 13, 2018 4:01 PM
To: Krysundra Cannington
Cc: Carroll Holzer (jcholzer38@gmail.com); Peoples Counsel; Lawrence Schmidt
Subject: 15815 Falls Road/Case No. 2017-332-SPHXA
Attachments: Letter to BOA in advance of deliberation - pdf.PDF

Sunny ,

Please see the attached in connection with the above referenced matter.

Alyssa Fiore Moyers | Paralegal
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
amoyers@sgs-law.com | www.sgs-law.com

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Please consider the environment before printing this email.

SDAT: Real Property Search

Real Property Data Search (w3)

Search Result for BALTIMORE COUNTY

View Map
Tax Exempt:
Exempt Class:
Account Identifier:
Owner Name:
Mailing Address:

View GroundRent Redemption
View GroundRent Registration

District - 05 Account Number - 2500012245
Special Tax Recapture: NONE
Owner Information
PRAJAPATI MITTAL
PRAJAPATI HARNISHA
910 ACADEMY AVE
OWINGS MILLS MD 21117
Location & Structure Information
FALLS RD
0-0000

Use: Principal Residence:
Deed Reference:
Legal Description:
Lot: 2
Assessment Year: 2017
Plat No:
Plat Ref:
RESIDENTIAL NO /38203/ 00322
LT 2 MINOR SUB
23.297 AC
FALLS RD ESR

Parcel: 0027
Grid: 0013
Map: 0027
Sub District: 0000
Town: Ad Valorem:
Tax Class:
Finished Basement Area
Property Land Area
23.2970 AC
Last Major Renovation
Cour Use 04

Special Tax Areas:

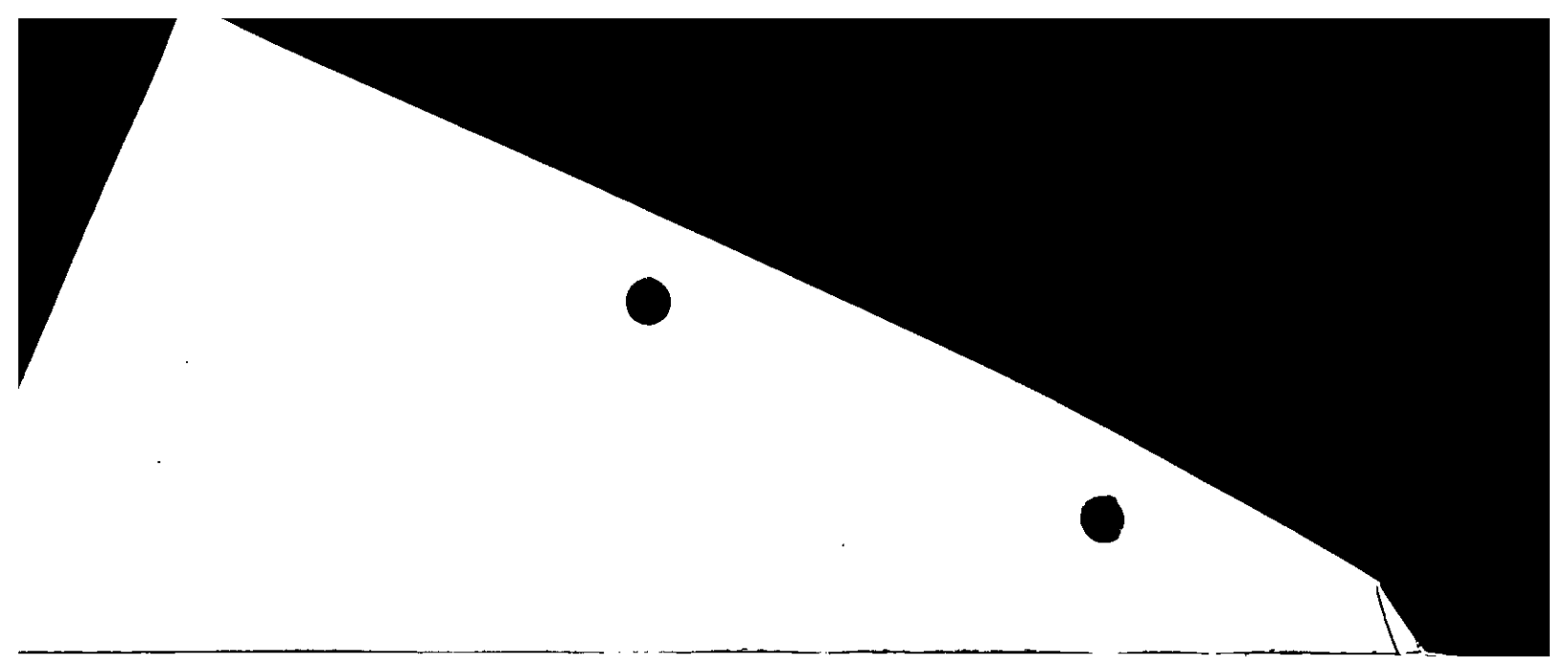
Primary Structure Built		Above Grade Living Area		Exterior		Full/Half Bath		Garage		Phase-in Assessments As of 07/01/2017	
Stories	Basement	Type	Base Value	Type	Value	Type	Value	Type	Value	As of	Last Major Renovation
			208,800		As of 01/01/2017		208,800		208,800		
			0		0		0		0		
			208,800		208,800		208,800		208,800		
			0		0		0		0		

Land: Improvements
Total:
Preferential Land:

Seller: MENCHEY CALVIN ROSS
Type: ARMS LENGTH VACANT
Seller: MENCHEY CALVIN ROSS
Type: NON-ARMS LENGTH OTHER

Transfer Information
Date: 11/01/2016
Deed1: /38203/ 00322
Date: 11/18/2014
Deed1: /35570/ 00090

Seller:
Type:
Partial Exempt Assessments:
County:
State:
Municipal:
Class 000
000
000
Exemption Information 07/01/2017
0.00
0.00
0.00



PM

PLAN LEGEND

F1 - F6 FIELDS FOR PASTURING HORSES
 TO SHORT TERM PASTURING FOR HORSES
 R RIDING ARENA
 M MANURE STORAGE

Elliott has requested a Special
 Exception & Special Hearing to allow
 proposed improvements as shown hereon
 to allow riding stable (maximum 15 horses
 for boarding) & curricula to allow a
 non-durable, non-distress, non stripped parking
 area and a manure storage area
 within 30 feet of the property line
 Section 404.8 APPROVED TO MANURE STORAGE WITHIN
 30 FEET OF PROPERTY LINE. MITAL PRASAD
 FOR WILSON FARMHOUSE PROJECT

6/5/15

Just W. P. Dab
 6/3/27/18

Krysundra Cannington

From: Lawrence Schmidt <lschmidt@sgs-law.com>
Sent: Tuesday, July 17, 2018 11:41 AM
To: Krysundra Cannington
Cc: Peoples Counsel; J. Carroll Holzer, Esquire (jcholzer38@gmail.com) (jcholzer38@gmail.com)
Subject: FW: MANURE STORAGE
Attachments: manure pit ok.pdf

Sunny; Per our telephone conversation, please find enclosed a copy of the plan wherein the new neighbor (Prajapati) accepted the location of the manure pit. As we had submitted a signed settlement agreement between the parties (Elliott and Waller) at the hearing, I do not believe that there are any open issues.

Larry Schmidt

Lawrence E. Schmidt | Partner
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
lschmidt@sgs-law.com | www.sgs-law.com

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From: Roger Elliott [mailto:elliottslaw@gmail.com]
Sent: Tuesday, March 27, 2018 7:33 PM
To: Lawrence Schmidt; Alyssa Moyers; julia; meg elliott
Subject: Fwd: MANURE STORAGE

Larry,

My neighbor , Mittal Prajapati ,MD and his wife have agreed to the location of the Manure Pit if this is still required.

Their accompanying note indicates their support for our requests/proposals.

Let me know what else, if anything, you need from me. We remain willing and able to simply locate the Pit 150' from any boundary line and not in any area governed by the Forest

Buffer/Conservation regulations which should satisfy any legitimate concerns.

Thanks,

Krysundra Cannington

From: Tammie J. Monaco <tammie.monaco@gmail.com>
Sent: Friday, July 20, 2018 11:20 PM
To: Appeals Board
Subject: Case # 2017-0332-SPHXA - 15815 Falls Road

My name is Tammie Monaco and I own the property at 15635 Falls Road in Sparks Glencoe. My driveway is the next one south of the Elliott's property which is located at 15815 Falls Road. It is my understanding that they have a case (#2017-0332-SPHXA) pending to get a variance to build a second, ten-stall boarding barn on their property and operate a riding/training stable there.

Since May of 2015, I have boarded my two ponies, via self-care, at the Elliott's "Ventura" farm.

I have been hesitant to speak out about my opposition of the Elliott's planned expansion proposal for fear of retaliation towards my equines. However, as I will be moving my animals off their farm at the end of July, I finally feel able to speak out about it. I do, however, ask for your discretion until the end of this month as my ponies are currently still on the Elliott property.

I have serious and valid reservations about this proposed operation. Having been at their farm for over three years now, I have witnessed first hand the ignorance of these non-horse people. In fact, I am the only boarder who has been there since they started their boarding operation, while many MANY others have come and gone. It has been a revolving door.

The daughter, Julia Elliott, is the supposed "barn manager" as stated on the boarding license. I am next door at the barn a minimum of twice a day to feed and care for my animals. I can count the number of times I have seen her at the barn so far this year on one hand. She seems to show minimal to no interest in the current operation. And yet they want to expand?!?

The proposed plan to have fifteen total equines on fifteen acres of land is a terrible idea. The area is just too small to support that many animals, and the environmental impact would be devastating. If you ask any true horse person, they would laugh at the notion of 15 horses on 15 acres. There is zero pasture management or rotation as it now - with only five equines currently on the property. The fields are filled with weeds. There was even an occasion this spring when I was forced to hire someone to mow my pony's pasture (despite it being one of the Elliott's responsibilities) as it was out of control and they were not able to properly maintain it. But yet they want to triple the size of their operation?!?

There is no manure management plan in place. I understand they stated on their initial boarding license application that they were planning to spread it in the fields. Well, for my three plus years there, it has simply piled up. They do not own a spreader - and all of the fields are either in pasture or crop. There is no place for them TO spread it! If you were to drive onto the property tomorrow, you would see a pile at the top of a water run-off gully and I just cannot believe that is permissible.

I moved up to the country to enjoy the peace and quiet of the bucolic northern Baltimore countryside. I am a member as well as an avid supporter of the Valleys Planning Council and their work. The thought of being subjected to a bustling, 15 horse business next door to me makes me cringe. Mr. Elliott has already applied for and been granted one exception request back in 2015. This new request should absolutely be denied based upon the fact that it would override the

restriction that was imposed by the original exception. Why is he to revisit this and have a restriction (potentially) changed?!? Is this not res judicata?

I do hope that you will deny the special exception requested by the Elliotts. As a neighbor to this operation, I am certainly willing to testify in order to support res judicata.

Tammie J. Monaco

--

Tammie



Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

July 13, 2018

Lawrence E. Schmidt, Esquire
Smith, Gildea & Schmidt, LLC
600 Washington Avenue
Suite 200
Towson, Maryland 21204

J. Carroll Holzer, Esquire
Holzer & Lee
508 Fairmount Avenue
Towson, Maryland 21286

Peter M. Zimmerman, Esquire
People's Counsel for Baltimore
County
105 W. Chesapeake Avenue
Suite 204
Towson, Maryland 21204

Re: The matter of: Roger Elliott
Case no: 17-332-SPHXA

Dear Counsel:

The Board convened for a hearing on March 8, 2018. At your request, this matter was continued to allow time for the parties to discuss settlement. Additionally, an adjacent property had had a change in ownership and the Board requested the new neighbor be notified of this pending matter.

To date, we have not heard from any party to this matter. We kindly request the status of this matter.

Thank you, in advance, for your prompt response.

Very truly yours,

A handwritten signature in cursive script that reads "Sunny Cannington".

Krysundra "Sunny" Cannington
Administrator

Multiple Original Letter

cc: Roger Elliott
Sallie Waller

S TH, GILDEA & SCH DT LLC

MICHAEL PAUL SMITH
DAVID K. GILDEA
LAWRENCE E. SCHMIDT
MICHAEL G. DEHAVEN
JASON T. VETTORI

MARIELA C. D'ALESSIO*
MELISSA L. ENGLISH
CARMELO D. MORABITO
SARAH A. ZADROZNY

of counsel:
EUGENE A. ARBAUGH, JR.
DAVID T. LAMPTON
MARY G. LOKER

*Admitted in MD, FL, PA

March 13, 2018

Sent Via Hand Delivery

Jason S. Garber, Chairman
Board of Appeals of Baltimore County
Jefferson Building
105 W. Chesapeake Avenue, Suite 203
Towson, MD 21204



**Re: In the Matter of: Roger L. Elliot
15815 Falls Road
Case No. 2017-0332-SPHXA**

Dear Chairman Garber and members of the Board:

I have received Mr. Zimmerman's letter of March 9, 2018 and this is in response thereto. Simply stated, I do not object to Mr. Zimmerman's comments and agree that the "manure storage issue" can be easily resolved. Although I initially believed that adding a variance to the relief requested might most expeditiously resolve this issue, I appreciate Mr. Zimmerman's concerns about the impact upon the neighbor who owns the adjacent tract (and who did not appear at the hearing) and the issues concerning notice of the request.

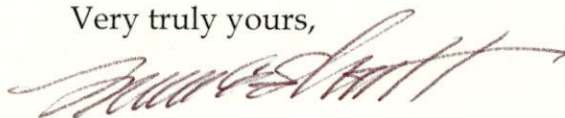
Obviously, this site is a large property of over 33 acres. There are numerous locations on the property where the manure storage area can be located that meet the 150 foot setback requirement imposed by BCZR § 404.8. Moreover, although certain areas of the property are encumbered by forest buffer and/or forest conservation easements, a large part of the property is not so encumbered and can thus accommodate the manure storage area.

I am well aware of your comments at the hearing and whether a relocation of the manure storage area may well lead to "unintended consequences" and could raise an issue that the parties and/or Board are presently unaware. Although I believe that unlikely, I believe that this can be addressed through a condition upon the grant of relief that requires the Petitioner "to relocate the manure storage area to a location at least 150 feet from any property line and approved by the Department of Environmental Protection and Sustainability before any building permit is issued." I suggest that the Board address this issue via the imposition of such a condition.

Jason S. Garber, Chairman
Board of Appeals of Baltimore County
March 13, 2018
Page 2

Additionally, as I explained at the hearing, the nature of the precise wording of the relief requested and required in the Petitions is somewhat confusing and complex. If the Board requires any further clarification as to what my client seeks and the relief requested, please do not hesitate to contact me. Thank you for your patience with this matter.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Lawrence E. Schmidt", with a stylized, flowing script.

Lawrence E. Schmidt

LES/amf

cc: Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County
J. Carroll Holzer, Esquire
Lynne Jones, Sparks-Glencoe CPC President
Glenn Shaffer, EPS
Lloyd Moxley, DOP
Roger Elliott, Esquire



Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

Jefferson Building
105 West Chesapeake Avenue, Room 204
Towson, Maryland 21204

410-887-2188
Fax: 410-823-4236

PETER MAX ZIMMERMAN
People's Counsel

March 9, 2018

CAROLE S. DEMILIO
Deputy People's Counsel

HAND DELIVERED

Jason S. Garber, Chairman
Board of Appeals of Baltimore County
105 West Chesapeake Avenue, Suite 203
Towson, Maryland 21204

Re: Roger L. Elliott
15815 Falls Road
Case No.: 2017-332-SPHXA



Dear Chairman Garber,

The purpose of this letter is to consider further the issue of the manure storage location and the BCZR Sec. 404.8 minimum setback of 150 feet from the northern property line. Given the procedural context and the basic facts adduced, the special exception approval should be conditioned on relocation of the proposed manure storage to meet the setback, subject to departmental review with reference to any other applicable laws. Notably, when the issue came up, Roger Elliott said essentially that there is ample room to relocate this area. The site plan shows substantial open area on this 33-acre property. For these and other reasons, the petitioner should comply with BCZR Sec. 404.8.

The issue arose in an unusual way. It appears helpful to elaborate.

To repeat our office's position expressed at yesterday's hearing, we do not oppose the amended special exception for the stable in the northern area of the property, based on the evidence and Settlement Agreement between Roger Elliott and Sallie Waller, and pursuant to BCZR Sec. 502.1. This includes a modification of the 2015 ALJ Order relating to the number of horses and other provisions, as stated in the Agreement. It also includes a modification of the prohibition of trail riding in the Forest Buffer and Conservation and Forest Conservation areas delineated on the site plan to provide that they may occur solely as permitted and authorized by the Baltimore County Department of Environment and Sustainability. This is consistent with the Agreement, and, more importantly with the Baltimore County Code provisions in Article 33, Title 3, for Forest Buffers and Article 33, Title 6 for Forest Conservation, as also reflected in the attached DEPS Revised Comments dated August 10, 2017 reviewed by Glenn Shaffer, part of Petitioner's Exhibit 6 and attached here for convenience. As we understand the evidence, there are be no horse shows or indoor arena proposed.

Our office also does not oppose the petition for variance of the durable and dustless surface requirements for the new parking lot. The unique environmental characteristics with the property in

this rural area justify lessening of impermeable surfaces to mitigate adverse environmental impacts. Such a parking lot fits in this rural neighborhood and does not adversely affect adjacent properties.

Having covered the elements of the petition, let me proceed to the manure storage issue. As we now know, the site plan locates the area approximately 20 feet from the northern property line, a major deviation from the required minimum setback of 150 feet. There was no request in the petition for any variance from this requirement.

Preparing for the case, I reviewed the July 27, 2017 Planning Department comment and decided to question Bruce Doak, the consultant who prepared the petition. In general, the DOP comment is supportive. But one of the recommendations is to comply with BCZR Sec. 404.8. During preparation, I had not discovered that the site plan locates the manure storage area so close to the northern boundary. Indeed, the area is marked just with a small "M," and then there is a legend near the lower part of the site plan. So, it takes a bit of digging to locate the area.

When I questioned Mr. Doak, I was just checking for compliance. He honestly replied that the location does not meet BCZR Sec. 404.8. It is, on one side, about 20 feet or so from the northern property line. He admitted in essence that he had not addressed the issue.

Because of the Agreement, the spirit of accommodation, and perhaps thinking that the case might be concluded with dispatch, I initially suggested that a variance might be possible. Fortunately, Chairman Garber, you correctly and wisely observed that no notice was provided to the adjacent property owner to the north. I had overlooked that.

Upon further discussion, it came out (I believe from Ms. Sallie Waller) that there is a new owner of the northern adjacent property, a doctor, who acquired the property a couple of years ago and is building a dwelling. Mr. Roger Elliott then observed that the manure storage area could be relocated. As I recall, he said something to the effect that this would not be a problem. Even so, it was then broached that Mr. Elliott might approach the neighbor for consent, and the Planning Department might also be contacted.

Upon further reflection, under all the circumstances, I have come to the conclusion that there is no justification for such potential variance. There is no hardship or difficulty of any kind which justifies location of the manure storage area in a way which deviates from the setback requirement. Furthermore, although Mr. Doak suggested the manure storage area would not be visible from the proposed dwelling, a property owner is entitled to the use of their entire property.

As I was also reminded after the hearing by Lynne Jones, the Sparks-Glencoe CPC President, visibility is not the only issue. Such storage areas are typically structures which are not covered. There also arise issues of odor and insect infestation.

So, as a matter of law, there is no reason to inject this additional variance in the case. To approve such a variance could also be a bad precedent.

Parenthetically, although the adjacent property owner is likely the only one affected, there is yet a jurisdictional problem. The absence of public notice deprives the Board of jurisdiction. Cassidy v.

Jason S. Garber Chairman
March 9, 2018
Page 3

County Board of Appeals 218 Md. 418 (1958). While this seems like an academic technical point here, it is the law.

It is noteworthy also that the Planning Department raised the issue in its July 27, 2017 comment. There was never any objection or other response by the Petitioner. When I read the comment, in preparation for the hearing, I assumed that Petitioner had taken steps to comply with BCZR Sec. 404.8. This assumption proved to be mistaken.

I believe the Board of Appeals can take care of this issue without the necessity for a further hearing. The Board can condition its approval on a revised site plan to relocate the manure storage area to comply with BCZR Sec. 404.8, subject to review by the Department of Planning, the Department of Permits, Approval and Inspections, and/or DEPS for compliance with any other relevant laws. Such review should not pose any significant problems, given that the only recommendation on the record so far is to comply with BCZR Sec. 404.8. Obviously, the relocation could not be in the Forest Buffer and Conservation or Forest Conservation areas, but there is plenty of room outside those areas.

Such a condition would be comparable to many conditions imposed by the ALJ and/or the Board in zoning case orders involving further submission and review of elements of cases by various departments: building elevations and architecture, landscaping and lighting, stormwater management, signage subject to BCZR Sec. 450, etc.

Thank you, Chairman Garber and the panel, for your patience, carefulness, wisdom, and attention. I hope this letter is of assistance to the Board in the resolution of this matter.

Sincerely,

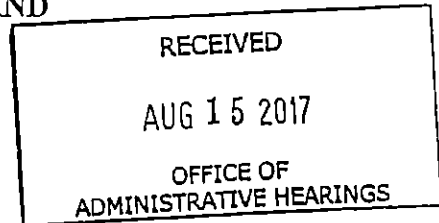


Peter Max Zimmerman
People's Counsel for Baltimore County

cc: J. Carroll Holzer, Esquire
Lawrence Schmidt, Esquire
Lynne Jones, Sparks-Glencoe CPC President
Glenn Shaffer, DEPS
Lloyd Moxley, DOP

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence



TO: Hon. Lawrence M. Stahl; Managing Administrative Law Judge
Office of Administrative Hearings

FROM: Jeff Livingston, Department of Environmental Protection and
Sustainability (EPS) - Development Coordination

DATE: August 10, 2017

SUBJECT: Revised DEPS Comments for Zoning Item # 2017-0332-SPHXA
Address 15815 Falls Road
(Elliott Property)

Zoning Advisory Committee Meeting of June 26, 2017.

- ☒ The Department of Environmental Protection and Sustainability offers the following comments on the above-referenced zoning item:
- ☒ Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 33-3-101 through 33-3-120 of the Baltimore County Code).
 - ☒ Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).

Additional Comments:

- ☒ Please condition any zoning approval that no horse riding or other disturbances shall occur in any Forest Buffer Easement or Forest Conservation Easement except solely as permitted or authorized by Baltimore County Dept. of Environmental Protection & Sustainability.

Reviewer: Glenn Shaffer Date: 8-10-2017

PM2

BALTIMORE COUNTY, MARYLAND INTER-OFFICE MEMORANDUM

TO: Arnold Jablon
Deputy Administrative Officer and
Director of Permits, Approvals and Inspections

FROM: Andrea Van Arsdale
Director, Department of Planning

SUBJECT: ZONING ADVISORY COMMITTEE COMMENTS
Case Number: 17-332

DATE: 7/27/2017

INFORMATION:

Property Address: 15815 Falls Road
Petitioner: Roger L. Ellicott
Zoning: RC 2
Requested Action: Special Hearing, Special Exception, Variance

The Department of Planning has reviewed the petition for a special hearing to determine whether or not the Administrative Law Judge (ALJ) should approve: amending the approved special exception in Case #2015-0196-XA; expanding and clarifying the previously approved special exception by allowing for additional horses for boarding and other lawful purposes and striking the previous condition # 6 of only allowing 5 horses; and adding to or modifying the previous condition #5 with language prohibiting trail riding in the forest buffer and forest conservation areas unless and/or as permitted by the director of the Department of Environmental Protection and Sustainability or other appropriate governing agency. The Department also reviewed the petition for special exception to use the property for a riding/boarding stable and the petition for variances to allow a parking area with no screening or landscaping, to be surfaced with stone, and not striped in lieu of the required screening and landscaping, durable and dustless surface and striping respectively.

A site visit was conducted on July 10, 2017.

The property was the subject of prior zoning case 2015-0196-XA wherein the ALJ granted the special exception establishing a riding stable having a parking area surfaced with stone not being striped and accessed via a two way 16' wide driveway. The ALJ imposed certain conditions in said order addressing landscaping, number of horses and the operation of the special exception.

The Department has no objection to granting the petitioned special exception with the condition that the riding stable operation meet the requirements of BCZR Section 404.8.

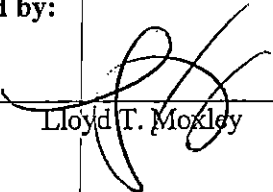
On the special hearing, the Department will concur with the determination of the ALJ based upon testimony given at the public hearing as to amending condition #6 in the prior order and the appropriate number of horses to be kept on site. The Department will support the position of the Department of Environmental Protection and Sustainability on amending condition #5 in the aforesaid case 2015-0196-XA and will concur with the decision of the ALJ.

The Department has no objection to granting the variances to allow the parking area to be surfaced with stone and not to be striped.

The Department objects to granting variance relief to allow for no screening or landscaping but instead recommends a plan be submitted for approval by the Baltimore County Landscape Architect in keeping with condition #2 of the prior zoning order 2015-0196-XA. Such a plan shall show additional landscape screening be installed between the special exception use and the property at 15813 Falls Road to mitigate impacts from any increased traffic.

For further information concerning the matters stated herein, please contact Joseph Wiley at 410-887-3480.

Prepared by:


Lloyd T. Moxley

Division Chief:


Kathy Schlabach

AVA/KS/LTM/ka

c: Joseph Wiley

James Hermann, R.L.A., Department of Permits, Approvals and Inspections
Bruce E. Doak, Bruce E. Doak Consulting
Office of the Administrative Hearings
People's Counsel for Baltimore County

Elliott 17-332-SPHXA

- Bd held hearing 3/8/18
- An adjacent property was recently bought/sold resulting in a new neighbor who has had no notice of this matter.
- While the parties are settling this matter, the Board will be holding this matter open for 30 days to receive further evidence and "settlement" with the new neighbor

7/12/18 - Call from Tammy Monoco requesting status and how to note an objection.

7/17/18 - TC w/ Larry -

March 7, 2018

~via email

Mr. Carl Richards Jr.
Chief of Baltimore County Zoning Review
County Office Building 111 West Chesapeake Avenue, Room 111
Towson, Maryland 21204.



RE: Case #2017-332-SPHXA 15815 Falls Road Sparks

Dear Chief Richards,

Gunpowder RIVERKEEPER® ("Riverkeeper") is a member based 501 (c)(3) nonprofit that represents members that have environmental, property, recreational, and aesthetic interests within the Gunpowder watershed and its tributaries.

Thank you for the opportunity to provide comments on the application for special exception Case No. 2017-332-SPHXA at 15815 Falls Rd, Sparks, MD("Site").

Riverkeeper opposes the special exception granting the site and activity on RC-2 zoned land because of concerns that the cumulative impacts of the site may pose the potential for irreversible environmental impacts to two sensitive waterways and species as described below.

Environmental attributes at proposed location are significant:

Upon review of the Baltimore County "My Neighborhood" website using the address of the subject property, tributaries of Indian Run and Black Rock Run are on and downstream of the subject property. The parcel is directly on the Indian Run and Black Rock Run subwatershed that is part of the Loch Raven Watershed, which through the Gunpowder River and Loch Raven provides drinking water for 1.6 million Baltimore-Metro area residents.

A majority of Baltimore County streams, including the above mentioned are categorized by the Maryland Department of the Environment as Use IIIP (defined as coldwater-drinking water supply streams and regulated and recognized by the Federal Water Pollution Control Act, "Clean Water Act" ¹ to protect their designated² and existing uses³.

¹ 33 U.S.C. §1251 et seq. (1972)

² Code of Maryland Regulations (COMAR) Sections 26.08.02.02 and 26.08.02.02-1.

³ 40 CFR § 131.12(a)

Notably, The Maryland Department of the Environment has identified the Indian Run and the Black Rock Run and any tributaries upstream of them as a catchment area for the Tier II (High Quality Waterways) found at page 66 of the following document typifying Maryland Water Quality Standards ⁴ and protected from degradation by COMAR 26.08.02.04. Because these related headwater streams on the subject property are within this catchment and listed as Tier II (High Quality waterways), they are subject to state and federal anti-degradation requirements. Additionally, they are also identified as USE IIP stream (coldwater--drinking water supply) known to support the Eastern Brook Trout

State studies have shown that Brook Trout, a Maryland state species of special concerns and may be extirpated when watersheds holding these sensitive species reach greater than 4% impervious surface. Adopted in 2006, the Maryland Brook Trout Management Plan⁵ recommended habitat strategies recognizing that urbanization and its effects on aquatic habitat was currently the most serious threat to Brook Trout.

An environmental study is warranted prior to a decision on this issue:

The potential for environmental impacts prior to granting the special exception should be studied. The siting of these facilities and any proposed changes that would entail manipulation of the existing codified Forest Buffers or Forest Conservation Easements near or adjacent to streams known to support Brook may pose harm to these sensitive species.

Riverkeeper suggests that because of the above mentioned existence of two Tier II Catchment areas along the subject property, Baltimore County zoning may not properly ascertain that the requested zoning relief via special exception 2017-332-SPHXA will not be detrimental to the Tier II status of Indian Run and Black Rock Run, their tributaries or the health, safety, or general welfare of the area.

Respectfully submitted,

/s/ Theaux M. Le Gardeur

Gunpowder RIVERKEEPER@

P.O. Box 156, Monkton, MD 21111

Keeper@gunpowderriverkeeper.org and 410-967-3526

⁴ https://www.epa.gov/sites/production/files/2014-12/documents/mdwqs_chapters.pdf

⁵ http://dnr.maryland.gov/fisheries/Documents/MD_Brook_Trout_management_plan.pdf

To: Carl Richards Jr
Cc: j zer38@gmail.com; Meg Enns
Subject: 2017-332-SPXHA
Attachments: #2017-332-SPXHA.docx

Chief Richards,

Please accept this comment letter (attached) as timely filed.

I regret that I cannot attend the hearing tomorrow.

Please confirm that you were able to open the attached and include it in the file case for Zoning Case No.2017-332-sphxa

Thank you in advance for your assistance.

Theaux

Theaux M. Le Gardeur
Gunpowder RIVERKEEPER
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Parkton, MD 21120
&
P.O. BOX 156
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410-967-3526
keeper@gunpowderriverkeeper.org
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Gunpowder RIVERKEEPER®, (GRK) is accredited by the WATERKEEPER ALLIANCE® as the 18th RIVERKEEPER® in the Chesapeake Bay region. GRK is registered with the state of Maryland as a non-profit and has obtained 501(c)(3) tax exempt status classified under natural resources conservation and protection. Donations are tax deductible to the fullest extent allowed by law.

RIVERKEEPER is a registered trademark of Waterkeeper Alliance, Inc.

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Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

January 10, 2018

NOTICE OF REASSIGNMENT

IN THE MATTER OF: Roger L. Elliott – Legal Owner
15815 Falls Road
17-332-SPHXA 5th Election District; 3rd Councilmanic District

Re: Petition for Special Hearing pursuant to § 500.7 of the BCZR to:

1. To amend the approved Special Exception in Case No. 2015-0196-XA; and
2. To amend by expanding and clarifying the previously approved Special Exception by:
 - 1) Allowing for additional horses for boarding and other lawful purposes and striking the previous condition #6 of only allowing 5 horses; and
 - 2) Adding to or modifying the previous condition #5 with language prohibiting trail riding in the Forest Buffer and Forest Conservation areas unless and/or as permitted by the Director of the DEPS or other governing agency.

Petition for Special Exception to permit a riding stable/boarding table on an existing AG farm, as a riding stable is defined in BCZR Section 101.1, per Section 1A01.2.C.22 of the BCZR.

Petition for Variances pursuant to the BCZR as follows:

1. To permit a parking area with no screening or landscaping in lieu of the required screening and landscaping per Section 409.8.A.1; and
2. To permit a parking area to be surfaced with stone in lieu of the required durable and dustless surface per Section 409.8.A.2; and
3. To permit a parking area not to be striped in lieu of the striping requirement per Section 409.8.A.6.

8/25/17

Order on Motion to Dismiss issued by the Administrative Law Judge wherein the Motion to Dismiss was GRANTED, and the case was DISMISSED without prejudice.

ASSIGNED FOR: **MARCH 8, 2018 AT 10:00 A.M.**

LOCATION: Hearing Room #2, Second Floor, Suite 206
Jefferson Building, 105 W. Chesapeake Avenue, Towson

NOTICE:

- This appeal is an evidentiary hearing. Parties should consider the advisability of retaining an attorney.
- Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.
- No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).
- If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.
- Parties must file one (1) original and three (3) copies of all Motions, Memoranda, and exhibits (including video and PowerPoint) with the Board unless otherwise requested.
- Projection equipment for digital exhibits is available by request. A minimum of forty-eight (48) hours-notice is required. Supply is limited and not guaranteed.

Notice of Assignment
In the matter of: Roger Elliott
Case number: 17-332-SPHXA
January 10, 2018
Page 2

For further information, including our inclement weather policy, please visit our website
www.baltimorecountymd.gov/Agencies/appeals/index.html

Krysundra "Sunny" Cannington, Administrator

c:	Counsel for Petitioner	: Lawrence E. Schmidt, Esquire
	Petitioner	: Roger Elliott, Esquire
	Counsel for Protestant	: J. Carroll Holzer, Esquire
	Protestant	: Sallie Waller

Bruce E. Doak
Lynne Jones, President/Sparks-Glencoe Community Planning Council.

Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Director/PAI
Lawrence M. Stahl, Managing Administrative Law Judge
Michael Field, County Attorney, Office of Law
Nancy West, Assistant County Attorney
Office of People's Counsel

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: Roger L. Elliott

17-332-SPHXA

DATE: December 12, 2017

BOARD/PANEL: Jason S. Garber, Chairman
 Kendra Randall Jolivet
 James H. West

RECORDED BY: Tammy A. Zahner, Legal Secretary

PURPOSE: To deliberate the following:

1. Motions to Dismiss, and Opposition thereto.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

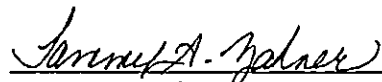
STANDING

- The Board convened for argument on the Motions to Dismiss, and immediately following held a Public Deliberation.
- The Board noted the Motions to Dismiss allege that *res judicata* applies and the case should be dismissed. The Petitioner disagrees alleging that the plan in this case is different than the plan presented during the first case, and argue there is a change in circumstance.
- In comparing the two plans, some aspects appear to be duplicated, or the relief could have been asked for during the first case. However, the Board needs more factual background on the change in circumstance alleged by the Petitioner. The Board reserved ruling on the Motion to Dismiss and required a full hearing.

CONCLUSION: After thorough review of the facts, testimony and law governing this matter, the Board unanimously agreed to RESERVE ruling on the Motions to Dismiss, and hold an evidentiary hearing.

NOTE: These minutes, which will become part of the case file, are intended to indicate for the record that a public deliberation took place on the above date regarding this matter. The Board's final decision and the facts and findings thereto will be set out in the written Opinion and Order to be issued by the Board.

Respectfully Submitted,


Tammy A. Zahner

People's Counsel Sign-In Sheet

Case Name: Petition of Roger Elliott
Case No.: 17-332-SHA
Date: 12/12/17

The Office of People's Counsel was created by the County Charter to participate in zoning matters on behalf of the public interest. While it does not actually represent community groups or protestants, it will assist in the presentation of their concerns, whether they have their own attorney or not. If you wish to be assisted by People's Counsel, please sign below.

[illegible]



Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

November 21, 2017

AMENDED NOTICE OF REASSIGNMENT **ARGUMENT ONLY ON MOTION TO DISMISS**

IN THE MATTER OF: Roger L. Elliott – Legal Owner
15815 Falls Road
17-332-SPHXA 5th Election District; 3rd Councilmanic District

Re: Petition for Special Hearing pursuant to § 500.7 of the BCZR to:

1. To amend the approved Special Exception in Case No. 2015-0196-XA; and
2. To amend by expanding and clarifying the previously approved Special Exception by:
 - 1) Allowing for additional horses for boarding and other lawful purposes and striking the previous condition #6 of only allowing 5 horses; and
 - 2) Adding to or modifying the previous condition #5 with language prohibiting trail riding in the Forest Buffer and Forest Conservation areas unless and/or as permitted by the Director of the DEPS or other governing agency.

Petition for Special Exception to permit a riding stable/boarding table on an existing AG farm, as a riding stable is defined in BCZR Section 101.1, per Section 1A01.2.C.22 of the BCZR.

Petition for Variances pursuant to the BCZR as follows:

1. To permit a parking area with no screening or landscaping in lieu of the required screening and landscaping per Section 409.8.A.1; and
2. To permit a parking area to be surfaced with stone in lieu of the required durable and dustless surface per Section 409.8.A.2; and
3. To permit a parking area not to be striped in lieu of the striping requirement per Section 409.8.A.6.

8/25/17

Order on Motion to Dismiss issued by the Administrative Law Judge wherein the Motion to Dismiss was GRANTED, and the case was DISMISSED without prejudice.

Having received a Motion to Dismiss from People's Counsel for Baltimore County on November 17, 2017, the de novo hearing on the merits has been changed to argument only on the Motion to Dismiss. The date and time will remain as

ASSIGNED ON: **DECEMBER 12, 2017 AT 10:00 A.M.**

LOCATION: Hearing Room #2, Second Floor, Suite 206
Jefferson Building, 105 W. Chesapeake Avenue, Towson

NOTICE:

- This appeal is an evidentiary hearing. Parties should consider the advisability of retaining an attorney.
- Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.
- No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

Notice of Assignment
In the matter of: Roger Elliott
Case number: 17-332-SPHXA
November 21, 2017
Page 2

- If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

NEW! Parties must file one (1) original and three (3) copies of all Motions, Memoranda, and exhibits (including video and PowerPoint) with the Board unless otherwise requested.

NEW! Projection equipment for digital exhibits is available by request. A minimum of forty-eight (48) hours-notice is required. Supply is limited and not guaranteed.

For further information, including our inclement weather policy, please visit our website www.baltimorecountymd.gov/Agencies/appeals/index.html

Krysundra "Sunny" Cannington, Administrator

c: Counsel for Petitioner
Petitioner

: Lawrence E. Schmidt, Esquire
: Roger Elliott, Esquire

Counsel for Protestant
Protestant

: J. Carroll Holzer, Esquire
: Sallie Waller

Bruce E. Doak
Lynne Jones, President/Sparks-Glencoe Community Planning Council.

Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Director/PAI
Lawrence M. Stahl, Managing Administrative Law Judge
Michael Field, County Attorney, Office of Law
Nancy West, Assistant County Attorney
Peter M. Zimmerman, People's Counsel for Baltimore County



**Sparks-Glencoe Community
Planning Council
P.O. Box 937, Sparks, MD 21152**

December 6, 2017

The Board of Appeals for Baltimore County
The Jefferson Building
105 West Chesapeake Avenue, Suite 103
Towson, Maryland 21204



Re: Roger L. Elliott
15815 Falls Road
Case No. 2017-332-SPHXA
Hearing Date: December 12, 2017

To the Board of Appeals:

The Sparks-Glencoe Community Planning Council (SGCPC) supports the Motion to Dismiss filed by People's Counsel in the above referenced matter. The Petition for Special Hearing ("Elliott Petition") wants to modify the conditions of a special exception that was granted only two years ago after a contested hearing. People's Counsel is moving to dismiss the Petition based on the legal principle of *res judicata*.

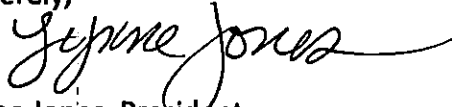
The Elliott Petition seeks removal of the prohibition on trail riding within the forest conservation and forest buffer areas. These areas are buffers precisely because they are, and they protect, environmentally sensitive areas. We understand that Mr. Elliott **agreed** to this very important restriction in 2015. Judge Beverungen's 2015 opinion indicates that these kinds of activities are prohibited by law in the buffer and conservation easement areas. We are aware of no change in the law or the factual circumstances in the past two years to justify amending that condition.

The Petition also wants to revisit that part of Judge Beverungen's 2015 order that required screening and landscaping to protect the neighboring Waller property. Once again, Ms. Waller has spent time and money to protect her own property. This screening was the very least that could be done to shield Ms. Waller from the activities to which she has objected over the years. In fact, Ms. Waller initially appealed the 2015 special exception to this Board. She then voluntarily dismissed that appeal, allowing the special exception to take effect. Not only is the requested downgrading of the screening disrespectful of Ms. Waller's property rights, it would appear to take unfair advantage of Ms. Waller's decision to not pursue the appeal in 2015.

In short, we support People's Counsel's legal argument that Judge Beverungen correctly dismissed the Elliott Petition because the Petition seeks to re-litigate issues that were decided two years ago with no intervening change in the law or facts.

Thank you for your consideration in this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lynne Jones".

Lynne Jones, President

cc: Peter Zimmerman, Esquire
People's Counsel

Lawrence Schmidt, Esquire
Jason Vettori, Esquire
Attorneys for Roger Elliott

J. Carroll Holzer, Esquire
Attorney for Sallie Waller



IN THE MATTER OF:

Roger Elliott
15815 Falls Road
E/S Falls Rd, 3400' S of c/line of Benson Mill Rd
Petitioner

5th Election District
3rd Councilmanic District

Re: Petition for Special hearing, Special Exception
and Variance

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
*
* **Case No.: 2017-332-SPHXA**
*

* * * * *

**PETITIONER'S RESPONSE TO MOTION TO DISMISS FILED BY PEOPLE'S
COUNSEL FOR BALTIMORE COUNTY**

Roger Elliott, Petitioner, through Lawrence E. Schmidt and Smith, Gildea & Schmidt, LLC, his attorneys, submits this Response to Motion to Dismiss filed by People's Counsel and respectfully states:

I. Introduction

This is a de novo appeal from an Order on a Motion to Dismiss by the Administrative Law Judge ("ALJ") wherein the ALJ found that res judicata¹ is applicable and therefore dismissed certain zoning petitions filed by the Petitioner. Thus, the ALJ rendered no opinion on the merits of the petitions. The ALJ stated without first conducting a hearing and receiving

¹ In *Batson v. Shiflett*, 325 Md. 684, 703 (1992), the Court of Appeals clarified the difference between res judicata and collateral estoppel as follows:

In *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 99 S.Ct. 645, 58 L.Ed.2d 552 (1979), the Court discussed the distinction between res judicata and collateral estoppel, remarking that:

"Under the doctrine of res judicata, a judgment on the merits in a prior suit bars a second suit involving the same parties or their privies based on the same cause of action. Under the doctrine of collateral estoppel, on the other hand, the second action is upon a different cause of action and the judgment in the prior suit precludes relitigation of issues actually litigated and necessary to the outcome of the first action."

Id. at 326 n. 5, 99 S.Ct. at 649 n. 5, 58 L.Ed.2d at 559 n. 5.

evidence that “it is not clear why [the requests for zoning relief made in Case No. 2015-196-XA] are again made in the current petition.” His failure to conduct a hearing and misunderstanding of the reasoning behind the filing of the second petition resulted in an improper ruling on the Motion to Dismiss. While it is true that both cases involved requests for special exception approval for a riding stable at 15815 Falls Road, these are different petitions and there is a substantial change in the request. The differences in the facts and circumstances between these cases (Case Nos. 2015-196-XA and 2017-0332-SPHXA will hereinafter be referred to as “Elliott I” and “Elliott II”, respectively) are significant. For this reason and as further explained hereinafter, this is not a res judicata case.

II. Factual Background

The subject site is a 33.829 acre parcel which is located in Butler. For many years, Petitioner’s father, the Protestant (Sallie Waller) and another neighbor (Mencheys), jointly operated a Christmas tree business on the site known as Ventura Farms. Around the time Petitioner’s father passed away in 2003, this business was wound down. The subject site has been owned by the Elliott family for approximately thirty years and is now proposed to be occupied and utilized by the third generation of the Elliott family (Julia Elliott).

The existing improvements on the subject site consist of a single family dwelling, where Petitioner’s daughter, Julia Elliott, resides, a nearly 100 year old 41’ high wood frame barn and a 13’ high wood frame shed.² Prior to 2015, the Petitioner renovated the 100 year old barn in anticipation of, and in order to, accommodate the boarding of up to five (5) horses. Further, at that time, much of the acreage of the Property was leased to a farmer for the production of crops.

² Petitioner lives on the adjoining property to the east of the subject site, 15817 Falls Road, which is approximately 17.45 acres in size. It is improved with a single family dwelling. Petitioner’s brother owns another adjacent property immediately to the south.

III. Procedural History:

1. Elliott I

In Elliott I, Petitioner/Property Owner Roger Elliott sought special exception relief “to permit the subject property and the improvements to be used for a riding stable”. In addition to this special exception approval, Petitioner also requested certain variances for an attendant driveway/parking lot. The Petition for Zoning Hearing for Elliott I was filed on or about March 6, 2015. A hearing before the ALJ was held on June 10, 2015. Petitioner represented himself at that hearing. He presented testimony and evidence to the ALJ through Bruce Doak, the surveyor who prepared the site plan, and his daughter, Julia Elliott, who was to operate the riding stable. A neighbor, Sallie Waller, who was represented by J. Carroll Holzer, Esquire at the hearing, opposed the relief requested (hereinafter referred to as “Protestant”). Following the hearing, the ALJ issued an Opinion and Order dated June 17, 2015 which granted the relief requested but imposed certain conditions upon this approval. These conditions included a landscaping requirement, the imposition of certain requirements for the driveway accessing the property, a restriction on where trail riding could occur and a limitation upon the number of horses that could be kept on the property. A site plan submitted into evidence in that matter was accepted as Exhibit Number 1. It identified the improvements on the property that were to be used in connection with the riding stable (i.e. the 100 year old renovated wood frame barn and the wood frame shed) and also showed the driveway and proposed parking area. The site plan also identified the dwelling on the property and indicated that much of the acreage of the site was planted in crops. Although an appeal to the Board of Appeals was filed by the Protestant, it was dismissed before any hearing and ALJ Beverungen’s opinion thus became final.

2. Elliott II

After relief was approved in Elliott I, Julia Elliott began operation of the riding stable. As the operation has been proven to be successful, the Petitioner proposes an expansion of the use. Specifically, the Petitioner proposes eliminating the production of crops (the lease with the farmer who planted the fields has been terminated) and these areas will now be used for the pasturing of horses. Significantly, the Petitioner also proposes the construction of an additional barn building in an area of the Property previously dedicated to crop production, a riding arena and a new parking area. Petitioner filed a new Petition for Zoning Hearing for these changes on or about June 13, 2017. It sought special hearing relief to amend the approved special exception in Case No. 2015-0196-X, specifically by expanding and clarifying the previously approved special exception by: a. allowing for additional horses for boarding and other lawful purposes and striking the previous condition #6 of only allowing 5 horses; and, b. adding to or modifying the previous condition #5 with language prohibiting trail riding in the Forest Buffer and Forest Conservation areas unless and/or as permitted by the Director of the Department of Environmental Protection and Sustainability or other appropriate governing agency. Petitioner also requested special exception approval to permit the entire subject property and the improvements to be used for a riding stable.³ Finally, variance relief was requested for a new driveway/parking lot necessitated by the expansion of the use and the newly proposed structures. People's Counsel filed a Memorandum with the ALJ on or about August 16, 2017 asking that the petitions be dismissed. Additional memorandums were filed by the Sparks Glencoe Association on August 17, 2017 and the Protestant on August 21, 2017. Both of these supported People's

³ Arguably, this special exception relief is not needed as the previously approved special exception was not limited to any specific area of the Property either as shown on the plan or within the text of ALJ Beverungen's order. The previous special exception approval arguably applied to the entire property. But the instant Special Exception was filed out of an abundance of caution, to reflect that areas of the property originally shown as in crop production, would now be dedicated to the riding stable use.

Counsel's Motion. The Petitioner, representing himself, filed a memorandum on August 23, 2017. The ALJ issued an Order granting the Motion to Dismiss on August 24, 2017. A timely Notice of Appeal was filed on September 21, 2017. Mr. Holzer entered his appearance on or about September 28, 2017 and filed a request for postponement of the Board's hearing originally scheduled for November 7, 2017. The Board's hearing date was reassigned to December 12, 2017 but it will be limited to argument regarding the motion.

IV. Standard of Review

Whether the doctrine of res judicata applies is a question of law. As such (and in an appellate setting), the decision of the ALJ is to be given no deference. *Seminary Galleria, LLC v. Dulaney Valley Improvement Ass'n*, 192 Md. App. 719, 734 (2010). Moreover, this appeal from the ALJ to the Board is de novo, as provided in Baltimore County Charter § 603. Therefore, the ALJ's decision is not entitled to any deference or weight by the Board.

V. Argument

A. People's Counsel misapplication of res judicata

People's Counsel's Motion and memorandum in support thereof completely corrupts the concept of res judicata and confuses its application. In describing its essence, res judicata is often called the "one bite of the apple rule." That is, a litigant (having had his/her day in Court) cannot try again and file a new claim seeking relitigation of a matter previously decided. But that is not happening here. Elliott was not denied the special exception in Elliott I and he is not now seeking a second bite of that apple. He was previously granted relief. Now he is asking for a revision to what was approved or in the alternative a separate and distinct approval. Whether the Petitioner is entitled to that revision must be decided on the merits. Petitioner may get what he is requesting; or may not. The Board may decide that a riding stable on this property with fifteen

horses is “detrimental to the health, safety and general welfare of the locale” (i.e. the BCZR Sec. 502.1 standard by which special exceptions are adjudged) or the Board may decide that a fifteen horse riding stable is appropriate. But the Board must decide the issue and this is not a case to be dismissed (without consideration on the merits) via res judicata.

Zoning is not a static principle of the law. Each property comes with a bundle of rights. An owner may utilize some of those rights on one occasion and later utilize others. The owner’s failure to utilize all the rights associated with a property at one time does not mean that he “failed to raise issues which could have properly been asserted in a prior action” as People’s Counsel claims. Such a fundamental principle in the land use law continuum is evident in Baltimore County’s regulations. Final Development Plans can (and frequently are) amended to allow for additional buildings and/or other improvements. (BCZR § 1B01.3.A.7). Even non-conforming uses can be expanded. (BCZR § 104.3). Properties and neighborhoods change. Property owners, and their desire as to the utilization of their property, change. There is nothing in the BCZR which prohibits (or suggests any limitation) of a Property owner’s right to request that relief previously granted cannot be modified, expanded or updated. Such a practice has been allowed on countless occasions since zoning came into being in Baltimore County in 1945.

In sum, People’s Counsel simply misses the “big picture” and loses the forest for the trees. In an effort to defeat this proposal, People’s Counsel refuses to take the risk that it might lose on the merits and instead employs a procedural defense to the Petitioner’s requests. The fallacy in this argument, however, is that this defense simply does not apply.

B. The relief requested in Elliott II (and the evidence to be offered to support it) is different than that submitted in Elliott I

An examination of ALJ Beverungen’s decision and the site plan that he approved in Elliott I versus the proposed plan and requested relief in Elliott II is dispositive to the conclusion

that res judicata does not apply. The plan in Elliott I showed a small area of the property (highlighted in detail) which contained an existing 100 year old barn, an old existing shed and a proposed parking area which would be dedicated to traffic generated by the riding stable use.⁴ The two old buildings (barn and shed) were proposed to be converted to accommodate the previously proposed riding stable. The barn was only large enough to accommodate five horses. ALJ Beverungen's decision notes as much. The remainder of the property was shown to be in crops or pasture. In comparison, the site plan filed in Elliott II depicts a significantly expanded riding stable operation. As noted above, the area of the property where crops were previously cultivated is now shown as horse pasture for the animals. As significantly, the new plan shows the construction of a new ten (10) stall center-isle horse barn, a second parking area for the new barn, a riding arena and an area for manure storage. The area where crops were previously cultivated is converted to fields (short term or long term) for the pasturing of horses. The number of horses that can be boarded will be increased from five to fifteen. With the elimination of the field crops, this number of horses is consistent with the limitations in BCZR § 100.6. Thus, the proposal and plans submitted in these cases are significantly different.

Were the Board to apply res judicata, it would establish a precedent by which no Petitioner could ever seek an alteration and/or intensification of a permitted use. Shopping center owners would never be allowed to add a new building or pad site. Home builders would never be allowed to expand a residential community by providing new home sites. Under People's Counsels review of res judicata, since these modifications were not laid out in the original request, they could not now be considered or allowed. Such a prohibition is simply not what res judicata is designed to prevent.

⁴ A riding stable is defined as "[a] building where riding horses are boarded or kept for hire."

C. A Special Exception Is A Presumptively Permitted Use

Petitioner's next door neighbor, Sallie M. Waller, objected to the original request for approval of the riding stable in Elliott I and, not surprisingly, similarly opposes the reasonable expansion of the use in Elliott II. The fact of the matter is a riding stable is permitted by special exception in the RC 2 zone, the underlying zoning of the subject site. A use permitted by special exception is a presumptively permissible use. *Attar v. DMS Tollgate, LLC*, 451 Md. 272, 279 (2017). Therefore, it is not a camel's nose under a tent, nor is it the entire camel (as characterized by People's Counsel on page 3 of its motion) for that matter. A riding stable is exactly the kind of use that the legislature felt should be permitted in the RC 2 zone, provided the inherent adverse effects of said use are not greater than they would be elsewhere in the zone. To be fair, the existing barn where the horses were authorized to be boarded in Elliott I is close to Ms. Waller's residence so it's plausible why she might have feared the inherently adverse impacts of a riding stable. The proposed improvements are farther away and will not impact Ms. Waller. Moreover, the RC 2 zone makes clear that dwellings in the RC 2 zone may experience inconveniences arising from agricultural operations such as those contemplated by the proposed use. BCZR § 1A01.5.

D. Elliott II Constitutes A Material Change In Circumstances

The doctrine of *res judicata* bars the litigation of a cause of action after it has already been litigated to a final judgment. *Gertz v. Anne Arundel County*, 339 Md. 261, 269 (1995); *DeLeon v. Slear*, 328 Md. 569, 580 (1992). Furthermore, *res judicata* may be applicable in administrative (quasi judicial) proceedings. *Batson v. Shiflett*, 325 Md. 684 (1992). *Res judicata* also bars re-litigation of claims that were, or could have been, litigated in an earlier proceeding between the parties. *Batson* 325 Md. 684 (1992). In order to successfully establish a claim for *res*

judicata, the following elements must be satisfied: (1) The parties in the present litigation should be the same or in privity with the parties to the earlier case; (2) the second suit must present the same cause of action or claim as the first; and (3) in the first suit, there must have been a valid final judgment on the merits by a court of competent jurisdiction. *DeLeon*, 328 Md. at 580. But, *res judicata* does not apply if the cause of action or claim is different from the first case to the second. The nature of the claim is determined by the relevant facts as presented in each case. Here *res judicata* does not apply because the second test is not met.

What is being proposed in Elliott II constitutes a material change in circumstances from what was proposed in Elliott I because a new barn and additional fenced, usable pasture is being proposed. It is most constructive to analyze the *res judicata* cases involving requests for zoning relief as opposed to other forms of administrative relief. The reported decisions involving requests for zoning relief where *res judicata* was applicable are *Whittle v. Board of Zoning Appeals*, 211 Md. 36 (1956); *Woodlawn Ass'n v. Board*, 241 Md. 187 (1965); *The Chatham Corp. v. Beltram*, 243 Md. 138 (1966); *Alvey v. Hedin*, 243 Md. 334 (1966); *Jack v. Foster Br. Homeowners' Ass'n*, 53 Md. App. 325 (1982); and *Seminary Galleria, LLC v. Dulaney Valley Improvement Ass'n*, 192 Md. App. 719 (2010). Each involved requests for zoning relief which are distinguishable from the instant one.

Woodlawn, *Chatham* and *Hedin* involved petitions for zoning reclassification.⁵ Most of these cases involved repeated attempts to reclassify the zoning of the exact same property in its entirety. A reclassification case differs significantly from a special exception case. First,

⁵ Zoning reclassification is defined as “[a] change to a district of zone of a particular piece of property”. § 32-3-501(d)(1)(i) of the Baltimore County Code (“BCC”). The Board has exclusive authority to approve a zoning reclassification. BCC § 32-3-502. The Board must find that a “substantial change in the character of the neighborhood” or that there was an “error” since the last classification. BCC § 32-3-510(a)(1). The quadrennial Comprehensive Zoning Map Process (“CZMP”) is an alternative means to change the zoning of a given property.

different standards are involved so the same evidence would not be involved. Second, while the facts offered in the aforementioned reclassification cases are not completely clear, it is presumed that the entire property in the initial and subsequent cases was involved and the question was still whether there was a change or mistake. In this context, it makes sense that in each of those cases the Court was frustrated by a repackaged argument in subsequent cases to support a contention that a change or mistake had occurred.

Only *Whittle*, *Jack* and *Seminary* involved non-reclassification requests for zoning relief. In *Whittle*, the petitioner sought a special permit to allow a funeral home in a residential zone. After the original request was denied and a second petition was filed, it too was denied because essentially the same facts were argued. 211 Md. @ 49. The same standard, which was highly deferential to the level of community opposition, was applied. The same facts that the petitioner sought to utilize an existing building for the funeral home, were quintessentially the same as well. The only difference noted by the Court was the slightly more favorable support for the second petition and the fact that one property 400 feet away was converted to a commercial use (which has nothing to do with the special exception standard).

Jack and *Seminary* both involved attempts by parties to obtain zoning relief from parking regulations but had different outcomes. While neither is dispositive of the issues in this case, it is interesting that both involved alternative means of permitting additional parking (i.e. variance and waiver, without any change in the underlying facts (i.e. new buildings, etc.)) but had different outcomes. In *Jack*, a doctor was required to provide eight off-street parking spaces for the accessory physician's office he operated out of the garage of his residence. Initially, he sought a variance. It was denied. Thereafter, he sought a modification, reduction or waiver. The Court ruled that the "same evidence" test applied and, because "the burden of persuasion

was far heavier in the first case than in the second", res judicata did not apply. *Jack*, 53 Md. App. @ 334-37. In *Seminary*, the property owner attempted to obtain retroactive approval of 10 new parking spaces. The first case involved a request for special hearing or a variance. The second case sought essentially the same relief but, equipped with a letter from the Zoning Supervisor which claimed the commercially used property satisfied the definition of a shopping center that was to be parked at 5 spaces per 1,000 square feet of gross leasable area. The net result was the petitioner was seeking relief for 746 spaces to be provided in lieu of 1084 required spaces as opposed to the 746 spaces in lieu of 1059, as noted in the first case. The Court found that petitioner's attempt to create a larger need for parking to rationalize its paving for additional spaces did not constitute a material change in the retail use at the shopping center, only a change in the characterization of the relief needed. Furthermore, the same calculation of parking could have been made in the first case. *Seminary*, 192 Md. App. @ 740. The same cannot be said of the instant case. There are no reported decisions regarding an expansion of a special exception approval, based upon a substantial change in conditions such as those which are summarized herein.

It goes without saying that the principles stated in the res judicata cases seem contradictory at times.

In *Whittle*, 211 Md. @49, Judge Brune held that:

If the second suit is between the same parties and is upon the same cause of action, a judgment in the earlier case on the merits is an absolute bar, not only as to all matters which were litigated in the earlier case, but as to all matters which could have been litigated.

Meanwhile, Judge Brune had earlier stated that:

where the facts are subject to changes which might reasonably lead to an opposite result from that arrived at in an earlier case, and if there have been substantial changes in fact

and circumstances between the first case and the second, the doctrine of res judicata would not prevent the granting of the special permit sought by the appellees.

Whittle, 211 Md. @ 45.

The distinction is best demonstrated by *Seminary*, where the petitioner's objective remained the same, the retroactive approval of paving for 10 parking spaces. In the instant case, the Petitioner sought to utilize the existing 100 year old barn and a portion of his property for a riding stable. While he could have asked for the entirety of Baltimore County to be used for a riding stable should an opportunity to expand the operation present itself, at that time it only made sense to request relief for the five (5) horses for which approval was obtained.

While it is true that an approval of a riding stable was previously the use approved on the subject site in Elliott I, only a portion of the property was proposed to be used. Stated another way, if 10 acres of a million acre farm was to be dedicated to a riding stable, this would not forever preclude the property owner from utilizing say another 100 acres of his/her million acre property. By analogy, the Basignani Winery lies across the street from the subject property at 15722 Falls Road. The Basignani Winery is comprised of vineyards, a fermentation building, east winery building and a single family dwelling. **Case No. 06-106-X**. If the winery owners acquired additional acreage to expand their winery, would that constitute "all matters which could have been litigated?" In the instant matter, the Petitioner for an assortment of reasons did not seek relief to utilize the entirety of the property for a riding stable. Circumstances have now changed.

E. Other Provisions of the BCZR support the Proposition that a previously approved special exception can be expanded

There are no specific provisions in the BCZR that address the instant situation; to wit, when a property owner has obtained special exception approval wishes to expand that approval. But BCZR § 500.12 provides that:

If a zoning reclassification or special exception petition has been denied, the Zoning Commissioner may not accept for filing any other zoning reclassification or special exception petition with respect to the same property or any part of that property until at least 18 months have passed from the date of the final order relating to the previous petition, whether that order is issued by the Zoning Commissioner or Deputy Zoning Commissioner, by the Board of Appeals, or by a court of competent jurisdiction considering the petition on appeal. (emphasis added).

It is axiomatic that if the BCZR specifically allows a property owner who was denied special exception approval to re-file for that special exception more than eighteen months later then, surely, one who is granted a special exception can certainly request to up-date it later. The Petitioner filed the petition for zoning hearing in Elliott II on June 13, 2017. Elliott I became final and non appealable on September 4, 2015. Therefore, Elliott II was properly filed at least 18 months from the date of the final order for Elliott I.

This provision (actually the predecessor to BCZR §500.12) was considered by the Court of Appeals in *Whittle, Id.* The Court noted that although this provision allows a special exception to be filed 18 months after a previous special exception was denied, the section does not dispense with the rule of re judicata. That is, there must be a change in circumstances. As noted above, the significant change in circumstances alleged here includes the construction of new buildings and the conversion of a large portion of the property from crop production to use as part of the riding stable.

The Board's own rules of Practice and Procedure are consistent with this approach. Specifically Board Rule 3 provides that a petitioner who wishes a petition to be withdrawn

without prejudice must file the withdrawal more than ten days before the Board's scheduled hearing. Further, petitions dismissed with prejudice "may not be resubmitted for a period of eighteen months after the dismissal." Thus, this rule clearly contemplates the re-filing of a petition on the same property.

Although these sections are not precisely on point to the issue presented, how can it be seriously contended that a petitioner cannot submit a petition to revise/modify a previously granted special exception when previously denied special exceptions can be resubmitted. Such a conclusion defies common sense.

Finally, BCZR Section 102.7 is instructive.⁶ This provision supports the proposition that a special exception use does not need to involve an entire property. The original special exception approval for a riding stable, in fact, did not involve the entire property. This is in part because a portion of the property was being used to grow corn pursuant to a lease with a commercial farmer. That lease was terminated subsequent to the prior approval and it was not until the aforementioned land had not been utilized for this crop for a sufficient period of time that horses could use it for grazing. The fact that the approximately this acreage will be available for the riding stable operation constitutes a substantial change in conditions.

F. The Board Must Make Findings Of Fact To Grant The Motion

If the Board decides to grant the Motion to Dismiss, it must first conduct a full evidentiary hearing. People's Counsel, and Ms. Waller by incorporation, did not object to the Board waiting to rule on the motion to dismiss until after the conclusion of the hearing. This procedural tact makes the most sense. Were the Board to grant this motion prior to the creation

⁶ BCZR § 102.7. **Calculation of residential density in subdivisions with special exception uses.** Where development of a property includes both a special exception and a residential subdivision, the area allocated for use as a special exception shall not be included in the calculation of residential density.

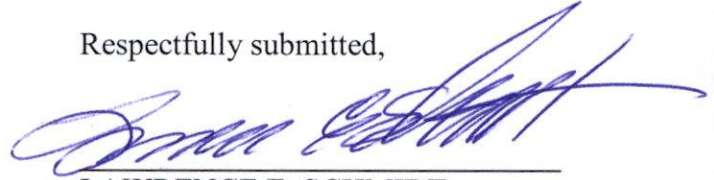
of an administrative record which would allow for meaningful judicial review by the appellate courts as to whether res judicata applies, such a ruling would likely result in a remand to this Board for further findings of fact. While the reported decisions regarding the doctrine of res judicata do not expressly provide whether the respective motions in those cases were decided before or after a full evidentiary hearing, the Board's determination must be based on "substantial evidence" to survive judicial review. *People's Counsel v. Surina*, 400 Md. 662, 681 (2007) (citations omitted); *see also Critical Area Comm'n for Chesapeake & Atl. Coastal Bays v. Moreland, LLC*, 418 Md. 111, 135, 12 A.3d 1223, 1238 (2011) (holding that meaningful judicial review is possible when the Board summarizes substantial evidence in support of its findings). Proffered testimony and evidence in a motion and response thereto hardly qualifies as substantial evidence. At the conclusion of the hearing, it will be evident to the Board that res judicata does not preclude the instant request for zoning relief. Simply stated, if some factual foundation is not established as to the operative facts and proposal in Elliott I vs. Elliott II; then the Board can not grant the Motion based upon res judicata.

VI. Conclusion

The ALJ stated in his Order on Motion to Dismiss in Elliott II that "it is not clear why these requests are again made again in the current petition." Had an evidentiary hearing taken place, the evidence presented would have made it clear that res judicata does not apply. Irrespective of the ALJ's reasons, the matter is before the Board on a de novo appeal so it is incumbent upon the Board to decide this question of law and thereafter rule on the underlying request for zoning relief. Essentially what People's Counsel is arguing is that this Board must hold that the riding stable, and other approved special exceptions, are precluded from ever

expanding their operations because the opportunity to grow/expand the uses should have been foreseen at the time of the original zoning approval. Such an argument is simply without merit.

Respectfully submitted,



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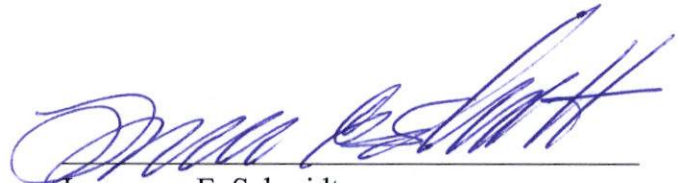
CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 7th day of December, 2017, a copy of the foregoing Response to Motion to Dismiss was mailed, postage pre-paid, to

Peter Max Zimmerman, Esquire
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Sparks-Glencoe Community Association
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Lawrence E. Schmidt

RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE COUNTY
SPECIAL EXCEPTION AND	*	BOARD OF APPEALS
15815 Falls Road; E/S Falls Road	*	FOR
3400' S of c/line of Benson Mill Road	*	BALTIMORE COUNTY
5 th Election District	*	
3 rd Councilmanic District	*	Case No.: 2017-332-SPHXA
Legal Owner(s): Roger Elliott	*	
Petitioner(s)	*	

* * * * *

MOTION TO DISMISS

J. Carroll Holzer, Esquire, Holzer & Lee, on behalf of Sallie Waller, moves to dismiss this Petition because it is barred by *res judicata*. We adopt the Motion and Legal Argument submitted by People's Counsel for Baltimore County as if herein restated.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of November, 2017, a copy of the foregoing Motion to Dismiss was mailed first class, postage pre-paid to the following:

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J. CARROLL HOLZER, Esquire

RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE COUNTY
SPECIAL EXCEPTION AND VARIANCE		
15815 Falls Road; E/S Falls Road, 3400' S of	*	BOARD OF APPEALS
c/line of Benson Mill Road & Falls Road		
5 th Election & 3 rd Councilmanic Districts	*	FOR
Legal Owner(s): Roger Elliott		
Petitioner(s)	*	BALTIMORE COUNTY
	*	2017-332-SPHXA

* * * * *



MOTION TO DISMISS

People's Counsel for Baltimore County moves to dismiss this petition because it is barred by *res judicata*. We leave it to the County Board of Appeals' (CBA's) discretion to rule on it preliminarily or reserve until conclusion of the hearing.

I. Introduction

Petitioner Roger Elliott's filed this zoning petition on June 13, 2017. Just about two years ago, he filed a similar petition to approve a special exception and variances for a stable. Case No. 2015-196-XA. We call the earlier case **Elliott I**.

Sallie Waller is adjacent. She opposed **Elliott I**. On June 17, 2015, Administrative Law Judge John Beverungen approved the petition, subject to limitations: specified landscaping, 5 horses maximum, and no trail riding in forest conservation and buffer areas. Upon Sally Waller's appeal, followed by her voluntary dismissal, the CBA entered a confirmatory order. These are attached. Mr. Elliott did not appeal **Elliott I**.

The **Elliott II** petition seeks to remove all the restrictions.

Our office asked ALJ Beverungen for dismissal based on *res judicata*. Sally Waller filed a motion to dismiss. The Sparks-Glencoe Community Association submitted an articulate opposition. Mr. Elliott responded. ALJ Beverungen thereupon reviewed the record and entered his current August 24, 2017 Order dismissing the petition.

Elliott filed the present appeal. While reviewed *de novo* under County Charter Sec. 603, *res judicata* applies here as a matter of law. ALJ Beverungen's decision is correct.

II. People's Counsel's Submission to ALJ Beverungen

Our office stands by its August 16, 2017 letter to ALJ Beverungen. For convenience, here is what we wrote,

"This is another case for *res judicata*. The June 13, 2017 petition for special hearing asks to amend and expand the riding stable special exception at 15815 Falls Road in the northern county.

Petitioner Roger Elliott received conditional approval in a case contested by Sallie Waller about two years ago. No. 2015-196-XA, June 17, 2015, enclosed. The conditions included:

1. A requirement to screen and/or landscape the proposed parking area from Ms. Waller's property, subject to the configuration approved by the Baltimore County Landscape Architect.
2. A limit to no more than five (5) horses.
3. A prohibition on trail riding within forest conservation and forest buffer areas, (buttressed in the opinion, page 3, that "the law prohibits recreational activities within these environmentally-sensitive areas, Ms. Elliott agreed).

(Ms. Waller appealed, but eventually withdrew this voluntarily, County Board of Appeals (CBA) Order dated September 4, 2015 also enclosed).

The current petition requests to eliminate the screening/landscaping requirement, allow additional horses, and allow potential trail riding in the forest conservation and forest buffer areas. These requests are plainly precluded by *res judicata*. There are no substantial changes in circumstances in the area to warrant such elimination and relaxation of litigated conditions.

To make a long story short, we enclose your recent March 13, 2017 decision in RREF II, 502/504 Montclair Court. The CBA effectively affirmed and confirmed your grant of our office's motion to dismiss in its *de novo* appeal public deliberation last week, August 9. Minutes enclosed. This matter involved a request to eliminate or relax previous litigated height and area conditions. The present case is even stronger for the application of *res judicata* because the time interval is shorter (2 years vs. 13); the same petitioner is involved (not a successor owner covered by privity); and it is your own decision at issue (not that of a previous hearing officer).

We also enclose your September 12, 2014 decision in Belvedere Baptist Church, Case No. 2015-004-SPHA, 1301 Cheverly Road. *Res judicata* barred that effort to relax the litigated condition limiting the number of children permitted in a group child care center. The CBA effectively affirmed this decision in its enclosed February 27, 2015 opinion and order.

The case law is by now familiar and consistent, from Whittle v. Board of Zoning Appeals 211 Md. 36 (1956) to Seminary Galleria v. Dulaney Valley Improvement Ass'n

192 Md. App. 719 (2010). These both were Baltimore County cases, but the doctrine has been applied statewide.

The current petition also asks for a variance to allow a stone surface for the parking area. This request was also made in the 2015 petition. Your 2015 opinion seems sympathetic to this request, with its description on page 3 of the existing parking area. But we cannot find it addressed or determined in the order. Therefore, we submit this issue for your exercise of discretion. About the same can be said for the request to waive striping.

We also understand that Sallie Waller is reentering her appearance in opposition, represented again by J. Carroll Holzer.”

III. Roger Elliott’s Response at the ALJ Level

While Mr. Elliott’s appeal comes to the CBA *de novo*, we do not perceive any genuine dispute about the material facts pertinent to *res judicata*.

Mr. Elliott has argued he had five stalls and about five acres fenced at the time of Elliott I, but now is ready to fence the remaining 10 acres of pasture and construct a new barn primarily for boarding, not visible from Falls Road or Ms. Waller’s residence. He argues it will have little impact on surrounding properties. He does not propose any limit on the number of horses, but rather elimination of the limit.

This plan is personal, relates to his property alone, and does not logically amount to a change in the neighborhood to justify relaxation of the 5-horse limit. This plan either was, or could have been, encompassed in Elliott I. The earlier petition requested a stable without any numeric limitation and could have included a new barn. The sequential filing resembles the iconic “Camel’s nose under the tent,” followed by the unpleasant entire camel. *Res judicata* averts and prevents this piecemeal litigation scenario.

Mr. Elliott says he has planted more screening than previously required by the County Landscape Architect. But this is not a reason to alter the landscaping requirement.

Mr. Elliott asks the forest buffer/forest conservation trail riding limitation be left to DEPS rather than the zoning order. But this is not a change in circumstance either.

Mr. Elliott asserts, without details, that Sallie Waller and adjoining landowners subdivided and sold off residential lots. The attached online county development records show Ms. Waller, 15813 Falls Road, and Calvin Menchey, 15825 Falls Road, applied for

minor subdivision approval as far back as 2012 to add one dwelling lot each. MIN-2012-91889 (Waller), MIN-2012-91087 (Menchey). So, processing was ongoing by Elliott I. Mr. Elliott filed a minor subdivision application about the same time. MIN-2012-91894. The records show surveyor/engineer Alonzo Childress, did work somewhat on these applications, which all appear to have been filed on November 30, 2012. Some site plans show even earlier dates. These minor subdivisions are permitted in the R.C. 2 Zone. They do not materially change the area insofar as relevant to the zoning issues.

IV. Brief Survey of *Res Judicata* in the Zoning Context

Res judicata applies to quasi-judicial administrative proceedings. Batson v. Shifflett 325 Md. 684, 701-04 (1992); Powell v. Breslin 430 Md. 52, 63-65 (2013); Fertitta v. Brown 252 Md. 594, 599-600 (1969); Seminary Galleria v. Dulaney Valley Imp. Ass'n 192 Md. App. 719, 736 (2010). Batson explained 325 Md. at 701-02

In United States v. Utah Constr. Co., 384 U.S. 394, 86 S.Ct. 1545, 16 L.Ed.2d 642 (1966), the Court spoke particularly to the preclusive effect of administrative law rulings, stating that:

“When an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, the courts have not hesitated to apply *res judicata* to enforce repose.” [citations omitted].

Id. at 422, 86 S.Ct. at 1560, 16 L.Ed.2d at 661. Thus, agency findings made in the course of proceedings that are judicial in nature should be given the same preclusive effect as findings made by a court.”

It is unfair to put parties through repeat cases. It is inimical and subversive to efficient and proper administration of justice. Justice Souter explained in Utah Constr. Co., citing Astoria Federal Savings & Loan Assoc. v. Solimino 501 U.S. 104, 107 (1991),

“Such repose is justified on the sound and obvious principle of judicial policy that a losing litigant deserves no rematch after a defeat fairly suffered, in adversarial proceedings, on an issue identical in substance to the one he subsequently seeks to raise. To hold otherwise would as a general matter, impose unjustifiably upon those who have already shouldered their burdens, and drain the resources of an adjudicatory system with disputes resisting resolution. ... The principle holds true when a court has resolved an issue, and should do so equally when the issue has been decided by an administrative agency, be it state or federal”

Res judicata applies to all issues which were raised and litigated, as well as to issues which might have been raised. Alvey v. Alvey 225 Md. 286, 290 (1961); Anne Arundel County Bd. Of Education v. Norville 390 Md. 93, 106-07 (2005); Anand v. O'Sullivan 233 Md. App. 677, 696-97 (2017).

The doctrine is worldwide: French, *l'autorite de la chose juge*, Spanish, *cosa juzgada*. It translates virtually in every legal language.

* * *

Res judicata applies to zoning cases where there has not been a significant relevant change in the type of use, the neighborhood, and the law. Mayor & City Council v. Linthicum 170 Md. 245 (1936); post office in a residential zone; Bensel v. Mayor and City Council 203 Md. 506 (1954) nonconforming business use. Whittle v. Board of Zoning Appeals of Baltimore County 211 Md. 36 (1956) followed and became a landmark decision. Whittle involved a previously denied special permit for a Towson funeral home. Petitioners asserted many changes justified a different and favorable result.

The Court of Appeals reversed their zoning board approval, stating at 211 Md. 45,

"The general rule, where the question has arisen, seems to be that after the lapse of such time as may be specified by the ordinance, a zoning appeals board may consider and act upon a new application for a special permit previously denied, but that it may properly grant such a permit only if there has been a substantial change in conditions. See Bassett on Zoning (2nd Ed., 1940), pp. 119-120; Yokely on Zoning Law and Practice (1953 Ed.), § 128; 168 A.L.R. 124; St. Patrick's Church Corporation v. Daniels, 113 Conn. 132, 154 A. 343; Burr v. Rago, 120 Conn. 287, 180 A. 444; Rommell v. Walsh, 127 Conn. 272, 16 A.2d 483; Rutland Parkway, Inc. v. Murdock, 241 App.Div. 762, 270 N.Y.S. 971. This rule seems to rest not strictly on the doctrine of *res judicata*, but upon the proposition that it would be arbitrary for the board to arrive at opposite conclusions on substantially the same state of facts and the same law.

In the instant case we have, of course, a prior court determination and the question of *res judicata* is directly involved.

Many zoning questions do not rest upon immutable facts, St. Patrick's Church Corp. v. Daniels, supra, and the application of the rules of *res judicata* is not always so easy and so clear cut as in the Linthicum and Bensel cases. It is our view that where the facts are subject to changes which might reasonably lead to an opposite result from that arrived at in an earlier case, and if there have been substantial changes in facts and circumstances between the first case and the second, the doctrine of *res judicata* would not prevent the granting of the special permit sought by the appellees. They contend that

such changes have occurred, and we shall now proceed to examine the alleged differences.

The changes in circumstances which the appellees rely upon may be summarized as follows: (1) increased commercialization of the area; (2) increased population of Baltimore County; (3) decreased opposition of neighbors and some support by them; (4) additional conditions attached to the granting of the permit.”

The Court proceeded to explain in detail why petitioners’ assertions of changed conditions were not material or substantial so as to overcome the previous denial.

Woodlawn Area Citizens Ass’n v. Board of County Comm’rs 241 Md. 187 (1966) picked up the subject a decade later. The Court addressed a petition for zoning reclassification from zoning for detached houses to garden apartments. The Court reversed District Council approval of the repeat application, concluding, 241 Md. at 197, “We think Whittle is dispositive of the case before us.”

The alleged changes in conditions were a proposed East-West highway, speculative; the terrain’s relative suitability for garden apartments; need for apartments and increase in population; eight zoning reclassifications of other properties to garden apartment zones, but on the far side of busy highways; rezoning of a shopping center and two other commercial areas; and the altered definition of the requested zone, but involving just a modest decrease in density, still allowing many apartments. The Court analyzed each assertion and found them insufficient to show a substantial change relevant to the neighborhood and the zoning issue. 241 Md. at 197-201.

In quick succession, Alvey v. Hedin 243 Md. 334 (1966) followed. This involved a request to rezone property from agricultural to heavy commercial to operate a marina. The alleged changes were a request for a light commercial instead of heavy commercial zone; the rezoning of an adjacent property from agricultural to cottage residential; and a need for more boating and mooring facilities. The Court rejected these as insubstantial. 243 Md. at 340-42. To the same effect is Chatham Corp. v. Beltram 243 Md. 138 (1966).

The Court of Special Appeals (CSA) followed with Seminary Galleria, LLC v. Dulaney Valley Imp. Ass’n 192 Md. App. 719 (2010). This addressed business parking in the residential zone split at a shopping/office complex. Seminary Galleria identified many

changes: 1,000 parking spaces required instead of the previous 728 based on a new tenant mix calculation; a new "... characterization of the entire complex as a 'shopping center;'" a new 'zoning verification letter;' and aspects of the 14 parking spaces. 192 Md. App. at 731, 739-41. The CSA reversed the CBA approval. As a matter of law, Judge Meredith explained these claims did not amount to a substantial change in conditions.

In the present case, there also comes into play Prince George's County v. Prestwick 263 Md. 217, 226-29 (1972). This case exposes the flaw in Mr. Elliott's claims regarding his neighbors' minor subdivisions. Prestwick held that residential and infrastructure development along the lines permitted in the zone were anticipated and so would not constitute a material change in the neighborhood. This came up in a piecemeal rezoning case, where such alleged change was the main issue. So, even if Ms. Waller and Mr. Menchey subdivided after Elliott I, there would be no material change. The CBA addressed a somewhat similar issue in RREF, where the subdivision was built out subsequent to the initial development approval. The CBA agreed that this was in accordance with the initial approval and so not a material change. As noted, Mr. Elliott's argument for change pales by comparison because the neighboring minor subdivisions were already in process by the time of Elliott I.

The CBA has often addressed *res judicata*. In two such cases, the CSA held the doctrine applies as a matter of law: Back River, LLC v. Baltimore County 221 Md. App. 726 (2014), Arthur, J., affirming CBA No. 08-531-SPH; Freeland Community Ass'n v. HZ Properties 229 Md. App. 723 (2016), Kehoe, J., reversing CBA No. 9-039-M.

Here, Mr. Elliott's petition mirrors his earlier petition. The claim is the same. His alleged changes are cosmetic personal desires. This does not overcome *res judicata*. Moreover, the numbers of horses, use of the conservation area, and landscaping were specific issues litigated and limited. So, they are also also estopped from that perspective. The bottom line is that his arguments for change have way less merit than those rejected consistently in Whittle and the succeeding cases.

V. Conditional Grants as Partial Denials

Conditional grants are limited grants. They also by definition are partial denial, disallowance to deviate from or exceed said conditions. Two sides of the same coin. A condition grant is thus a hybrid denial. --- especially where discretionary, substantive, and contested. A conditional and limited grant does not function as the proverbial camel's nose under the tent. The litigated boundary, set at inches or feet, does not invite the country mile.

Here, Sallie Waller might have pursued her appeal if the grant had been unconditional. Likewise, Elliott could have appealed if he did not wish to be limited. We will never know that hypothetical outcome, unlimited approval, conditional approval, or complete denial. They both ended up accepting Elliott I.

The purposes of *res judicata* are directed to ensure repose for parties and promote decisional efficiency. They apply as much here as to a case of outright denial. Where a contested zoning petition is approved, but with limiting conditions, the CBA has rejected any subsequent request to remove such conditions must in the absence of a material change in circumstances. Bonner-Joppa, LLC, Case No. 04-127-SPH; Belvedere Baptist Church (Davenport Preschool), Case No. 15-004-SPH; and RREF, Case No. 2017-113-SPH. See attached exhibits.

Serendipitously, the Circuit Court has just delivered In the Matter of Valleys Planning Council, No. C-17-1849, (Souder, J.), attached. The opinion addressed material change pertinent to collateral estoppel. This differs from *res judicata* mainly by focusing on issue preclusion rather than claim preclusion. In the zoning context, the issue of material change is comparable.

Judge Souder rejected the developer's many assertions of factual and legal change framed to overcome ALJ John Murphy's 2004 plan denial. The new plan was smaller, 4 lots vs. 14, thus reduced overall. But it still centered on a litigated issue: development in the historic district, near the historic Stemmers Run house. The Court found preservation of the historic area at the heart of the previous denial, the very area ALJ Murphy highlighted for protection. Judge Souder cited Whittle and Seminary Galleria.

VI. Comment on BCZR Sec. 500.12

We have also reviewed BCZR Sec. 500.12. This precludes filing a petition for special exception (or zoning reclassification) as to the same property, or part thereof, until at least 18 months have passed from the final order on the previous petition.

This threshold prohibition does not alter the common law *res judicata* doctrine. It is not a *carte blanche* invitation to file a new case after the passage of 18 months as if the previous adjudicated denial or limitations were irrelevant and insignificant. The petition must still overcome *res judicata*, including proof of substantial change in conditions.

The core question is whether BCZR Sec. 500.12 evinces a purpose to alter *res judicata*. There arise contextual canons of statutory construction and the constitutional rule that a statute shall not be interpreted to repeal or modify common law any further than explicitly expressed. The answer here is that there is no such legislative purpose.

a. Statutory Construction: context and consequences

A statute must read in its entirety and in context to discern its essential purpose. Board of Physicians v. Mullan 381 Md. 157, 168 (2004) stated:

“...we ‘avoid constructions that are illogical, unreasonable, or inconsistent with common sense..., and instead interpret and harmonize statutes as a whole, giving meaning and effect to all parts of the statutory language and refraining from interpretations that render any part of a law surplusage or contradictory.’”

Legislation “... usually has some objective, goal, or purpose. It seeks to remedy some evil, to advance some interest, to attain some end.” Kaczorowski v. Baltimore, 309 Md. 505, 513 (1987). Judge William Adkins explained:

“Moreover, despite Kaczorowski’s pleas that we examine the trees so closely that we do not see the forest, the plain-meaning rule does not force us to read legislative provisions in rote fashion and in isolation. What we are engaged in is the divination of legislative purpose or goal... The ‘meaning of the plainest language’ is controlled by the context in which it appears.” 309 Md., at 514.

He cited Justice Holmes’ concept that “the general purpose is a more important aid than any rule which grammar or formal logic may lay down.” *Ibid*.

In Baltimore County Coalition Against Unfair Taxes v. Baltimore County, 321 Md. 184, 203-04 (1990), the Court wrote:

“Thus, we have said that a statute must be construed in context, because the meaning of the ‘plainest language may be governed by the context in which it appears.’... In this regard, words in a statute must be read in a way that advances the legislative policy involved. ... Courts may, therefore, consider not only the literal or usual meaning of those words, but their meaning and effect in the context in which the words were used, and in light of the setting, the objectives, and purpose of the enactment. ... Moreover, in such circumstances, courts may consider the consequences that may result from one meaning rather than another, with real intent prevailing over literal intent.”

Lucas v. People’s Counsel 147 Md. App. 209, 232 (2002) similarly explained,

“[T]he plain meaning rule of construction is not absolute.” Tracey v. Tracey, 328 Md. 380, 387, 614 A.2d 590 (1992). ...See State v. Bell, 351 Md. 709, 718, 720 A.2d 311 (1998) (statutory language is not read in isolation and must be read in the full context it appears).”

Judge Kehoe recently provided contextual statutory construction in Washington Gas Light Company v. Maryland Public Service Commission ____ Md. App. ____ (2017), No. 117, Sept. Term 2016, November 1, 2017. Essentially, it is impermissible to extend a statute to engraft an additional statutory allowance from linguistic silence. Pages 13-16.

Here, BCZR Sec. 500.12 must be read in the context of the common law. Here, BCZR Sec. 500.12 may allow the filing of any special exception petition after an 18-month intermission. But it does not immunize it from common law *res judicata*.

b. Statutory Construction relative to Common Law

Statutes are not presumed not to alter or repeal the common law further than any explicitly stated intent to the contrary: Antonio v. SSA Security, 442 Md. 67, 74 (2015); State v. North, 356 Md. 308, 311-12 (1999); Anderson v. State 61 Md. App. 436, 449 (1985); State v. Hardy 53 Md. App. 313, 317 (1982); Lutz v. State 167 Md. 12, 15 (1934); Hooper v. Baltimore 12 Md. 464, 475 (1859).

Judge Wilner crystallized in North,

In Robinson v. State, 353 Md. 683, 728 A.2d 698 (1999), we held it to be “a generally accepted rule of law that statutes are not presumed to repeal the common law ‘further than is expressly declared, and that a statute, made in the affirmative without any negative expressed or implied, does not take away the common law,’ ” but we also observed that “[w]here a statute and the common law are in conflict, or where a statute deals with an entire subject-matter, the rule is otherwise, and the statute is generally construed as abrogating the common law as to that subject.” Id. at 693, 728 A.2d at 702–

03, quoting, in part, from Lutz v. State, 167 Md. 12, 15, 172 A. 354, 356 (1934), quoting, in turn, 25 R.C.L. 1054.

“This view, generally disfavoring repeal of the common law by implication, has a long history in Maryland. In Hooper v. Mayor & C.C. of Balto., 12 Md. 464, 475 (1859), we quoted with approval from DWARRIS ON STATUTES at 695 that “it is not to be presumed that the legislature intended to make any innovation upon the common law, further than the case absolutely required,” but that “[t]he law rather infers that the act did *not* intend to make any alteration *other* than what is *specified*, and besides *what has been plainly pronounced*.” (Emphasis in original.)

Lutz v. State 167 Md. 12, 15 includes this additional discussion,

“In 25 R.C.L. 1054, it is said that: ‘It has been said that statutes are not presumed to make any alterations in the common law further than is expressly declared, and that a statute, made in the affirmative without any negative expressed or implied, does not take away the common law. The rules of the common law are not to be changed by doubtful implication, nor overturned except by clear and unambiguous language. In order to hold that a statute has abrogated common law rights existing at the date of its enactment, it must clearly appear that they are repugnant to the act, or the part thereof invoked, that their survival would in effect deprive it of its efficacy and render its provisions nugatory.’

Nickens v. Mount Vernon Realty Group 429 Md. 53, 73-74 (2012) summarized,

“It is axiomatic that statutes are presumed not to make any alterations or innovations in the common law further than is expressly declared, and that when a statute does expressly revise the common law, it should be strictly construed.” Brooks v. Lewin Realty III, Inc., 378 Md. 70, 92, 835 A.2d 616, 628–29 (2003); see Zetty v. Piatt, 365 Md. 141, 153, 776 A.2d 631, 638 (2001) (noting that unless there is an otherwise clear and contrary indication, we assume that an ordinance or statute did not intend to nullify, amend, or supersede the common law).”

Richwind v. Brunson 335 Md. 661, 672 (1994); Bradshaw v. Prince George’s County 284 Md. 294, 302 (1979); see Singer, 3 Sutherland Statutory Construction Sec. 61:1 (7th Ed.). Long ago, Shaw v. Merchants Nat’l Bank 101 U.S. 557, 565 (1879) stated,

“No statute is to be construed as altering the common law, farther than its words import. It is not to be construed as making any innovation upon the common law which it does not fairly express.”

**c. The Constitutional Foundation of Statutory Construction: Article 5 of the
Maryland Declaration of Rights**

Article 5(a)(1) of the Declaration of Rights states,

“**Art. 5. (a)**

(1) That the Inhabitants of Maryland are entitled to the Common Law of England, and the trial by Jury, according to the course of that Law, and to the benefit of such of the English statutes as existed on the Fourth day of July, seventeen hundred and seventy-six; and which, by experience, have been found applicable to their local and other circumstances, and have been introduced, used and practiced by the Courts of Law or Equity; and also of all Acts of Assembly in force on the first day of June, eighteen hundred and sixty-seven; except such as may have since expired, or may be inconsistent with the provisions of this Constitution; **subject, nevertheless, to the revision of, and amendment or repeal by, the Legislature of this State.** And the Inhabitants of Maryland are also entitled to all property derived to them from, or under the Charter granted by His Majesty Charles the First to Caecilius Calvert, Baron of Baltimore.” Emphasis supplied.

Article 5 is the constitutional source of the rule that common law prevails unless there is definitive legislative repeal. Judge Wilner’s North opinion stressed, 356 Md. at 312,

“In Anderson v. State, 61 Md. App. 436, 449 ... (1985), Judge Moylan explained the jurisprudential underpinning of that view, namely, the fact that, by Article 5 of the Declaration of Rights, the common law is Constitutionally guaranteed to the inhabitants of the State. Although that common law may be altered or repealed through statutes duly enacted by the General Assembly, given the Constitutional underpinning, its erosion is not lightly to be implied.”

Anderson echoed Walker v. State 53 Md. App. 182, 196 (1982). Walker rejected an argument that the statutory maximum punishment for felonious assault limited and displaced the indefinite sentence for residual common law assault. Citing Article 5 and ample precedent, Judge Moylan declared it settled,

“The first and more general answer to the argument based upon logical implication is that in Maryland we have historically and consistently disfavored the repeal of the common law by implication.” Citations omitted.

In sum, “The Walker court made clear that Maryland courts disfavor the repeal of the common law by implication.” D. Friedman, The Maryland State Constitution 30 (2011).

d. Recapitulation

BCZR Sec. 500.12 allows filing of a new special exception after 18 months. But it does not engraft immunity from *res judicata*. There is nothing in the legislative language which affects or alters the common law doctrine and its settled application in the zoning arena. The CBA should apply the doctrine here according to its established rules.

Conclusion

For the foregoing reasons, the County Board of Appeals should deny the petition to remove the litigated conditions. The petition is barred by *res judicata*.



PETER MAX ZIMMERMAN
People's Counsel for Baltimore County



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Towson, MD 21204
(410) 887-2188
peoplescounsel@baltimorecountymd.gov

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of November, 2017, a copy of the foregoing Motion to Dismiss was mailed to J. Carroll Holzer, Esquire, 508 Fairmount Avenue, Towson, Maryland 21286, attorney for Sallie Waller, , Lawrence Schmidt and Jason Vettori, 600 Washington Avenue, Towson, MD 21204, attorneys for Petitioner, and Sparks-Glencoe Community Association, c/o Lynne Jones, President, P.O. Box 937, Sparks, MD 21152.



PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

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Record MIN-2012-91889:
Minor Subdivision Plan Review New

Work Location

FALLS RD
SPARKS GLENDE MD 21152-9585

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Record Details

Licensed Professional:
Joseph C. Thompson
THOMPSON & ASSOCIATES, LLC
402 Hickory Ave Ste B
Bel Air, MD, 21014
Home Phone: 410 803-0696
Fax: 410 838-0666
Surveyor 21039

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Project Description:
Waller Sallie M Property 2 - TBP
2 SFDs

Owner:
WALLER SALLIE M
15813 FALLS RD
SPARKS MD 21152-9581

More Details

Related Contacts

Contact information
R. A. CHILDRESS & ASSOCIATES, INC.
418 CLUBSIDE DR TANETOWN MD 21787
TANETOWN, MD, 21787
Home Phone: 443 504-3367

Developer information
SALLIE M WALLER
15813 FALLS RD
SPARKS, MD, 21152
Home Phone: 410 771-4510

Application Information

PROJECT NUMBER

Minor Sub Number: 08085M

PROJECT INFORMATION

PAI Number: 05-0326
Project Acreage: 19.975
Total Number of Units: 2

ADDITIONAL PARCEL INFORMATION

In URDL: No
Elementary School: Fifth District ES
Middle School: Hereford MS
High School: Hereford HS
RFD: 302
TAZ: 433
LMA: APPA
Planned SC: No

Application Information Table

ZONING INFORMATION

Zoning: RC 2
Acreage: 19.975

DEVELOPMENT TYPES AND UNITS

Type of Unit: Single Family Detached
Existing Units: 0
Proposed Units: 2
Developed Units: 0
Comments: Proposed dwelling (#15833 Falls Rd) on lot 1 (14.48ac) and (#15837) lot 2 (5.50ac).

Parcel Information

Parcel Number: 202830
Page: 0047
Parcel Area: 39.34
Improved Value: 0
Plat: 0000000
Year Built: 0000
Unit: A

Book: 05236
Legal Description: 05-0326
Land Value: 0
Tax Account #: 1600005048
Reference: 0000
Land Area: 39.34

Fees

Paid:

Date	Invoice Number	Amount
11/30/2012	56368	\$581.00

Total paid fees: \$581.00

Processing Status

Development Plan Review
Appeals Process
Final Approval Processing
Closure

Attachments

View People Attachments

Name	Record ID	Type	Size	Latest Update
No records found.				

Record DRC-2014-00152:
Development Review Committee

Work Location

15813 FALLS RD
SPARKS GLENCOE MD 21152



Record Details

Applicant:

Sallie M. Waller
15813 Falls Road
Sparks, MD, 21152

Licensed Professional:

Geoffrey C. Schultz
Polaris Land Consultants, LLC
10 Gerard Avenue Suite 101
Timonium, MD, 21093
Home Phone: 410-250-4444
Surveyor 21154

Project Description:

Waller Sallie M Property 2
The request is for a minor subdivision refinement for
a lot line adjustment.

Owner:

WALLER SALLIE M
15813 FALLS RD
SPARKS MD 21152-9581

More Details

Related Contacts

Developer Information
SALLIE M WALLER
15813 FALLS RD
SPARKS, MD, 21152
Home Phone: 410 771-4510

Application Information
PROJECT INFORMATION

DRC Number:	1105148
PAI Number:	05-0326
Project Acreage:	19.9
Request Type:	Plan Refinement
Request Actions:	B-2
Plan Type Review:	Minor Subdivision
Zoning Classification:	RC 2

DRC DECISIONS

Granted DRC Actions:

B-2 1st Minor Subdivision
Refinement

Application Information Table

MEETING INFORMATION

Meeting Type:	DRC
Meeting Date:	11/05/2014
Old Business:	No
Meeting Time:	14:00
Meeting Location:	COUNTY OFFICE BUILDING ; ROOM 123; 111 W CHESAPEAKE AVE; TOWSON, MD 21204
Meeting Facilitator:	Colleen Kelly
Meeting Status:	Completed

Parcel Information

Parcel Number:	Book:
205388	05316
Page:	Legal Description:
0562	05-0326
Parcel Area:	Land Value:
20	0
Improved Value:	Tax Account #:
0	1600008078
Plat:	Reference:
0000000	0000
Year Built:	Land Area:
0000	20
Unit:	
A	

Fees

Paid:

Date	Invoice Number	Amount
10/15/2014	87508	\$100.00
Total paid fees: \$100.00		

Processing Status

✓ DRC Intake
✓ EPS-DC
✓ File
✓ PAI-DPR
✓ PAI-Zoning
✓ Planning-Dev Review
✓ SHA
✓ DRC Action

Attachments

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Name	Record ID	Type	Size	Latest Update
No records found.				

Related Records

View Entire Tree >

Record Number	Record Type	Project Name	Date	View
MIN-2012-91889	LandManagement/Plan Review/Minor Subdivision/New	Waller Sallie M Property 2 - TBP	12/03/2012	View
DRC-2014-00152	Development Review Committee	Waller Sallie M Property 2	10/15/2014	View
REF-2016-00022	Plan Refinement	Waller, Sallie M. Property 2 - 1st Refinement of Minor Subdivision	04/18/2016	View



BALTIMORE COUNTY, MARYLAND

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[Register for an Account](#) | [Login](#)[Home](#) [Animal Complaint](#) [License](#) [Land Management](#) [more ▾](#)[Search Development Applications](#)Record REF-2016-00022:
Plan Refinement

Work Location

15813 FALLS RD
SPARKS GLENCOE MD 21152

Record Details

Applicant:

Sallie M. Waller
15813 Falls Road
Sparks, MD, 21152

Licensed Professional:

Geoffrey C. Schultz
Polaris Land Consultants, LLC
10 Gerard Avenue Suite 101
Timonium, MD, 21093
Home Phone: 410-250-4444
Surveyor 21154

Project Description:

Waller, Sallie M. Property 2 - 1st Refinement of Minor
Subdivision
The request is for a minor subdivision refinement for
a lot line adjustment.

Owner:

WALLER SALLIE M
15813 FALLS RD
SPARKS MD 21152-9581

More Details

Related Contacts

Developer Information

Sallie M. Waller
15813 FALLS RD
SPARKS, MD, 21152
Home Phone: 410 771-4510Application Information
PROJECT INFORMATION

DRC Number:	110514
PAI Number:	05-0326
Minor Sub Number:	08085M
PAI Project Manager:	Jun Fernando
Zoning Reviewer:	Jun Fernando
Zoning Reviewer Assigned Date:	11/07/2014

APFO SCHOOL INFORMATION

New SFD: 2

Parcel Information

Parcel Number:	Book:
205348	05316
Page:	Legal Description:
0562	05-0326
Parcel Area:	Land Value:
20	0
Improved Value:	Tax Account #:
0	1600008078
Plot:	Reference:
0000000	0000
Year Built:	Land Area:
0000	20
Unit:	
A	

Fees

No records found.

Processing Status

Refinement Intake

EPS-OC
Fin
PAI-DPR
PAI-Zoning
Planning-Dev Review
SIA
EPS-EIR
EPS-SWM
EPS-GWM
PAI-Real Estate
OT-GIS

Refinement Action

Attachments

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Name	Record ID	Type	Size	Latest Update
M_Property 2_1st Refinement to Minor Subdivision Plan Approved.pdf	REF-2016-00022	Minor Subdivision Plans	995.03 KB	04/16/2016

Related Records



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Record MIN-2012-91897:
Minor Subdivision Plan Review New

Work Location
15825 FALLS RD
SPARKS GLENCOE MD 21152

Record Details

Licensed Professional:
R. A. CHILDRESS & ASSOCIATES, INC.
418 CLUBSIDE DR TANEYTOWN MD 21787
TANEYTOWN, MD, 21787
Home Phone: 443 504-3367
Engineer Unknown-1897

Project Description:
Menchey Calvin R Property
2 SFDs

Owner:
MENCHEY CALVIN ROSS MENCHEY MARGARET M
1817 LANDRAKE RD
BALTIMORE MD 21204-1825

▼ More Details

☒ Related Contacts

Contact information
R. A. CHILDRESS & ASSOCIATES, INC.
418 CLUBSIDE DR TANEYTOWN MD 21787
TANEYTOWN, MD, 21787
Home Phone: 443 504-3367

Developer information
CALVIN R MENCHEY
1817 LANDPAKE RD
BALTIMORE, MD, 21204
Home Phone: 410 823-8216

☒ Application Information

PROJECT NUMBER
Minor Sub Number:12001M

PROJECT INFORMATION
PAI Number:05-0334
Project Acreage:39.8
Total Number of Units:2

ADDITIONAL PARCEL INFORMATION
In URDL:No
Elementary School:Fifth District ES
Middle School:Hereford HS
High School:Hereford HS
RPD:302
TAZ:433
LMA:APPA
Planned SC:No

☒ Application Information Table

ZONING INFORMATION
Zoning:RC 2
Acreage:39.8

DEVELOPMENT TYPES AND UNITS
Type of Unit:Single Family Detached
Existing Units:0
Proposed Units:2
Developed Units:0
Comments:Proposed dwelling (#15825 Falls Rd) on lot 1 and (#15829) on lot 2.

☒ Parcel Information

Parcel Number:205387
Page:0565
Parcel Area:40
Improved Value:0
Plat:0000000
Year Built:0000
Unit:A

Book:05316
Legal Description:05-0334
Land Value:0
Tax Account #:1600008077
Reference:0000
Land Area:40

▼ Fees

Paid:

Date	Invoice Number	Amount
11/30/2012	56191	\$581.00

Total paid fees: \$581.00

▼ Processing Status

☒ Development Plan Review

☒ Appeals Process

☒ Final Approval Processing

Closure

Map

Map to the location of this file

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 Record MIN-2012-91894:
 Minor Subdivision Plan Review New
Work Location
 15817 FALLS RD
 SPARKS GLENCOE MD 21152
[View Additional Locations>>](#)**Record Details****Licensed Professional:**
 R. A. Childress, P.E.
 R. A. CHILDRESS & ASSOCIATES, INC.
 418 Clubside Dr.
 Taneytown, MD, 21787
 Home Phone: 410 803-0304
 Engineer 10227
[View Additional Licensed Professionals>>](#)**Project Description:**
 Elliott Roger L Property
 2 single family detached dwellings proposed, 1 is
 existing to remain
Owner:
 ELLIOTT ROGER L ELLIOTT MARGARET T
 15817 FALLS RD
 SPARKS MD 21152-9581
More Details**Related Contacts****Contact Information**
 R. A. CHILDRESS & ASSOCIATES, INC.
 418 CLUBSIDE DR TANEYTOWN MD 21787
 TANEYTOWN, MD, 21787
 Home Phone: 443 504-3367
Developer Information
 ROGER L ELLIOTT
 15817 FALLS RD
 SPARKS, MD, 21152-9581
Application Information**PROJECT NUMBER**

Minor Sub Number:

100206

PROJECT INFORMATION

PAT Number:

05-0331

Project Acreage:

18.114

Total Number of Units:

2

ADDITIONAL PARCEL INFORMATION

In URDL:

No

Elementary School:

JRM District ES

Middle School:

Hersford MS

High School:

Hersford HS

BPD:

302

TAZ:

156

LMA:

APPA

Planned RC:

No

Septic Tank:

4

Application Information Table**ZONING INFORMATION**

Zoning:

AC 2

Acreage:

18.114

DEVELOPMENT TYPES AND UNITS

Type of Units:

Single Family Detached

Existing Units:

1

Proposed Units:

2

Developed Units:

1

Comments:

Existing dwelling (#15817 Falls Rd) to remain on lot 1 (3.84ac).

Parcel Information

Parcel Number:

232414

Page:

0348

Parcel Area:

17.45

Improved Value:

0

Plat:

0000000

Year Built:

1950

Unit:

A

Book:

06172

Legal Description:

05-0331

Land Value:

0

Tax Account #:

1600614042

Reference:

0000

Land Area:

17.45

Fees**Paid:**

Date

Invoice Number

Amount

11/09/2012

55008

\$581.00

Total paid fees: \$581.00

Processing Status☒ Development Plan Review☒ Appeals Process☒ Final Approval Processing

Closure

Attachments**View People Attachments**

Name	Record ID	Type	Size	Latest Update
No records found.				

Related Records

IN THE MATTER OF
ROGER ELLIOTT - LEGAL OWNER/PETITIONER
FOR SPECIAL EXCEPTION AND VARIANCE ON
THE PROPERTY LOCATED AT 15815 FALLS ROAD

5TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

BEFORE THE
BOARD OF APPEALS

OF
BALTIMORE COUNTY
CASE NO. 15-196-XA

ORDER OF DISMISSAL

This matter comes to the Board of Appeals by way of an appeal filed by J. Carroll Holzer, Esquire on behalf of Sallie Waller, Protestant and Appellant, from a final decision of the Administrative Law Judge dated June 17, 2015, in which the requested zoning relief was granted with conditions.

WHEREAS, the Board is in receipt of a letter of voluntary withdrawal of appeal filed on August 14, 2015, by J. Carroll Holzer, Esquire on behalf of Protestant/Appellant, Sallie Waller, (a copy of which is attached hereto and made a part hereof); and

WHEREAS, said Petitioner/Appellant requests that the appeal taken in this matter be withdrawn and dismissed as of August 14, 2015,

THEREFORE, IT IS ORDERED this 14th day of September, 2015 by the Board of Appeals of Baltimore County that the appeal taken in Case No. 15-196-XA be and the same is hereby DISMISSED.

BOARD OF APPEALS
OF BALTIMORE COUNTY


Maureen E. Murphy, Chairman

IN RE: PETITION FOR SPECIAL
EXCEPTION AND VARIANCE

5th Election District
3rd Councilmanic District

Roger Elliott, Owner/Petitioner
15815 Falls Road

BEFORE THE
COUNTY

BOARD OF APPEALS

FOR
BALTIMORE COUNTY

PUD Case No.: 2015-0196-XA

NOTICE OF WITHDRAWAL OF APPEAL

Ms. Sallie Waller, 15813 Falls Road, Sparks, Maryland 21152, Appellant, by her attorney, J. Carroll Holzer, Esquire, Holzer & Lee, hereby withdraws her appeal from the Opinion & Order of the Administrative Law Judge dated June 17, 2015.

Appellant hereby withdraws her appeal with prejudice. The case is currently assigned for Tuesday, September 22, 2015.

Respectfully submitted,


J. CARROLL HOLZER, Esquire
Holzer & Lee
508 Fairmount Avenue
Towson, Maryland 21286
410-825-6961
Attorney for Appellant,
Sallie Waller

LAW OFFICE
HOLZER AND LEE
THE 508 BUILDING
508 FAIRMOUNT AVENUE
TOWSON, MARYLAND
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY on the 14th day of August, 2015 a copy of the foregoing

Notice of Withdrawal of Appeal was mailed first class, postage prepaid, to:

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J. CARROLL HOLZER, Esquire

6/17/15

IN RE: PETITIONS FOR SPECIAL
EXCEPTION AND VARIANCE
(15815 Falls Road)
5th Election District
3rd Council District
Roger Elliott
Legal Owner
Petitioner

* BEFORE THE
* OFFICE OF
* ADMINISTRATIVE HEARINGS
* FOR BALTIMORE COUNTY
* Case No. 2015-0196-XA

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) as Petitions for Special Exception and Variance filed for property located at 15815 Falls Road. The Petitions were filed on behalf of Roger Elliott, the legal owner of the subject property. The Petitioner seeks special exception relief per Baltimore County Zoning Regulations (B.C.Z.R.) to permit the subject property and the improvements to be used for a riding stable. The petition for variance seeks the following relief: (1) to permit a parking area with no screening or landscaping in lieu of the required screening and landscaping; (2) to permit a parking area to be surfaced with stone in lieu of the required durable and dustless surface; (3) to permit a parking area not to be striped in lieu of the striping requirement; and (4) to allow a two-way access driveway to have a width of 16 ft. in lieu of the required 20 ft. A site plan was marked as Petitioner's Exhibit 1.

Appearing at the hearing in support of the petitions was Roger Elliott and surveyor Bruce E. Doak, from Bruce E. Doak Consulting LLC, the firm which prepared the site plan. A neighbor (Ms. Waller) represented by J. Carroll Holzer, Esq. opposed the requests. The Petition was advertised and posted as required by the B.C.Z.R. Zoning Advisory Committee (ZAC) comments were received from the Bureau of Development Plans Review (DPR) and the Department of Planning (DOP). Those will be discussed below.

The subject property is approximately 33.829 acres and is zoned RC 2. The rural site is improved with a large barn, shed and adjoining parking area. These improvements would be used in connection with the riding stable. Petitioner's daughter will operate the riding stable, and she resides in a single family dwelling which is also located on the subject property.

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.

I do not believe the Protestant presented such evidence. Ms. Waller testified the riding stable operation would cause noise, increased traffic, odors and a potential decrease in property value. As to that last issue, Steven Edelin, a licensed realtor presented by the Protestant, testified the stable operation would on balance be a "negative" that could impact the future sale of the home. Joyce Corcoran, a realtor called by the Petitioner, testified that people looking to purchase homes in the northern Baltimore County area (i.e., Butler) would consider a horse riding stable to be a positive feature that would in her opinion enhance property values.

Though the testimony was conflicting, the potentially negative factors identified by Protestant are all inherent in the operation of a horse riding stable, a use permitted by special exception in the RC 2 zone. B.C.Z.R. §1A01.2.C.21. These are the types of inherent adverse effect that the legislature was presumed to have anticipated when it allowed the use by special exception. In other words, most uses for which a special exception is required are regarded as

"potentially troublesome because of noise, traffic, congestion..." *Montgomery County v. Butler*, 417 Md. 271, 297 (2010). As such, the Petition will be granted, subject to the conditions noted below.

VARIANCES

To obtain variance relief requires a showing that:

- (1) The property is unique; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Trinity Assembly of God v. People's Counsel, 407 Md. 53, 80 (2008).

Petitioner has met this test. The large property is irregular shaped and contains significant topographical features. As such it is unique. If the B.C.Z.R. were strictly interpreted Petitioner would suffer a practical difficulty, in that he would be unable to use the existing parking area. While it may be that with a great deal of difficulty and expense the parking area could be relocated, additional grading and paving (impervious surface) should be avoided if possible in a rural, agricultural setting such as this.

Finally, I find that the variances can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare. The DOP recommended that a vegetative buffer be provided to screen the view from Falls Road and the adjoining property (owned by Ms. Waller), and thus the first variance will not be granted. In addition, the DPR requested the driveway be at least 16' wide between Falls Road and the proposed parking area, and a condition will be added to that effect.

The only other issue pertains to the large forest buffer and forest conservation easements shown on the site plan. While the Department of Environmental Protection did not submit a ZAC comment, the law prohibits recreational activities within these environmentally-sensitive areas.

Ms. Elliott was asked by Protestant's counsel to outline the approximate location of the trails she intends to use for her business, and the course shown in blue ink on the site plan does not encroach upon any of the buffer areas. Even so, a condition will be added to make clear that horse riding shall not take place in those areas.

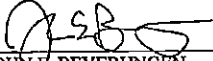
THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 17th day of June, 2015, that the Petition for Special Exception to permit the subject property and the improvements to be used for a riding stable, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Variance: (1) to permit a parking area to be surfaced with stone in lieu of the required durable and dustless surface; (2) to permit a parking area not to be striped in lieu of the striping requirement; and (3) to allow a two-way access driveway to have a width of 16 ft. in lieu of the required 20 ft., be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon 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 his 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 provide screening and/or other landscaping between the proposed parking area and the property owned by Ms. Waller. The configuration of and specific requirements for the landscaping shall be determined in the sole discretion of the Baltimore County landscape architect.
3. The driveway accessing the proposed parking lot shall be at least 16' wide for its entire length.
4. Petitioner shall, prior to issuance of any necessary permits/licenses, secure approval from the Baltimore County Soil Conservation District.
5. No trail riding or horses shall be permitted within the forest buffer and forest conservation easement areas shown on the site plan.
6. Petitioner shall keep no more than five (5) horses on the subject property.

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


JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/sln

IN THE MATTER OF
THE APPLICATION OF
BONNER-JOPPA, LLC - PETITIONER
FOR SPECIAL HEARING ON PROPERTY LOCATED
ON THE SW CORNER OF "C" STREET AND
AVONDALE ROAD (3015 E JOPPA ROAD)

11TH ELECTION DISTRICT
6TH COUNCILMANIC DISTRICT

• BEFORE THE
• COUNTY BOARD OF APPEALS
• OF
• BALTIMORE COUNTY
• CASE NO. 04-127-SPH
* * * * *

OPINION

This case comes to the County Board of Appeals as an appeal filed by the Office of People's Counsel from a decision of the Deputy Zoning Commissioner's decision issued on December 3, 2003, granting the special hearing request to approve an amendment to the Order in Case No. 02-066-SPHA, Restriction No. 9, to permit one tow truck to be stored on-site for the purpose of providing emergency towing services under contract from Baltimore County from the subject property at 3015 East Joppa Road.

The Petitioner, Mr. Timothy Bonner, of Bonner-Joppa, LLC, was represented by F. Vernon Boozer, Esquire. Peter M. Zimmerman, People's Counsel for Baltimore County, appeared on behalf of that office. The Board conducted a public hearing on September 22, 2004, and a public deliberation on November 4, 2004.

In his opening statement, Mr. Zimmerman described the zoning history of the subject site, which dates back to 1975. The lot is zoned for commercial use (B.L.-A.S.) but is surrounded by a residential neighborhood (D.R. 5.5). The most recent zoning decision is dated September 28, 2001. Mr. Zimmerman noted that a compromise agreement was reached at that time with the neighborhood which set 10 restrictions on the granting of the special exception. The instant case (Case No. 04-127-SPH) involves Restriction No. 9, which prohibited tow trucks from operating on the property.

The main issue in this case, according to Mr. Zimmerman, was whether an agreement that

Case No. 04-127-SPH / Bonner-Joppa, LLC - Petitioner

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was reached only a few years ago could be changed unless the situation had changed

dramatically. He argued that residents needed to have confidence when entering into an agreement to a special exception that it is going to hold; otherwise, they will be disinclined to enter into such agreements.

Mr. Zimmerman also argued that the Deputy Zoning Commissioner should not have based his decision on the "emergency need" by the County for an additional tow truck operator, but on the special exception requirements set for in § 502.1 of the *Baltimore County Zoning Regulations* (BCZR).

In his opening statement, Mr. Boozer submitted Petitioner's Exhibit 1, a copy of the decision in Case No. 02-066-SPHA dated September 28, 2001, which granted the Petitioner's request to amend a previously approved special exception granted in Case No. 95-423-SPH (decision dated August 2, 1995), and a request for variance, subject to ten restrictions.

Testimony

The first witness called by the Petitioner was Mike Walkley, a Civil Engineer who prepared the site plan for the tow truck operation at the subject location. He testified that the tow truck would be stored on the west side of the building (known as Tim's Auto), and that a fence would screen the truck. The truck would also be screened from Avondale Avenue by the building itself. Two parking spaces would be eliminated as a result. Petitioner's Exhibit 2 was accepted into evidence showing a plan of the site.

Testimony was then given by Officer Ruark, of Baltimore County Traffic Management. Mr. Ruark had prepared a report for permitting a tow truck operation at 3015 Joppa Road, which was submitted as Petitioner's Exhibit 3. Officer Ruark testified that the report recommended that

another towing operation was needed in the Harford Road corridor. However, Officer Ruark noted that the Police Department took a position of "neutrality" on whether Bonner-Joppa should be granted a towing license, stating that the report did not reach a conclusion as to whether this particular site filled the Department's needs.

Mr. Timothy Bonner next testified regarding the subject property. He bought the property in September 2001, at which time it was an "old rundown garage" with two service bays. Because the building was dilapidated, he tore it down and went through the zoning process to rebuild. Petitioner's Exhibits 4A-H were introduced to show the new building, the location of parked cars, the fence, and where the tow truck operation would be run.

Mr. Bonner was asked why he now wanted tow trucks on the site, when the original special exception included a condition prohibiting them. Mr. Bonner replied that he had originally intended to run the tow trucks from his first location in Baltimore City, but as his business on Joppa Road has grown, he needs the tow trucks to further expand. He further testified that he wanted the Police Department towing license and needed to be able to operate tow trucks from the subject site. Mr. Bonner stated that the agreement entered into 2 years ago is now limiting his business.

Mr. Bonner further testified that he owns a house in the nearby residential neighborhood on 6th Avenue, which he owns with his brother.

Upon cross-examination, Mr. Bonner admitted that he currently has a tow truck operation in Perry Hall. Mr. Zimmerman offered People's Counsel Exhibits 2A-P, which Mr. Bonner identified. Exhibits 2A-C are photos showing Tim's Auto on the subject site. Exhibit 2D shows vans from Tim's Auto parked on Avondale Avenue, around the corner from the shop. Exhibit

2H and 2I show vehicles on C Street. Exhibit 2K shows a van on Avondale. Exhibit 2L shows

Mr. Bonner's house and garage on Avondale.

When asked by Mr. Zimmerman how often the tow trucks would operate, Mr. Bonner testified that it would be a 24-hour operation, because towing could occur at all hours whenever a customer breaks down. Mr. Zimmerman pointed out that this would be contrary to Condition 7 of the original request for variance, which limits hours of operation to from 7 a.m. to 6 p.m. Monday through Friday and 8 a.m. to 3 p.m. on Saturdays. Mr. Bonner stated that he understood this restriction to mean those were the hours he could be open for business, but that this did not preclude him from towing a vehicle to his business.

Upon questioning by Panel Chairman Don Mohler, Mr. Bonner admitted that the towing operation would enable him to serve more customers, not just the Police Department.

Mr. Zimmerman introduced People's Counsel Exhibit 3, an aerial photo of the site and surrounding neighborhood, and People's Counsel Exhibit 4, a zoning map of the area, with the location of the site marked in yellow. People's Counsel Exhibit 5 is a copy of the decision granting a special exception to operate a service garage granted on June 4, 1975 to the original owner of the site (Case No. 75-262-X), and People's Counsel Exhibit 6 is a copy of the decision granting a Special Hearing in August 1995 to amend the 1975 Special Exception to remove Condition 2 (Case No. 95-423-SPH). Finally, Mr. Zimmerman introduced People's Counsel Exhibit 7, a letter from the Carney Improvement Association to Mr. Timothy Kotroco, the Deputy Zoning Commissioner for Baltimore County, dated September 21, 2001, in which the community association expressed support for Mr. Bonner's Petition for a Special Hearing on condition that certain restrictions be placed on the business.

The first witness called by People's Counsel, Marilyn Ryan, of 3414 Sixth Avenue in Carney, testified regarding her concern for the proposed towing operation. Her concern centered on the continued expansion of the business. She stated she was concerned that tow trucks would be running all night. She also testified that she was concerned about what would be done with cars towed to the site from accidents, since Tim's Towing was not allowed to do body work - one of the original conditions. She further testified that vehicles from the auto shop have been parked illegally on nearby vacant property and at the house that Bonner owns on 6th Avenue.

The second witness called by Mr. Zimmerman was Ruth Baisden, representing the Greater Parkville Council (People's Counsel Exhibit 10). She testified that, while the neighborhood wanted to see the property improved, it was initially concerned about the size and scope of the business, which was why the restrictions were originally placed on it in 2001. Ms. Baisden pointed out that the nearby area is all residential, and the community must constantly police Bonner's actions to enforce the current restrictions.

Other witnesses testified to seeing the commercial vans that Bonner's shop repairs parked on Avondale, where they are not allowed, and at Bonner's house on 6th Avenue (People's Counsel Exhibits 13A-E).

In his closing argument, Mr. Boozer pointed out that Mr. Bonner had eight tow trucks at his Perry Hall location and only wanted one at this location, and that he wanted the one at the subject location for his convenience and his customers. He argued that Mr. Bonner had complied with the original restrictions during the last two years, but because his business had grown, he now needs the restrictions amended to allow a tow truck on the site.

In his closing, Mr. Zimmerman argued that, although the Bonner property is zoned B.L.-

A.S., the surrounding area is residential zoning, D.R. 5.5. In order for his special exception request to be granted, Mr. Bonner had to meet the conditions placed on it to accommodate the residential neighborhood's concerns. Since the decision in 2001, Mr. Zimmerman argued, there had been no "substantial change in conditions" as to the facts or the law, as required by *Whittle v. Board of Zoning Appeals*, 211 Md. 36 (1956), for the Board to now modify the conditions placed on the subject property. Mr. Zimmerman pointed out that the only change has been that Bonner's business has grown, but that the original intent of the 2001 restrictions was to moderate the business. Mr. Zimmerman further argued that the special exception requirements of BCZR 502.1 require that the impact on the neighborhood be considered.

Mr. Boozer then argued that this was not a 502.1 case, because the special exception for a service garage had been made in 1975. The request now was for an amendment to the conditions made in 2001.

Decision

The history of this case dates back to 1952, when the special exception for a two-bay service station was first granted (Case No. 22435A). In 1975, a second Petition for Special Exception was filed. In his opinion in that case (Case No. 75-262-X), the Deputy Zoning Commissioner for Baltimore County, James Dyer, noted that "[t]estimony by several area residents established that the subject property has, in the past, been a blight on the neighborhood due to maintenance, junk, etc." (Peoples Counsel Exhibit 5; p. 1). Because the residents thought the new owner "was providing a service to the community," the Deputy Zoning Commissioner found that the use met the requisites of § 502.1 and granted the special exception with certain restrictions. Among the four restrictions were Restriction 2, which prohibited body or fender

work; and Restriction 3, which required that overnight storage of vehicles take place only behind a stockade fence.

Twenty years later, in 1995, the same owner, Antoni Horodowicz, petitioned for special hearing to amend the 1975 special exception to remove Restriction 2 and allow body and fender work to be performed on the site (Case No. 95-423-SPH). Area resident testimony again cited problems with the maintenance of the property. Although one witness for the neighborhood did not oppose the removal of the restriction, he did request that the "property be cleaned up and kept that way." (Peoples Counsel Exhibit 6, p. 2). The Deputy Zoning Commissioner, Timothy Kotroco, granted the amendment, but again set four restrictions. Among those restrictions were Number 2, which requires that all wrecked or damaged vehicles be stored within the fenced/screened area on site; and Number 3, which required improvement and maintenance of the property, in accordance with the dictates of the Office of Planning and Zoning.

We then come to the first Petition for Special Hearing and Variance of September 2001 (Case No. 02-066-SPHA), requested by the current owner of the subject property, Bonner Joppa LLC/Tim's Automotive, in conjunction with the original owner Antoni Horodowicz (Petitioner's Exhibit 1). This petition requested permission to allow the construction of a new building on the subject property and grant a variance from § 409.8.4 of the BCZR to allow existing parking spaces to continue with a 0-foot setback from the street right-of-way in lieu of the required 10 feet. In his opinion in this case, Mr. Timothy Kotroco states, "In order to proceed with the redevelopment of this property, the special hearing request, as well as the variance request, are necessary." (Petitioner's Exhibit 1, p. 2) In granting the request, Mr. Kotroco goes on to state, "I believe it is necessary to place appropriate conditions and restrictions upon this Petitioner, in

order to protect the interests of the surrounding residential community." (Petitioner's Exhibit 1, p. 3)

A total of ten restrictions were placed upon the business as a condition for granting the special hearing and variance request. Among these restrictions are Number 5, which specifies that damaged vehicles should be stored on Petitioner's property and that automobiles waiting for repair should be in designated spaces on the property; Number 7, which limits the hours of operation; and Number 9, which prohibits a towing operation and the storing of a tow truck, but does allow tow trucks to bring automobiles to the site for repair.

The petition before us now seeks to amend the Special Hearing and Variance of September 2001 by removing Restriction Number 9 and allowing a single tow truck to operate from the site.

The neighborhood thus has a 50-year history with the operation of a service station/garage on this site, and most of that history appears to have been negative from the neighborhood's viewpoint.

Counsel for Petitioner argues that, because Mr. Bonner's business has increased since 2001, conditions have changed as to allow the amendment of the restrictions placed upon the site.

People's Counsel argues that the standard of *res judicata* applies. Mr. Zimmerman cites *Whittle v. Board of Zoning Appeals*, which states:

The general rule, where the question has arisen, seems to be that after the lapse of such time as may be specified by the ordinance, a zoning appeals board may consider and act upon a new application for a special permit previously denied, but that it *may properly grant such a permit only if there has been a substantial change in conditions* [emphasis added]. . . .

This rule seems to rest not strictly on the doctrine of res judicata, but upon the proposition that it would be arbitrary for the board to arrive at opposite conclusions on substantially the same state of facts and the same law.It is our view that where *the facts are subject to changes which might reasonably lead to an opposite result* from that arrived at in an earlier case, and if there have been *substantial changes in fact and circumstances between the first case and the second*, the doctrine of res judicata would not prevent the granting of the special permit sought by the appellees [emphasis added].

The Board finds that the Petitioner has not shown substantial change in fact and circumstances that would lead to approval of removing the restriction on a towing operation. The restrictions were originally placed on the service garage with the express purpose of protecting the neighborhood, which has suffered for at least 30, and possibly 50, years from poorly maintained service garages on this site. The argument that the business has grown and therefore needs to operate a tow truck from the premises, if anything, supports the community concerns that led to the initial restrictions. As Mr. Zimmerman pointed out in his closing arguments, the restrictions were intended to moderate the business, so it would not have a harmful impact on the surrounding residential community. In this respect, the changing circumstances of Mr. Bonner's business do not lead to an opposite result, but to the same result: the restrictions remain necessary to protect the surrounding community.

Testimony by Mr. Bonner and witnesses for People's Counsel seems to support the argument by the People's Counsel that removing Restriction 9 would, in effect, also remove Restriction 7 (regulating the hours of business), because the towing operation would potentially operate 24 hours.

In granting the special exception in 1975, and in amending and modifying that special exception subsequently, the zoning commissioners placed certain restrictions on the property in order to address the requirements of BCZR 502.1. Without these conditions, particularly the ten

placed on the property in 2001, the special exception and subsequent amendments might not have been granted. The relevant portions of BCZR 502.1 state:

Before any special Exception may be granted, it must appear that the use for which the Special Exception is requested will not:

- A. Be detrimental to the health, safety, or general welfare of the locality involved;
- B. Tend to create congestion in roads, streets, or alleys therein;
- C. Create a potential hazard from fire, panic, or other dangers.

Based upon the testimony, which indicated that there was already congestion caused by vehicles awaiting repair parked on the public streets -- contrary to Restriction #5 -- and since a towing operation would potentially only increase the vehicles brought to the site, the Board finds that the proposed use would be detrimental to the health, safety or general welfare of the locality and would tend to create congestion in the roads, streets, or alleys therein. The Board voted unanimously against amending the restrictions.

Further, this Board is concerned with the precedent that would be set if an agreement between a community and a business were set aside within only 2 years of being reached. The community acted in good faith in not opposing Mr. Bonner's original petition in 2001 because he agreed to the ten conditions they requested. The community should not have to fight the same battle every 2 years.

Although the Deputy Zoning Commissioner, in his December 2003 decision, cited the Baltimore County Police Department's need for a towing operation in the Harford Road area, that is not one of the criteria for granting a special exception -- and, therefore, in this matter, it is not a criteria for amending the special exception.

Therefore, this Board will deny the special hearing request and will so order.

ORDER

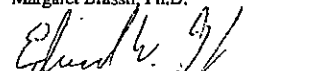
THEREFORE, IT IS THIS 27th day of January, 2005 by the
County Board of Appeals of Baltimore County

ORDERED that the Petitioner's special hearing request to approve an amendment to the
Order in Case No. 02-066-SPHA, Restriction No. 9, to permit one tow truck to be stored on-site
be and the same is hereby DENIED.

Any petition for judicial review from this decision must be made in accordance with Rule
7-201 through Rule 7-210 of the *Maryland Rules*.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY¹


Margaret Brassil, Ph.D.


Edward W. Crizer, Jr.

¹ While the third member of this panel, Donald I. Mohler III, publicly deliberated and participated in reaching the
above unanimous decision of the Board, Mr. Mohler resigned from the Board prior to signature of this Opinion and
Order. Therefore, this written decision has been signed by the two remaining panel members.

RE: PETITION FOR SPECIAL HEARING * BEFORE THE
1301 CHEVERLY ROAD *
9th Election & 3rd Councilmanic Districts * BOARD OF APPEALS

Legal Owner: The Belvedere Baptist Church * FOR
of Baltimore *
Lessee: Davenport Preschool LLC, * BALTIMORE COUNTY
Petitioners *
Case No.: 15-004-SPH

OPINION

This case comes before the Baltimore County Board of Appeals on an appeal of Administrative Law Judge John Beverungen's decision denying a Petition for a Special Hearing to approve an amendment to Restriction No. 2 in Zoning Case No. 2013-0166-X for the property located at 1301 Cheverly Road in Eastern Baltimore County. People's Counsel for Baltimore County has moved for dismissal of Petitioners' appeal on the grounds of *res judicata*. Petitioner Davenport Preschool, LLC ("Davenport")¹ and People's Counsel submitted Memoranda, and the Board heard oral arguments on January 27, 2015. Matthew T. Vocci of Ober Kaler Grimes & Shriver appeared on behalf of Davenport, J. Carroll Holzer appeared on behalf of the Protestants, and Peter M. Zimmerman appeared on behalf of People's Counsel. The Board publicly deliberated the Motion to Dismiss on January 27, 2015.

BACKGROUND

The dispute at issue dates back to March 28, 2013, when Administrative Law Judge ("ALJ") Beverungen of the Office of Administrative Hearings issued a written order granting, with certain conditions, the Petition for a Special Exception filed by The Belvedere Baptist Church of

¹ Counsel for Davenport has indicated the proper name of the Lessee is 'Davenport Education, LLC.'

Belvedere Baptist Church of Baltimore/ Case No.: 15-004-SPH

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Baltimore, Legal Owner ("Belvedere") and Davenport, the Lessee. (Belvedere and Davenport are collectively referenced herein as "Petitioners"). Petitioners had sought the special exception pursuant to §424.5.A of the Baltimore County Zoning Regulations ("BCZR") to permit a Class B Group Child Care Center with more than 40 children in an existing church on the subject property. (Case No. 2013-166-X). After a contested hearing involving testimony and evidence from Davenport and several members of the community, the ALJ granted the Petition, subject to three conditions. The pertinent condition is No. 2, which states as follows:

2. The Petitioner shall have no more than 120 children in the facility at any one time, unless state regulations or fire and life safety regulations provide a lower number which would prevail.

(March 28, 2013 ALJ Opinion and Order at 7). Petitioners did not file an appeal of this Order. Certain community members ("Protestants") did file a timely appeal to the Board of Appeals from the ALJ's decision but subsequently withdrew their appeal. By Order dated June 27, 2013, the Board of Appeals dismissed Protestant's appeal with prejudice. (The 2013 hearing and appeal process shall be referred to as "Davenport I").

More than a year later, on July 8, 2014 and pursuant to § 500.7 of the BCZR, Petitioners filed for a Special Hearing, seeking amendment of Condition No. 2. Specifically, Petitioners wanted the ALJ to amend that condition to allow a maximum of 150 rather than 120 children in the child care facility. A public hearing was held and both sides again presented testimony and evidence. By Order dated September 12, 2014, ALJ Beverungen denied the Petition. Petitioners filed a timely appeal to this Board of Appeals. (The 2014 hearing and appeal process shall be referred to as "Davenport II"). People's Counsel has filed a Motion to Dismiss Petition for Special Hearing, based on the doctrine of *res judicata*. Petitioner Davenport opposes the Motion.

FACTS

In Davenport I, Petitioner Davenport sought a special exception in order to operate a childcare facility for more than forty children. Davenport intended to lease space in the existing Belvedere Baptist Church to house the facility. The Church is situated on a 12.711 acre property in a rural residential neighborhood consisting of approximately 160 homes and zoned DR 1. See Davenport I ALJ Opinion at 2,4. Under the DR 1 classification the Petitioners would be permitted to operate a class B Group Child Care Center with up to forty children as a matter of right. See BCZR §1B01.1.A.12. The Regulations require a Special Exception to operate a facility with more than forty children. See BCZR §424.5.A.

During the hearing in Davenport I, the Davenport representative indicated that applicable child care regulations would limit the number of child in the facility as planned to approximately 135. Davenport stated further that its goal was to enroll 150 children, resulting in approximately 120 children attending the center on any given day.² See Davenport I ALJ Opinion at 5-6. Neighborhood residents who spoke at the hearing identified potential traffic problems as their primary concern. Id. at 4. There was some divergent testimony as to the estimated number of vehicle trips through the neighborhood 150 enrolled children would generate. ALJ Beverungen stated that each such estimate represented "a lot of traffic" for the rural residential neighborhood and may well disturb the peace and quiet of the neighborhood. He stated further, however, that a large child care center with 100+ children would generate a large volume of traffic in any DR zone, not just this particular location. Id. at 4. According to ALJ Beverungen, the increase in traffic was "inherent" in the proposed use and "is exactly the type of inherent adverse effect that the legislature

² Given that some of the younger children would attend on a part-time basis, Davenport counted two such part-time children as one full-time enrollment.

was presumed to have anticipated when it allowed the use by a special exception." Id. He concluded he was compelled to grant the Petition because the Protestants failed to show that the proposed use at the particular location would have non-inherent adverse effects. Id. at 5.

Although he granted the Petition, ALJ Beverungen also conditioned the relief in an attempt "to mitigate the impacts on the community." Id. The "most significant condition" concerned the number of children at the facility. Considering both the expected traffic problems, and Davenport's testimony regarding the anticipated number of students and classrooms, the ALJ concluded 120 children was an appropriate figure. Id. He thus granted the special exception subject to the condition that Davenport would have "no more than 120 children in the facility at any one time. . . ." Id. at 7. Petitioners did not appeal this decision. Protestants did file but later withdrew an appeal. Therefore, on June 27, 2013, this Board dismissed the appeal with prejudice.

In July 2014 Petitioners reemerged and filed a Petition for a Special Zoning Hearing. The Petition sought amendment of Condition No. 2 in the March 2013 Order, such that Davenport would be permitted to increase the number of children in the facility to 150, rather than 120. Petitioners also wanted to build an additional classroom on the property to accommodate more children. ALJ Beverungen again heard testimony from witnesses for the Petitioner and Protestants and received exhibits regarding the proposed changes. In an Opinion dated September 12, 2014, ALJ Beverungen denied the Petition for Special Hearing. He emphasized that Petitioners had failed to indicate why the original restriction should not remain in place, that Davenport had not yet reached the maximum number of students permitted in condition No. 2,³ and that Petitioners failed to demonstrate some change in circumstances that would justify a different restriction. See

³ The Davenport representative indicated the then-current class had 109 children and that she wanted to build another classroom to house 16 more students. See Davenport II ALJ Opinion at 2.

Davenport II ALJ Opinion at 2-3. On October 10, 2014 Davenport filed a Notice of Appeal. People's Counsel filed a Motion to Dismiss the Petition for Special Hearing and Petitioner's appeal from the decision in Davenport II on the ground of *res judicata*. Davenport responded and on January 27, 2015 all parties presented arguments before the Board of Appeals.

DISCUSSION

I. Res Judicata

Under the doctrine of *res judicata*, a judgment on the merits in a previous suit between the same parties or their privies is entitled to full preclusive effect and bars a second suit predicated upon the same cause of action. Seminary Galleria, LLC v. Dulaney Valley Improvement Ass'n, Inc., 192 Md. App. 719, 734 (2010)(citations omitted). *Res judicata* acts as "an absolute bar, not only as to all matters which were litigated in the earlier case, but as to all matters which could have been litigated." Whittle v. Bd. of Zoning Appeals, 211 Md. 36, 49 (1956). See Garrett Park v. Montgomery County Council, 257 Md. 250, 257 (1970) (*res judicata* applies to every matter that was or might have been presented in the prior case).

Although some older cases held that *res judicata* did not apply to rulings of administrative agencies, it is now well-established that "when an administrative agency is performing a quasi-judicial function, the principles of *res judicata* are applicable." Seminary Galleria, 192 Md. App. at 735. This determination is guided by a three-part test: 1) whether the agency was acting in a judicial capacity; 2) whether the issue presented to the tribunal was actually litigated before the agency; and 3) whether the issue's resolution was necessary to the agency's decision. Id. at 736. See Batson v. Shiflett, 325 Md. 684, 705-08 (1992).

In acting upon the Petitions filed herein, the Office of Administrative Hearings acted in a judicial capacity, conducting a hearing and allowing the parties to present evidence. The parties

were precisely the same in both Davenport I and II. The issues regarding the maximum number of children presented in Davenport II were previously addressed, litigated and resolved in Davenport I. That resolution was key to the original decision. According to these criteria, the resulting conditioned decision rendered by ALJ Beverungen in Davenport I should preclude maintenance of a second action to amend that same condition.

Petitioners argue the decision is not entitled to a preclusive effect because it was based on an error of law. However, just as a final decision in a prior litigation, even if incorrect, will bind the parties to the litigation, a decision by an administrative agency acting in a judicial capacity is equally binding whether or not the decision was made in error. See Powell v. Breslin, 430 Md. 52, 64-65 (2013)(an incorrect ruling in a prior action does not deprive the ruling of *res judicata* effect). This should particularly apply when the party striving for that proverbial second bite at the apple failed to appeal the first determination. Even if this were not the case, the decision in Davenport I was not in error. Petitioners argue that Schultz v. Pritts, 291 Md. 1 (1981) and its progeny such as Montgomery County v. Butler, 417 Md. 271 (2010) should be considered in analyzing the matter. However, that is exactly the path ALJ Beverungen followed. Citing Schultz and Butler, the ALJ concluded that insofar as the community's traffic concerns are an inherent effect of a large child-care center in any DR zone, he was bound to, and therefore he did grant the Petition. See Davenport I ALJ Opinion at 3-4.

The fact that the ALJ also imposed certain conditions in an attempt to alleviate the traffic burden and protect the neighborhood does not in any way undermine the validity of his decision. To the contrary, the applicable zoning regulations specifically permit such conditional grants. According to BCZR §502.2, "[i]n granting any special exception, the Zoning Commissioner . . . shall impose such conditions, restrictions or regulations as may be deemed necessary or

advisable for the protection of surrounding and neighboring properties." See Halle Companies v. Crofton Civic Ass'n, 339 Md. 131, 140 (1995) (agency may impose reasonable conditions and restrictions in connection with a special exception order to mitigate the effect upon neighboring property and the community at large.); Baylis v. City Council of Baltimore, 219 Md. 164, 168 (1959). The ALJ permitted Petitioners to operate their business on a scale larger than that permitted as of right while concomitantly imposing certain restrictions intended to protect the neighborhood and its residents. This compromise was an appropriate use of his discretionary powers.

II. Substantial Change in Circumstances

Res judicata operates on the premise that faced with the same information, there is no reason to expend judicial resources and force opposing parties to rehash the same case in an ongoing effort to reach a different result. Thus, if a party *does* provide evidence of substantial changes in circumstances and fact between the first case and the second, *res judicata* may not necessarily prevent a second hearing on a previously decided matter. This issue arises fairly often in the zoning arena. According to the Court of Appeals, "[t]his rule seems to rest not strictly on the doctrine of *res judicata* but upon the proposition that it would be arbitrary for the board to arrive at opposite conclusions on substantially the same state of facts and the same law." Whittle, 211 Md. at 45. See Seminary, 192 Md. App. at 737 ("The Court of Appeals has emphasized that before a party can apply to a zoning agency for relief previously denied by the agency, 'substantial changes in fact and circumstances' must be, indeed, substantial.") (citations omitted); Jack v. Foster Branch Homeowner's Ass'n No. 1, Inc., 53 Md. App. 325, 333 (1982) (*res judicata* doctrine may not preclude a second case where there has been a material change in circumstances since the first decision); Chatham Corp. v. Beltrami, 243 Md. 138, 151-52 (1966)

(barring a second attempt to re-raise a previously decided issue where the underlying facts remained unchanged).

Davenport contends that the actual operation of the school is a significant change in circumstances. They point to a document all school parents are required to sign regarding safe driving through the neighborhood and note that there have not been any traffic accidents. They further indicate that the growth of the student population and current space restrictions may require them in the future to refuse admittance to a few families. (Davenport's Response Memorandum at 7-8). These are not significant material changes that would warrant a rehearing or amendment of Condition No. 2. These same items were raised in Davenport I. The school's operation and the consequences thereof was a fact that was anticipated and discussed at the prior hearing. Condition No. 2 was imposed precisely to mitigate contemplated traffic problems resulting from the student population; the current absence of accidents argues more for the continuation of the condition rather than its amendment and a larger student body.⁴ As to the school's parents now signing an agreement regarding safety and neighborhood issues, that is not a change warranting a rehearing; one would have assumed that school parents would obey traffic laws and exercise caution when driving through the neighborhood irrespective of the agreement.⁵ In short, there was no substantial change to the property, the neighborhood or the facts that would lead to a contrary result upon re-litigation, particularly in the relatively short time span between the decisions.

⁴ Moreover, while Davenport may desire more available student slots, the school has yet to reach the maximum number of students allowed under the existing condition.

⁵ The "Community Respect Agreement" signed by the Davenport parents includes such statements as "I will come to a complete stop at every stop sign" and "I will not speed through the neighborhood . . ."

CONCLUSION

In Davenport I, the ALJ struck a valid compromise between each party's concerns in light of the governing law. If Petitioners took issue with Condition No. 2 in the ALJ's decision they could have and should have filed a timely appeal with the Board. They failed to do so. The Protestants filed an appeal but withdrew that appeal in the apparent belief that Petitioners would be adhering to the conditions set forth in Davenport I. The community's good faith in withdrawing its appeal should not mean they are now required to fight the same battle every new school year. The parties in both Davenport I and II are identical, there are no material changes of fact or law, and the issues now presented either were addressed or could have been addressed in Davenport I. Petitioners have not presented any compelling reason permitting them, contrary to the doctrine of *res judicata*, to go back to the well and re-litigate the same issue in the hope of achieving a different result.

ORDER

IT IS THEREFORE, this 27th day of February, 2015 by the Board of Appeals for Baltimore County,

ORDERED, that the Motion to Dismiss Petition for Special Hearing filed by Baltimore County's People's Counsel be and is hereby GRANTED; and it is further

ORDERED, that the appeal in Case No. 2015-0004-SPH be and is hereby DISMISSED WITH PREJUDICE.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

BOARD OF APPEALS
OF BALTIMORE COUNTY

David L. Thurston
David L. Thurston, Chairman

Benfred B. Alston
Benfred B. Alston

Meryl W. Rosen
Meryl W. Rosen

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: RREF II SB-MD, LLC

17-113-SPH

DATE: August 9, 2017

BOARD/PANEL: Andrew M. Belt, Chairman
Meryl W. Rosen
James H. West

RECORDED BY: Tammy A. Zahner, Legal Secretary

PURPOSE: To deliberate the following:

1. Motion to Dismiss filed by People's Counsel, and Opposition thereto.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

- The Board reviewed the history of this property. There was a previous case from 2004 which imposed restrictions on the development of the lots in question within the Montclair development, including height limitations and minimum setbacks, in order to protect the adjoining property that includes the historic Wiseburg Inn. Petitioner seeks to amend certain restrictions from the prior case.
- A Motion to Dismiss was filed by People's Counsel, and an Opposition to the Motion was filed by Petitioner. The Board held a hearing to provide the parties with the opportunity to present argument on the application of *res judicata* to this case.
- The Board noted that, in order for Petitioner to avoid the application of *res judicata*, there must be a substantial change in circumstances involving the properties.
- The Petitioner argues that the development restrictions set forth in connection with the original approval of the Montclair development were put in place for the protection of the adjoining property. They argue that construction of a barn by the neighbor, the completion of the Montclair development, and mature tree growth constitute a material change in circumstance.
- The Board finds that the items argued by the Petitioner as material changes were to be expected, and finds there has not been a substantial change to the property or circumstances.

CONCLUSION: After thorough review of the facts in the record and law governing this matter, the Board unanimously agreed to GRANT the Motion to Dismiss on the basis of *res judicata*.

NOTE: These minutes, which will become part of the case file, are intended to indicate for the record that a public deliberation took place on the above date regarding this matter. The Board's final decision and the facts and findings thereto will be set out in the written Opinion and Order to be issued by the Board.

Respectfully Submitted,

/s/
Tammy A. Zahner

IN THE MATTER
OF
VALLEYS PLANNING
COUNCIL INC, *et al.*

• IN THE
• CIRCUIT COURT
• FOR
• BALTIMORE COUNTY
• CASE NO.: C-17-1849



MEMORANDUM OPINION AND ORDER

This matter comes before the Court on the timely Petition for Judicial Review filed by Valleys Planning Council Inc., Kathleen Pontone, and David and Betsy Wilmerding (collectively, "Petitioners"), seeking review of the February 1, 2017 Majority Opinion and Order of the Baltimore County Board of Appeals ("Board"). 2627, LLC (hereafter referred to as "Developer") seeks to develop the property at issue, an undeveloped lot at 2609 – 2615 Caves Road in Owings Mills (the "Property") into four residential homes, each on its own lot. The Board's majority affirmed the decision of the Administrative Law Judge (ALJ) approving the plan. Respondent Developer filed a timely response in Opposition to Petition for Judicial Review; and, the Petitioners filed a timely Reply. This Court held a hearing on this matter on September 12, 2017. The issue of development of this parcel has been previously decided. For the reasons set forth below, the decision of the Board is REVERSED.

BACKGROUND

The property is a 24.18 acre plot of RC 5 land situated in Owings Mills, Maryland. ALJ's Development Plan Opinion and Order at 1. The Developer submitted a plan ("Plan") for approval of four single-family homes on four lots. *Id.* The four houses would be accessed through a shared driveway from Caves Road. *Id.* Currently, this area is

undeveloped and forested. In addition, it shares a boundary with a designated historic district, and is adjacent to the Stemmer House, a Baltimore County Landmark. *Id.*

Thirteen years ago, in 2004, a proposed residential development for 13 homes (hereinafter the "2004 Plan") in the same area was denied. Petitioners' Ex. 10 (hereinafter the "2004 Decision"). Commissioner John Murphy denied the application, stating, "I will not approve a plan with homes in the historic district, not only to preserve the district but also to relieve the pressure to build on this ridgeline." *Id.* at 21. The 2004 Decision was not appealed. The current Plan proposes four homes, whose lots are along this same ridgeline along the historic district, in the same location as three of the homes proposed in the 2004 Plan. *See* Petitioners' Ex. 73.

On November 5, 2015, the matter at hand was heard before the Honorable John E. Beverungen who rejected the Developer's plan because the record failed to contain certain required findings by the Department of Planning. *Id.* at 21. The Developer filed a Motion for Reconsideration, requesting the ALJ to allow submission of the requisite materials to the Department of Planning. Board Decision at 1. The Motion was granted; and, an additional hearing was held on August 16, 2016. Upon reconsideration, the ALJ issued an Amended Development Plan Opinion and Order approving the Plan on August 25, 2016. ALJ's Amended Development Plan Opinion and Order at 1. The Petitioners appealed to the Board.

The Board held a hearing on November 9, 2016. Board Decision at 2. This Court will summarize the evidence presented at the ALJ and Board hearings only as it is relevant to this Opinion and Order.

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The ALJ initially heard testimony from County agency representatives, all of whom testified that the Plan met applicable regulations and recommended approval.¹

Transcript of ALJ Hearing, Nov. 5, 2015 ("November Transcript") at 4-50. The Developer then presented its case, beginning with testimony from Mr. Douglas Kennedy, a professional engineer. Mr. Kennedy testified to the layout of the Property, the forest buffer that would remain on the Property, and the storm water management system. *Id.* at 101-25. When asked whether the Plan complies with applicable regulations and policies, Mr. Kennedy stated "Yes it does...we comply with the zoning code, we comply with the development regulations." *Id.* at 125:3-5.

The Developer's next witness was Mr. Henry Leskinen, an ecologist. November Transcript at 177-78. Mr. Leskinen testified that one "specimen tree" would be removed to develop the driveway; without removal of this one tree, the alternative plan would require a quarter-acre of forest to be removed. November Transcript at 185-86. Mr. Leskinen stated that the "removal of the one three [sic] is not going to alter the character of that neighborhood." *Id.* at 184:10-11. Ms. Sally Malena, a landscape architect, next testified that the current topography and proposed tree screening would inhibit, if not entirely prevent, visibility of the proposed homes from Caves Road. *Id.* at 232-38.

Ms. Kathryn Kuranda, an architectural historian, then testified that although the Property is located within the Caves Valley National Register Historic District ("NRHD"), numerous new structures and homes have been built since its designation and that the new construction, including that of a Golf Club, has "not detracted from the baseline

¹ Jean Tansey, Department of Recreation and Parks; Dennis Kennedy, Development Plans Review Bureau; Lloyd Moxley, Department of Planning; Jeff Livingston, Department of Environmental Protection and Sustainability (DEPS).

integrity of the historic district." Transcript of ALJ Hearing, Jan. 20, 2016 ("January Transcript") at 147:18-20.

The Petitioners then presented their case, beginning with testimony from Ms. Janet Davis, a retired historic preservation planner. *Id.* at 148:18-20. Ms. Davis testified to her involvement in nominating the Stemmer House to Baltimore County's Landmarks Preservation List, and described the house as "the most unique structure in the Caves Valley Historic District." *Id.* at 186:16-17. Ms. Davis also opined that the Plan would negatively impact the Historic District and Stemmer House, even though the development will occur on the "edges" or boundaries of the district. *Id.* at 205-06. Her testimony offered a contrasting opinion to Ms. Kuranda's, explaining that prior development in the district since its historic designation has not been detrimental to its integrity; the current Plan is different because it will "cut out a chunk of that forested ridge line...[and take] a bite out of the forest." *Id.* at 217:9-15.

Next, the Petitioners called Mr. Dan O'Leary, an engineer testifying regarding stormwater management. Transcript of ALJ Hearing, February 5, 2016 ("February Transcript") at 20:16-20. Mr. O'Leary testified that the stormwater management plan would not be able to handle the water discharge from a 100-year storm, in violation of COMAR 21.17.02.06. *Id.* at 38-41. Mr. O'Leary further opined that Developer's depiction of the stormwater management plan was not accurate and will not be effective. *Id.* at 75-77; 85-90.

Ms. Elizabeth Watson, an historic preservationist, then testified, affirming many of Ms. Davis's opinions. *Id.* at 171:5-13 ("This is simply chopping into the forest, fragmenting it..."). Ms. Watson further stated that the Plan will negatively impact the

Historic District and Stemmer House through the added lighting and sounds of human activity. *Id.* at 174-75. Ms. Margaret De Arcangellis testified next on behalf of a group called Preservation Maryland. *Id.* at 207-08. She expressed the group's concern that the Plan proposes development too close to the Stemmer House which will harm the Historic District. *Id.* at 214-15.

Ms. Betsy Wilmerding, a neighborhood resident, then testified as to four concerns regarding the Plan. *Id.* at 216:4-18. She stated her bewilderment as to why the current Plan was approved when another development plan was denied in 2004. *Id.* at 220-21. She was also concerned about the Plan's impact on the "Integrity of the Historic District." *Id.* at 224:7-9. Thirdly, she testified to her concern that stormwater runoff would imperil a nearby stream. *Id.* at 227-28. Finally, she stated that the driveway to the Property would cause erosion and disruption to the forest. *Id.* at 228:6-16.

Ms. Kathleen Pontone, another neighborhood resident testified next. *Id.* at 248-49. Ms. Pontone is heavily involved with the Valleys Planning Council, an organization whose mission is to "preserve the resources in the Caves Valley historic district. *Id.* at 249-50. Ms. Pontone's testimony consisted mainly of identifying historic aspects and characteristics of the Stemmer House and the surrounding area. *Id.* at 250-324.

The Petitioner also called Ms. Barbara Holdridge, who lived in the Stemmer House from 1932 until 2012. November Transcript at 290-91. She stated her opinions that the Plan does not offer proper screening, and that the Plan will upset the uniqueness of the Stemmer House and its surrounding property. *Id.* at 298-301.

The final witness for the Petitioners was Mr. Bruce Doak, a property line surveyor, who testified that the Plan does not comply with Baltimore County Code provisions. Transcript of ALJ Hearing, March. 24, 2016 ("March Transcript") at 29-33.

Following the ALJ's approval and the Petitioners' appeal, the parties presented argument to the Board on November 9, 2016, and the Board affirmed the ALJ's decision. The majority of the Board noted that collateral estoppel is inapplicable because of the substantial changes in the factual and legal circumstances. Board Decision at 15-19. The Board unanimously found that the ALJ was within his authority when he found the Developer's storm water management plan engineer more persuasive. *Id.* at 20. The majority of the Board also held that there is no provision requiring the ALJ to "preserve" historic sites; and, because the Plan does not infringe upon an historic district, the ALJ was not required to make specific findings on that issue. *Id.* at 23-24. Finally, the Board unanimously held that ALJ properly approved the panhandle lots because the Code does not mandate submission of a "neighborhood map" or a "photo montage" as suggested by the Petitioners, and the Developer presented evidence that the Department of Planning had approved the lots. *Id.* at 25.

Mr. Joseph Evans of the Board dissented on two issues of law: the preclusive effect of the 2004 Decision and whether the ALJ is authorized to consider the historic impact. *Id.* at 32. Mr. Evans discussed the current Plan as it relates to the 2004 Decision and concluded that there are no significant changes in law or fact as to render *res judicata* or collateral estoppel inapplicable. *Id.* at 37 ("[The ALJ] took the unreasonably narrow view that the deletion of the language of § 32-4-416 and the reduction of the scale of development from 13 new houses to 4 new houses resolved

the question without further thought"). Mr. Evans also opined that the County Code granted the ALJ authority to consider the impact of historic preservation, and that the ALJ erred by refusing to account for such effects. *Id.* at 38.

QUESTION PRESENTED

Whether the Board was correct in affirming the ALJ's decision that the Plan is not barred by *res judicata* and/or collateral estoppel.²

STANDARD OF REVIEW

"A court's role in reviewing an administrative agency adjudicatory decision is narrow." *Board of Physician Quality Assurance v. Banks*, 354 Md. 59, 67 (1999). The court is "limited to determining if there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine [*sic*] if the administrative decision is premised upon an erroneous conclusion of law." *United Parcel Service, Inc. v. People's Counsel for Baltimore County*, 336 Md. 569, 577 (1994).

In regard to the Board's legal conclusions, this Court's review is "expansive" and owes "no deference." *Bennett v. Zelinsky*, 163 Md. App. 292, 299 (2005), *cert. granted*, 389 Md. 399 (2005). "Generally, a decision of an administrative agency, including a local zoning board, is owed no deference when its conclusions are based upon an error of law." *Stansbury v. Jones*, 372 Md. 172, 184 (2002) (quoting *Belvoir Farms Homeowners' Ass'n v. North*, 355 Md. 259, 267 (1999)). See also *Maryland State Police v. Lindsey*, 318 Md. 325, 334 (1990) ("When, however, the agency's decision is predicated solely on an error of law, no deference is appropriate and the reviewing court may substitute its judgment for that of the agency").

² The Petitioners submitted five questions for review. The conclusion to this single question is dispositive, therefore this Court will not examine the remaining issues.

DISCUSSION

I. The Board incorrectly determined that the ALJ's decision approving the Plan was not barred by collateral estoppel.

Both parties primarily discuss *res judicata* in their respective briefs. As the Petitioners acknowledged at oral argument, however, *res judicata* is not applicable. Its sister doctrine, collateral estoppel (issue preclusion), is, however, applicable to the case at hand. As an error of law, this issue is reviewed *de novo*. *Coleman v. Anne Arundel County Police Dept.*, 369 Md. 108, 122 (2002).

The doctrine of collateral estoppel bars relitigation of an issue of fact or law that was "actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment." *Garity v. Maryland State Bd. of Plumbing*, 447 Md. 359, 368 (2016). For collateral estoppel to apply, four elements must be met:

- (1) Was the issue decided in the prior adjudication identical to the one presented in the action in question?
- (2) Was there a final judgment on the merits?
- (3) Was the party against whom the plea is asserted a party or in privity with a party to the prior adjudication?
- (4) Was the party against whom the plea is asserted given a fair opportunity to be heard on the issue?

Id.; See also *Colandrea v. Wilde Lake Community Ass'n, Inc.*, 361 Md. 371, 391 (2000); *Washington Suburban Sanitary Commission v. TKU Associates*, 281 Md. 1, 18-19 (1977). An agency decision has preclusive effect for the purposes of collateral estoppel where the agency is "performing quasi judicial functions." *Garity*, 447 Md. at 380. See also *Electrical General Corp. v. Labonte*, 229 Md. App. 187, 203 (2016) ("[T]he doctrine of collateral estoppel applies with full force to decisions of administrative agencies...").

Collateral estoppel is based on the principles of judicial economy and fairness. It "protect[s] litigants from the burden of relitigating an identical issue with the same party or his privy and...promot[es] judicial economy by preventing needless litigation." *Garity*, 447 Md. at 368 (quoting *Parklane Hosiery Co., Inc. v. Shore*, 439 U.S. 322, 326 (1979)) (emphasis added). These principles have been accepted in numerous other jurisdictions. See e.g., *Cumberland Farms, Inc. v. Town of Groton*, 262 Conn. 45, 58 (2002) ("The common-law doctrine of collateral estoppel, or issue preclusion, embodies a judicial policy in favor of judicial economy, the stability of former judgments and finality...."); *Murray v. Alaska Airlines, Inc.*, 50 Cal. 4th 860, 864 (2010) (quoting *Parklane Hosiery Co.*, 439 U.S. at 326); *Lewis v. Maine Coast Artists*, 770 A.2d 644, 649 (2001) (describing *res judicata* as a doctrine founded on concerns for "judicial economy and efficiency, the stability of final judgments, and fairness to litigants").

The 2004 plan proposed the development of 14 single-family homes, three of which were in the same area as the four proposed homes in the current Plan. See Developer's Ex. 1A; Petitioners' Ex. 9, 73. Commissioner Murphy denied the 2004 plan; and, this decision was not appealed. 2004 Decision at 21. Therefore, the first two elements of the collateral estoppel test are satisfied.

The "mutuality of parties," requirement of the third element will preclude relitigation of an issue in a second suit "when the parties are the same as, or in privity with, those who participated in the first litigation." *Id.* at 368-69. "The analysis of privity for purposes of collateral estoppel focuses on whether the interests of the party against whom estoppel is sought were fully represented, with the same incentives, by another party in the prior matter." *Mathews v. Cassidy Turley Maryland, Inc.*, 435 Md.

584, 628 (2013). See also *Warner v. German*, 100 Md. App. 512, 521 (1994) ("[A] court may focus on the nature of the interests binding the two parties, and, correspondingly,

whether they share the same incentive in their separate litigation attempts").

Because the Developer (the party against whom collateral estoppel has been asserted) is not the same party as that in the 2004 case, the analysis of the third element turns on privity. Developer did not address this issue in its brief. Privity depends on "whether the interests of the party against whom estoppel is sought were fully represented, with the same incentives, by another party in the matter." *Mathews v. Cassidy Turley Maryland, Inc.*, 435 Md. 584, 628 (2013). The developer in 2004 was George William Stephens, Jr. & Associates, Inc. ("GWS"). This Court finds that Developer's interests "were fully represented, with the same incentives" in 2004 by GWS. *Id.* Both parties were incentivized by the prospect of developing this wooded area surrounding the Stemmer House. Both developers faced the same incentives in attempting to obtain approval of their respective plans, creating stormwater management plans, and complying with the relevant zoning laws and County Code provisions. Although the Court indicated at the hearing its inclination to accept Petitioners' argument regarding the application of collateral estoppel, Developer's counsel offered no argument as to how the Developer's interests might vary from GWS's interests in 2004.

Developer argues, and the majority of the Board agreed, that collateral estoppel is not applicable because there have been substantial changes in both the law and the factual circumstances since the 2004 Decision. Board Decision at 19. In its brief, Developer describes eight changes in the factual circumstances:

- (1) Lots and acreage – the 2004 plan proposed 14 lots on 73 acres; the current Plan proposes four lots on 24 acres.
- (2) Access to the developments – the 2004 plan's access route would include access to the Stemmer House; the current Plan provides access through an existing driveway off Caves Road, with no access to the Stemmer House.
- (3) Orientation – the fronts of the homes proposed in the current Plan are slightly reoriented as compared to the 2004 plan.
- (4) Impervious Areas and Stormwater Management – the current Plan proposes micro-biorentention-based management systems, no ponds, and no outfalls near steep slopes.
- (5) Steep Slopes – the current Plan does not propose any building near a steep slope, unlike the 2004 Plan.
- (6) Forest Clearing – the current Plan will require removal of a single specimen tree.
- (7) Historic Structures – the 2004 plan included and encroached on the Stemmer House; the current Plan does not.
- (8) Historic Setting – the historic setting associated with the Stemmer House was created after the 2004 Decision, and the current Plan is entirely outside the established historic district.

Developer's Brief at 13. Petitioners do not contest the existence of the aforementioned changes; however, they contend that the changes are not "substantial." Petitioners' Reply, at 7-8.

Petitioners present two cases to support their argument. In *Whittle*, the Board of Zoning Appeals of Baltimore County initially denied a permit for the building of a funeral home. *Whittle*, 211 Md. at 38. Upon reapplication, the developers in *Whittle* argued that *res judicata* was inapplicable because the area had undergone further commercialization and an increase in property values, a change in neighbors' attitude, and the plan included additional shrubbery and covered less of an area. *Id.* at 39. In the Court's view, these changes only amounted to "slight distinctions," therefore *res judicata* was still applicable. *Id.* at 48.

The Petitioners also cite *Seminary Galleria, LLC*, where a commercial property owner's attempt to reconfigure parking spaces was denied. Three years later, the owner

filed a new petition with a new parking plan, classifying the property as a "shopping center." The Court found that there were no substantial differences between the two plans solely because the latter plan sought more parking spaces. *Seminary Galleria, LLC v. Dulaney Valley Improvement Ass'n, Inc.*, 192 Md. App. 719, 742 (2010).

In general, the factual changes cited by Developer are merely superficial and do not rise to the requisite level to render collateral estoppel inapplicable. In 2004, Commissioner Murphy's primary concern was to preserve the historic district. Many of the changes cited by Developer have no nexus to this concern. See 2004 Decision, at 20-21. Furthermore, Commissioner Murphy suggested in 2004 that the developer remove the three houses which were in the same area as the houses in the current plan and resubmit the plan. *Id.* ("Should the Developer accept these revisions [i.e. remove the three lots] to the plan in a Motion to Reconsider, I will refer the revised plan to the Development Plan Conference..."). As Mr. Joseph Evans noted in his Dissenting Opinion, "it appears that the precise flaw in the 2004 development plan related to the three lots that correspond to the four lots at issue here." Board Decision, at 33. Analysis of the remaining purported changes demonstrates that the current Plan is merely a repackaged version of the 2004 plan.

While the changes cited by Developer may be more numerous than those discussed in *Whittle* and *Seminary Galleria*, they are overlapping and are not more significant in substance. The fewer number of homes proposed in the current Plan makes little difference, because all four of the proposed houses are in nearly the exact location of the three homes which troubled Commissioner Murphy in 2004. Petitioners Ex. 73; See 2004 Decision, at 20-21. Furthermore, the Plan avoids the steep slopes

only because the four proposed houses are located on the ridgeline itself, to the west of the slopes of the 2004 plan. Petitioners' Ex. 9. These two alleged differences overlap entirely and may as well be the same.

The fact that the current Plan reorients the houses (and only slightly) does not change the underlying similarities in factual circumstances. *Id.* Additionally, based on Commissioner Murphy's concern about development on the ridgeline, the currently proposed Caves Road access road would likely have only intensified his opposition. And again, the development of the access road along the ridgeline overlaps with the purported changes in the paragraph above. *See* 2004 Decision at 21.

Furthermore, Developer specifically notes that the Plan differs from that in 2004 because of the differing means of egress and ingress. The current Plan proposes a driveway from Caves Road, which would provide access to all four homes. The 2004 plan involved a driveway from Park Heights Avenue. This difference is superficial to the concerns stated in Commissioner Murphy's 2004 Decision. As Mr. Doak testified, the proposed driveway would still require significant destruction and fragmentation to the forest and the historic area. March Transcript at 23-26 ("...and then the relationship of the houses and the driveway to the adjoining property that is the historic home and property here...it has great detriment to the adjoining properties [i.e. the Stemmer House]"). Mr. Doak also stated his concern regarding the driveway's grading and the stormwater management problems that will arise from the driveway's placement. *Id.* In sum, these proposed changes to the access road overlap with the continued detrimental impact the Plan will have on the historic area.

Additionally, the Developer alleges that the new Plan is distinct from the 2004 plan in that the historic structures (i.e. the Stemmer House) and the historic setting will not be impacted. This assertion ignores Commissioner Murphy's stated concern for the "cultural landscape." 2004 Decision at 20-21 ("...there is a cultural landscape associated with a rural agricultural valley that in my view is incompatible with these three new homes"). Commissioner Murphy heard testimony in 2004 from James Wollen, a registered architect. Mr. Wollen testified to his concern that the proposed development would "disturb the cultural landscape..."[h]e emphasized that development outside the district can have negative visual impacts on the district...." 2004 Decision at 10. The cultural landscape is still a concern, and Petitioners provided evidence to this point at the ALJ hearing. In discussing the nomination of the Stemmer House to the National Register of Historic Places, Ms. Davis explained the importance of the cultural landscape as an area where one can observe and perceive the relationship between the natural resources and human activities. January Transcript at 199-201. The current Plan would upset this visual dynamic, similar to the concern stated in 2004.

The registration documents for the National Register of Historic Places also emphasizes the cultural landscape. Petitioners' Ex. 33, Section 7, p. 4 ("The man-made resources of the Caves Valley Historic District are closely interwoven with its natural characteristics"). The registration went on to state that the "continuous pattern of human interaction" through the "agricultural land use" is the "major difference" in the Caves Valley, setting it apart from other districts. *Id.* at 2. Ms. Davis stated her concern that the Plan will upset this landscape, as it will "cut out a chunk of that forested ridgeline...[and take] a bite out of the forest." January Transcript at 217:9-15. Ms. Watson echoed these

concerns, stating that the Plan would fragment the continuous band of trees of the area, forever altering the "grain" of the landscape. February Transcript at 169-71. The current Plan may have some differences in its design, however, there are no substantial changes in its impact on the historic or cultural landscape.

Similarly, Developer's assertion that the current Plan will result in less "priority 1" forest clearing is redundant and not substantial.³ Although only one specimen tree would be removed, a substantial amount of forest would still be cleared to make room for the proposed homes. November Transcript at 185-86. Mr. Doak testified that "...by placing the lots where they are, by destroying this amount of forest, you are fragmenting what's left." March Transcript at 24:17-19. Mr. Doak explained that the Plan proposes homes in "existing mature forest," which will require the destruction of many trees, rather than placing the homes in open areas. *Id.* at 24. This alleged change in forest removal overlaps with the concerns regarding the cultural landscape. Additionally, the Court is not convinced that the reduction in amount of priority 1 forest removal is substantial when the Plan still requires large amounts of forest to be removed. As such, this alleged change from 2004 is not substantial.

Analysis of these factual "changes" alleged by Developer reveals that the founding principles of collateral estoppel have not been served by allowing Developer to move forward with the Plan. The Plan proposes four homes in the very same location as the three homes that Commissioner Murphy found so concerning in 2004. The issues and testimony presented to the ALJ and Board during the Plan's approval process are

³ Priority one forest is "forest that occurs in environmentally sensitive areas such as forest buffers, flood plains, wetlands, [and] encompasses steep slopes. They have high structural diversity, [and] may be habitat for rare or endangered species." November Transcript at 207:3-9.

almost identical to the issues discussed in the 2004 Decision. Permitting relitigation in such a context does not promote judicial economy. This Court is now hearing the same dispute that Commissioner Murphy has already decided, thus representing the "needless litigation" which collateral estoppel is designed to prevent. *See Gamity*, 447 Md. at 368.

Regarding the alleged changes in legal circumstances, Developer correctly notes that there has been a change to the Baltimore County Code since 2004. However, the Court is not convinced that this revision amounts to a "substantial or significant change" in law. *Seminary Galleria, LLC*, 192 Md. App. at 737. In 2004, Commissioner Murphy relied on BCC § 32-4-416, which required a development plan to "preserve natural features...including [h]istoric structures or sites identified on any of the lists referred to in § 32-4-223(b)." *See* 2004 Decision, at 19. Section 32-4-416 has since been repealed. Bill 26-07. However, the introduction of Bill 26-07 does not mention the development review process of Title 4 at all. The first five words of the Bill state "AN ACT concerning Landmark Preservation." Bill 26-07. The Fiscal Note for Bill 26-07 further defines the purpose of the Bill as "propos[ing] changes to Article 32, Title 7 of the Code dealing with the landmarks preservation process." Fiscal Note Bill 26-07. The County Council made clear that Bill 26-07 was not intended to alter the development review process, and therefore cannot be a substantial change for the purposes of collateral estoppel.

Petitioner also correctly points to two substantive provisions in the Code which highlight the significance the County Council still places on historic areas. The BCC provides that "all development shall conform to the policy and intent of this title." BCC § 32-4-401(b)(2). The development policies of the Title are "intended to ensure that

proposed development projects are safe, adequate, convenient and, where applicable, provide for [the] prevention of environmental degradation and promotion of environmental enhancement...including historical sites or areas." BCC § 32-4-102(b)(2)(vi). In the provision titled "Purposes of the Title," the Code states "complying with [Title 4] and the Comprehensive Manual of Development Policies fulfills the development policies and purposes set forth in § 32-4-102." BCC § 32-4-103(b).

Developer relies heavily on the repeal of § 32-4-416 to support its argument that the County Code no longer authorizes the ALJ to consider the impact on historical sites and areas. As discussed above, the repeal of § 32-4-416 was not intended to alter the development review process. See Bill 26-07; Fiscal Note Bill 26-07. Furthermore, BCC §§ 32-4-102(b)(2)(vi) and 32-4-103(b) provide substantive instruction to the ALJ, requiring the consideration of development on historical areas. Section 32-4-223(B)(iii) also requires that a proposed development plan identify historic properties. See Developer's Ex. 1A (identifying the Stemmer House as an "historic propert[y]"). If the development plan must identify historic properties when submitted to the ALJ, logically the ALJ is authorized to consider them in the ALJ's evaluation. As such, the ALJ remains authorized, as it was prior to the repeal in 2007, to consider the impact of development on historical sites and areas.

The Court is required to "give the ordinary and natural meaning to statutory language..." *McClanahan v. Washington County Dept. of Social Services*, 445 Md. 691, 701 (2015). Furthermore, "[t]his plain meaning should be construed to carry out and effectuate, or aid in, the general purposes and policies of the statute." *Maryland Economic Development Corp. v. Montgomery County*, 431 Md. 189, 199 (2013). Had

the County Council intended to alter the development process, it would have stated such an intention in the Bill. The plain meaning of the Code, as it stands now, allows the ALJ to consider the impacts on historic areas.

There are neither substantial changes in law nor fact, therefore issue preclusion applies and Developer is estopped from relitigating the new development Plan. Because this Court reverses the Board's Majority Opinion and Order on this issue, it declines to consider the remaining issues raised by Petitioners.

CONCLUSION

For the reasons set forth above, it is, this 18th day of October, 2017, hereby

ORDERED that the Board's Majority Opinion and Order of the Baltimore County Board of Appeals is REVERSED.

Susan Souder
Judge Susan Souder

Copies were sent to:

Michael R. McCann
Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, Maryland 21204

Christopher Mudd
Adam Rosenblatt
Venable, LLP
210 W. Pennsylvania Avenue
Suite 500
Towson, Maryland 21204

True Copy Test
JULIE L. ENSOR, Clerk
Julie L. Ensor
Per Assistant Clerk



Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

October 27, 2017

NOTICE OF REASSIGNMENT

IN THE MATTER OF: Roger L. Elliott – Legal Owner
15815 Falls Road
17-332-SPHXA 5th Election District; 3rd Councilmanic District

Re: Petition for Special Hearing pursuant to § 500.7 of the BCZR to:

1. To amend the approved Special Exception in Case No. 2015-0196-XA; and
2. To amend by expanding and clarifying the previously approved Special Exception by:
 - 1) Allowing for additional horses for boarding and other lawful purposes and striking the previous condition #6 of only allowing 5 horses; and
 - 2) Adding to or modifying the previous condition #5 with language prohibiting trail riding in the Forest Buffer and Forest Conservation areas unless and/or as permitted by the Director of the DEPS or other governing agency.

Petition for Special Exception to permit a riding stable/boarding table on an existing AG farm, as a riding stable is defined in BCZR Section 101.1, per Section 1A01.2.C.22 of the BCZR.

Petition for Variances pursuant to the BCZR as follows:

1. To permit a parking area with no screening or landscaping in lieu of the required screening and landscaping per Section 409.8.A.1; and
2. To permit a parking area to be surfaced with stone in lieu of the required durable and dustless surface per Section 409.8.A.2; and
3. To permit a parking area not to be striped in lieu of the striping requirement per Section 409.8.A.6.

8/25/17

Order on Motion to Dismiss issued by the Administrative Law Judge wherein the Motion to Dismiss was GRANTED, and the case was DISMISSED without prejudice.

ASSIGNED FOR: **DECEMBER 12, 2017 AT 10:00 A.M.**

LOCATION: Hearing Room #2, Second Floor, Suite 206
Jefferson Building, 105 W. Chesapeake Avenue, Towson

NOTICE:

- This appeal is an evidentiary hearing. Parties should consider the advisability of retaining an attorney.
- Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.
- No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).
- If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

NEW! Parties must file one (1) original and three (3) copies of all Motions, Memoranda, and exhibits (including video and PowerPoint) with the Board unless otherwise requested.

NEW! Projection equipment for digital exhibits is available by request. A minimum of forty-eight (48) hours-notice is required. Supply is limited and not guaranteed.

Notice of Assignment
In the matter of: Roger Elliott
Case number: 17-332-SPHXA
October 27, 2017
Page 2

For further information, including our inclement weather policy, please visit our website
www.baltimorecountymd.gov/Agencies/appeals/index.html

Krysundra "Sunny" Cannington, Administrator

c: Counsel for Petitioner
Petitioner

: Lawrence E. Schmidt, Esquire
: Roger Elliott, Esquire

Counsel for Protestant
Protestant

: J. Carroll Holzer, Esquire
: Sallie Waller

Bruce E. Doak
Lynne Jones, President/Sparks-Glencoe Community Planning Council.

Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Director/PAI
Lawrence M. Stahl, Managing Administrative Law Judge
Michael Field, County Attorney, Office of Law
Nancy West, Assistant County Attorney
Office of People's Counsel

SOUTH, GILDEA & SCHMIDT LLC

MICHAEL PAUL SMITH
DAVID K. GILDEA
LAWRENCE E. SCHMIDT
MICHAEL G. DEHAVEN
JASON T. VETTORI

MICHAEL H. BOWMAN
CHRISTOPHER W. COREY
MARIELA C. D'ALESSIO*
MELISSA L. ENGLISH
WILLIAM L. RODOWSKY
SARAH A. ZADROZNY
of counsel:
EUGENE A. ARBAUGH, JR.
DAVID T. LAMPTON
*Admitted in MD, FL, PA

October 19, 2017

Sent Via Email and First Class Mail

Ms. Krysundra L. Cannington, Administrator
Board of Appeals of Baltimore County
Jefferson Building
105 W. Chesapeake Avenue, Suite 203
Towson, MD 21204

**Re: In the Matter of: Roger L. Elliot
15815 Falls Road
Case No. 2017-0332-SPHXA**



Dear Sunny,

I am in receipt of Mr. Holzer's October 5, 2017 letter requested a postponement and rescheduling of the November 7, 2017 hearing related to the above referenced matter.

Please note that I have no objection to the postponement request. I would, however, request that the Board please avoid the following dates for rescheduling this matter:

- November 8th
- November 30th - December 5th
- December 26th
- January 2nd

Thank you for your courtesy. I look forward to hearing from you.

Very truly yours,

Lawrence E. Schmidt

LES/amf

cc: Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County
J. Carroll Holzer, Esquire
Roger Elliott, Esquire

MICHAEL H. BOWMAN
CHRISTOPHER W. COREY
MARIELA C. D'ALESSIO*
MELISSA L. ENGLISH
WILLIAM L. RODOWSKY
SARAH A. ZADROZNY
of counsel:
EUGENE A. ARBAUGH, JR.
DAVID T. LAMPTON
*Admitted in MD, FL, PA

October 19, 2017

ROBERT T. JASON
MICHAEL C. DEHAVEN
LAWRENCE E. SCHMIDT
DAVID K. GILDEA
JUDITH A. SMITH
HILARY R. SMITH

Class Mail

on, Administrator
e County

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Roger L. Elliot

oad

. 2017-0332-SPHXA

Sunny,

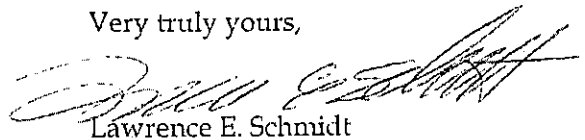
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Very truly yours,



Lawrence E. Schmidt

LES/amf

cc: Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County
J. Carroll Holzer, Esquire
Roger Elliott, Esquire

600 WASHINGTON AVENUE • SUITE 200 • TOWSON, MARYLAND 21204
TELEPHONE (410) 821-0070 • FACSIMILE (410) 821-0071 • www.sgs-law.com

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Schmidt





Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

October 17, 2017

J. Carroll Holzer, Esquire
Holzer & Lee
508 Fairmount Avenue
Towson, Maryland 21286

Re: In the matter of: Roger Elliott
Case No: 17-332-SPHXA

Dear Mr. Holzer,

We are in receipt of your request for postponement in the above referenced case. Please be advised that your request is hereby granted and the hearing on November 7, 2017 is hereby postponed. Enclosed please find a Notice of Postponement.

Please contact our office to discuss rescheduling this matter for a later date.

Very truly yours,

A handwritten signature in cursive script that reads "Sunny Cannington".

Krysundra "Sunny" Cannington
Administrator

cc: Lawrence E. Schmidt, Esquire



Board of Appeals of Baltimore County

JEFFERSON BUILDING
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105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

October 17, 2017

NOTICE OF POSTPONEMENT

IN THE MATTER OF: Roger L. Elliott – Legal Owner
15815 Falls Road
17-332-SPHXA 5th Election District; 3rd Councilmanic District

Re: Petition for Special Hearing pursuant to § 500.7 of the BCZR to:

1. To amend the approved Special Exception in Case No. 2015-0196-XA; and
2. To amend by expanding and clarifying the previously approved Special Exception by:
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Petition for Special Exception to permit a riding stable/boarding table on an existing AG farm, as a riding stable is defined in BCZR Section 101.1, per Section 1A01.2.C.22 of the BCZR.

Petition for Variances pursuant to the BCZR as follows:

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2. To permit a parking area to be surfaced with stone in lieu of the required durable and dustless surface per Section 409.8.A.2; and
3. To permit a parking area not to be striped in lieu of the striping requirement per Section 409.8.A.6.

8/25/17 Order on Motion to Dismiss issued by the Administrative Law Judge wherein the Motion to Dismiss was GRANTED, and the case was DISMISSED without prejudice.

This matter was assigned for Tuesday, November 7, 2017 and has been postponed. It will be rescheduled to a later date.

NOTICE:

- This appeal is an evidentiary hearing. Parties should consider the advisability of retaining an attorney.
 - Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.
 - No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).
 - If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.
- NEW!** Parties must file one (1) original and three (3) copies of all Motions, Memoranda, and exhibits (including video and PowerPoint) with the Board unless otherwise requested.
- NEW!** Projection equipment for digital exhibits is available by request. A minimum of forty-eight (48) hours-notice is required. Supply is limited and not guaranteed.

Notice of Postponement
In the matter of: Roger Elliott
Case No: 17-332-SPHXA
October 17, 2017
Page 2

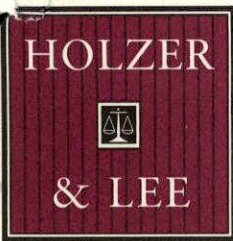
For further information, including our inclement weather policy, please visit our website
www.baltimorecountymd.gov/Agencies/appeals/index.html

Krysundra "Sunny" Cannington, Administrator

c:	Counsel for Petitioner Petitioner	: Lawrence E. Schmidt, Esquire : Roger Elliott, Esquire
	Counsel for Protestant Protestant	: J. Carroll Holzer, Esquire : Sallie Waller

Bruce E. Doak
Lynne Jones, President/Sparks-Glencoe Community Planning Council.

Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Director/PAI
Lawrence M. Stahl, Managing Administrative Law Judge
Michael Field, County Attorney, Office of Law
Nancy West, Assistant County Attorney
Office of People's Counsel



LAW OFFICES

J. CARROLL HOLZER, PA

J. HOWARD HOLZER

1907-1989

THOMAS J. LEE

OF COUNSEL

THE 508 BUILDING

508 FAIRMOUNT AVE.

TOWSON, MD 21286

(410) 825-6961

FAX: (410) 825-4923

~~XXXXXXXXXXXXXXXXXXXX~~

E-Mail: jcholzer38@gmail.com

October 5, 2017
#8135

Mr. Andrew M. Belt, Chairman
Baltimore County Board of Appeals
Jefferson Building
105 West Chesapeake Avenue
Second Floor, Suite 203
Towson, Maryland 21204

RE: *Appeal of Roger L. Elliott*
Property: *15815 Falls Road*
Case No.: *2017-0332-SPHXA*



Dear Mr. Chairman:

I recently, on September 28, 2017, forwarded my Entry of Appearance in the above-captioned matter. Subsequently, I received a Notice from the Board that the case has been assigned for ***Tuesday, November 7, 2017 at 10:00 a.m.***

I am currently involved in a matter in Worcester County that has been scheduled for a County Commissioner's Hearing for several months. That Hearing is currently scheduled for ***November 7, 2017 at 10:30 a.m.*** in Snow Hill, Maryland.

I have attached the Notice that I received from the County Commissioners of Worcester County indicating the four (4) cases that I am responsible for presenting. I would therefore respectfully request that the above-captioned matter schedule for ***Tuesday, November 7, 2017 at 10:00 a.m.*** be postponed and rescheduled.

Thank you for your consideration.

Very truly yours,

J. Carroll Holzer

JCH:mlg

Enclosure

cc: Peter Max Zimmerman, Esquire
Larry E. Schmidt, Esquire
Ms. Sallie Waller

**NOTICE
OF
PROPOSED CHANGES
IN ZONING**

WEST OF MD ROUTE 611 (STEPHEN DECATUR HIGHWAY)
SOUTH OF MD ROUTE 376 (ASSATEAGUE ROAD)

TENTH TAX DISTRICT
WORCESTER COUNTY, MARYLAND

Pursuant to Section 1-113 of the Worcester County Zoning Ordinance, the following Rezoning Cases have been filed for amendments to the Official Zoning Maps to change the total land area listed below, all of which are located to the west of Maryland Route 611 (Stephen Decatur Highway) and south of Maryland Route 376 (Assateague Road) in the Tenth Tax District of Worcester County, Maryland, from E-1 Estate District to R-1 Rural Residential District:

- **Rezoning Case No. 409** - filed by J. Carroll Holzer, attorney, on behalf of Mac Dean Jenkins and Joan H. Jenkins, property owners, to change approximately 20.1 acres of land as shown on Worcester County Tax Map 33, Parcel 338, Lots 1, 2A and 2B, and
- **Rezoning Case No. 410** - filed by Raymond J. and Jean M. Shanley, property owners, to change approximately 5.128 acres of land as shown on Worcester County Tax Map 33, Parcel 338, Lot 2C, and
- **Rezoning Case No. 411** - filed by Donald B. and Deborah J. Bounds, property owners, to change approximately 1.34 acres of land as shown on Worcester County Tax Map 33, Parcel 211, and
- **Rezoning Case No. 412** - filed by William C. Waterman, II, property owner, to change approximately 1.22 acres of land as shown on Worcester County Tax Map 33, Parcel 190.

The Planning Commission has given favorable recommendations to each of these rezoning applications.

Pursuant to Sections 1-113 and 1-114 of the Worcester County Zoning Ordinance, the County Commissioners will hold

PUBLIC HEARINGS

on

TUESDAY, NOVEMBER 7, 2017

at 10:30 A.M.

in the

COUNTY COMMISSIONERS' MEETING ROOM

ROOM 1101, WORCESTER COUNTY GOVERNMENT CENTER

ONE WEST MARKET STREET, SNOW HILL, MARYLAND 21863-1072

At said public hearing, the Commissioners will consider each of the rezoning applications, the staff files on Rezoning Case No. 409, Rezoning Case No. 410, Rezoning Case No. 411, and Rezoning Case No. 412, and the recommendations of the Planning Commission, any proposed restrictions on the rezonings, other appropriate restrictions, conditions or limitations as may be

deemed by them to be appropriate to preserve, improve or protect the general character and design of the lands and improvements being zoned or rezoned or of the surrounding or adjacent lands and improvements, and the advisability of reserving the power and authority to approve or disapprove the design of buildings, construction, landscaping or other improvements, alterations and changes made or to be made on the subject land or lands to assure conformity with the intent and purpose of applicable State laws and regulations and the County Zoning Ordinance.

Maps of the petitioned areas, the staff files on Rezoning Case No. 409, Rezoning Case No. 410, Rezoning Case No. 411, and Rezoning Case No. 412, and the Planning Commission's recommendations which will be entered into the record of the public hearings are on file and are available for inspection at the Department of Development Review and Permitting, Worcester County Government Center, One West Market Street, Room 1201, Snow Hill, Maryland 21863, Monday through Friday from 8:00 am until 4:30 pm (except holidays).

Madison J. Bunting, Jr., President



Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

September 27, 2017

NOTICE OF ASSIGNMENT

IN THE MATTER OF: Roger L. Elliott – Legal Owner
15815 Falls Road
17-332-SPHXA 5th Election District; 3rd Councilmanic District

- Re: Petition for Special Hearing pursuant to § 500.7 of the BCZR to:
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8/25/17

Order on Motion to Dismiss issued by the Administrative Law Judge wherein the Motion to Dismiss was GRANTED, and the case was DISMISSED without prejudice.

ASSIGNED FOR: **NOVEMBER 7, 2017 AT 10:00 A.M.**

LOCATION: Hearing Room #2, Second Floor, Suite 206
Jefferson Building, 105 W. Chesapeake Avenue, Towson

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Board of Appeals of Baltimore County

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September 27, 2017

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- This appeal is an evidentiary hearing. Parties should consider the advisability of retaining an attorney.
- Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.
- No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).
- If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

NEW! Parties must file one (1) original and three (3) copies of all Motions, Memoranda, and exhibits (including video and PowerPoint) with the Board unless otherwise requested.

NEW! Projection equipment for digital exhibits is available by request. A minimum of forty-eight (48) hours-notice is required. Supply is limited and not guaranteed.

Notice of Assignment
In the matter of: Roger Elliott
Case number: 17-332-SPHXA
September 27, 2017
Page 2

For further information, including our inclement weather policy, please visit our website
www.baltimorecountymd.gov/Agencies/appeals/index.html

Krysundra "Sunny" Cannington, Administrator

c: Counsel for Petitioner
Petitioner

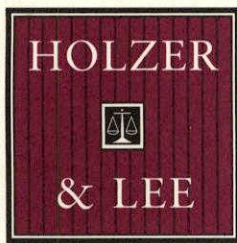
: Lawrence E. Schmidt, Esquire
: Roger Elliott, Esquire

Counsel for Protestant
Protestant

: J. Carroll Holzer, Esquire
: Sallie Waller

Bruce E. Doak
Lynne Jones, President/Sparks-Glencoe Community Planning Council.

Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Director/PAI
Lawrence M. Stahl, Managing Administrative Law Judge
Michael Field, County Attorney, Office of Law
Nancy West, Assistant County Attorney
Office of People's Counsel



LAW OFFICES

J. CARROLL HOLZER, PA

J. HOWARD HOLZER

1907-1989

THOMAS J. LEE

OF COUNSEL

THE 508 BUILDING

508 FAIRMOUNT AVE.

TOWSON, MD 21286

(410) 825-6961

FAX: (410) 825-4923

~~E-MAIL: JCHOLZER38@GMAIL.COM~~
~~XXXXXXXXXXXXXXXXXXXX~~

E-Mail: jcholzer38@gmail.com

September 28, 2017
#8135

Mr. Andrew M. Belt, Chairman
Baltimore County Board of Appeals
Jefferson Building
105 West Chesapeake Avenue
Second Floor, Suite 203
Towson, Maryland 21204



RE: *Appeal of Roger L. Elliott*
Property: *15815 Falls Road*
Case No.: *2017-0332-SPHXA*

Dear Mr. Chairman:

Please enter my appearance in the above-captioned matter on behalf of Sallie Waller, who filed the Motion to Dismiss granted by Administrative Law Judge John Beverungen. Ms. Waller intends to participate in the matter before the Board when it is schedule for a Hearing.

Very truly yours,

A handwritten signature in blue ink, appearing to be "JCH", written over the typed name "J. Carroll Holzer".

J. Carroll Holzer

JCH:mlg

cc: Larry E. Schmidt, Esquire
Peter Max Zimmerman, Esquire
Ms. Sallie Waller



KEVIN KAMENETZ
County Executive

LAWRENCE M. STAHL
Managing Administrative Law Judge
JOHN E. BEVERUNGEN
Administrative Law Judge

September 22, 2017



J. Carroll Holzer, Esq.
Holzer & Lee
508 Fairmount Avenue
Towson, Maryland 21286

RE: **APPEAL TO BOARD OF APPEALS – Motion to Dismiss**
Petitions for Special Hearing, Special Exception and Variance
Case No. 2017-0332-SPHXA
Property: 15815 Falls Road

Dear Mr. Holzer:

Please be advised that an appeal of the above-referenced case was filed in this Office on September 21, 2017. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals ("Board").

If you are the person or party taking the appeal, you should notify other similarly interested parties or persons known to you of the appeal. If you are an attorney of record, it is your responsibility to notify your client.

If you have any questions concerning this matter, please do not hesitate to contact the Board at 410-887-3180.

Sincerely,

A handwritten signature in black ink, appearing to read "JEB", with a long horizontal line extending to the right.

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/dlw

c: Lawrence E. Schmidt, Esq., Smith, Gildea & Schmidt, 600 Washington Avenue,
Suite 200, Towson, MD 21204
Roger L. Elliott, Esq., 15817 Falls Road, Sparks, Maryland 21152
Peter Max Zimmerman, Esq., Office of People's Counsel
Baltimore County Board of Appeals

SMITH, GILDEA & SCHMIDT LLC

MICHAEL PAUL SMITH
DAVID K. GILDEA
LAWRENCE E. SCHMIDT
MICHAEL G. DEHAVEN
JASON T. VETTORI

MICHAEL H. BOWMAN
CHRISTOPHER W. COREY
MARIELA C. D'ALESSIO*
MELISSA L. ENGLISH
WILLIAM L. RODOWSKY
SARAH A. ZADROZNY
of counsel:
EUGENE A. ARBAUGH, JR.
DAVID T. LAMPTON
*Admitted in MD, FL, PA

September 21, 2017

Via Hand Delivery

Arnold Jablon, Esquire
Director
Baltimore County Department of Permits, Approvals and Inspections
111 West Chesapeake Ave, Suite 105
Towson, MD 21204

Re: Notice of Appeal
Property: 15815 Falls Road
Case No. 2017-0332-SPHXA



Dear Mr. Jablon,

Enclosed herewith please find an original and four (4) copies of the Notice of Appeal on behalf of Appellant, Roger L. Elliott, to be filed in the above referenced matter. Please date stamp the copies and return the same to our courier. Also enclosed, please find a check in the amount of \$265.00 to cover the filing fee for such appeal.

Please contact me should you have any questions.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Lawrence E. Schmidt".

Lawrence E. Schmidt

LES/amf
Enclosures

cc: Administrative Law Judge John E. Beverungen
J. Carroll Holzer, Esquire
Peter Max Zimmerman, Esquire
Krysundra Cannington, Board of Appeals
Roger L. Elliott, Esquire (Petitioner)

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET AND FINANCE
MISCELLANEOUS CASH RECEIPT

Nº 143344

Date:

9-21-17

Fund	Dept	Unit	Sub Unit	Rev Source/ Obj	Sub Rev/ Obj	Dept Obj	BS Acct	Amount
001	806	0000		650				265.00

Total:

265.00

Rec
From:

Appeal - Case No. 2017-0332-SHXA

For:

Lawrence E. Schmidt, Esq.

16815 Falls Rd.

Motion to Dismiss

DISTRIBUTION

WHITE - CASHIER

PINK - AGENCY

YELLOW - CUSTOMER

GOLD - ACCOUNTING

PLEASE PRESS HARD!!!!

PAID RECEIPT

BUSINESS ACTUAL TIME TRM

9/25/2017 9/21/2017 15:01:52 5

REG NS05 WALKIN LRB

>>RECEIPT N 922369 9/21/2017 DFLH

Dept 5 5:8 ZONING VERIFICATION

CR NO. 143344

Recpt Tot \$265.00

\$265.00 CR \$1.00 CA

Baltimore County, Maryland

**CASHIER'S
 VALIDATION**

**IN RE:
PETITIONS FOR SPECIAL HEARING
SPECIAL EXCEPTION & VARIANCE
15815 Falls Road**

5th Election District
3rd Councilmanic District

Roger L. Elliott, *Legal Owner*
Appellant

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* **Case No.: 2017-0332-SPHXA**
*



* * * * *

NOTICE OF APPEAL

The Appellant, Roger L. Elliott, by and through his attorneys, Lawrence E. Schmidt and Smith, Gildea, and Schmidt, LLC, feeling aggrieved by the decision of the Administrative Law Judge for Baltimore County from the Order on Motion to Dismiss dated August 25, 2017 in the above-captioned matter, hereby note this appeal to the County Board of Appeals for Baltimore County in accordance with Baltimore County Code §32-3-401 by filing this Notice of Appeal with the Director of the Baltimore County Department of Permits, Approvals & Inspections.

Respectfully submitted,

LAWRENCE E. SCHMIDT
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, MD 21204
(410) 821-0070
Attorney for Appellant

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on this **21st** day of **September, 2017**, a copy of the foregoing Notice of Appeal was mailed first-class pre-paid postage to:

John E. Beverungen, Esquire
Administrative Law Judge for Baltimore County
Office of Administrative Hearings
105 West Chesapeake Avenue, Suite 103
Towson, MD 21204

J. Carroll Holzer, Esquire
Holzer & Lee
508 Fairmount Avenue
Towson, MD 21204

Peter Max Zimmerman, Esquire
People's Counsel for Baltimore County
The Jefferson Building
105 West Chesapeake Avenue, Room 204
Towson, MD 21204

Krysundra Cannington,
Board of Appeals for Baltimore County
The Jefferson Building
105 West Chesapeake Avenue, Room 205
Towson, MD 21204


LAWRENCE E. SCHMIDT

IN RE: PETITIONS FOR SPECIAL HEARING, *
SPECIAL EXCEPTION & VARIANCE

(15815 Falls Road) *

5th Election District

3rd Council District *

Roger L. Elliott

Legal Owner *

Petitioner *

BEFORE THE

OFFICE OF

ADMINISTRATIVE HEARINGS

FOR BALTIMORE COUNTY

Case No. 2017-0332-SPHXA

* * * * *

ORDER ON MOTION TO DISMISS

Now pending is a Motion to Dismiss filed by Protestant Sallie Waller, represented by J. Carroll Holzer, Esq. Petitioner Roger Elliott, Esq. filed a response to the Motion.

The Motion assert that *res judicata* is applicable, and that the above petition should therefore be dismissed. By Order dated June 17, 2015 Petitioner was granted special exception and variance relief to operate a riding stable, subject to enumerated conditions. See Case No. 2015-0196-XA. The petition in this case again seeks a special exception for a riding stable and variances seeking to waive the "durable and dustless" and striping requirements pertaining to off-street parking. Of course, this relief was granted in the 2015 Order and it is not clear why these requests are made again in the current petition.

The newly-filed petition also seeks to strike or modify certain conditions included in the 2015 special exception order regarding the number of horses and whether trail riding is permitted in environmental easement areas. An additional variance request (No.1) - - concerning landscaping for the parking area - - is also included.

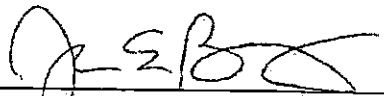
As to these requests I believe *res judicata* is applicable, and the petition will therefore be dismissed. The restrictions upon the special exception were imposed just two years ago, and I do not believe Petitioner has shown substantial changes in fact and circumstances between the first

case and the second, as required by Maryland law. *Seminary Galleria, LLC v. Dulaney Valley Improv. Ass'n.*, 192 Md. App. 719, 739-40 (2010).

With regard to trail riding in the easement areas, I believe Condition No. 5 in the 2015 order merely restates the law found in B.C.C. §33-3-112. Petitioner indicated in his response he intends to seek a variance or other approval from the Department of Environmental Protection and Sustainability (DEPS). Environmental "special variances" and similar approvals under Article 33 of the County Code are not matters handled by the Office of Administrative Hearings or the Administrative Law Judge.

Concerning the number of horses, the restriction imposed in Condition No. 6 pertains to the riding stable special exception use approved in the 2015 order. Petitioner's daughter at that time described how she intended to conduct the trail riding operation. If I recall correctly five horses would accommodate her proposed business, and the restriction was designed to limit the scope of the riding stable commercial operation. Whether or not Petitioner is entitled to have other horses on the property which are not used in connection with the "riding stable" is a matter which must be decided by the zoning office and/or DEPS, and is also addressed in B.C.Z.R. §100.6.

THEREFORE, IT IS ORDERED by this Administrative Law Judge this 25th day of August, 2017 that the Motion to Dismiss be and is hereby GRANTED, and the petition in the above case shall be dismissed without prejudice.


JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:slh

SMITH, GILDEA & SCHMIDT LLC

MICHAEL PAUL SMITH
DAVID K. GILDEA
LAWRENCE E. SCHMIDT
MICHAEL G. DEHAVEN
JASON T. VETTORI

RECEIVED

SEP 21 2017

DEPARTMENT OF PERMITS
APPROVALS AND INSPECTIONS

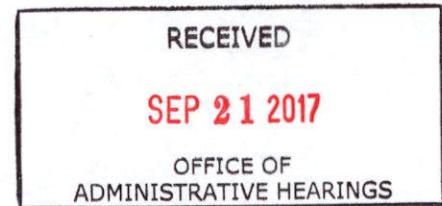
September 21, 2017

MICHAEL H. BOWMAN
CHRISTOPHER W. COREY
MARIELA C. D'ALESSIO*
MELISSA L. ENGLISH
WILLIAM L. RODOWSKY
SARAH A. ZADROZNY
of counsel:
EUGENE A. ARBAUGH, JR.
DAVID T. LAMPTON
*Admitted in MD, FL, PA

Via Hand Delivery

Arnold Jablon, Esquire
Director
Baltimore County Department of Permits, Approvals and Inspections
111 West Chesapeake Ave, Suite 105
Towson, MD 21204

Re: Notice of Appeal
Property: 15815 Falls Road
Case No. 2017-0332-SPHXA



Dear Mr. Jablon,

Enclosed herewith please find an original and four (4) copies of the Notice of Appeal on behalf of Appellant, Roger L. Elliott, to be filed in the above referenced matter. Please date stamp the copies and return the same to our courier. Also enclosed, please find a check in the amount of \$265.00 to cover the filing fee for such appeal.

Please contact me should you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lawrence E. Schmidt".

Lawrence E. Schmidt

LES/amf
Enclosures

cc: Administrative Law Judge John E. Beverungen
J. Carroll Holzer, Esquire
Peter Max Zimmerman, Esquire
Krysundra Cannington, Board of Appeals
Roger L. Elliott, Esquire (Petitioner)



IN RE:
PETITIONS FOR SPECIAL HEARING
SPECIAL EXCEPTION & VARIANCE
15815 Falls Road

5th Election District
3rd Councilmanic District

Roger L. Elliott, *Legal Owner*
Appellant

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* **Case No.: 2017-0332-SPHXA**
*

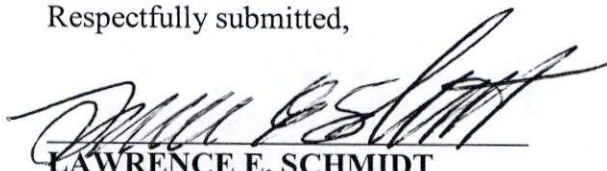
* * * * *

NOTICE OF APPEAL

The Appellant, Roger L. Elliott, by and through his attorneys, Lawrence E. Schmidt and Smith, Gildea, and Schmidt, LLC, feeling aggrieved by the decision of the Administrative Law Judge for Baltimore County from the Order on Motion to Dismiss dated August 25, 2017 in the above-captioned matter, hereby note this appeal to the County Board of Appeals for Baltimore County in accordance with Baltimore County Code §32-3-401 by filing this Notice of Appeal with the Director of the Baltimore County Department of Permits, Approvals & Inspections.

Respectfully submitted,




LAWRENCE E. SCHMIDT
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, MD 21204
(410) 821-0070
Attorney for Appellant

CERTIFICATE OF SERVICE

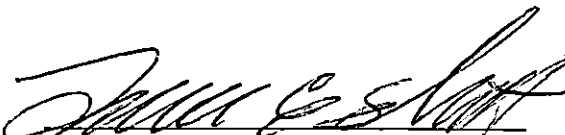
I HEREBY CERTIFY that on this 21st day of **September, 2017**, a copy of the foregoing Notice of Appeal was mailed first-class pre-paid postage to:

John E. Beverungen, Esquire
Administrative Law Judge for Baltimore County
Office of Administrative Hearings
105 West Chesapeake Avenue, Suite 103
Towson, MD 21204

J. Carroll Holzer, Esquire
Holzer & Lee
508 Fairmount Avenue
Towson, MD 21204

Peter Max Zimmerman, Esquire
People's Counsel for Baltimore County
The Jefferson Building
105 West Chesapeake Avenue, Room 204
Towson, MD 21204

Krysundra Cannington,
Board of Appeals for Baltimore County
The Jefferson Building
105 West Chesapeake Avenue, Room 205
Towson, MD 21204


LAWRENCE E. SCHMIDT

IN RE: PETITIONS FOR SPECIAL HEARING, *	BEFORE THE
SPECIAL EXCEPTION & VARIANCE	
(15815 Falls Road) *	OFFICE OF
5 th Election District	
3 rd Council District *	ADMINISTRATIVE HEARINGS
Roger L. Elliott	
Legal Owner *	FOR BALTIMORE COUNTY
Petitioner *	Case No. 2017-0332-SPHXA

* * * * *

ORDER ON MOTION TO DISMISS

Now pending is a Motion to Dismiss filed by Protestant Sallie Waller, represented by J. Carroll Holzer, Esq. Petitioner Roger Elliott, Esq. filed a response to the Motion.

The Motion assert that *res judicata* is applicable, and that the above petition should therefore be dismissed. By Order dated June 17, 2015 Petitioner was granted special exception and variance relief to operate a riding stable, subject to enumerated conditions. See Case No. 2015-0196-XA. The petition in this case again seeks a special exception for a riding stable and variances seeking to waive the "durable and dustless" and striping requirements pertaining to off-street parking. Of course, this relief was granted in the 2015 Order and it is not clear why these requests are made again in the current petition.

The newly-filed petition also seeks to strike or modify certain conditions included in the 2015 special exception order regarding the number of horses and whether trail riding is permitted in environmental easement areas. An additional variance request (No.1) - - concerning landscaping for the parking area - - is also included.

As to these requests I believe *res judicata* is applicable, and the petition will therefore be dismissed. The restrictions upon the special exception were imposed just two years ago, and I do not believe Petitioner has shown substantial changes in fact and circumstances between the first

case and the second, as required by Maryland law. *Seminary Galleria, LLC v. Dulaney Valley Improv. Ass'n.*, 192 Md. App. 719, 739-40 (2010).

With regard to trail riding in the easement areas, I believe Condition No. 5 in the 2015 order merely restates the law found in B.C.C. §33-3-112. Petitioner indicated in his response he intends to seek a variance or other approval from the Department of Environmental Protection and Sustainability (DEPS). Environmental "special variances" and similar approvals under Article 33 of the County Code are not matters handled by the Office of Administrative Hearings or the Administrative Law Judge.

Concerning the number of horses, the restriction imposed in Condition No. 6 pertains to the riding stable special exception use approved in the 2015 order. Petitioner's daughter at that time described how she intended to conduct the trail riding operation. If I recall correctly five horses would accommodate her proposed business, and the restriction was designed to limit the scope of the riding stable commercial operation. Whether or not Petitioner is entitled to have other horses on the property which are not used in connection with the "riding stable" is a matter which must be decided by the zoning office and/or DEPS, and is also addressed in B.C.Z.R. §100.6.

THEREFORE, IT IS ORDERED by this Administrative Law Judge this 25th day of August, 2017 that the Motion to Dismiss be and is hereby GRANTED, and the petition in the above case shall be dismissed without prejudice.


JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:slh



KEVIN KAMENETZ
County Executive

LAWRENCE M. STAHL
Managing Administrative Law Judge
JOHN E. BEVERUNGEN
Administrative Law Judge

August ²⁵~~24~~, 2017

J. Carroll Holzer, Esq.
Holzer & Lee
508 Fairmount Avenue
Towson, Maryland 21286

VIA E-MAIL

Motion to Dismiss

RE: Petitions for Special Hearing, Special Exception and Variance
Case No. 2017-0332-SPHXA
Property: 15815 Falls Road

Dear Counsel:

Enclosed please find a copy of the decision rendered in the above-captioned matter.

Given that the Motion to Dismiss was granted, the hearing scheduled for August 29, 2017 at 1:30 p.m. shall be cancelled.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Office of Administrative Hearings at 410-887-3868.

Sincerely,

A handwritten signature in blue ink, appearing to read "JEB", is written over the typed name.

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:sln
Enclosure

c: Roger L. Elliott, Esq., 15817 Falls Road, Sparks, Maryland 21152 **(via e-mail)**
Peter Max Zimmerman, Esq., Office of People's Counsel, 105 W. Chesapeake Avenue,
Room 204, Towson, Maryland 21204 **(via e-mail)**

IN RE: PETITIONS FOR SPECIAL HEARING, *
SPECIAL EXCEPTION & VARIANCE

(15815 Falls Road) *

5th Election District *

3rd Council District *

Roger L. Elliott *

Legal Owner *

Petitioner *

BEFORE THE

OFFICE OF

ADMINISTRATIVE HEARINGS

FOR BALTIMORE COUNTY

Case No. 2017-0332-SPHXA

* * * * *

ORDER ON MOTION TO DISMISS

Now pending is a Motion to Dismiss filed by Protestant Sallie Waller, represented by J. Carroll Holzer, Esq. Petitioner Roger Elliott, Esq. filed a response to the Motion.

The Motion assert that *res judicata* is applicable, and that the above petition should therefore be dismissed. By Order dated June 17, 2015 Petitioner was granted special exception and variance relief to operate a riding stable, subject to enumerated conditions. See Case No. 2015-0196-XA. The petition in this case again seeks a special exception for a riding stable and variances seeking to waive the "durable and dustless" and striping requirements pertaining to off-street parking. Of course, this relief was granted in the 2015 Order and it is not clear why these requests are made again in the current petition.

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ORDER RECEIVED FOR FILING

Date 8/25/17

By Sen

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With regard to trail riding in the easement areas, I believe Condition No. 5 in the 2015 order merely restates the law found in B.C.C. §33-3-112. Petitioner indicated in his response he intends to seek a variance or other approval from the Department of Environmental Protection and Sustainability (DEPS). Environmental “special variances” and similar approvals under Article 33 of the County Code are not matters handled by the Office of Administrative Hearings or the Administrative Law Judge.

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THEREFORE, IT IS ORDERED by this Administrative Law Judge this 25th day of August, **2017** that the Motion to Dismiss be and is hereby GRANTED, and the petition in the above case shall be dismissed without prejudice.


JOHNE. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:sln

ORDER RECEIVED FOR FILING

Date 8/25/17
By sen

**LAW OFFICES
OF
ROGER L. ELLIOTT**

Maurice L. Elliott
(1915-2003)

MAILING ADDRESS:

**15817 Falls Rd
Sparks, MD 21152**

OFFICE

York Road
Hereford, Maryland

Phone: (410) 207-7964
Telefax:: (443) 927-8926
e-mail : elliottslaw@gmail.com



August 23, 2017

Honorable John Beverungen , ALJ **HAND DELIVERED**
The Jefferson Bldg.
105 W. Chesapeake Ave. Suite 103
Towson , MD 21204

RE: 2017-0332-SPHXA

Dear Judge Beverungen ,

I only received via email copies of People's Counsel's Letter dated August 16, 2017 and the letter from Lynne Jones dated August 17, 2017 late on Monday August 21, 2017.

Regarding the issue of *res judicata* as it applies to our request to remove the five(5) horse restriction (Condition #6) , we understood that limitation was simply based upon the fact that at the time of that hearing in 2015 we only had five (5) stalls in our renovated 100 year old barn and about five (5) acres fenced. We are now ready to fence the remaining 10 +/- acres of pasture land and construct a new barn approximately one quarter mile from Falls Rd and not visible from there *or* Ms. Waller's residence at 15813 Falls Rd. It is intended primarily for boarding which will have little impact on the surrounding properties and provide year round income to augment the more seasonal and weather dependant trail riding and instruction.

I am prepared to address the issue of "additional" screening for 15813 Falls Rd raised in the ZAC comments at our hearing. We have planted *more* than was required by Ms. Tansey , had no complaints about our activities of which I am aware, and note that Ms. Waller has never replaced screening trees she removed between her home and Falls Rd. which is much closer and far more heavily trafficked than our driveway will ever be.

Careful reading of our request concerning the Forest Buffer/Conservation Areas (Condition #5) reveals only a desire to have those issues governed by the agency (*Department of*

Environmental Protection and Sustainability) charged with their implementation and oversight , including Applications for Special Variance.(**Baltimore County Code s/s33-6-116.**)

It does **NOT** seek to have this Court circumvent this statutory scheme or “ remove the prohibition on trail riding” as stated in Ms. Jones’ letter which misrepresents the facts and the law.

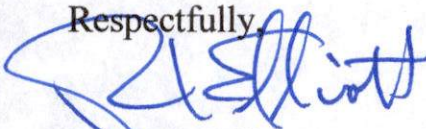
The requested revisions and expansion represent the logical next step toward providing the opportunity for the next generation of our family, my daughter, to realize her hope of living and working on the family farm she was raised on. Horses , not Christmas Trees, have become her passion and are more suitable now that adjoining landowners (including Ms. Waller) have subdivided and are selling off as residential lots the fields where those crops once grew.

I find it impossible to believe that any significant number of the members of the Sparks-Glencoe Community who were actually aware of the true facts in this case would oppose our requests.

I am dismayed that my County Government that has promoted northern Baltimore County as “**A Horse Lover’s Haven**” and “horse country” would use its resources to disrupt and destroy the dreams of one of its young citizens. Our requests are not destructive of the rural , agricultural , or historic aspects of our area but rather are designed to promote them.

Thank you for your attention and we look forward to presenting our position at the hearing.

Respectfully,



Roger L. Elliott

Cc People’s Counsel , Lynne Jones

[illegible]

1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific requirements of the task.

Figure 1. The effect of the concentration of the Ca^{2+} solution on the Ca^{2+} concentration in the Ca^{2+} solution. The concentration of the Ca^{2+} solution was 0.1, 0.2, 0.3, 0.4, 0.5, 0.6, 0.7, 0.8, 0.9, 1.0, 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.7, 1.8, 1.9, 2.0, 2.1, 2.2, 2.3, 2.4, 2.5, 2.6, 2.7, 2.8, 2.9, 3.0, 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9, 4.0, 4.1, 4.2, 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.9, 5.0, 5.1, 5.2, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 5.9, 6.0, 6.1, 6.2, 6.3, 6.4, 6.5, 6.6, 6.7, 6.8, 6.9, 7.0, 7.1, 7.2, 7.3, 7.4, 7.5, 7.6, 7.7, 7.8, 7.9, 8.0, 8.1, 8.2, 8.3, 8.4, 8.5, 8.6, 8.7, 8.8, 8.9, 9.0, 9.1, 9.2, 9.3, 9.4, 9.5, 9.6, 9.7, 9.8, 9.9, 10.0, 10.1, 10.2, 10.3, 10.4, 10.5, 10.6, 10.7, 10.8, 10.9, 11.0, 11.1, 11.2, 11.3, 11.4, 11.5, 11.6, 11.7, 11.8, 11.9, 12.0, 12.1, 12.2, 12.3, 12.4, 12.5, 12.6, 12.7, 12.8, 12.9, 13.0, 13.1, 13.2, 13.3, 13.4, 13.5, 13.6, 13.7, 13.8, 13.9, 14.0, 14.1, 14.2, 14.3, 14.4, 14.5, 14.6, 14.7, 14.8, 14.9, 15.0, 15.1, 15.2, 15.3, 15.4, 15.5, 15.6, 15.7, 15.8, 15.9, 16.0, 16.1, 16.2, 16.3, 16.4, 16.5, 16.6, 16.7, 16.8, 16.9, 17.0, 17.1, 17.2, 17.3, 17.4, 17.5, 17.6, 17.7, 17.8, 17.9, 18.0, 18.1, 18.2, 18.3, 18.4, 18.5, 18.6, 18.7, 18.8, 18.9, 19.0, 19.1, 19.2, 19.3, 19.4, 19.5, 19.6, 19.7, 19.8, 19.9, 20.0, 20.1, 20.2, 20.3, 20.4, 20.5, 20.6, 20.7, 20.8, 20.9, 21.0, 21.1, 21.2, 21.3, 21.4, 21.5, 21.6, 21.7, 21.8, 21.9, 22.0, 22.1, 22.2, 22.3, 22.4, 22.5, 22.6, 22.7, 22.8, 22.9, 23.0, 23.1, 23.2, 23.3, 23.4, 23.5, 23.6, 23.7, 23.8, 23.9, 24.0, 24.1, 24.2, 24.3, 24.4, 24.5, 24.6, 24.7, 24.8, 24.9, 25.0, 25.1, 25.2, 25.3, 25.4, 25.5, 25.6, 25.7, 25.8, 25.9, 26.0, 26.1, 26.2, 26.3, 26.4, 26.5, 26.6, 26.7, 26.8, 26.9, 27.0, 27.1, 27.2, 27.3, 27.4, 27.5, 27.6, 27.7, 27.8, 27.9, 28.0, 28.1, 28.2, 28.3, 28.4, 28.5, 28.6, 28.7, 28.8, 28.9, 29.0, 29.1, 29.2, 29.3, 29.4, 29.5, 29.6, 29.7, 29.8, 29.9, 30.0, 30.1, 30.2, 30.3, 30.4, 30.5, 30.6, 30.7, 30.8, 30.9, 31.0, 31.1, 31.2, 31.3, 31.4, 31.5, 31.6, 31.7, 31.8, 31.9, 32.0, 32.1, 32.2, 32.3, 32.4, 32.5, 32.6, 32.7, 32.8, 32.9, 33.0, 33.1, 33.2, 33.3, 33.4, 33.5, 33.6, 33.7, 33.8, 33.9, 34.0, 34.1, 34.2, 34.3, 34.4, 34.5, 34.6, 34.7, 34.8, 34.9, 35.0, 35.1, 35.2, 35.3, 35.4, 35.5, 35.6, 35.7, 35.8, 35.9, 36.0, 36.1, 36.2, 36.3, 36.4, 36.5, 36.6, 36.7, 36.8, 36.9, 37.0, 37.1, 37.2, 37.3, 37.4, 37.5, 37.6, 37.7, 37.8, 37.9, 38.0, 38.1, 38.2, 38.3, 38.4, 38.5, 38.6, 38.7, 38.8, 38.9, 39.0, 39.1, 39.2, 39.3, 39.4, 39.5, 39.6, 39.7, 39.8, 39.9, 40.0, 40.1, 40.2, 40.3, 40.4, 40.5, 40.6, 40.7, 40.8, 40.9, 41.0, 41.1, 41.2, 41.3, 41.4, 41.5, 41.6, 41.7, 41.8, 41.9, 42.0, 42.1, 42.2, 42.3, 42.4, 42.5, 42.6, 42.7, 42.8, 42.9, 43.0, 43.1, 43.2, 43.3, 43.4, 43.5, 43.6, 43.7, 43.8, 43.9, 44.0, 44.1, 44.2, 44.3, 44.4, 44.5, 44.6, 44.7, 44.8, 44.9, 45.0, 45.1, 45.2, 45.3, 45.4, 45.5, 45.6, 45.7, 45.8, 45.9, 46.0, 46.1, 46.2, 46.3, 46.4, 46.5, 46.6, 46.7, 46.8, 46.9, 47.0, 47.1, 47.2, 47.3, 47.4, 47.5, 47.6, 47.7, 47.8, 47.9, 48.0, 48.1, 48.2, 48.3, 48.4, 48.5, 48.6, 48.7, 48.8, 48.9, 49.0, 49.1, 49.2, 49.3, 49.4, 49.5, 49.6, 49.7, 49.8, 49.9, 50.0, 50.1, 50.2, 50.3, 50.4, 50.5, 50.6, 50.7, 50.8, 50.9, 51.0, 51.1, 51.2, 51.3, 51.4, 51.5, 51.6, 51.7, 51.8, 51.9, 52.0, 52.1, 52.2, 52.3, 52.4, 52.5, 52.6, 52.7, 52.8, 52.9, 53.0, 53.1, 53.2, 53.3, 53.4, 53.5, 53.6, 53.7, 53.8, 53.9, 54.0, 54.1, 54.2, 54.3, 54.4, 54.5, 54.6, 54.7, 54.8, 54.9, 55.0, 55.1, 55.2, 55.3, 55.4, 55.5, 55.6, 55.7, 55.8, 55.9, 56.0, 56.1, 56.2, 56.3, 56.4, 56.5, 56.6, 56.7, 56.8, 56.9, 57.0, 57.1, 57.2, 57.3, 57.4, 57.5, 57.6, 57.7, 57.8, 57.9, 58.0, 58.1, 58.2, 58.3, 58.4, 58.5, 58.6, 58.7, 58.8, 58.9, 59.0, 59.1, 59.2, 59.3, 59.4, 59.5, 59.6, 59.7, 59.8, 59.9, 60.0, 60.1, 60.2, 60.3, 60.4, 60.5, 60.6, 60.7, 60.8, 60.9, 61.0, 61.1, 61.2, 61.3, 61.4, 61.5, 61.6, 61.7, 61.8, 61.9, 62.0, 62.1, 62.2, 62.3, 62.4, 62.5, 62.6, 62.7, 62.8, 62.9, 63.0, 63.1, 63.2, 63.3, 63.4, 63.5, 63.6, 63.7, 63.8, 63.9, 64.0, 64.1, 64.2, 64.3, 64.4, 64.5, 64.6, 64.7, 64.8, 64.9, 65.0, 65.1, 65.2, 65.3, 65.4, 65.5, 65.6, 65.7, 65.8, 65.9, 66.0, 66.1, 66.2, 66.3, 66.4, 66.5, 66.6, 66.7, 66.8, 66.9, 67.0, 67.1, 67.2, 67.3, 67.4, 67.5, 67.6, 67.7, 67.8, 67.9, 68.0, 68.1, 68.2, 68.3, 68.4, 68.5, 68.6,

the 1990s, the number of people in the world who are under 15 years of age is expected to increase from 1.2 billion to 1.5 billion. The number of people aged 65 and over is expected to increase from 200 million to 400 million. The number of people aged 15 and over is expected to increase from 3.5 billion to 4.5 billion. The number of people aged 15 and over is expected to increase from 3.5 billion to 4.5 billion. The number of people aged 15 and over is expected to increase from 3.5 billion to 4.5 billion.

1. *Chlorophyll a* and *Chlorophyll b* were determined by the method of Arar and Collins (1971).

[illegible]

Sherry Nuffer

From: Sherry Nuffer
Sent: Thursday, August 24, 2017 3:36 PM
To: Peter Max Zimmerman; 'elliottslaw@gmail.com'; 'Carroll Holzer'
Cc: Kristen L Lewis
Subject: 2017-0332-SPHXA
Attachments: 20170824154723145.pdf

Please send a response when you receive this e-mail so that Judge Beverungen can confirm that all parties received.

Thank you,

Sherry Nuffer

From: Carroll Holzer <jcholzer38@gmail.com>
Sent: Thursday, August 24, 2017 4:15 PM
To: Sherry Nuffer
Subject: Re: 2017-0332-SPHXA

Dear Sherry:

J. Carroll Holzer received.

Thank you.

On Thu, Aug 24, 2017 at 3:35 PM, Sherry Nuffer <snuffer@baltimorecountymd.gov> wrote:

Please send a response when you receive this e-mail so that Judge Beverungen can confirm that all parties received.

Thank you,



CONNECT WITH BALTIMORE COUNTY



--
Very truly yours,

J. Carroll Holzer

Sherry Nuffer

From: Roger Elliott <elliottslaw@gmail.com>
Sent: Thursday, August 24, 2017 4:19 PM
To: Sherry Nuffer
Cc: Bruce E. Doak; meg elliott; VenturaFarms1830@gmail.com; heather
Subject: Re: 2017-0332-SPHXA

Received yes thank you. I just received the Motion today !

On Thu, Aug 24, 2017 at 3:35 PM, Sherry Nuffer <snuffer@baltimorecountymd.gov> wrote:

Please send a response when you receive this e-mail so that Judge Beverungen can confirm that all parties received.

Thank you,



CONNECT WITH BALTIMORE COUNTY



www.baltimorecountymd.gov

--

Roger L Elliott
Attorney at Law
15817 Falls Rd
Sparks, Md 21152
Ph 410-207-7964
Fax 443-927-8926
elliottslaw@gmail.com

This e-mail is confidential,intended only for named recipient(s).If you are not an intended recipient,please notify the sender and delete this message.Unless otherwise specifically stated , nothing herein is intended as tax advice and nothing herein may be used to violate tax laws or regulations. Thank you.

Sherry Nuffer

From: Peter Max Zimmerman
Sent: Friday, August 25, 2017 10:25 AM
To: Sherry Nuffer; elliottslaw@gmail.com; Carroll Holzer
Cc: Kristen L Lewis; Lynne Jones
Subject: RE: 2017-0332-SPHXA, 15815 Falls Road, Roger Elliott, Petitioner, Petition for Special Hearing, Special Exception and Variance

Ms. Nuffer, This is to confirm receipt of Judge Beverungen's August 24 , 2017 Order. Thank you.

I am also sending a copy to Lynne Jones, President of Sparks-Glencoe Community Council, another interested party

Peter Max Zimmerman, People's Counsel 410 887 2188

From: Sherry Nuffer
Sent: Thursday, August 24, 2017 3:36 PM
To: Peter Max Zimmerman <pzimmerman@baltimorecountymd.gov>; elliottslaw@gmail.com; Carroll Holzer <jcholzer38@gmail.com>
Cc: Kristen L Lewis <klewis@baltimorecountymd.gov>
Subject: 2017-0332-SPHXA

Please send a response when you receive this e-mail so that Judge Beverungen can confirm that all parties received.

Thank you,

JB 8-29-17
1:30 PM



RE: PETITION FOR
SPECIAL HEARING
15815 Falls Road

BEFORE THE

ADMINISTRATIVE LAW JUDGE

PETITION OF:

ROGER L. ELLIOTT

Case No.: 2017-332-SPHXA

Petitioner

* * * * *

MOTION TO DISMISS
THE PETITION FOR SPECIAL HEARING

Protestant, Ms. Sallie Waller, of 15813 Falls Road, Sparks, Maryland, by
J. Carroll Holzer, Esquire, Holzer & Lee, hereby moves to dismiss the above-captioned
Petition filed by Roger Elliott and currently scheduled for a hearing on ***Tuesday***,
August 29, 2017, at 1:30 p.m., and says:

Protestant Waller hereby adopts the letter of Baltimore County People's Counsel dated August 16, 2017, raising an issue of *res judicata*. Counsel has entered his appearance on behalf of Sallie Waller, an adjacent property owner. Protestant Waller participated in the initial request by Mr. Elliott in this case dated No. 2015-196-XA, filed on June 17, 2015. Ms. Waller adopts the facts as presented by Mr. Zimmerman, People's Counsel for Baltimore County.

In addition, Protestant submits additional discussion concerning the doctrine of *res judicata*, its application to land use cases and its application to the present case.

Res judicata applies to parties and privies in quasi-judicial administrative proceedings. *Batson v. Shifflett*, 325 Md. 684, 701-04 (1992); *United States v. Utah Constr. Co.*, 384 U.S. 394 (1966); *Powell v. Breslin*, 430 Md. 52, 63-65 (2013); *Fertitta v. Brown*, 252 Md. 594, 599-600 (1969); *Seminary Galleria v. Dulaney Valley Imp. Ass'n.*, 192 Md. App. 719, 736 (2010).

A successor owner is in privity with a previous owner. 13 M.L.E. Judgments Sec. 123 (2016); Walzl v. King, 113 Md. 550 (1910); cf. Kim v. Collington Center III, 180 Md. App. 606, 615-20 (2008). This point is especially apt in zoning cases, where issues revolve around property use rather than the owner's identity or personality. City of Baltimore v. Poe, 224 Md. 428 (1961).

The public policy underlying the doctrine to effectuate repose. It is unfair to put parties through repeat cases. It is inimical and subversive to the efficient and proper administration of justice. Following Utah Constr. Co., the Supreme Court explained in Astoria Federal Savings & Loan Assoc. v. Solimino, 501 U.S. 104, 107 (1991), Souter, J.:

“Such repose is justified on the sound and obvious principle of judicial policy that a losing litigant deserves no rematch after a defeat fairly suffered, in adversarial proceedings, on an issue identical in substance to the one he subsequently seeks to raise. To hold otherwise would as a general matter, impose unjustifiably upon those who have already shouldered their burdens, and drain the resources of an adjudicatory system with disputes resisting resolution. ... The principle holds true when a court has resolved an issue, and should do so equally when the issue has been decided by an administrative agency, be it state or federal”

The application of *res judicata* to land use cases stretches back almost a century. In 1936, the Court of Appeals applied *res judicata* to a proposed substation post office in a residential zone. Mayor & City Council v. Linthicum, 170 Md. 245 (1936). The Court observed “...there had been no change in the proposal, either in the use planned, or in the neighborhood conditions; and there was none in the relevant ordinances.” Following Linthicum, the Court in Bensel v. Mayor and City Council, 203 Md. 506 (1954) implemented the doctrine to sustain dismissal of a complaint to allow a non-conforming business use. Four (4) years previously, there had been a final court judgment sustaining the Zoning Commissioner's permit denial.

Whittle v. Board of Zoning Appeals of Baltimore County, 211 Md. 36 (1956) has become a landmark case. This involved a special permit for a funeral home on York Road, Towson. In 1949, there had been a prior application, based on need, population increase, and lack of proportionate increase in funeral homes. Area residents had opposed the project based on its effect on enjoyment of their homes and on traffic. Upon judicial review of the CBA approval, the Circuit Court had reversed.

Despite this final denial, the contract purchasers acquired the property. In 1954, they filed a second petition. The adduced testimony that the neighboring church supported the petition; experts said there would be no adverse impact on traffic and parking, and no decrease in area property values or adverse psychological impact; there was more neighborhood commercial activity; and there was greater increase in population than previously. 211 Md. at 40-41. The neighbors still opposed the application, finding no need, that the use would be commercial, and it would still affect property values. The BZA granted the second petition; and the Circuit Court affirmed.

The Court of Appeals reversed. Chief Judge Brune wrote, 211 Md. at 45,

“The general rule, where the question has arisen, seems to be that after the lapse of such time as may be specified by the ordinance, a zoning appeals board may consider and act upon a new application for a special permit previously denied, but that it may properly grant such a permit only if there has been a substantial change in conditions. See Bassett on Zoning (2nd Ed., 1940), pp. 119-120; Yokley on Zoning Law and Practice (1953 Ed.), §128; 168 A.L.R. 124; St. Patrick's Church Corporation v. Daniels, 113 Conn. 132, 154 A. 343; Burr v. Rago, 120 Conn. 287, 180, A. 444; Rommell v. Walsh, 127 Conn. 272, 16 A.2d 483; Rutland Parkway, Inc. v. Murdock, 241 App. Div. 762, 270 N.Y.S. 971. This rule seems to rest not strictly on the doctrine of *res judicata*, but upon the proposition that it would be arbitrary for the board to arrive at opposite conclusions on substantially the same state of facts and the same law.

In the instant case we have, of course, a prior court determination and the question of *res judicata* is directly involved.

Many zoning questions do not rest upon immutable facts, *St. Patrick's Church Corp. v. Daniels, supra*, and the application of the rules of *res judicata* is not always so easy and so clear cut as in the *Linthicum* and *Bensel* cases. It is our view that where the facts are subject to changes which might reasonably lead to an opposite result from that arrived at in an earlier case, and if there have been substantial changes in facts and circumstances between the first case and the second, the doctrine of *res judicata* would not prevent the granting of the special permit sought by the appellees. They contend that such changes have occurred, and we shall now proceed to examine the alleged differences."

The Court then reviewed and found the myriad of alleged differences to be insubstantial.

The appellate courts have followed *Whittle* consistently. *Woodlawn Area Citizens Ass'n. v. Board of County Comm'rs.*, 241 Md. 187, 197-201 (1966); *Alvey v. Hedin*, 243 Md. 334, 340-42 (1966); *Seminary Galleria v. Dulaney Valley Imp. Ass'n.*, 192 Md. App. 719, 736 (2010).¹

Since 2015, Ms. Waller has suffered many instances of improper actions on her property and submits that there has been no change in the circumstances involving the original issue related to the number of horses and the prohibition in regard to the forest conservation and buffer areas and has an unsatisfactory experience with the condition imposed in 2015 in regard to landscaping. She therefore requests that this additional

¹ Prepared by Office of People's Counsel in Case No.: 2017-113 SPH

expense and burden upon her to defend the very issues that were addressed and decided in 2015 is a substantial burden upon her use and enjoyment of her property.

Respectfully submitted,



J. CARROLL HOLZER, Esquire
Holzer & Lee
508 Fairmount Avenue
Towson, Maryland 21286
410-825-6961
Attorney for Sally Waller,
Adjacent Property Owner

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on this 21ST day of August, 2017, a copy of the foregoing Motion to Dismiss the Petition for Special Hearing was mailed first class, postage pre-paid to the following: Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County, Jefferson Building, 105 West Chesapeake Avenue, Room 204, Towson, Maryland 21204 and Mr. Bruce E. Doak, Bruce E. Doak Consulting, LLC, Land Use Expert and Surveyor, 3801 Baker Schoolhouse Road, Freeland, Maryland 21053, Petitioner's Representative.



J. CARROLL HOLZER, Esquire



**Sparks-Glencoe Community
Planning Council
P.O. Box 937, Sparks, MD 21152**

August 17, 2017

The Honorable John E. Beverungen
Administrative Law Judge
The Jefferson Building
105 West Chesapeake Avenue, Suite 103
Towson, Maryland 21204



Re: Roger L. Elliott
15815 Falls Road
Case No. 2017-332-SPHXA
Hearing Date: August 29, 2017

Dear Judge Beverungen:

The Sparks-Glencoe Community Planning Council (SGCPC) opposes the request in the above referenced matter to expand the conditions of a special exception that was granted only two years ago after a contested hearing.

As an initial matter, we endorse the position taken by People's Counsel in its letter of August 16, 2017. Further, we also firmly support the efforts of Sallie Waller, a neighboring property owner, who has been directly and personally involved in this matter for a number of years.

In particular, SGCPC objects to removing the prohibition on trail riding within the forest conservation and forest buffer areas. These areas are buffers precisely because they are, and they protect, environmentally sensitive areas. We understand that Mr. Elliott agreed to this very important restriction in 2015. Further, your 2015 opinion indicates that these kinds of activities are prohibited by law in the buffer and conservation easement areas. Consequently we can imagine no conceivable lawful basis to amend that condition.

We also want to note that the 2015 order required screening and landscaping to protect the Waller property. Once again, Ms. Waller has spent time and money to protect her own property. This screening – to be designed in accordance with the directives of the Baltimore County landscape architect – is the very least that can be done to shield Ms. Waller from the activities to which she has objected over the years. The requested downgrading and/or elimination of the screening is, in our view, disrespectful of Ms. Waller's property rights. Ms. Waller objected to the grant of the special exception in 2015. Though you granted that special exception, your opinion clearly indicates that she is worthy of considerable deference. SGCPC believes that that deference should continue.

We do not see any change of circumstances that can justify revisiting the special exception conditions so recently imposed. Certainly, if Ms. Waller had filed a petition for a special hearing to now impose more restrictive conditions, that request would be summarily denied. We believe that Mr. Elliott's request deserves that same treatment.

Thank you for your consideration in this matter.

Sincerely,


Lynne Jones, President

Cc: Peter Zimmerman, Esquire
People's Counsel

Bruce Doak
Petitioner's Representative

J. Carroll Holzer, Esquire
Attorney for Sallie Waller



Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

Jefferson Building
105 West Chesapeake Avenue, Room 204
Towson, Maryland 21204

410-887-2188
Fax: 410-823-4236

August 16, 2017

PETER MAX ZIMMERMAN
People's Counsel

RECEIVED

AUG 16 2017

OFFICE OF
ADMINISTRATIVE HEARINGS

CAROLE S. DEMILIO
Deputy People's Counsel

HAND DELIVERED

John Beverungen, Administrative Law Judge
The Jefferson Building
105 W. Chesapeake Avenue, Suite 103
Towson, Maryland 21204

Re: Roger L. Elliott
15815 Falls Road
Case No.: 2017-332-SPHXA
Hearing Date: August 29, 2017 @ 1:30 p.m.

Dear Judge Beverungen,

This is another case for *res judicata*. The June 13, 2017 petition for special hearing asks to amend and expand the riding stable special exception at 15815 Falls Road in the northern county.

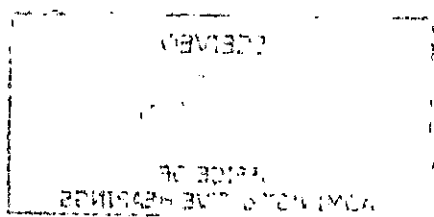
Petitioner Roger Elliott received conditional approval in a case contested by Sallie Waller about two years ago. No. 2015-196-XA, June 17, 2015, enclosed. The conditions included:

1. A requirement to screen and/or landscape the proposed parking area from Ms. Waller's property, subject to the configuration approved by the Baltimore County Landscape Architect.
2. A limit to no more than five (5) horses.
3. A prohibition on trail riding within forest conservation and forest buffer areas, (buttressed in the opinion, page 3, that "the law prohibits recreational activities within these environmentally-sensitive areas, Ms. Elliott agreed).

(Ms. Waller appealed, but eventually withdrew this voluntarily, County Board of Appeals (CBA) Order dated September 4, 2015 also enclosed).

The current petition requests to eliminate the screening/landscaping requirement, allow additional horses, and allow potential trail riding in the forest conservation and forest buffer areas. These requests are plainly precluded by *res judicata*. There are no substantial changes in circumstances in the area to warrant such elimination and relaxation of litigated conditions.

To make a long story short, we enclose your recent March 13, 2017 decision in RREF II, 502/504 Montclair Court. The CBA effectively affirmed and confirmed your grant of our office's motion to dismiss in its *de novo* appeal public deliberation last week, August 9. Minutes enclosed. This matter involved a request to eliminate or relax previous litigated height and area conditions.



The present case is even stronger for the application of *res judicata* because the time interval is shorter (2 years vs. 13); the same petitioner is involved (not a successor owner covered by privity); and it is your own decision at issue (not that of a previous hearing officer).

We also enclose your September 12, 2014 decision in Belvedere Baptist Church, Case No. 2015-004-SPHA, 1301 Cheverly Road. *Res judicata* barred that effort to relax the litigated condition limiting the number of children permitted in a group child care center. The CBA effectively affirmed this decision in its enclosed February 27, 2015 opinion and order.

The case law is by now familiar and consistent, from Whittle v. Board of Zoning Appeals 211 Md. 36 (1956) to Seminary Galleria v. Dulaney Valley Improvement Ass'n 192 Md. App. 719 (2010). These both were Baltimore County cases, but the doctrine has been applied statewide.

The current petition also asks for a variance to allow a stone surface for the parking area. This request was also made in the 2015 petition. Your 2015 opinion seems sympathetic to this request, with its description on page 3 of the existing parking area. But we cannot find it addressed or determined in the order. Therefore, we submit this issue for your exercise of discretion. About the same can be said for the request to waive striping.

We also understand that Sallie Waller is reentering her appearance in opposition, represented again by J. Carroll Holzer.

Sincerely,



Peter Max Zimmerman

People's Counsel for Baltimore County

cc: Bruce Doak, petitioner's representative, sent via email & first class mail
J. Carroll Holzer, Esquire, attorney for Sallie Waller, sent via email & first class mail

6/17/15

IN RE: PETITIONS FOR SPECIAL
EXCEPTION AND VARIANCE
(15815 Falls Road)
5th Election District
3rd Council District
Roger Elliott
Legal Owner
Petitioner

* BEFORE THE
* OFFICE OF
* ADMINISTRATIVE HEARINGS
* FOR BALTIMORE COUNTY
* Case No. 2015-0196-XA

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) as Petitions for Special Exception and Variance filed for property located at 15815 Falls Road. The Petitions were filed on behalf of Roger Elliott, the legal owner of the subject property. The Petitioner seeks special exception relief per Baltimore County Zoning Regulations (B.C.Z.R.) to permit the subject property and the improvements to be used for a riding stable. The petition for variance seeks the following relief: (1) to permit a parking area with no screening or landscaping in lieu of the required screening and landscaping; (2) to permit a parking area to be surfaced with stone in lieu of the required durable and dustless surface; (3) to permit a parking area not to be striped in lieu of the striping requirement; and (4) to allow a two-way access driveway to have a width of 16 ft. in lieu of the required 20 ft. A site plan was marked as Petitioner's Exhibit 1.

Appearing at the hearing in support of the petitions was Roger Elliott and surveyor Bruce E. Doak, from Bruce E. Doak Consulting LLC, the firm which prepared the site plan. A neighbor (Ms. Waller) represented by J. Carroll Holzer, Esq. opposed the requests. The Petition was advertised and posted as required by the B.C.Z.R. Zoning Advisory Committee (ZAC) comments were received from the Bureau of Development Plans Review (DPR) and the Department of Planning (DOP). Those will be discussed below.

The subject property is approximately 33.829 acres and is zoned RC 2. The rural site is improved with a large barn, shed and adjoining parking area. These improvements would be used in connection with the riding stable. Petitioner's daughter will operate the riding stable, and she resides in a single family dwelling which is also located on the subject property.

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.

I do not believe the Protestant presented such evidence. Ms. Waller testified the riding stable operation would cause noise, increased traffic, odors and a potential decrease in property value. As to that last issue, Steven Edelin, a licensed realtor presented by the Protestant, testified the stable operation would on balance be a "negative" that could impact the future sale of the home. Joyce Corcoran, a realtor called by the Petitioner, testified that people looking to purchase homes in the northern Baltimore County area (i.e., Butler) would consider a horse riding stable to be a positive feature that would in her opinion enhance property values.

Though the testimony was conflicting, the potentially negative factors identified by Protestant are all inherent in the operation of a horse riding stable, a use permitted by special exception in the RC 2 zone. B.C.Z.R. §1A01.2.C.21. These are the types of inherent adverse effect that the legislature was presumed to have anticipated when it allowed the use by special exception. In other words, most uses for which a special exception is required are regarded as

"potentially troublesome because of noise, traffic, congestion...." Montgomery County v. Butler, 417 Md. 271, 297 (2010). As such, the Petition will be granted, subject to the conditions noted below.

VARIANCES

To obtain variance relief requires a showing that:

- (1) The property is unique; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Trinity Assembly of God v. People's Counsel, 407 Md. 53, 80 (2008).

Petitioner has met this test. The large property is irregular shaped and contains significant topographical features. As such it is unique. If the B.C.Z.R. were strictly interpreted Petitioner would suffer a practical difficulty, in that he would be unable to use the existing parking area. While it may be that with a great deal of difficulty and expense the parking area could be relocated, additional grading and paving (impervious surface) should be avoided if possible in a rural, agricultural setting such as this.

Finally, I find that the variances can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare. The DOP recommended that a vegetative buffer be provided to screen the view from Falls Road and the adjoining property (owned by Ms. Waller), and thus the first variance will not be granted. In addition, the DPR requested the driveway be at least 16' wide between Falls Road and the proposed parking area, and a condition will be added to that effect.

The only other issue pertains to the large forest buffer and forest conservation easements shown on the site plan. While the Department of Environmental Protection did not submit a ZAC comment, the law prohibits recreational activities within these environmentally-sensitive areas.

Ms. Elliott was asked by Protestant's counsel to outline the approximate location of the trails she intends to use for her business, and the course shown in blue ink on the site plan does not encroach upon any of the buffer areas. Even so, a condition will be added to make clear that horse riding shall not take place in those areas.

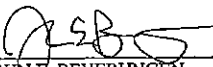
THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 17th day of June, 2015, that the Petition for Special Exception to permit the subject property and the improvements to be used for a riding stable, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Variance: (1) to permit a parking area to be surfaced with stone in lieu of the required durable and dustless surface; (2) to permit a parking area not to be striped in lieu of the striping requirement; and (3) to allow a two-way access driveway to have a width of 16 ft. in lieu of the required 20 ft., be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon 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 his 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 provide screening and/or other landscaping between the proposed parking area and the property owned by Ms. Waller. The configuration of and specific requirements for the landscaping shall be determined in the sole discretion of the Baltimore County landscape architect.
3. The driveway accessing the proposed parking lot shall be at least 16' wide for its entire length.
4. Petitioner shall, prior to issuance of any necessary permits/licenses, secure approval from the Baltimore County Soil Conservation District.
5. No trail riding or horses shall be permitted within the forest buffer and forest conservation easement areas shown on the site plan.
6. Petitioner shall keep no more than five (5) horses on the subject property.

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


JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/sln

IN THE MATTER OF
ROGER ELLIOTT - LEGAL OWNER/PETITIONER
FOR SPECIAL EXCEPTION AND VARIANCE ON
THE PROPERTY LOCATED AT 15815 FALLS ROAD

5TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

BEFORE THE
BOARD OF APPEALS
OF
BALTIMORE COUNTY
CASE NO. 15-196-XA

ORDER OF DISMISSAL

This matter comes to the Board of Appeals by way of an appeal filed by J. Carroll Holzer, Esquire on behalf of Sallie Waller, Protestant and Appellant, from a final decision of the Administrative Law Judge dated June 17, 2015, in which the requested zoning relief was granted with conditions.

WHEREAS, the Board is in receipt of a letter of voluntary withdrawal of appeal filed on August 14, 2015, by J. Carroll Holzer, Esquire on behalf of Protestant/Appellant, Sallie Waller, (a copy of which is attached hereto and made a part hereof); and

WHEREAS, said Petitioner /Appellant requests that the appeal taken in this matter be withdrawn and dismissed as of August 14, 2015,

THEREFORE, IT IS ORDERED this 4th day of September, 2015 by the Board of Appeals of Baltimore County that the appeal taken in Case No. 15-196-XA be and the same is hereby DISMISSED.

BOARD OF APPEALS
OF BALTIMORE COUNTY


Maureen E. Murphy, Chairman

IN RE: PETITION FOR SPECIAL
EXCEPTION AND VARIANCE

5th Election District
3rd Councilmanic District

Roger Elliott, Owner/Petitioner
15815 Falls Road

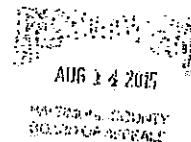
BEFORE THE
COUNTY
BOARD OF APPEALS
FOR
BALTIMORE COUNTY
PUD Case No.: 2015-0196-XA

NOTICE OF WITHDRAWAL OF APPEAL

Ms. Sallie Waller, 15813 Falls Road, Sparks, Maryland 21152, Appellant, by her attorney, J. Carroll Holzer, Esquire, Holzer & Lee, hereby withdraws her appeal from the Opinion & Order of the Administrative Law Judge dated June 17, 2015.

Appellant hereby withdraws her appeal with prejudice. The case is currently assigned for Tuesday, September 22, 2015.

Respectfully submitted,




J. CARROLL HOLZER, Esquire
Holzer & Lee
508 Fairmount Avenue
Towson, Maryland 21286
410-825-6961
Attorney for Appellant,
Sallie Waller

LAW OFFICE
HOLZER AND LEE
THE 508 BUILDING
508 FAIRMOUNT AVENUE
TOWSON, MARYLAND
21286
410-825-6961
FAX: 410-825-4923

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on the 14th day of August, 2015 a copy of the foregoing

Notice of Withdrawal of Appeal was mailed first class, postage prepaid, to:

Lawrence E. Schmidt, Esquire
Smith, Gildea & Schmidt, LLC
600 Washington Avenue
Suite 200
Towson, Maryland 21204

Mr. Roger Elliott, Esquire
P.O. Box 147
Butler, Maryland 21023

Peter Max Zimmerman, Esquire
People's Counsel for
Baltimore County
Jefferson Building
105 West Chesapeake Avenue
Room 204
Towson, Maryland 21204


J. CARROLL HOLZER, Esquire

PM2

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon
Deputy Administrative Officer and
Director of Permits, Approvals and Inspections

DATE: March 20, 2015

FROM: Andrea Van Arsdale
Director, Department of Planning

SUBJECT: 15815 Falls Road

INFORMATION:

Item Number: 15-196

Petitioner: Roger L. Elliott

Zoning: RC 2

Requested Action: Special Exception, Variance

SUMMARY OF RECOMMENDATIONS:

The Department of Planning (Department) has reviewed the Special Exception and Variance Petitions with accompanying site plan to permit a riding stable with a parking area with no screening or landscaping, to be surfaced with stone and not to be striped with a two-way access driveway having a width of 16 feet in lieu of the required screening and landscaping, durable and dustless surface, striping and 20 feet respectively.

The Department has no objection to the grant of the petitioned special exception use conditioned upon the following:

- The petitioner shall obtain all necessary approvals from the Soil Conservation District.

Further, the Department has no objection to the grant of the petitioned variance relief with the exception of providing "no screening or landscaping". The Department recommends as a condition of approval the following:

- The petitioner create a buffer of evergreen trees and mixed deciduous trees in the 30' between the proposed parking area and the existing barn and the lot line thereby screening the view from Falls Road and of the neighboring property located at 15813 Falls Road.

For further information concerning the matters stated here in, please contact Carmela Iacovelli at 410-887-3480.

Division Chief: Katry Sallabudin
AVA/LTM

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(502 & 504 Montclair Court)		
7 th Election District	*	OFFICE OF
3 rd Council District		
RREF II SB-MD, LLC	*	ADMINISTRATIVE HEARINGS
Legal Owner		
Petitioner	*	FOR BALTIMORE COUNTY
	*	Case No. 2017-0113-SPH

* * * * *

OPINION AND ORDER

This case involves a residential subdivision in northern Baltimore County. Following a series of contested hearings and appeals, Developer obtained approval for a 16 lot subdivision. The approval imposed conditions that the dwellings on Lot Nos. 14 and 15 be limited to one-story structures and a rear yard setback of 100 feet was also required for these lots.

Developer has filed a petition for special hearing, seeking to have these restrictions modified. I believe the relief sought herein is barred by the doctrine of *res judicata*. In addition, the Administrative Law Judge (ALJ) is not authorized to modify the 100 ft. rear yard setbacks. As such, this case will be dismissed.

While it is unusual to dismiss a zoning case prior to a public hearing, it is not without precedent. *See, e.g.,* Case No. 2014-0064-SPH. In fact, a legal defense like *res judicata* should be decided at the earliest possible juncture, so the parties do not need to incur the time and expense of a hearing in a case that will ultimately not be resolved on the merits. In a series of e-mails (included in the case file) the parties have briefed the *res judicata* issue, which I believe can be decided as a matter of law.

Under Maryland law, an agency determination affirmed on appeal is entitled to preclusive effect. *Seminary Galleria, LLC v. Dulaney Valley Improv. Ass'n. Inc.*, 192 Md. App. 719, 736

(2010); *Esslinger v. Balto. City*, 95 Md. App. 607, 621 (1993). This is the case, and *res judicata* will apply, unless there is a significant change in circumstances between the earlier and subsequent action. *See, e.g., Alvey v. Hedin*, 243 Md. 334, 340 (1966). In light of this authority I believe the doctrine of *res judicata* mandates that the petition in this case be dismissed.

In its submissions Petitioner contends there have been significant changes in the community since the 2004 hearing. Petitioner notes nearly all of the homes in the subdivision have been constructed and sold, and the trees and other landscaping required in the 2004 order are now fully grown, obscuring some of the views sought to be preserved. Petitioner also contends a large barn was constructed in the rear yard of the Wiseburg Inn historic property (though such a structure is not shown on Petitioner's site plan), which also obscures the view shed sought to be preserved.

These are not the sort of significant changes contemplated by the case law. *See, e.g., Woodlawn Area Citizens Ass'n. v. Board of County Commissioners*, 241 Md. 187 (1966). Of course, it was intended and expected the homes in the subdivision would be constructed, and the same can be said regarding the maturation and growth of the vegetative buffer. These were anticipated and within the contemplation of the hearing officer when the conditions were imposed. As for the barn, the owner of the Wiseburg Inn testified at the 2004 hearing he had obtained a building permit for that structure, a fact expressly noted in the 2004 order. Thus, it is also clear the hearing officer was aware of this fact when the conditions were imposed. The neighborhood was in 2004, and remains today, a rural residential community. As such, the doctrine of *res judicata* is applicable.

In addition to the foregoing, the ALJ cannot grant the relief sought by Petitioner. The 100 foot rear yard setback was imposed by the Planning Board, to whom this case was referred pursuant to a Code provision concerning development proposals "involving" an historic structure.

Baltimore County Code ("B.C.C.") § 32-4-231(a)(3). The Wiseburg Inn, which adjoins the subject property, is designated as a Baltimore County historic landmark. Under the Code, the comments and conditions imposed by the Planning Board are "final" and "binding" on the ALJ. B.C.C. §32-4-232(f). As such, even if a hearing was held in this case the undersigned would be unable to grant the relief sought.

THEREFORE, IT IS ORDERED this 13th day of March, 2017 by this Administrative Law Judge, that the Petition for Special Hearing: (1) to permit a modification of the conditions imposed in Case No. VII-372 to permit homes on Lots 14 and 15 (502 and 504 Montclair Court) greater in height than the permitted one-story; (2) to permit a modification of the conditions imposed in Case No. VII-372 to reduce the required rear yard setback for Lots 14 and 15 (502 and 504 Montclair Court) from 100 ft. to 80 ft.; (3) to amend the Final Development Plan (FDP) for Montclair; and (4) to permit a setback of 55 ft. from the centerline of the road in lieu of the required 75 ft. and to permit a setback from the western lot line for Lot 14 of 30 ft. in lieu of the required 50 ft., be and is hereby **DISMISSED** with prejudice.

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


JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:slh

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: RREF II SB-MD, LLC

17-113-SPH

DATE: August 9, 2017

BOARD/PANEL: Andrew M. Belt, Chairman
Meryl W. Rosen
James H. West

RECORDED BY: Tammy A. Zahner, Legal Secretary

PURPOSE: To deliberate the following:

1. Motion to Dismiss filed by People's Counsel, and Opposition thereto.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

- The Board reviewed the history of this property. There was a previous case from 2004 which imposed restrictions on the development of the lots in question within the Montclair development, including height limitations and minimum setbacks, in order to protect the adjoining property that includes the historic Wiseburg Inn. Petitioner seeks to amend certain restrictions from the prior case.
- A Motion to Dismiss was filed by People's Counsel, and an Opposition to the Motion was filed by Petitioner. The Board held a hearing to provide the parties with the opportunity to present argument on the application of *res judicata* to this case.
- The Board noted that, in order for Petitioner to avoid the application of *res judicata*, there must be a substantial change in circumstances involving the properties.
- The Petitioner argues that the development restrictions set forth in connection with the original approval of the Montclair development were put in place for the protection of the adjoining property. They argue that construction of a barn by the neighbor, the completion of the Montclair development, and mature tree growth constitute a material change in circumstance.
- The Board finds that the items argued by the Petitioner as material changes were to be expected, and finds there has not been a substantial change to the property or circumstances.

CONCLUSION: After thorough review of the facts in the record and law governing this matter, the Board unanimously agreed to GRANT the Motion to Dismiss on the basis of *res judicata*.

NOTE: These minutes, which will become part of the case file, are intended to indicate for the record that a public deliberation took place on the above date regarding this matter. The Board's final decision and the facts and findings thereto will be set out in the written Opinion and Order to be issued by the Board.

Respectfully Submitted,

_____/s/
Tammy A. Zahner

9/12

IN RE: PETITION FOR SPECIAL HEARING * BEFORE THE
(1301 Cheverly Road) *
9th Election District * OFFICE OF
3rd Councilmanic District *
The Belvedere Baptist Church of Baltimore, * ADMINISTRATIVE HEARINGS
Legal Owner *
Davenport Preschool, LLC, * FOR BALTIMORE COUNTY
Lessee *
Petitioners * Case No. 2015-0004-SPH

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of a Petition for Special Hearing filed on behalf of The Belvedere Baptist Church of Baltimore, Legal Owner, and Davenport Preschool, LLC, Lessee ("Petitioners"). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to determine whether or not the Administrative Law Judge should approve an amendment to restriction #2 in Zoning Case No. 2013-0166-X to allow the petitioner/lessee to have a maximum of 150 children in the approved Class B Group Child Care Center in lieu of the previously granted 120 children.

Appearing at the public hearing in support of the requests was Liz Harlan, the owner of the Davenport Preschool which is operated on site, and Carl Dyhrberg with C.D. Design Consultants, the consulting firm that prepared the site plan. Matthew Vocci, Esquire, represented the Petitioners. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Several community residents attended the hearing and opposed the request and the file also contains several letters of opposition from neighbors. The only substantive Zoning Advisory Committee (ZAC) comment was received from the Department of Planning (DOP), which did not oppose the request.

The subject property is 12.711 acres (553,691.16 sq. ft.) and is zoned DR 1. The Petitioners were granted special exception relief in 2013, permitting them to operate a Class B child care facility with a maximum of "120 children in the facility at any one time." Case No. 2013-0166-X, Order p. 7. The current Petition seeks an amendment of that restriction, "to have a maximum of 150 children . . . in lieu of the previously granted 120 children." As noted at the hearing, the previous Order did not contain an enrollment cap. In other words, the school could very well enroll 150 students, but given the various schedules offered, only 120 children would be in the center at any one time.

Ms. Harlan stated that the fall class which just began has 109 children; in other words, to date the school has not had the maximum number of students permitted by last year's Order. Ms. Harlan would like to construct one additional classroom which would accommodate 16 children. She believes 150 would be the maximum number of students that could be accommodated at the site, and State regulations provide a similar numerical restriction based on the size of the existing and proposed classrooms. Petitioners' Ex. No. 2.

The neighbors expressed many of the same concerns which were discussed at the prior hearing: increased traffic in the community, safety of pedestrians and neighborhood children, and the potential for an expansion of the site if Ms. Harlan eventually purchases the property. Many area residents also complained Ms. Harlan did not notify them about her plans to seek approval for additional children at the School.

At this juncture, I do not believe the Petition should be granted. The special exception approval for 120 children was granted in March 2013, over the objection of many area residents. The Petitioner has not indicated why that restriction should not remain in place and no appeal was filed to challenge this aspect of the previous Order. Ms. Harlan conceded she has yet to

reach the maximum number of students, and thus the community rightly notes that it has not had time to evaluate the impact of the school when it is operating at permitted capacity.

Therefore, I believe the current Petition, filed after the preschool has been operating for just one year, is premature. In addition, the law also requires some change in circumstances that would justify a different restriction; i.e., an increased demand for enrollment or waiting list for preschool admissions. Calvert County v. Howlin Realty, Inc., 364 Md. 301, 325 (2001) (agency may reconsider action taken previously upon a showing that "some new or different factual situation exists that justifies the different conclusion"). I do not believe the Petitioners presented any evidence of such changed circumstances here.

THEREFORE, IT IS ORDERED this 12th day of September, 2014, by this Administrative Law Judge, that the Petition for Special Hearing pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R") to determine whether or not the Administrative Law Judge should approve an amendment to restriction #2 in Zoning Case No. 2013-0166-X to allow the petitioners/lessee to have a maximum of 150 children in the approved Class B Group Child Care Center in lieu of the previously granted 120 children, be and is hereby DENIED.

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



JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/sln

RE: PETITION FOR SPECIAL HEARING * BEFORE THE
 1301 CHEVERLY ROAD *
 9th Election & 3rd Councilmanic Districts * BOARD OF APPEALS

Legal Owner: The Belvedere Baptist Church * FOR
 of Baltimore *
 Lessee: Davenport Preschool LLC, * BALTIMORE COUNTY
 Petitioners *
 Case No.: 15-004-SPH

OPINION

This case comes before the Baltimore County Board of Appeals on an appeal of Administrative Law Judge John Beverungen's decision denying a Petition for a Special Hearing to approve an amendment to Restriction No. 2 in Zoning Case No. 2013-0166-X for the property located at 1301 Cheverly Road in Eastern Baltimore County. People's Counsel for Baltimore County has moved for dismissal of Petitioners' appeal on the grounds of *res judicata*. Petitioner Davenport Preschool, LLC ("Davenport")¹ and People's Counsel submitted Memoranda, and the Board heard oral arguments on January 27, 2015. Matthew T. Vocci of Ober Kaler Grimes & Shriver appeared on behalf of Davenport, J. Carroll Holzer appeared on behalf of the Protestants, and Peter M. Zimmerman appeared on behalf of People's Counsel. The Board publicly deliberated the Motion to Dismiss on January 27, 2015.

BACKGROUND

The dispute at issue dates back to March 28, 2013, when Administrative Law Judge ("ALJ") Beverungen of the Office of Administrative Hearings issued a written order granting, with certain conditions, the Petition for a Special Exception filed by The Belvedere Baptist Church of

¹ Counsel for Davenport has indicated the proper name of the Lessee is 'Davenport Education, LLC.'

Baltimore, Legal Owner ("Belvedere") and Davenport, the Lessee. (Belvedere and Davenport are collectively referenced herein as "Petitioners"). Petitioners had sought the special exception pursuant to §424.5.A of the Baltimore County Zoning Regulations ("BCZR") to permit a Class B Group Child Care Center with more than 40 children in an existing church on the subject property. (Case No. 2013-166-X). After a contested hearing involving testimony and evidence from Davenport and several members of the community, the ALJ granted the Petition, subject to three conditions. The pertinent condition is No. 2, which states as follows:

2. The Petitioner shall have no more than 120 children in the facility at any one time, unless state regulations or fire and life safety regulations provide a lower number which would prevail.

(March 28, 2013 ALJ Opinion and Order at 7). Petitioners did not file an appeal of this Order. Certain community members ("Protestants") did file a timely appeal to the Board of Appeals from the ALJ's decision but subsequently withdrew their appeal. By Order dated June 27, 2013, the Board of Appeals dismissed Protestant's appeal with prejudice. (The 2013 hearing and appeal process shall be referred to as "Davenport I").

More than a year later, on July 8, 2014 and pursuant to § 500.7 of the BCZR, Petitioners filed for a Special Hearing, seeking amendment of Condition No. 2. Specifically, Petitioners wanted the ALJ to amend that condition to allow a maximum of 150 rather than 120 children in the child care facility. A public hearing was held and both sides again presented testimony and evidence. By Order dated September 12, 2014, ALJ Beverungen denied the Petition. Petitioners filed a timely appeal to this Board of Appeals. (The 2014 hearing, and appeal process shall be referred to as "Davenport II"). People's Counsel has filed a Motion to Dismiss Petition for Special Hearing, based on the doctrine of *res judicata*. Petitioner Davenport opposes the Motion.

FACTS

In Davenport I, Petitioner Davenport sought a special exception in order to operate a childcare facility for more than forty children. Davenport intended to lease space in the existing Belvedere Baptist Church to house the facility. The Church is situated on a 12.711 acre property in a rural residential neighborhood consisting of approximately 160 homes and zoned DR 1. See Davenport I ALJ Opinion at 2,4. Under the DR 1 classification the Petitioners would be permitted to operate a class B Group Child Care Center with up to forty children as a matter of right. See BCZR §1B01.1.A.12. The Regulations require a Special Exception to operate a facility with more than forty children. See BCZR §424.5.A.

During the hearing in Davenport I, the Davenport representative indicated that applicable child care regulations would limit the number of child in the facility as planned to approximately 135. Davenport stated further that its goal was to enroll 150 children, resulting in approximately 120 children attending the center on any given day.² See Davenport I ALJ Opinion at 5-6. Neighborhood residents who spoke at the hearing identified potential traffic problems as their primary concern. Id. at 4. There was some divergent testimony as to the estimated number of vehicle trips through the neighborhood 150 enrolled children would generate. ALJ Beverungen stated that each such estimate represented "a lot of traffic" for the rural residential neighborhood and may well disturb the peace and quiet of the neighborhood. He stated further, however, that a large child care center with 100+ children would generate a large volume of traffic in any DR zone, not just this particular location. Id. at 4. According to ALJ Beverungen, the increase in traffic was "inherent" in the proposed use and "is exactly the type of inherent adverse effect that the legislature

² Given that some of the younger children would attend on a part-time basis, Davenport counted two such part-time children as one full-time enrollment.

was presumed to have anticipated when it allowed the use by a special exception." Id. He concluded he was compelled to grant the Petition because the Protestants failed to show that the proposed use at the particular location would have non-inherent adverse effects. Id. at 5.

Although he granted the Petition, ALJ Beverungen also conditioned the relief in an attempt "to mitigate the impacts on the community." Id. The "most significant condition" concerned the number of children at the facility. Considering both the expected traffic problems, and Davenport's testimony regarding the anticipated number of students and classrooms, the ALJ concluded 120 children was an appropriate figure. Id. He thus granted the special exception subject to the condition that Davenport would have "no more than 120 children in the facility at any one time." Id. at 7. Petitioners did not appeal this decision. Protestants did file but later withdrew an appeal. Therefore, on June 27, 2013, this Board dismissed the appeal with prejudice.

In July 2014 Petitioners reemerged and filed a Petition for a Special Zoning Hearing. The Petition sought amendment of Condition No. 2 in the March 2013 Order, such that Davenport would be permitted to increase the number of children in the facility to 150, rather than 120. Petitioners also wanted to build an additional classroom on the property to accommodate more children. ALJ Beverungen again heard testimony from witnesses for the Petitioner and Protestants and received exhibits regarding the proposed changes. In an Opinion dated September 12, 2014, ALJ Beverungen denied the Petition for Special Hearing. He emphasized that Petitioners had failed to indicate why the original restriction should not remain in place, that Davenport had not yet reached the maximum number of students permitted in condition No. 2,³ and that Petitioners failed to demonstrate some change in circumstances that would justify a different restriction. See

³ The Davenport representative indicated the then-current class had 109 children and that she wanted to build another classroom to house 16 more students. See Davenport II ALJ Opinion at 2.

Davenport II ALJ Opinion at 2-3. On October 10, 2014 Davenport filed a Notice of Appeal. People's Counsel filed a Motion to Dismiss the Petition for Special Hearing and Petitioner's appeal from the decision in Davenport II on the ground of *res judicata*. Davenport responded and on January 27, 2015 all parties presented arguments before the Board of Appeals.

DISCUSSION

I. Res Judicata

Under the doctrine of *res judicata*, a judgment on the merits in a previous suit between the same parties or their privies is entitled to full preclusive effect and bars a second suit predicated upon the same cause of action. Seminary Galleria, LLC v. Dulaney Valley Improvement Ass'n, Inc., 192 Md. App. 719, 734 (2010)(citations omitted). *Res judicata* acts as "an absolute bar, not only as to all matters which were litigated in the earlier case, but as to all matters which could have been litigated." Whittle v. Bd. of Zoning Appeals, 211 Md. 36, 49 (1956). See Garrett Park v. Montgomery County Council, 257 Md. 250, 257 (1970) (*res judicata* applies to every matter that was or might have been presented in the prior case).

Although some older cases held that *res judicata* did not apply to rulings of administrative agencies, it is now well-established that "when an administrative agency is performing a quasi-judicial function, the principles of *res judicata* are applicable." Seminary Galleria, 192 Md. App. at 735. This determination is guided by a three-part test: 1) whether the agency was acting in a judicial capacity; 2) whether the issue presented to the tribunal was actually litigated before the agency; and 3) whether the issue's resolution was necessary to the agency's decision. Id. at 736. See Batson v. Shiflett, 325 Md. 684, 705-08 (1992).

In acting upon the Petitions filed herein, the Office of Administrative Hearings acted in a judicial capacity, conducting a hearing and allowing the parties to present evidence. The parties

were precisely the same in both Davenport I and II. The issues regarding the maximum number of children presented in Davenport II were previously addressed, litigated and resolved in Davenport I. That resolution was key to the original decision. According to these criteria, the resulting conditioned decision rendered by ALJ Beverungen in Davenport I should preclude maintenance of a second action to amend that same condition.

Petitioners argue the decision is not entitled to a preclusive effect because it was based on an error of law. However, just as a final decision in a prior litigation, even if incorrect, will bind the parties to the litigation, a decision by an administrative agency acting in a judicial capacity is equally binding whether or not the decision was made in error. See Powell v. Breslin, 430 Md. 52, 64-65 (2013)(an incorrect ruling in a prior action does not deprive the ruling of *res judicata* effect). This should particularly apply when the party striving for that proverbial second bite at the apple failed to appeal the first determination. Even if this were not the case, the decision in Davenport I was not in error. Petitioners argue that Schultz v. Pritts, 291 Md. 1 (1981) and its progeny such as Montgomery County v. Butler, 417 Md. 271 (2010) should be considered in analyzing the matter. However, that is exactly the path ALJ Beverungen followed. Citing Schultz and Butler, the ALJ concluded that insofar as the community's traffic concerns are an inherent effect of a large child-care center in any DR zone, he was bound to, and therefore he did grant the Petition. See Davenport I ALJ Opinion at 3-4.

The fact that the ALJ also imposed certain conditions in an attempt to alleviate the traffic burden and protect the neighborhood does not in any way undermine the validity of his decision. To the contrary, the applicable zoning regulations specifically permit such conditional grants. According to BCZR §502.2, "[i]n granting any special exception, the Zoning Commissioner . . . shall impose such conditions, restrictions or regulations as may be deemed necessary or

advisable for the protection of surrounding and neighboring properties." See Halle Companies v. Crofton Civic Ass'n, 339 Md. 131, 140 (1995) (agency may impose reasonable conditions and restrictions in connection with a special exception order to mitigate the effect upon neighboring property and the community at large.); Baylis v. City Council of Baltimore, 219 Md. 164, 168 (1959). The ALJ permitted Petitioners to operate their business on a scale larger than that permitted as of right while concomitantly imposing certain restrictions intended to protect the neighborhood and its residents. This compromise was an appropriate use of his discretionary powers.

II. Substantial Change in Circumstances

Res judicata operates on the premise that faced with the same information, there is no reason to expend judicial resources and force opposing parties to rehash the same case in an ongoing effort to reach a different result. Thus, if a party *does* provide evidence of substantial changes in circumstances and fact between the first case and the second, *res judicata* may not necessarily prevent a second hearing on a previously decided matter. This issue arises fairly often in the zoning arena. According to the Court of Appeals, "[t]his rule seems to rest not strictly on the doctrine of *res judicata* but upon the proposition that it would be arbitrary for the board to arrive at opposite conclusions on substantially the same state of facts and the same law." Whittle, 211 Md. at 45. See Seminary, 192 Md. App. at 737 ("The Court of Appeals has emphasized that before a party can apply to a zoning agency for relief previously denied by the agency, 'substantial changes in fact and circumstances' must be, indeed, substantial.") (citations omitted); Jack v. Foster Branch Homeowner's Ass'n No. 1, Inc., 53 Md. App. 325, 333 (1982) (*res judicata* doctrine may not preclude a second case where there has been a material change in circumstances since the first decision); Chatham Corp. v. Beltram, 243 Md. 138, 151-52 (1966)

(barring a second attempt to re-raise a previously decided issue where the underlying facts remained unchanged).

Davenport contends that the actual operation of the school is a significant change in circumstances. They point to a document all school parents are required to sign regarding safe driving through the neighborhood and note that there have not been any traffic accidents. They further indicate that the growth of the student population and current space restrictions may require them in the future to refuse admittance to a few families. (Davenport's Response Memorandum at 7-8). These are not significant material changes that would warrant a rehearing or amendment of Condition No. 2. These same items were raised in Davenport I. The school's operation and the consequences thereof was a fact that was anticipated and discussed at the prior hearing. Condition No. 2 was imposed precisely to mitigate contemplated traffic problems resulting from the student population; the current absence of accidents argues more for the continuation of the condition rather than its amendment and a larger student body.⁴ As to the school's parents now signing an agreement regarding safety and neighborhood issues, that is not a change warranting a rehearing; one would have assumed that school parents would obey traffic laws and exercise caution when driving through the neighborhood irrespective of the agreement.⁵ In short, there was no substantial change to the property, the neighborhood or the facts that would lead to a contrary result upon re-litigation, particularly in the relatively short time span between the decisions.

⁴ Moreover, while Davenport may desire more available student slots, the school has yet to reach the maximum number of students allowed under the existing condition.

⁵ The "Community Respect Agreement" signed by the Davenport parents includes such statements as "I will come to a complete stop at every stop sign" and "I will not speed through the neighborhood"

CONCLUSION

In Davenport I, the ALJ struck a valid compromise between each party's concerns in light of the governing law. If Petitioners took issue with Condition No. 2 in the ALJ's decision they could have and should have filed a timely appeal with the Board. They failed to do so. The Protestants filed an appeal but withdrew that appeal in the apparent belief that Petitioners would be adhering to the conditions set forth in Davenport I. The community's good faith in withdrawing its appeal should not mean they are now required to fight the same battle every new school year. The parties in both Davenport I and II are identical, there are no material changes of fact or law, and the issues now presented either were addressed or could have been addressed in Davenport I. Petitioners have not presented any compelling reason permitting them, contrary to the doctrine of *res judicata*, to go back to the well and re-litigate the same issue in the hope of achieving a different result.

ORDER

IT IS THEREFORE, this 27th day of February, 2015 by the Board of Appeals for Baltimore County,

ORDERED, that the Motion to Dismiss Petition for Special Hearing filed by Baltimore County's People's Counsel be and is hereby GRANTED; and it is further

ORDERED, that the appeal in Case No. 2015-0004-SPH be and is hereby DISMISSED WITH PREJUDICE.

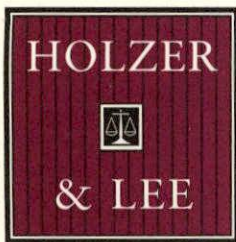
Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

BOARD OF APPEALS
OF BALTIMORE COUNTY

David L. Thurston
David L. Thurston, Chairman

Benfred B. Alston
Benfred B. Alston

Meryl W. Rosen
Meryl W. Rosen



LAW OFFICES

J. CARROLL HOLZER, PA

J. HOWARD HOLZER

1907-1989

THOMAS J. LEE

OF COUNSEL

THE 508 BUILDING

508 FAIRMOUNT AVE.

TOWSON, MD 21286

(410) 825-6961

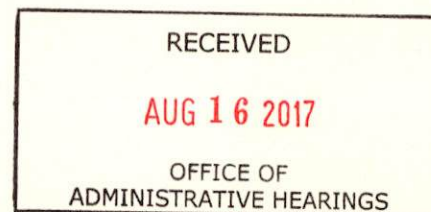
FAX: (410) 825-4923

~~E-MAIL: JCHOLZER38@GMAIL.COM~~

E-Mail: jcholzer38@gmail.com

August 14, 2017
#8135

John E. Beverungen, Esquire
Administrative Law Judge
Office of Administrative Hearings
105 West Chesapeake Avenue
Suite 103
Towson, Maryland 21204



RE: *Entry of Appearance in Case No.: 2017-0332-SPHXA*

Dear Mr. Beverungen:

Please enter my appearance in the above-captioned case on behalf of Ms. Sallie Waller of 1581 Falls Road of Sparks, Maryland. Please be advised that I previously represented Ms. Waller in Case No.: 2015-0196-XA.

I expect to present an Argument to Dismiss this Petition on the basis of *res judicata* in that this matter has been resolved in 2015 and should not be relitigated at this time.

Very truly yours,

A handwritten signature in blue ink, appearing to be "JCH", written over the typed name "J. Carroll Holzer".

J. Carroll Holzer

JCH:mlg



PETITION FOR ZONING HEARING(S)

To be filed with the Department of Permits, Approvals and Inspections

To the Office of Administrative Law of Baltimore County for the property located at:

Address 15815 Falls Road which is presently zoned RC2
 Deed References: SM 33811/414 10 Digit Tax Account # 1600005049
 Property Owner(s) Printed Name(s) ROGER L. ELLIOTT

(SELECT THE HEARING(S) BY MARKING **X** AT THE APPROPRIATE SELECTION AND PRINT OR TYPE THE PETITION REQUEST)

The undersigned legal owner(s) of the property situate in Baltimore County and which is described in the description and plan attached hereto and made a part hereof, hereby petition for:

1. X a **Special Hearing** under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

SEE ATTACHED SHEET

2. X a **Special Exception** under the Zoning Regulations of Baltimore County to use the herein described property for

SEE ATTACHED SHEET

3. X a **Variance** from Section(s)

SEE ATTACHED SHEET

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons:
 (Indicate below your hardship or practical difficulty or indicate below "TO BE PRESENTED AT HEARING". If you need additional space, you may add an attachment to this petition)

TO BE PRESENTED AT THE HEARING

Property is to be posted and advertised as prescribed by the zoning regulations.

I, or we, agree to pay expenses of above petition(s), advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

Legal Owner(s) Affirmation: I / we do so solemnly declare and affirm, under the penalties of perjury, that I / We are the legal owner(s) of the property which is the subject of this / these Petition(s).

Contract Purchaser/Lessee:

Name- Type or Print

Signature

Mailing Address City State

Zip Code Telephone # Email Address

Attorney for Petitioner:

Name- Type or Print

Signature

Mailing Address City State

Zip Code Telephone # Email Address

Legal Owners (Petitioners):

ROGER L. ELLIOTT /
 Name #1 - Type or Print Name #2 - Type or Print

Signature #1 Signature #2

15817 Falls Road Sparks MD
 Mailing Address City State

21152 / 410-414-4906 / BDOAK@BRUCEEDOAK
 Zip Code Telephone # Email Address CONSULTING.COM

Representative to be contacted:

BRUCE E. DOAK
BRUCE E DOAK CONSULTING
 Name - Type or Print

Signature

3801 BAKER SCHOOLHOUSE ROAD FREELAND MD
 Mailing Address City State

21053 / 410-414-4906 /
 Zip Code Telephone # Email Address

BDOAK@BRUCEEDOAKCONSULTING.COM

CASE NUMBER 2017-0332-SPHYA Filing Date 6/13/17

Do Not Schedule Dates: Reviewer JF

Petition Requests

Special Hearing

1. To amend the approved special exception in Case #2015-0196-XA
2. To amend by expanding and clarifying the previously approved Special Exception by:
 - a) allowing for additional horses for boarding and other lawful purposes and striking the previous condition # 6 of only allowing 5 horses;
 - b) adding to or modifying the previous condition # 5 with language prohibiting trail riding in the Forest Buffer and Forest Conservation areas unless and / or as permitted by the Director /Department of Environmental Protection and Sustainability or other appropriate governing agency.

Special Exception

1. To permit a riding stable / boarding stable on an existing agricultural farm, as a riding stable is defined in Section 101.1 BCZR per Section 1A01.2.C.22 BCZR.

Variances

1. To permit a parking area with no screening or landscaping in lieu of the required screening and landscaping per Section 409.8.A.1 BCZR
2. To permit a parking area to be surfaced with stone in lieu of the required durable and dustless surface per Section 409.8.A.2 BCZR
3. To permit a parking area not to be striped in lieu of the striping requirement per Section 409.8.A.6 BCZR

CASE #2017-0332-SPHXA

Bruce E. Doak Consulting, LLC

3801 Baker Schoolhouse Road
Freeland, MD 21053
o 443-900-5535 m 410-419-4906
bdoak@bruceedoakconsulting.com

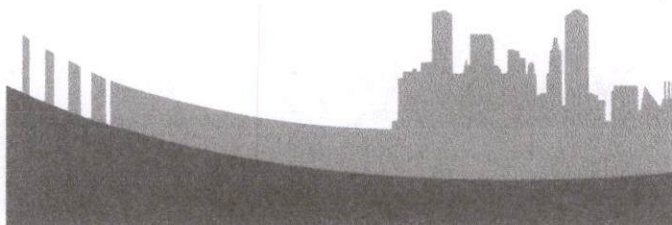
Zoning Description

15815 Falls Road- 33.829 Acres
Fifth Election District Third Councilmanic District
Baltimore County, Maryland

Beginning at a point on the east side of Falls Road, approximately ^{3,400}~~37,915~~ feet +- southerly of the centerline of Benson Mill Road, thence leaving Falls Road and running and binding on the outlines of the subject property, the ten following courses and distances, viz. 1) North 65 degrees 42 minutes 50 seconds East 1947.45 feet, 2) South 29 degrees 57 minutes 53 seconds East 387.28 feet, 3) South 29 degrees 57 minutes 53 seconds East 572.60 feet, 4) South 55 degrees 29 minutes 34 seconds West 411.21 feet, 5) North 29 degrees 59 minutes 58 seconds West 344.01 feet, 6) South 55 degrees 47 minutes 41 seconds West 819.66 feet, 7) North 89 degrees 08 minutes 17 seconds West 787.31 feet, 8) North 00 degrees 51 minutes 43 seconds East 248.14 feet, 9) North 89 degrees 08 minutes 17 seconds West 185.00 feet and 10) South 77 degrees 36 minutes 43 seconds West 75.00 feet to the east side of Falls Road, thence binding on the east side of Falls Road and continuing to run and bind on the outlines of the subject property, the four following courses and distances, viz. 11) North 10 degrees 30 minutes 36 seconds West 52.61 feet, 12) North 08 degrees 13 minutes 46 seconds West 61.21 feet and 13) Northwesterly by a line curving to the right with a radius of 1224.09 feet for 67.70 feet and a chord of North 04 degrees 50 minutes 10 seconds West 67.69 feet to the place of beginning.

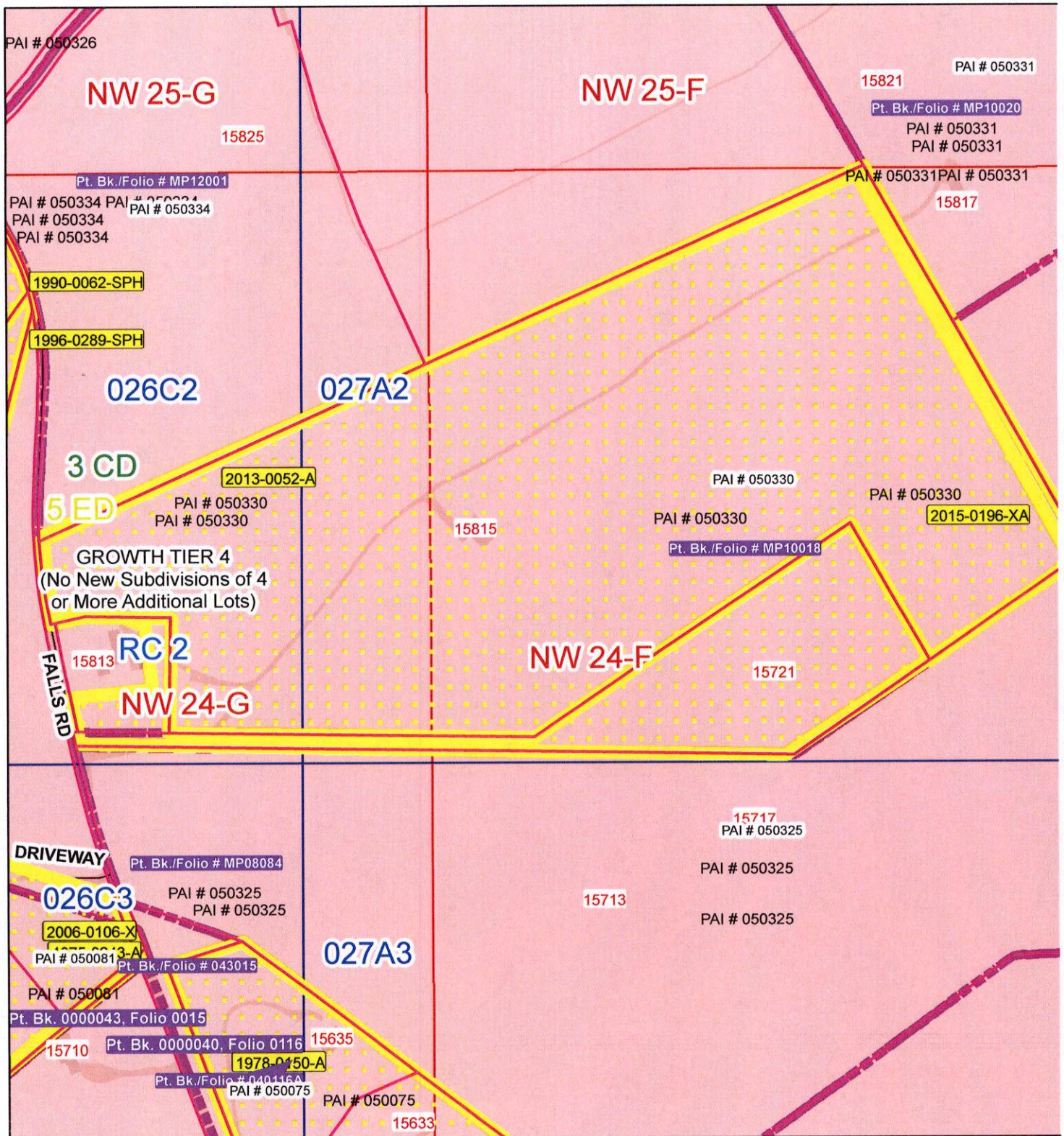
Containing 33.829 acres of land, more or less.

This description is part of a zoning hearing petition and is not intended for any conveyance purposes.



Land Use Expert and Surveyor

15815 Falls Road



Publication Date: 6/13/2017



Publication Agency: Permits, Approvals & Inspections
 Projection/Datum: Maryland State Plane,
 FIPS 1900, NAD 1983/91 HARN, US Foot



0 80 160 320 480 640 Feet

1 inch = 300 feet



KEVIN KAMENETZ
County Executive
July 20, 2017

ARNOLD JABLON
Deputy Administrative Officer
Director, Department of Permits,
Approvals & Inspections

NEW NOTICE OF ZONING HEARING

The Administrative Law Judge of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 2017-0332-SPHXA

15815 Falls Road

E/s Falls Road, 3400 ft. s/of centerline of Benson Mill Road

5th Election District – 3rd Councilmanic District

Legal Owners: Roger Elliott

Special Hearing to amend the approved Special Exception in Case # 2015-0196 XA

2. To amend by expanding and clarifying the previously approved Special Exception by: a. allowing for additional horses for boarding and other lawful purposes and striking the previous condition #6 of only allowing 5 horses; b. Adding to or modifying the previous condition #5 with language prohibiting trail riding in the Forest Buffer and Forest Conservation areas unless and/or as permitted by the Director/Department of Environmental Protection and Sustainability or other appropriate governing agency. Special Exception to permit the entire subject property and all of the improvements to be used for a riding stable. Variance to permit a parking area with no screening or landscaping in lieu of the required screening and landscaping; to permit a parking area to be surfaced with stone in lieu of the required durable and dustless surface; to permit a parking area not to be striped in lieu of the striping requirement.

Hearing: Tuesday, August 29, 2017 at 1:30 p.m. in Room 205, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204

A handwritten signature in black ink, appearing to read "Arnold Jablon".

Arnold Jablon
Director

AJ:kl

C: Roger Elliott, 15817 Falls Road, Sparks 21152
Bruce Doak, 3801 Baker Schoolhouse Road, Freeland 21053

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY WEDNESDAY, AUGUST 9, 2017.**
- (2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ADMINISTRATIVE HEARINGS OFFICE AT 410-887-3868.
- (3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.



KEVIN KAMENETZ
County Executive
July 19, 2017

ARNOLD JABLON
Deputy Administrative Officer
Director, Department of Permits,
Approvals & Inspections

NOTICE OF ZONING HEARING

The Administrative Law Judge of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 2017-0332-SPHXA

15815 Falls Road
E/s Falls Road, 3400 ft. s/of centerline of Benson Mill Road
5th Election District – 3rd Councilmanic District
Legal Owners: Roger Elliott

Special Hearing to amend the approved Special Exception in Case # 2015-0196 XA
2. To amend by expanding and clarifying the previously approved Special Exception by: a. allowing for additional horses for boarding and other lawful purposes and striking the previous condition #6 of only allowing 5 horses; b. Adding to or modifying the previous condition #5 with language prohibiting trail riding in the Forest Buffer and Forest Conservation areas unless and/or as permitted by the Director/Department of Environmental Protection and Sustainability or other appropriate governing agency. Special Exception to permit the entire subject property and all of the improvements to be used for a riding stable. Variance to permit a parking area with no screening or landscaping in lieu of the required screening and landscaping; to permit a parking area to be surfaced with stone in lieu of the required durable and dustless surface; to permit a parking area not to be striped in lieu of the striping requirement.

Hearing: Thursday, August 17, 2017 at 1:30 p.m. in Room 205, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204

A handwritten signature in black ink, appearing to read "Arnold Jablon".

Arnold Jablon
Director

AJ:kl

C: Roger Elliott, 15817 Falls Road, Sparks 21152
Bruce Doak, 3801 Baker Schoolhouse Road, Freeland 21053

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY FRIDAY, JULY 28, 2017.**
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ADMINISTRATIVE HEARINGS OFFICE AT 410-887-3868.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.



501 N. Calvert St., P.O. Box 1377
Baltimore, Maryland 21278-0001
tel: 410/332-6000
800/829-8000

WE HEREBY CERTIFY, that the annexed advertisement of Order No 5112546

Sold To:

Roger Elliott - CU00435738
15817 Falls Rd
Sparks Glencoe, MD 21152

Bill To:

Roger Elliott - CU00435738
15817 Falls Rd
Sparks Glencoe, MD 21152

Was published in "Jeffersonian", "Bi-Weekly", a newspaper printed and published in Baltimore County on the following dates:

Aug 08, 2017

NOTICE OF ZONING HEARING

The Administrative Law Judge of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing in Towson, Maryland on the property identified herein as follows:

Case: # 2017-0332-SPHXA

15815 Falls Road
E/s Falls Road, 3400 ft. s/of centerline of Benson Mill Road
5th Election District - 3rd Councilmanic District
Legal Owner(s) Roger Elliott

Special Hearing: to amend the approved Special Exception in Case #2015-0196-XA 2. To amend by expanding and clarifying the previously approved Special Exception by: a. allowing for additional horses for boarding and other lawful purposes and striking the previous condition #6 of only allowing 5 horses; b. Adding to or modifying the previous condition #5 with language prohibiting trail riding in the Forest Buffer and Forest Conservation areas unless and/or as permitted by the Director/Department of Environmental Protection and Sustainability or other appropriate governing agency.

Special Exception: to permit the entire subject property and all of the improvements to be used for a riding stable.

Variance: to permit a parking area with no screening or landscaping in lieu of the required screening and landscaping; to permit a parking area to be surfaced with stone in lieu of the required durable and dustless surface; to permit a parking area not to be striped in lieu of the striping requirement.

Hearing: Tuesday, August 29, 2017 at 1:30 p.m. in Room 205, Jefferson Building, 105 West Chesapeake Avenue, Towson 21204.

ARNOLD JABLON, DIRECTOR OF PERMITS, APPROVALS AND INSPECTIONS FOR BALTIMORE COUNTY

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Administrative Hearings Office at (410) 887-3868.

(2) For information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391.

JT 8/652 August 8

5112546

The Baltimore Sun Media Group

By *S. Wilkinson*

Legal Advertising

Bruce E. Doak Consulting, LLC

3801 Baker Schoolhouse Road
Freeland, MD 21053
o 443-900-5535 m 410-419-4906
bdoak@bruceedoakconsulting.com

CERTIFICATE OF POSTING

August 9, 2017

Re:
Zoning Case No. 2017-0332-SPHXA
Legal Owner: Roger Elliott
Hearing date: August 29, 2017

Baltimore County Department of Permits, Approvals & Inspections
County Office Building
111 West Chesapeake Avenue, Room 111
111 West Chesapeake Avenue Towson, MD 21204

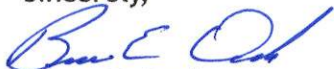
Attention: Kristen Lewis

Ladies and Gentlemen,

This letter is to certify under the penalties of perjury that the two necessary signs required by law were posted conspicuously on the property located at **15815 Falls Road**.

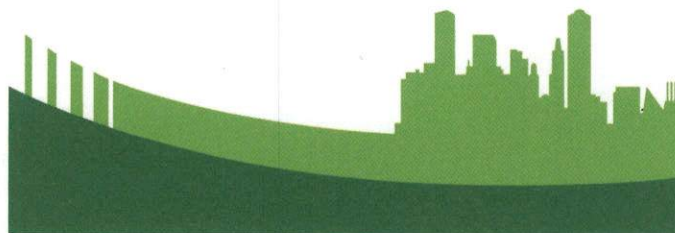
The sign was posted on August 9, 2017.

Sincerely,



Bruce E. Doak
MD Property Line Surveyor #531

See the attached sheet(s) for the photos of the posted sign(s)



Land Use Expert and Surveyor

ZONING NOTICE

CASE NO. 2017-0332-SPHXA

15815 Falls Road

A PUBLIC HEARING WILL BE HELD BY THE
ADMINISTRATIVE LAW JUDGE
IN TOWSON MARYLAND

PLACE: Room 205 JEFFERSON BUILDING
105 W. CHESAPEAKE AVENUE TOWSON, MD 21204

DATE & TIME: Tuesday August 29, 2017 1:30 PM

SPECIAL HEARING 1) TO AMEND THE APPROVED SPECIAL EXCEPTION IN CASE # 2015-0196 XA 2) TO AMEND BY EXPANDING AND CLARIFYING THE PREVIOUSLY APPROVED SPECIAL EXCEPTION BY: a) ALLOWING FOR ADDITIONAL HORSES FOR BOARDING AND OTHER LAWFUL PURPOSES AND STRIKING THE PREVIOUS CONDITION #6 OF ONLY ALLOWING 5 HORSES; b) ADDING TO OR MODIFYING THE PREVIOUS CONDITION #5 WITH LANGUAGE PROHIBITING TRAIL RIDING IN THE FOREST BUFFER AND FOREST CONSERVATION AREAS UNLESS AND/ OR AS PERMITTED BY THE DIRECTOR/DEPARTMENT OF ENVIRONMENTAL PROTECTION AND SUSTAINABILITY OR OTHER APPROPRIATE GOVERNING AGENCY.

SPECIAL EXCEPTION TO PERMIT THE ENTIRE SUBJECT PROPERTY AND ALL OF THE IMPROVEMENTS TO BE USED FOR A RIDING STABLE.

VARIANCE 1) TO PERMIT A PARKING AREA WITH NO SCREENING OR LANDSCAPING IN LIEU OF THE REQUIRED SCREENING AND LANDSCAPING 2) TO PERMIT A PARKING AREA TO BE SURFACED WITH STONE IN LIEU OF THE REQUIRED DURABLE AND DUSTLESS SURFACE 3) TO PERMIT A PARKING AREA NOT TO BE STRIPED IN LIEU OF THE STRIPING REQUIREMENT.

POSTPONEMENTS DUE TO WEATHER OR OTHER CONDITIONS ARE SOMETIMES NECESSARY. TO CONFIRM THE HEARING CALL 410-887-3391.

DO NOT REMOVE THIS SIGN AND POST UNTIL THE DAY OF THE HEARING UNDER
PENALTY OF LAW.
THE HEARING IS HANDICAPPED ACCESSIBLE





KEVIN KAMENETZ
County Executive
July 20, 2017

ARNOLD JABLON
Deputy Administrative Officer
Director, Department of Permits,
Approvals & Inspections

NEW NOTICE OF ZONING HEARING

The Administrative Law Judge of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 2017-0332-SPHXA

15815 Falls Road

E/s Falls Road, 3400 ft. s/of centerline of Benson Mill Road

5th Election District – 3rd Councilmanic District

Legal Owners: Roger Elliott

Special Hearing to amend the approved Special Exception in Case # 2015-0196 XA

2. To amend by expanding and clarifying the previously approved Special Exception by: a. allowing for additional horses for boarding and other lawful purposes and striking the previous condition #6 of only allowing 5 horses; b. Adding to or modifying the previous condition #5 with language prohibiting trail riding in the Forest Buffer and Forest Conservation areas unless and/or as permitted by the Director/Department of Environmental Protection and Sustainability or other appropriate governing agency. Special Exception to permit the entire subject property and all of the improvements to be used for a riding stable. Variance to permit a parking area with no screening or landscaping in lieu of the required screening and landscaping; to permit a parking area to be surfaced with stone in lieu of the required durable and dustless surface; to permit a parking area not to be striped in lieu of the striping requirement.

Hearing: Tuesday, August 29, 2017 at 1:30 p.m. in Room 205, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204

A handwritten signature in black ink, appearing to read "Arnold Jablon".

Arnold Jablon
Director

AJ:kl

C: Roger Elliott, 15817 Falls Road, Sparks 21152
Bruce Doak, 3801 Baker Schoolhouse Road, Freeland 21053

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY WEDNESDAY, AUGUST 9, 2017.**
- (2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ADMINISTRATIVE HEARINGS OFFICE AT 410-887-3868.
- (3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE OFFICE
SPECIAL EXCEPTION AND VARIANCE		
15815 Falls Road; E/S Falls Road, 3400' S of	*	OF ADMINSTRATIVE
c/line of Benson Mill Road & Falls Road		
5 th Election & 3 rd Councilmanic Districts	*	HEARINGS FOR
Legal Owner(s): Roger Elliott		
Petitioner(s)	*	BALTIMORE COUNTY
	*	2017-332-SPHXA

* * * * *

ENTRY OF APPEARANCE

Pursuant to Baltimore County Charter § 524.1, please enter the appearance of People's Counsel for Baltimore County as an interested party in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and the passage of any preliminary or final Order. All parties should copy People's Counsel on all correspondence sent and all documentation filed in the case.

RECEIVED

JUN 20 2017

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

CAROLE S. DEMILIO
Deputy People's Counsel
Jefferson Building, Room 204
105 West Chesapeake Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of June, 2016, a copy of the foregoing Entry of Appearance was mailed to Bruce Doak, 3801 Baker Schoolhouse Road, Freeland, Maryland 21053, Representative for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County



MARYLAND DEPARTMENT
OF TRANSPORTATION

STATE HIGHWAY
ADMINISTRATION

Pete K. Rahn, Secretary
Gregory Slater, Administrator

Governor
Governor

Date: 6/21/17

Ms. Kristen Lewis
Baltimore County Department of
Permits, Approvals & Inspections
County Office Building, Room 109
Towson, Maryland 21204

Dear Ms. Lewis:

We have reviewed the site plan to accompany petition for variance on the subject of the Case number referenced below, which was received on 4/21/17. A field inspection and internal review reveals that an entrance onto MD25 consistent with current State Highway Administration guidelines is not required. Therefore, SHA has no objection to approval for Variance, Case Number 2017-0332-SPHXA.

*Special Exception Special Hearing, Variance
Roger L. Elliott
15815 Falls Road
MD25*

Should you have any questions regarding this matter feel free to contact Richard Zeller at 410-229-2332 or 1-866-998-0367 (in Maryland only) X 2332 or by email at (rzeller@sha.state.md.us).

Sincerely,

Wendy Wolcott, PLA
Metropolitan District Engineer – District 4
Baltimore & Harford Counties

WW/RAZ

Maryland Department of Transportation
State Highway Administration

320 West Warren Road, Hunt Valley, MD 21030

410.229.2300 | TTY 800.735.2258 | roads.maryland.gov

My telephone number/toll-free number is 866.998.0367

BALTIMORE COUNTY, MARYLAND
INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits, Approvals
And Inspections

FROM: *MD*
Vishnu Desai, Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
For June 26, 2017
Item No. 2017-0332, 0334, 0335, 0336 and 0337

DATE: July 3, 2017

The Bureau of Development Plans Review has reviewed the subject zoning items and we have no comment.

VKD:CEN
cc:file
G:\DevPlanRev\ZAC -No Comments\ZAC06262017.doc

8-29

BALTIMORE COUNTY, MARYLAND INTER-OFFICE MEMORANDUM

TO: Arnold Jablon
Deputy Administrative Officer and
Director of Permits, Approvals and Inspections

FROM: Andrea Van Arsdale
Director, Department of Planning

SUBJECT: ZONING ADVISORY COMMITTEE COMMENTS
Case Number: 17-332

DATE: 7/27/2017



INFORMATION:

Property Address: 15815 Falls Road
Petitioner: Roger L. Ellicott
Zoning: RC 2
Requested Action: Special Hearing, Special Exception, Variance

The Department of Planning has reviewed the petition for a special hearing to determine whether or not the Administrative Law Judge (ALJ) should approve: amending the approved special exception in Case #2015-0196-XA; expanding and clarifying the previously approved special exception by allowing for additional horses for boarding and other lawful purposes and striking the previous condition # 6 of only allowing 5 horses; and adding to or modifying the previous condition #5 with language prohibiting trail riding in the forest buffer and forest conservation areas unless and/or as permitted by the director of the Department of Environmental Protection and Sustainability or other appropriate governing agency. The Department also reviewed the petition for special exception to use the property for a riding/boarding stable and the petition for variances to allow a parking area with no screening or landscaping, to be surfaced with stone, and not striped in lieu of the required screening and landscaping, durable and dustless surface and striping respectively.

A site visit was conducted on July 10, 2017.

The property was the subject of prior zoning case 2015-0196-XA wherein the ALJ granted the special exception establishing a riding stable having a parking area surfaced with stone not being striped and accessed via a two way 16' wide driveway. The ALJ imposed certain conditions in said order addressing landscaping, number of horses and the operation of the special exception.

The Department has no objection to granting the petitioned special exception with the condition that the riding stable operation meet the requirements of BCZR Section 404.8.

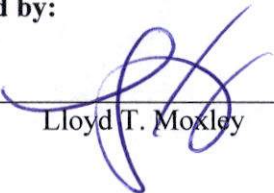
On the special hearing, the Department will concur with the determination of the ALJ based upon testimony given at the public hearing as to amending condition #6 in the prior order and the appropriate number of horses to be kept on site. The Department will support the position of the Department of Environmental Protection and Sustainability on amending condition #5 in the aforesaid case 2015-0196-XA and will concur with the decision of the ALJ.

The Department has no objection to granting the variances to allow the parking area to be surfaced with stone and not to be striped.

The Department objects to granting variance relief to allow for no screening or landscaping but instead recommends a plan be submitted for approval by the Baltimore County Landscape Architect in keeping with condition #2 of the prior zoning order 2015-0196-XA. Such a plan shall show additional landscape screening be installed between the special exception use and the property at 15813 Falls Road to mitigate impacts from any increased traffic.

For further information concerning the matters stated herein, please contact Joseph Wiley at 410-887-3480.

Prepared by:



Lloyd T. Moxley

Division Chief:



Kathy Schlabach

AVA/KS/LTM/ka

c: Joseph Wiley

James Hermann, R.L.A., Department of Permits, Approvals and Inspections

Bruce E. Doak, Bruce E. Doak Consulting

Office of the Administrative Hearings

People's Counsel for Baltimore County

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence



TO: Hon. Lawrence M. Stahl; Managing Administrative Law Judge
Office of Administrative Hearings

FROM: Jeff Livingston, Department of Environmental Protection and
Sustainability (EPS) - Development Coordination

DATE: August 10, 2017

SUBJECT: **Revised DEPS Comments** for Zoning Item # 2017-0332-SPHXA
Address 15815 Falls Road
(Elliott Property)

Zoning Advisory Committee Meeting of **June 26, 2017**.

- X The Department of Environmental Protection and Sustainability offers the following comments on the above-referenced zoning item:
- X Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 33-3-101 through 33-3-120 of the Baltimore County Code).
- X Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).

Additional Comments:

- X Please condition any zoning approval that no horse riding or other disturbances shall occur in any Forest Buffer Easement or Forest Conservation Easement except solely as permitted or authorized by Baltimore County Dept. of Environmental Protection & Sustainability.

Reviewer: Glenn Shaffer Date: 8-10-2017

Debra Wiley

From: Jeffery Livingston
Sent: Tuesday, August 15, 2017 1:19 PM
To: Debra Wiley; Sherry Nuffer
Subject: Revised comment for zoning petition 2017-0332-SPHXA - 15815 Falls Road
Attachments: ZAC 17-0332-SPHXA 15815 Falls Road-rev 8.10.17.doc

Debbie,

We revised our comment since we've received information that the property owners may be violating the Forest Buffer and Forest Conservation easements that are currently on the property.

Jeff Livingston
Baltimore County
Department of Environmental Protection and Sustainability
111 West Chesapeake Ave, Suite 319
Towson, MD 21204
(410) 887-5859
Fax (410) 887-4804

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence



TO: Hon. Lawrence M. Stahl; Managing Administrative Law Judge
Office of Administrative Hearings

FROM: Jeff Livingston, Department of Environmental Protection and
Sustainability (EPS) - Development Coordination

DATE: June 22, 2017

SUBJECT: DEPS Comment for Zoning Item # 2017-0332-SPHXA
Address 15815 Falls Road
(Elliott Property)

Zoning Advisory Committee Meeting of **June 26, 2017**.

X The Department of Environmental Protection and Sustainability has no
comment on the above-referenced zoning item.

Reviewer: Steve Ford

Date: 6-22-2017

JB 11-1-12

IN RE: PETITION FOR VARIANCE
(15815 Falls Road)
5th Election District
3rd Councilmanic District
Roger L. and C. Gregory Elliott
Petitioners

* BEFORE THE OFFICE
* OF ADMINISTRATIVE
* HEARINGS FOR
* BALTIMORE COUNTY
* CASE NO. 2013-0052-A

* * * * *

Amic

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by the legal owners of the subject property, Roger L. and C. Gregory Elliott. The Petitioners are requesting Variance relief pursuant to Sections 400.1 and 400.2 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit an existing shed and barn to be located in the front yard in lieu of the required rear yard, and for the barn to have a height of 42' in lieu of the permitted 15' as an accessory structure. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners' Exhibit 1.

Appearing at the public hearing held for this case was Roger L. Elliott and Alonzo Childress. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations. There were no Protestants or other interested persons in attendance, and the file does not contain any letters of opposition. In fact, Petitioners' immediate neighbor indicated she supports the petition. (Exhibit 3).

The Zoning Advisory Committee (ZAC) comments were received and made a part of the file. A ZAC comment was received on October 2, 2012 indicating that any future building permits will need to be reviewed by Groundwater Management, since the property is served by

well and septic.

Testimony and evidence revealed that the subject property is 39.348 acres and is zoned RC 2. The Petitioners are in the process of a minor subdivision on the property (creating just one additional lot), and in doing so were informed by county officials they would need variance relief for the existing barn, which is approximately 100 years old.

Based upon the testimony and evidence presented, I will grant the request for variance relief. Under *Cromwell* and its progeny, to obtain variance relief requires a showing that:

- (1) The property is unique; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Trinity Assembly of God v. People's Counsel, 407 Md. 53, 80 (2008).

Petitioners have met this test. As seen on the site plan, the property is uniquely shaped and the Petitioners are dealing with existing site conditions. If the B.C.Z.R. were strictly enforced, the Petitioners would indeed suffer a practical difficulty and/or hardship, in that they would need to raze a barn that has stood for over 100 years. Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare. This is demonstrated by the lack of opposition from the community and the lack of negative comments from Baltimore County reviewing agencies.

Pursuant to the advertisement, posting of the property and public hearing on this Petition, and for the reasons set forth above, the variance relief requested shall be granted.

THEREFORE, IT IS ORDERED, this 7th day of November, 2012 by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief pursuant to Sections

400.1 and 400.2 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit an existing shed and barn to be located in the front yard in lieu of the required rear yard, and for the barn to have a height of 42' in lieu of the permitted 15' as an accessory structure, be and is hereby GRANTED.

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



JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County

JEB:dlw

**IN RE: PETITIONS FOR SPECIAL
EXCEPTION AND VARIANCE
(15815 Falls Road)
5th Election District
3rd Council District
Roger Elliott
Legal Owner
Petitioner**

* BEFORE THE
* OFFICE OF
* ADMINISTRATIVE HEARINGS
* FOR BALTIMORE COUNTY
* **Case No. 2015-0196-XA**

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) as Petitions for Special Exception and Variance filed for property located at 15815 Falls Road. The Petitions were filed on behalf of Roger Elliott, the legal owner of the subject property. The Petitioner seeks special exception relief per Baltimore County Zoning Regulations (B.C.Z.R.) to permit the subject property and the improvements to be used for a riding stable. The petition for variance seeks the following relief: (1) to permit a parking area with no screening or landscaping in lieu of the required screening and landscaping; (2) to permit a parking area to be surfaced with stone in lieu of the required durable and dustless surface; (3) to permit a parking area not to be striped in lieu of the striping requirement; and (4) to allow a two-way access driveway to have a width of 16 ft. in lieu of the required 20 ft. A site plan was marked as Petitioner's Exhibit 1.

Appearing at the hearing in support of the petitions was Roger Elliott and surveyor Bruce E. Doak, from Bruce E. Doak Consulting LLC, the firm which prepared the site plan. A neighbor (Ms. Waller) represented by J. Carroll Holzer, Esq. opposed the requests. The Petition was advertised and posted as required by the B.C.Z.R. Zoning Advisory Committee (ZAC) comments were received from the Bureau of Development Plans Review (DPR) and the Department of Planning (DOP). Those will be discussed below.

The subject property is approximately 33.829 acres and is zoned RC 2. The rural site is improved with a large barn, shed and adjoining parking area. These improvements would be used in connection with the riding stable. Petitioner's daughter will operate the riding stable, and she resides in a single family dwelling which is also located on the subject property.

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.

I do not believe the Protestant presented such evidence. Ms. Waller testified the riding stable operation would cause noise, increased traffic, odors and a potential decrease in property value. As to that last issue, Steven Edelin, a licensed realtor presented by the Protestant, testified the stable operation would on balance be a "negative" that could impact the future sale of the home. Joyce Corcoran, a realtor called by the Petitioner, testified that people looking to purchase homes in the northern Baltimore County area (i.e., Butler) would consider a horse riding stable to be a positive feature that would in her opinion enhance property values.

Though the testimony was conflicting, the potentially negative factors identified by Protestant are all inherent in the operation of a horse riding stable, a use permitted by special exception in the RC 2 zone. B.C.Z.R. §1A01.2.C.21. These are the types of inherent adverse effect that the legislature was presumed to have anticipated when it allowed the use by special exception. In other words, most uses for which a special exception is required are regarded as

“potentially troublesome because of noise, traffic, congestion....” Montgomery County v. Butler, 417 Md. 271, 297 (2010). As such, the Petition will be granted, subject to the conditions noted below.

VARIANCES

To obtain variance relief requires a showing that:

- (1) The property is unique; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Trinity Assembly of God v. People's Counsel, 407 Md. 53, 80 (2008).

Petitioner has met this test. The large property is irregular shaped and contains significant topographical features. As such it is unique. If the B.C.Z.R. were strictly interpreted Petitioner would suffer a practical difficulty, in that he would be unable to use the existing parking area. While it may be that with a great deal of difficulty and expense the parking area could be relocated, additional grading and paving (impervious surface) should be avoided if possible in a rural, agricultural setting such as this.

Finally, I find that the variances can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare. The DOP recommended that a vegetative buffer be provided to screen the view from Falls Road and the adjoining property (owned by Ms. Waller), and thus the first variance will not be granted. In addition, the DPR requested the driveway be at least 16' wide between Falls Road and the proposed parking area, and a condition will be added to that effect.

The only other issue pertains to the large forest buffer and forest conservation easements shown on the site plan. While the Department of Environmental Protection did not submit a ZAC

comment, the law prohibits recreational activities within these environmentally-sensitive areas. Ms. Elliott was asked by Protestant's counsel to outline the approximate location of the trails she intends to use for her business, and the course shown in blue ink on the site plan does not encroach upon any of the buffer areas. Even so, a condition will be added to make clear that horse riding shall not take place in those areas.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 17th day of June, 2015, that the Petition for Special Exception to permit the subject property and the improvements to be used for a riding stable, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Variance: (1) to permit a parking area to be surfaced with stone in lieu of the required durable and dustless surface; (2) to permit a parking area not to be striped in lieu of the striping requirement; and (3) to allow a two-way access driveway to have a width of 16 ft. in lieu of the required 20 ft., be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon 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 his 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 provide screening and/or other landscaping between the proposed parking area and the property owned by Ms. Waller. The configuration of and specific requirements for the landscaping shall be determined in the sole discretion of the Baltimore County landscape architect.
3. The driveway accessing the proposed parking lot shall be at least 16' wide for its entire length.
4. Petitioner shall, prior to issuance of any necessary permits/licenses, secure approval from the Baltimore County Soil Conservation District.
5. No trail riding or horses shall be permitted within the forest buffer and forest conservation easement areas shown on the site plan.
6. Petitioner shall keep no more than five (5) horses on the subject property.

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

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/sln

to work

SMITH, GILDEA & SCHMIDT LLC

MICHAEL PAUL SMITH
DAVID K. GILDEA
LAWRENCE E. SCHMIDT
MICHAEL G. DEHAVEN
JASON T. VETTORI

RECEIVED

SEP 21 2017

DEPARTMENT OF PERMITS
APPROVALS AND INSPECTIONS

MICHAEL H. BOWMAN
CHRISTOPHER W. COREY
MARIELA C. D'ALESSIO*
MELISSA L. ENGLISH
WILLIAM L. RODOWSKY
SARAH A. ZADROZNY

of counsel:

EUGENE A. ARBAUGH, JR.
DAVID T. LAMPTON

*Admitted in MD, FL, PA

September 21, 2017

Via Hand Delivery

Arnold Jablon, Esquire

Director

Baltimore County Department of Permits, Approvals and Inspections

111 West Chesapeake Ave, Suite 105

Towson, MD 21204

Re: Notice of Appeal
Property: 15815 Falls Road
Case No. 2017-0332-SPHXA

RECEIVED

SEP 21 2017

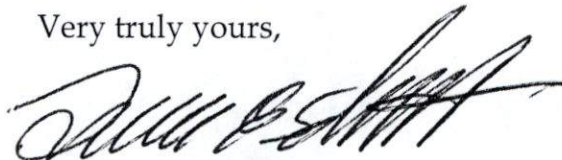
OFFICE OF
ADMINISTRATIVE HEARINGS

Dear Mr. Jablon,

Enclosed herewith please find an original and four (4) copies of the Notice of Appeal on behalf of Appellant, Roger L. Elliott, to be filed in the above referenced matter. Please date stamp the copies and return the same to our courier. Also enclosed, please find a check in the amount of \$265.00 to cover the filing fee for such appeal.

Please contact me should you have any questions.

Very truly yours,



Lawrence E. Schmidt

LES/amf
Enclosures

cc: Administrative Law Judge John E. Beverungen
J. Carroll Holzer, Esquire
Peter Max Zimmerman, Esquire
Krysundra Cannington, Board of Appeals
Roger L. Elliott, Esquire (Petitioner)

IN RE:
PETITIONS FOR SPECIAL HEARING
SPECIAL EXCEPTION & VARIANCE
15815 Falls Road

5th Election District
3rd Councilmanic District

Roger L. Elliott, *Legal Owner*
Appellant

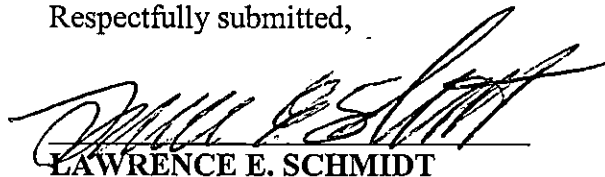
* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No.: 2017-0332-SPHXA
*

* * * * *

NOTICE OF APPEAL

The Appellant, Roger L. Elliott, by and through his attorneys, Lawrence E. Schmidt and Smith, Gildea, and Schmidt, LLC, feeling aggrieved by the decision of the Administrative Law Judge for Baltimore County from the Order on Motion to Dismiss dated August 25, 2017 in the above-captioned matter, hereby note this appeal to the County Board of Appeals for Baltimore County in accordance with Baltimore County Code §32-3-401 by filing this Notice of Appeal with the Director of the Baltimore County Department of Permits, Approvals & Inspections.

Respectfully submitted,



LAWRENCE E. SCHMIDT
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, MD 21204
(410) 821-0070
Attorney for Appellant

CERTIFICATE OF SERVICE

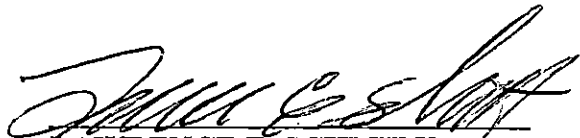
I HEREBY CERTIFY that on this **21st** day of **September, 2017**, a copy of the foregoing Notice of Appeal was mailed first-class pre-paid postage to:

John E. Beverungen, Esquire
Administrative Law Judge for Baltimore County
Office of Administrative Hearings
105 West Chesapeake Avenue, Suite 103
Towson, MD 21204

J. Carroll Holzer, Esquire
Holzer & Lee
508 Fairmount Avenue
Towson, MD 21204

Peter Max Zimmerman, Esquire
People's Counsel for Baltimore County
The Jefferson Building
105 West Chesapeake Avenue, Room 204
Towson, MD 21204

Krysundra Cannington,
Board of Appeals for Baltimore County
The Jefferson Building
105 West Chesapeake Avenue, Room 205
Towson, MD 21204


LAWRENCE E. SCHMIDT

IN RE: PETITIONS FOR SPECIAL HEARING, *	BEFORE THE
SPECIAL EXCEPTION & VARIANCE	
(15815 Falls Road) *	OFFICE OF
5 th Election District	
3 rd Council District *	ADMINISTRATIVE HEARINGS
Roger L. Elliott	
Legal Owner *	FOR BALTIMORE COUNTY
Petitioner *	Case No. 2017-0332-SPHXA

* * * * *

ORDER ON MOTION TO DISMISS

Now pending is a Motion to Dismiss filed by Protestant Sallie Waller, represented by J. Carroll Holzer, Esq. Petitioner Roger Elliott, Esq. filed a response to the Motion.

The Motion assert that *res judicata* is applicable, and that the above petition should therefore be dismissed. By Order dated June 17, 2015 Petitioner was granted special exception and variance relief to operate a riding stable, subject to enumerated conditions. See Case No. 2015-0196-XA. The petition in this case again seeks a special exception for a riding stable and variances seeking to waive the "durable and dustless" and striping requirements pertaining to off-street parking. Of course, this relief was granted in the 2015 Order and it is not clear why these requests are made again in the current petition.

The newly-filed petition also seeks to strike or modify certain conditions included in the 2015 special exception order regarding the number of horses and whether trail riding is permitted in environmental easement areas. An additional variance request (No.1) - - concerning landscaping for the parking area - - is also included.

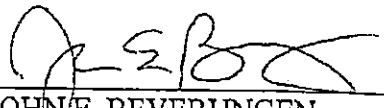
As to these requests I believe *res judicata* is applicable, and the petition will therefore be dismissed. The restrictions upon the special exception were imposed just two years ago, and I do not believe Petitioner has shown substantial changes in fact and circumstances between the first

case and the second, as required by Maryland law. *Seminary Galleria, LLC v. Dulaney Valley Improv. Ass'n.*, 192 Md. App. 719, 739-40 (2010).

With regard to trail riding in the easement areas, I believe Condition No. 5 in the 2015 order merely restates the law found in B.C.C. §33-3-112. Petitioner indicated in his response he intends to seek a variance or other approval from the Department of Environmental Protection and Sustainability (DEPS). Environmental "special variances" and similar approvals under Article 33 of the County Code are not matters handled by the Office of Administrative Hearings or the Administrative Law Judge.

Concerning the number of horses, the restriction imposed in Condition No. 6 pertains to the riding stable special exception use approved in the 2015 order. Petitioner's daughter at that time described how she intended to conduct the trail riding operation. If I recall correctly five horses would accommodate her proposed business, and the restriction was designed to limit the scope of the riding stable commercial operation. Whether or not Petitioner is entitled to have other horses on the property which are not used in connection with the "riding stable" is a matter which must be decided by the zoning office and/or DEPS, and is also addressed in B.C.Z.R. §100.6.

THEREFORE, IT IS ORDERED by this Administrative Law Judge this 25th day of August, 2017 that the Motion to Dismiss be and is hereby GRANTED, and the petition in the above case shall be dismissed without prejudice.



JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:slh



KEVIN KAMENETZ
County Executive

LAWRENCE M. STAHL
Managing Administrative Law Judge
JOHN E. BEVERUNGEN
Administrative Law Judge

September 22, 2017

J. Carroll Holzer, Esq.
Holzer & Lee
508 Fairmount Avenue
Towson, Maryland 21286



RE: **APPEAL TO BOARD OF APPEALS – Motion to Dismiss**
Petitions for Special Hearing, Special Exception and Variance
Case No. 2017-0332-SPHXA
Property: 15815 Falls Road

Dear Mr. Holzer:

Please be advised that an appeal of the above-referenced case was filed in this Office on September 21, 2017. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals ("Board").

If you are the person or party taking the appeal, you should notify other similarly interested parties or persons known to you of the appeal. If you are an attorney of record, it is your responsibility to notify your client.

If you have any questions concerning this matter, please do not hesitate to contact the Board at 410-887-3180.

Sincerely,

A handwritten signature in black ink, appearing to read "JEB", with a long horizontal line extending to the right.

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/dlw

c: Lawrence E. Schmidt, Esq., Smith, Gildea & Schmidt, 600 Washington Avenue,
Suite 200, Towson, MD 21204
Roger L. Elliott, Esq., 15817 Falls Road, Sparks, Maryland 21152
Peter Max Zimmerman, Esq., Office of People's Counsel
Baltimore County Board of Appeals



PETITION FOR ZONING HEARING(S)

To be filed with the Department of Permits, Approvals and Inspections

To the Office of Administrative Law of Baltimore County for the property located at:

Address 15815 Falls Road which is presently zoned RC2
Deed References: SM 33811 / 414 10 Digit Tax Account # 1600005049
Property Owner(s) Printed Name(s) ROGER L. ELLIOTT

(SELECT THE HEARING(S) BY MARKING **X** AT THE APPROPRIATE SELECTION AND PRINT OR TYPE THE PETITION REQUEST)

The undersigned legal owner(s) of the property situate in Baltimore County and which is described in the description and plan attached hereto and made a part hereof, hereby petition for:

1. ☒ a **Special Hearing** under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

SEE ATTACHED SHEET

2. ☒ a **Special Exception** under the Zoning Regulations of Baltimore County to use the herein described property for

SEE ATTACHED SHEET

3. ☒ a **Variance** from Section(s)

SEE ATTACHED SHEET

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons:
(Indicate below your hardship or practical difficulty or indicate below "TO BE PRESENTED AT HEARING". If you need additional space, you may add an attachment to this petition)

TO BE PRESENTED AT THE HEARING

Property is to be posted and advertised as prescribed by the zoning regulations.

I, or we, agree to pay expenses of above petition(s), advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

Legal Owner(s) Affirmation: I / we do so solemnly declare and affirm, under the penalties of perjury, that I / We are the legal owner(s) of the property which is the subject of this / these Petition(s).

Contract Purchaser/Lessee:

Name- Type or Print

Signature

Mailing Address City State

Zip Code Telephone # Email Address

Attorney for Petitioner:

Name- Type or Print

Signature

Mailing Address City State

Zip Code Telephone # Email Address

Legal Owners (Petitioners):

ROGER L. ELLIOTT
Name #1 - Type or Print Name #2 - Type or Print

Signature #1 Signature #2

15817 Falls Road Sparks MD
Mailing Address City State

21152 410-919-4906 BDQAK@BRUCEEDQAK
Zip Code Telephone # Email Address CONSULTING.COM

Representative to be contacted:

BRUCE E. DOAK
BRUCE E. DOAK CONSULTING
Name - Type or Print

Signature

3801 BAKER SCHOOLHOUSE ROAD FREELAND MD
Mailing Address City State

21053 410-919-4906
Zip Code Telephone # Email Address

BDQAK@BRUCEEDQAK CONSULTING.COM
Do Not Schedule Dates: Reviewer JE

CASE NUMBER 2017-0332-SP4XA Filing Date 6/13/17

Petition Requests

Special Hearing

1. To amend the approved special exception in Case #2015-0196-XA
2. To amend by expanding and clarifying the previously approved Special Exception by:
 - a) allowing for additional horses for boarding and other lawful purposes and striking the previous condition # 6 of only allowing 5 horses;
 - b) adding to or modifying the previous condition # 5 with language prohibiting trail riding in the Forest Buffer and Forest Conservation areas unless and / or as permitted by the Director /Department of Environmental Protection and Sustainability or other appropriate governing agency.

Special Exception

1. To permit a riding stable / boarding stable on an existing agricultural farm, as a riding stable is defined in Section 101.1 BCZR per Section 1A01.2.C.22 BCZR.

Variances

1. To permit a parking area with no screening or landscaping in lieu of the required screening and landscaping per Section 409.8.A.1 BCZR
2. To permit a parking area to be surfaced with stone in lieu of the required durable and dustless surface per Section 409.8.A.2 BCZR
3. To permit a parking area not to be striped in lieu of the striping requirement per Section 409.8.A.6 BCZR

CASE #2017-0332-SPHXA

Bruce E. Doak Consulting, LLC

3801 Baker Schoolhouse Road
Freeland, MD 21053
o 443-900-5535 m 410-419-4906
bdoak@bruceedoakconsulting.com

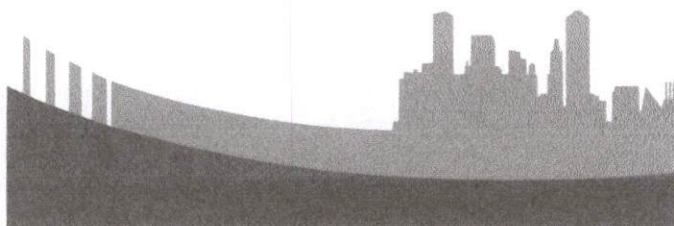
Zoning Description

15815 Falls Road- 33.829 Acres
Fifth Election District Third Councilmanic District
Baltimore County, Maryland

Beginning at a point on the east side of Falls Road, approximately ^{3,400}~~37,915~~ feet +- southerly of the centerline of Benson Mill Road, thence leaving Falls Road and running and binding on the outlines of the subject property, the ten following courses and distances, viz. 1) North 65 degrees 42 minutes 50 seconds East 1947.45 feet, 2) South 29 degrees 57 minutes 53 seconds East 387.28 feet, 3) South 29 degrees 57 minutes 53 seconds East 572.60 feet, 4) South 55 degrees 29 minutes 34 seconds West 411.21 feet, 5) North 29 degrees 59 minutes 58 seconds West 344.01 feet, 6) South 55 degrees 47 minutes 41 seconds West 819.66 feet, 7) North 89 degrees 08 minutes 17 seconds West 787.31 feet, 8) North 00 degrees 51 minutes 43 seconds East 248.14 feet, 9) North 89 degrees 08 minutes 17 seconds West 185.00 feet and 10) South 77 degrees 36 minutes 43 seconds West 75.00 feet to the east side of Falls Road, thence binding on the east side of Falls Road and continuing to run and bind on the outlines of the subject property, the four following courses and distances, viz. 11) North 10 degrees 30 minutes 36 seconds West 52.61 feet, 12) North 08 degrees 13 minutes 46 seconds West 61.21 feet and 13) Northwesterly by a line curving to the right with a radius of 1224.09 feet for 67.70 feet and a chord of North 04 degrees 50 minutes 10 seconds West 67.69 feet to the place of beginning.

Containing 33.829 acres of land, more or less.

This description is part of a zoning hearing petition and is not intended for any conveyance purposes.



Land Use Expert and Surveyor

TO: PATUXENT PUBLISHING COMPANY
→ Tuesday, August 8, 2017 Issue - Jeffersonian

Please forward billing to:
Roger Elliott
15817 Falls Road
Sparks, MD 21152

410-771-4244

New **NOTICE OF ZONING HEARING**

The Administrative Law Judge of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 2017-0332-SPHXA

15815 Falls Road
E/s Falls Road, 3400 ft. s/of centerline of Benson Mill Road
5th Election District – 3rd Councilmanic District
Legal Owners: Roger Elliott

Special Hearing to amend the approved Special Exception in Case # 2015-0196 XA
2. To amend by expanding and clarifying the previously approved Special Exception by: a. allowing for additional horses for boarding and other lawful purposes and striking the previous condition #6 of only allowing 5 horses; b. Adding to or modifying the previous condition #5 with language prohibiting trail riding in the Forest Buffer and Forest Conservation areas unless and/or as permitted by the Director/Department of Environmental Protection and Sustainability or other appropriate governing agency. Special Exception to permit the entire subject property and all of the improvements to be used for a riding stable. Variance to permit a parking area with no screening or landscaping in lieu of the required screening and landscaping; to permit a parking area to be surfaced with stone in lieu of the required durable and dustless surface; to permit a parking area not to be striped in lieu of the striping requirement.

→ Hearing: Tuesday, August 29, 2017 at 1:30 p.m. in Room 205, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204



Arnold Jablon
Director of Permits, Approvals and Inspections for Baltimore County

- NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ADMINISTRATIVE HEARINGS OFFICE AT 410-887-3868.
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

TO: PATUXENT PUBLISHING COMPANY
Thursday, July 27, 2017 Issue - Jeffersonian

Please forward billing to:
Roger Elliott
15817 Falls Road
Sparks, MD 21152

410-771-4244

NOTICE OF ZONING HEARING

The Administrative Law Judge of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

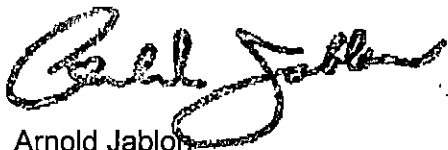
CASE NUMBER: 2017-0332-SPHXA

15815 Falls Road
E/s Falls Road, 3400 ft. s/of centerline of Benson Mill Road
5th Election District – 3rd Councilmanic District
Legal Owners: Roger Elliott

Special Hearing to amend the approved Special Exception in Case # 2015-0196 XA

2. To amend by expanding and clarifying the previously approved Special Exception by: a. allowing for additional horses for boarding and other lawful purposes and striking the previous condition #6 of only allowing 5 horses; b. Adding to or modifying the previous condition #5 with language prohibiting trail riding in the Forest Buffer and Forest Conservation areas unless and/or as permitted by the Director/Department of Environmental Protection and Sustainability or other appropriate governing agency. Special Exception to permit the entire subject property and all of the improvements to be used for a riding stable. Variance to permit a parking area with no screening or landscaping in lieu of the required screening and landscaping; to permit a parking area to be surfaced with stone in lieu of the required durable and dustless surface; to permit a parking area not to be striped in lieu of the striping requirement.

Hearing: Thursday, August 17, 2017 at 1:30 p.m. in Room 205, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204



Arnold Jablon
Director of Permits, Approvals and Inspections for Baltimore County

- NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ADMINISTRATIVE HEARINGS OFFICE AT 410-887-3868.
- (2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

**DEPARTMENT OF PERMITS, APPROVALS AND INSPECTIONS
ZONING REVIEW OFFICE**

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

The Baltimore County Zoning Regulations (BCZR) require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property (responsibility of the legal owner/petitioner) and placement of a notice in a newspaper of general circulation in the County, both at least fifteen (15) days before the hearing.

Zoning Review will ensure that the legal requirements for advertising are satisfied. However, the legal owner/petitioner is responsible for the costs associated with these requirements. The newspaper will bill the person listed below for the advertising. This advertising is due upon receipt and should be remitted directly to the newspaper.

OPINIONS MAY NOT BE ISSUED UNTIL ALL ADVERTISING COSTS ARE PAID.

For Newspaper Advertising:

Case Number: 2017-0332-SP4XA

Property Address: 15815 FAULS ROAD

Property Description: 33.829 ACRE PARCEL

Legal Owners (Petitioners): ROGER L. ELLIOTT

Contract Purchaser/Lessee: _____

PLEASE FORWARD ADVERTISING BILL TO:

Name: ROGER L. ELLIOTT

Company/Firm (if applicable): _____

Address: 15817 FAULS ROAD SPARKS MD 21152

Telephone Number: 410-771-9244

Revised 5/20/2014

Board of Appeals

Case No: 2017-3325PHX4 Case Name: Roger Elliott - Legal Owner

Exhibit List

Party: Roger Elliott (Petitioner) Date: 3/8/18

Exhibit No:	Description:
✓ 1	Settlement Agreement
✓ 2A	2015 Plan
✓ 2B	2017 Plan
✓ 3A	Balt. Co. - My Neighborhood 1:2,257
✓ 3B	" " 1:8,056
✓ 3C	" " 1:4,514
✓ 3D	" " Environmental Map
✓ 4A-4G	Pictures of Subject Property
✓ 5	6/17/15 ALJ Opinion & Order
✓ 6	6/22/17 - 8/10/17 Baltimore County ZAC Comments Inter-Office Correspondence re zoning
✓ 7	Tract: 2444 Farm: 2351 Aerial Plan - Conservation Plan Map
✓ 8	11/7/17 Letter of Support from Jane Selgler
✓ 9	5/27/15 Letter of Support from Tammie Jean Monaco
VERIFIED BY <u>KC</u> DATE: <u>3/9/18</u>	

Petitioner
1

SETTLEMENT AGREEMENT

WHEREAS, Roger Elliott (hereinafter "Elliott") is the owner of certain property located in northern Baltimore County and known as 15815 Falls Road; and,

WHEREAS, Sallie Waller (hereinafter "Waller") is the owner of property adjacent to the Elliot Property known as 15813 Falls Road; and,

WHEREAS, previously in Case No., 2015-196-XA, Elliott obtained certain special exception and variance relief in order to operate a riding stable on the Elliott property; and,

WHEREAS, Elliott has filed a second zoning petition, Case No. 2017-332-SPHXA, seeking special hearing, special exception and variance relief in order to amend and expand the approvals previously granted; and,

WHEREAS, Case No. 2017-332-SPHXA is pending at the Board of Appeals of Baltimore County; and,

WHEREAS, in order to avoid further litigation and reduce anticipated expense, the parties have reached an agreement to resolve the differences between them; and,

WHEREAS, the parties agree to memorialize their agreement herein and will request that the Board of Appeals incorporate this Settlement Agreement in their decision and Order and grant relief unto Elliott in accordance with the provisions herein; and,

NOW THEREFORE, it is the 8th day of March, 2018 agreed by the parties as follows:

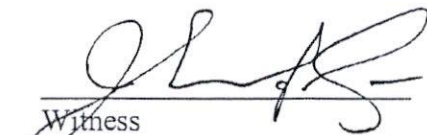
1. No more than fifteen (15) horses at any one time will be kept on the property for business purposes, except that Elliott his family may keep no more than two additional horses on the Property for their personal use;
2. No more than fifteen (15) people who are at the Property for riding or boarding purposes shall be permitted at the new ten (10) stall barn at any one time;
3. The proposed new ten (10) stall barn (approximately 36'X 72') shall be used for keeping/boarding horses and shall not be designed or used for public horse show purposes or competitions. Any fenced field/pasture enclosures shall not be used for public horse show purposes or competitions;
4. The proposed new (10) stall barn shall be built as shown on the site plan attached hereto as Exhibit 1 or not closer to the existing residence known as 15815 Falls Road;
5. No new /additional signage or other advertising shall be on or visible from Falls Road;

Petitioner
CBA Exhibit

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6. These conditions may only be modified by agreement between the record owners of 15813 and 15815/15817 Falls Rd or subsequent Order of the Office of Administrative Hearings or the Board of Appeals (on appeal);
7. The parties understand that any riding activity in the areas of the property encumbered with a Forest Buffer and/or Forest Conservation Easement shall only be if and as permitted by the Department of Environmental Protection and Sustainability;
8. Elliott shall advise all users/patrons of the riding stable that riding, hunting and/or trespassing is not permitted on any portion of the Waller property;
9. The provisions of this agreement are contingent upon, and shall become effective on the date of the final non-appealable approval of the attached site plan and requested zoning relief in Case No. 2017-332-SPHXA,
10. Presently, there is recorded in the Land Records of Baltimore County at Book 0029505, page 025 a "Private Easement Agreement" between the parties. This Private Easement Agreement generally governs access to the properties owned by the parties and/or their families. Nothing in this Settlement Agreement shall obstruct or interfere with the rights and obligations thereunder nor shall preclude either party from erecting a fence or barrier on property owned by them to prevent trespass or for other purposes.
11. The terms of this agreement shall be binding upon the successors and assignees of the parties hereto.


Witness


Witness


Roger Elliott


Sallie Waller



Petitioner
CBA Exhibit

4A



Petitioner
CBA Exhibit

4B



Petitioner
CBA Exhibit

4C



Petitioner
CBA Exhibit

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Petitioner
CBA Exhibit

4E



Petitioner
CBA Exhibit

4 F



Petitioner
CBA Exhibit

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Att No 5

IN RE: PETITIONS FOR SPECIAL
EXCEPTION AND VARIANCE
(15815 Falls Road)
5th Election District
3rd Council District
Roger Elliott
Legal Owner
Petitioner

* BEFORE THE
* OFFICE OF
* ADMINISTRATIVE HEARINGS
* FOR BALTIMORE COUNTY
* Case No. 2015-0196-XA

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) as Petitions for Special Exception and Variance filed for property located at 15815 Falls Road. The Petitions were filed on behalf of Roger Elliott, the legal owner of the subject property. The Petitioner seeks special exception relief per Baltimore County Zoning Regulations (B.C.Z.R.) to permit the subject property and the improvements to be used for a riding stable. The petition for variance seeks the following relief: (1) to permit a parking area with no screening or landscaping in lieu of the required screening and landscaping; (2) to permit a parking area to be surfaced with stone in lieu of the required durable and dustless surface; (3) to permit a parking area not to be striped in lieu of the striping requirement; and (4) to allow a two-way access driveway to have a width of 16 ft. in lieu of the required 20 ft. A site plan was marked as Petitioner's Exhibit 1.

Appearing at the hearing in support of the petitions was Roger Elliott and surveyor Bruce E. Doak, from Bruce E. Doak Consulting LLC, the firm which prepared the site plan. A neighbor (Ms. Waller) represented by J. Carroll Holzer, Esq. opposed the requests. The Petition was advertised and posted as required by the B.C.Z.R. Zoning Advisory Committee (ZAC) comments were received from the Bureau of Development Plans Review (DPR) and the Department of Planning (DOP). Those will be discussed below.

Petitioner
CBA Exhibit

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The subject property is approximately 33.829 acres and is zoned RC 2. The rural site is improved with a large barn, shed and adjoining parking area. These improvements would be used in connection with the riding stable. Petitioner's daughter will operate the riding stable, and she resides in a single family dwelling which is also located on the subject property.

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.

I do not believe the Protestant presented such evidence. Ms. Waller testified the riding stable operation would cause noise, increased traffic, odors and a potential decrease in property value. As to that last issue, Steven Edelin, a licensed realtor presented by the Protestant, testified the stable operation would on balance be a "negative" that could impact the future sale of the home. Joyce Corcoran, a realtor called by the Petitioner, testified that people looking to purchase homes in the northern Baltimore County area (i.e., Butler) would consider a horse riding stable to be a positive feature that would in her opinion enhance property values.

Though the testimony was conflicting, the potentially negative factors identified by Protestant are all inherent in the operation of a horse riding stable, a use permitted by special exception in the RC 2 zone. B.C.Z.R. §1A01.2.C.21. These are the types of inherent adverse effect that the legislature was presumed to have anticipated when it allowed the use by special exception. In other words, most uses for which a special exception is required are regarded as

"potentially troublesome because of noise, traffic, congestion...." Montgomery County v. Butler, 417 Md. 271, 297 (2010). As such, the Petition will be granted, subject to the conditions noted below.

VARIANCES

To obtain variance relief requires a showing that:

- (1) The property is unique; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Trinity Assembly of God v. People's Counsel, 407 Md. 53, 80 (2008).

Petitioner has met this test. The large property is irregular shaped and contains significant topographical features. As such it is unique. If the B.C.Z.R. were strictly interpreted Petitioner would suffer a practical difficulty, in that he would be unable to use the existing parking area. While it may be that with a great deal of difficulty and expense the parking area could be relocated, additional grading and paving (impervious surface) should be avoided if possible in a rural, agricultural setting such as this.

Finally, I find that the variances can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare. The DOP recommended that a vegetative buffer be provided to screen the view from Falls Road and the adjoining property (owned by Ms. Waller), and thus the first variance will not be granted. In addition, the DPR requested the driveway be at least 16' wide between Falls Road and the proposed parking area, and a condition will be added to that effect.

The only other issue pertains to the large forest buffer and forest conservation easements shown on the site plan. While the Department of Environmental Protection did not submit a ZAC comment, the law prohibits recreational activities within these environmentally-sensitive areas.

Ms. Elliott was asked by Protestant's counsel to outline the approximate location of the trails she intends to use for her business, and the course shown in blue ink on the site plan does not encroach upon any of the buffer areas. Even so, a condition will be added to make clear that horse riding shall not take place in those areas.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 17th day of June, 2015, that the Petition for Special Exception to permit the subject property and the improvements to be used for a riding stable, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Variance: (1) to permit a parking area to be surfaced with stone in lieu of the required durable and dustless surface; (2) to permit a parking area not to be striped in lieu of the striping requirement; and (3) to allow a two-way access driveway to have a width of 16 ft. in lieu of the required 20 ft., be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon 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 his 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 provide screening and/or other landscaping between the proposed parking area and the property owned by Ms. Waller. The configuration of and specific requirements for the landscaping shall be determined in the sole discretion of the Baltimore County landscape architect.
3. The driveway accessing the proposed parking lot shall be at least 16' wide for its entire length.
4. Petitioner shall, prior to issuance of any necessary permits/licenses, secure approval from the Baltimore County Soil Conservation District.
5. No trail riding or horses shall be permitted within the forest buffer and forest conservation easement areas shown on the site plan.
6. Petitioner shall keep no more than five (5) horses on the subject property.

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



JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/sln

8-29

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence



TO: Hon. Lawrence M. Stahl; Managing Administrative Law Judge
Office of Administrative Hearings

FROM: Jeff Livingston, Department of Environmental Protection and
Sustainability (EPS) - Development Coordination

DATE: June 22, 2017

SUBJECT: DEPS Comment for Zoning Item # 2017-0332-SPHXA
Address 15815 Falls Road
(Elliott Property)

Zoning Advisory Committee Meeting of **June 26, 2017**.

X The Department of Environmental Protection and Sustainability has no
comment on the above-referenced zoning item.

Reviewer: Steve Ford

Date: 6-22-2017

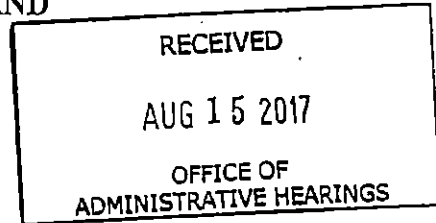
Ref No 6

**Petitioner
CBA Exhibit**

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BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence



TO: Hon. Lawrence M. Stahl; Managing Administrative Law Judge
Office of Administrative Hearings

FROM: Jeff Livingston, Department of Environmental Protection and
Sustainability (EPS) - Development Coordination

DATE: August 10, 2017

SUBJECT: Revised DEPS Comments for Zoning Item # 2017-0332-SPHXA
Address 15815 Falls Road
(Elliott Property)

Zoning Advisory Committee Meeting of June 26, 2017.

- X The Department of Environmental Protection and Sustainability offers the following comments on the above-referenced zoning item:
- X Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 33-3-101 through 33-3-120 of the Baltimore County Code).
 - X Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).

Additional Comments:

- X Please condition any zoning approval that no horse riding or other disturbances shall occur in any Forest Buffer Easement or Forest Conservation Easement except solely as permitted or authorized by Baltimore County Dept. of Environmental Protection & Sustainability.

Reviewer: Glenn Shaffer Date: 8-10-2017

Debra Wiley

From: Jeffery Livingston
Sent: Tuesday, August 15, 2017 1:19 PM
To: Debra Wiley; Sherry Nuffer
Subject: Revised comment for zoning petition 2017-0332-SPHXA - 15815 Falls Road
Attachments: ZAC 17-0332-SPHXA 15815 Falls Road-rev 8.10.17.doc

Debbie,

We revised our comment since we've received information that the property owners may be violating the Forest Buffer and Forest Conservation easements that are currently on the property.

Jeff Livingston
Baltimore County
Department of Environmental Protection and Sustainability
111 West Chesapeake Ave, Suite 319
Towson, MD 21204
(410) 887-5859
Fax (410) 887-4804

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE MEMORANDUM

TO: Arnold Jablon
Deputy Administrative Officer and
Director of Permits, Approvals and Inspections

DATE: 7/27/2017

FROM: Andrea Van Arsdale
Director, Department of Planning

SUBJECT: ZONING ADVISORY COMMITTEE COMMENTS
Case Number: 17-332

INFORMATION:

Property Address: 15815 Falls Road
Petitioner: Roger L. Ellicott
Zoning: RC 2
Requested Action: - Special Hearing, Special Exception, Variance

The Department of Planning has reviewed the petition for a special hearing to determine whether or not the Administrative Law Judge (ALJ) should approve: amending the approved special exception in Case #2015-0196-XA; expanding and clarifying the previously approved special exception by allowing for additional horses for boarding and other lawful purposes and striking the previous condition # 6 of only allowing 5 horses; and adding to or modifying the previous condition #5 with language prohibiting trail riding in the forest buffer and forest conservation areas unless and/or as permitted by the director of the Department of Environmental Protection and Sustainability or other appropriate governing agency. The Department also reviewed the petition for special exception to use the property for a riding/boarding stable and the petition for variances to allow a parking area with no screening or landscaping, to be surfaced with stone, and not striped in lieu of the required screening and landscaping, durable and dustless surface and striping respectively.

A site visit was conducted on July 10, 2017.

The property was the subject of prior zoning case 2015-0196-XA wherein the ALJ granted the special exception establishing a riding stable having a parking area surfaced with stone not being striped and accessed via a two way 16' wide driveway. The ALJ imposed certain conditions in said order addressing landscaping, number of horses and the operation of the special exception.

The Department has no objection to granting the petitioned special exception with the condition that the riding stable operation meet the requirements of BCZR Section 404.8.

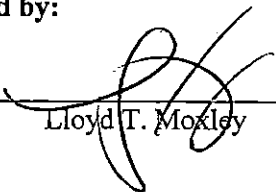
On the special hearing, the Department will concur with the determination of the ALJ based upon testimony given at the public hearing as to amending condition #6 in the prior order and the appropriate number of horses to be kept on site. The Department will support the position of the Department of Environmental Protection and Sustainability on amending condition #5 in the aforesaid case 2015-0196-XA and will concur with the decision of the ALJ.

The Department has no objection to granting the variances to allow the parking area to be surfaced with stone and not to be striped.

The Department objects to granting variance relief to allow for no screening or landscaping but instead recommends a plan be submitted for approval by the Baltimore County Landscape Architect in keeping with condition #2 of the prior zoning order 2015-0196-XA. Such a plan shall show additional landscape screening be installed between the special exception use and the property at 15813 Falls Road to mitigate impacts from any increased traffic.

For further information concerning the matters stated herein, please contact Joseph Wiley at 410-887-3480.

Prepared by:



Lloyd T. Moxley

Division Chief:



Kathy Schlabach

AVA/KS/LTM/ka

c: Joseph Wiley

James Hermann, R.L.A., Department of Permits, Approvals and Inspections
Bruce E. Doak, Bruce E. Doak Consulting
Office of the Administrative Hearings
People's Counsel for Baltimore County

Conservation Plan Map

Customer(s): ROGER L ELLIOTT
District: BALTIMORE COUNTY SCD
Farm: 2351 Tract: 2444

Field Office: BALTIMORE COUNTY SERVICE CENTER
Approximate Acres: 33.8
Assisted By: Jared Wagner



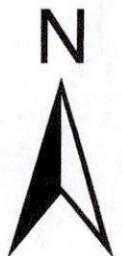
Prepared with assistance from USDA-Natural Resources Conservation Service

Legend

 Consplan



Petitioner
CBA Exhibit



7

Bel No 8

To: Baltimore County Board of Appeals

Date: November 7, 2017

Reference: 15815 Falls Rd
Zoning Appeal 2017



MARYLAND HORSE COUNCIL
P.O. BOX 141
DAMASCUS, MD 20872

The Maryland Horse Council (MHC) is a membership-based, umbrella trade association of the entire horse industry in Maryland. Our membership includes over 40 breed, interest and discipline associations, plus horse farms and stables, horse-related businesses, and horse owners representing all facets of the Maryland equestrian community, from the owners of race horses to the owners of trail horses or just beloved retired companion horses. As such, we represent over 30,000 Marylanders, including many residents of Baltimore County.

Maryland's vast and beautiful Thoroughbred and Standardbred breeding farms easily come to mind when thinking about our state's horse industry. But there is another, perhaps less well-known, component of the industry that also contributes to the preservation of open space and benefits our citizens by keeping land in agricultural use,¹ generating environmental benefits, preserving wildlife habitat and enhancing the viewshed. These are the small to medium sized lesson, boarding and training barns.

The benefits these stables offer to the general public are very real, although often un- or under-appreciated. For example:

- Because lesson and boarding facilities rely on access to potential clients, they thrive in locations that are relatively close to more populated areas, thereby preserving tracts of land (at private expense) that might otherwise fall to development with its concomitant increase in traffic and impervious surfaces, as suburban areas spread ever outward from our cities.
- Again, because of their proximity to neighbors, these small to medium sized horse farms are usually very careful to preserve good neighborly relations, by maintaining the land and facilities in good condition, and by employing sound environmental practices. It is widely accepted that a well maintained horse pasture is second only to forest in providing invaluable protection

¹ According to Maryland state law, equine lesson and boarding stables are classified as agricultural uses. Agriculture Article, Sections 2-701 and 2-702.1.

Petitioner
CBA Exhibit

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from harmful runoff into our streams, waterways, and, eventually, the Chesapeake Bay.

- It's no secret that in the 21st century, more and more Marylanders are becoming increasingly removed from the land and the natural world. Horseback riding lesson and horse boarding barns offer an accessible portal back to that world. For that reason, Maryland's horse farms - small, medium and large - are an invaluable and uniquely enhancing asset to Maryland's, and Baltimore County's, quality of life.



The Maryland Horse Council urges the Board of Appeals to act favorably upon the request for zoning approval for the above referenced boarding facility.

Respectfully submitted,

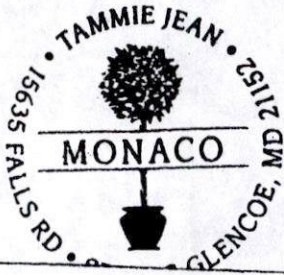
The Maryland Horse Council

By:

A handwritten signature in cursive script, appearing to read "Jane Seigler". The signature is written in dark ink and is positioned above the printed name.

Jane Seigler

MARYLAND HORSE COUNCIL
P.O. BOX 141
DAMASCUS, MD 20872



100 No
9

May 27, 2015

As a next door neighbor to Ventura Farm, I am happy to see the Elliotts planning to use their land for agricultural purposes. I have spoken with Felia at length about her proposal to run a boarding and/or trail riding operation and have no objections to this. As a lifelong equestrian myself, I am excited about the prospect of being able to look out of my window and see horses. The best improvements they have made around the farm and to the barn itself have not gone unnoticed either. Based on what Felia has told me, I see no reason to object to their future plans for Ventura Farm.

COPYRIGHT © 2013 BY TAMMIE J. MONACO, ALL RIGHTS RESERVED.

Tammie J. Monaco

Petitioner
CBA Exhibit

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Board of Appeals

Case No: 2017-3325PHAA

Case Name: Roger Elliott, Legal Owner

Exhibit List

Party: People's Counsel

Date: 3/8/18

Exhibit No:	Description:
✓ 1	11/7/12 ALJ Opinion & Order
✓ 2	Forest Conservation Site Plan of Subject. Prop.
✓ 3	12/1/12 Forest Buffer & Conservation Declaration # 33442 414
✓ 4	12/1/12 Forest Conservation Declaration # 33442 429
✓ 5	Spark's Glencoe Rule & materials
	VERIFIED BY <u>KC</u> DATE: <u>3/9/18</u>

IN RE: PETITION FOR VARIANCE
(1581st Road)
5th Elk District
3rd Colmanic District
Roger and C. Gregory
Petitioners

NO. 2013-0052-A

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by the legal owners of the subject property, Roger L. and C. Gregory Elliott. The Petitioners are requesting Variance relief pursuant to Sections 400.1 and 400.2 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit an existing shed and barn to be located in the front yard in lieu of the required rear yard, and for the barn to have a height of 42' in lieu of the permitted 15' as an accessory structure. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners' Exhibit 1.

Appearing at the public hearing held for this case was Roger L. Elliott and Alonzo Childress. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations. There were no Protestants or other interested persons in attendance, and the file does not contain any letters of opposition. In fact, Petitioners' immediate neighbor indicated she supports the petition. (Exhibit 3).

The Zoning Advisory Committee (ZAC) comments were received and made a part of the file. A ZAC comment was received on October 2, 2012 indicating that any future building permits will need to be reviewed by Groundwater Management, since the property is served by

well and septic.

Testimony and evidence revealed that the subject property is 39.348 acres and is zoned RC 2. The Petitioners are in the process of a minor subdivision on the property (creating just one additional lot), and in doing so were informed by county officials they would need variance relief for the existing barn, which is approximately 100 years old.

Based upon the testimony and evidence presented, I will grant the request for variance relief. Under *Cromwell* and its progeny, to obtain variance relief requires a showing that:

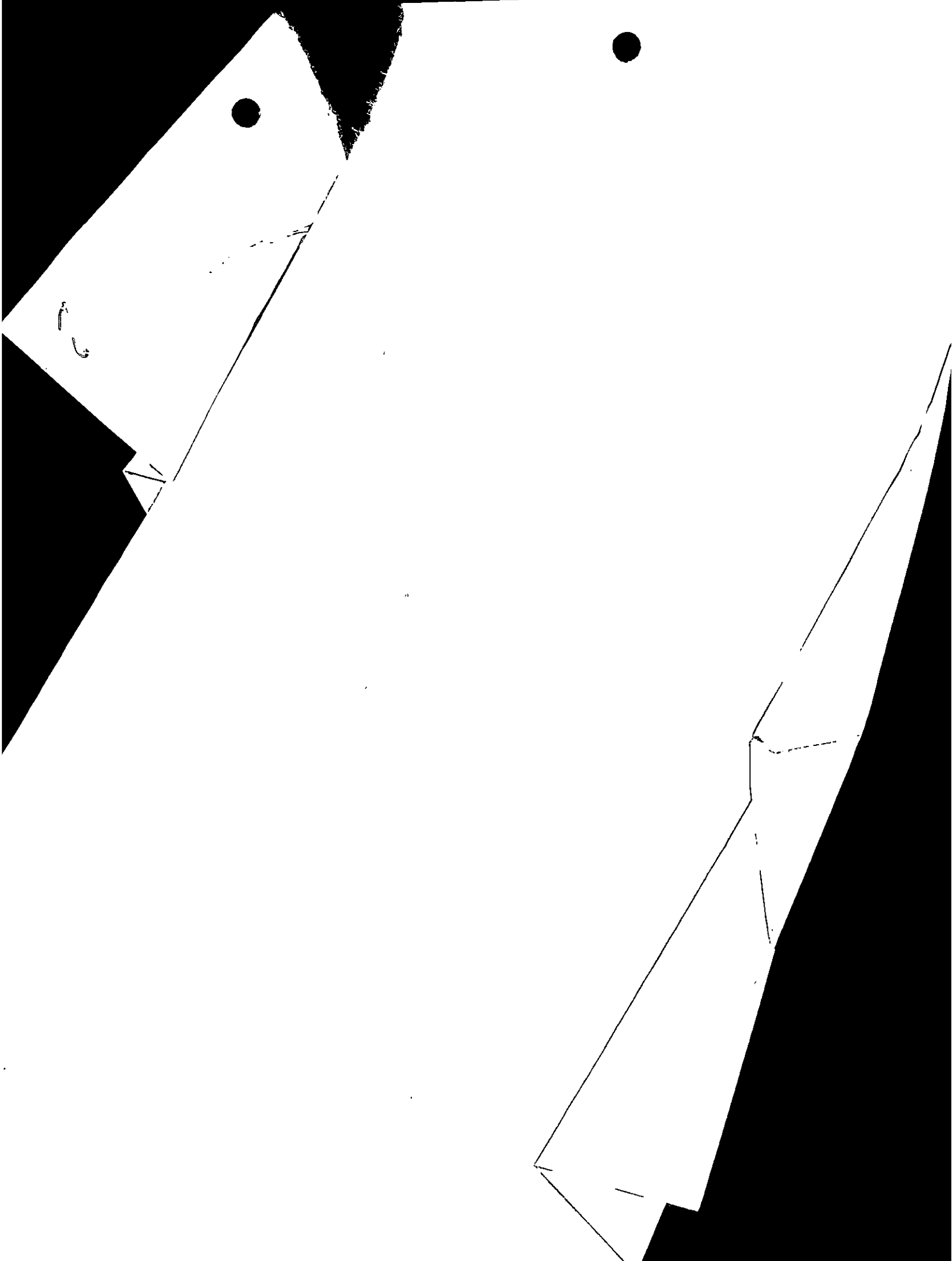
- (1) The property is unique; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Trinity Assembly of God v. People's Counsel, 407 Md. 53, 80 (2008).

Petitioners have met this test. As seen on the site plan, the property is uniquely shaped and the Petitioners are dealing with existing site conditions. If the B.C.Z.R. were strictly enforced, the Petitioners would indeed suffer a practical difficulty and/or hardship, in that they would need to raze a barn that has stood for over 100 years. Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare. This is demonstrated by the lack of opposition from the community and the lack of negative comments from Baltimore County reviewing agencies.

Pursuant to the advertisement, posting of the property and public hearing on this Petition, and for the reasons set forth above, the variance relief requested shall be granted.

THEREFORE, IT IS ORDERED, this 7th day of November, 2012, by
Law Judge for Baltimore County, that the Petition for Variance

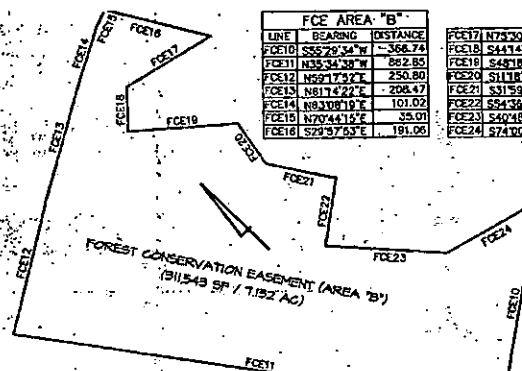
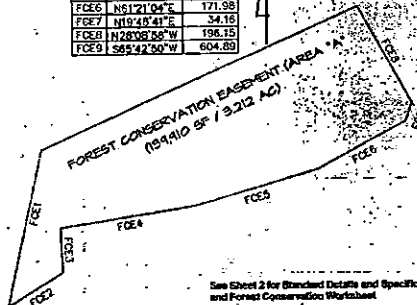


FCE AREA "A"		
LINE	BEARING	DISTANCE
FCE1	S17°25'02"W	279.71
FCE2	N58°26'31"E	112.11
FCE3	N02°33'53"E	77.16
FCE4	N81°05'20"E	237.66
FCE5	N73°55'47"E	223.47
FCE6	N61°21'04"E	171.98
FCE7	N19°45'41"E	34.16
FCE8	N28°08'58"W	196.15
FCE9	S85°42'50"W	604.89

FCE AREA "B"		
LINE	BEARING	DISTANCE
FCE10	S55°29'34"W	366.7
FCE11	N35°34'38"W	882.8
FCE12	N59°17'32"E	250.8
FCE13	N81°7'42"E	208.4
FCE14	N83°08'19"E	101.0
FCE15	N70°44'15"E	35.0
FCE16	S29°37'53"E	191.0

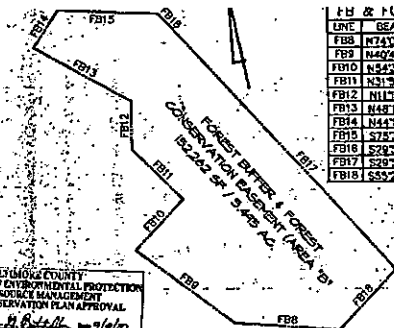
FCE17	N75°30'15"W	172.24
FCE18	S44°14'20"W	78.77
FCE19	S45°15'13"E	192.01
FCE20	S11°15'09"W	88.36
FCE21	S31°59'44"E	125.07
FCE22	SS4°36'05"W	121.53
FCE23	S40°48'55"E	213.38
FCE24	S74°00'58"E	182.88

LINE	BEARING	DISTANCE
F1B8	N74°00'55"W	152.88
F1B9	N40°45'55"W	213.38
F1D0	N54°38'05"E	121.53
F1B11	N31°39'44"W	125.07
F1B12	N11°18'05"E	86.36
F1B13	N48°18'15"W	192.01
F1B14	N44°34'10"E	76.77
F1B15	S75°30'18"E	172.24
F1B16	S29°57'53"E	41.31
F1B17	S29°27'53"E	572.59
F1B18	S53°28'34"W	144.96



BALTIMORE COUNTY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND RESOURCE MANAGEMENT
FOREST CONSERVATION PLAN APPROVAL

Approved by: *Ch. B. H. H.* Date: *7/9/90*
Environmental Impact Section
DPE approval specified professional: *Sheet 2 of 2*
FOREST CONSERVATION PLAN # *FCP 2910-066*



INCIDENTS ARISING FROM AGRICULTURAL OPERATIONS

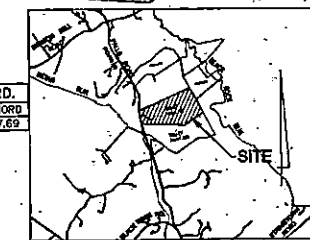
ANY NEW OR FORTHCOMING SHOWS ON THIS PLAT MAY BE SUBJECT TO INCIDENTS ARISING ON OCCASIONS ARISING FROM AGRICULTURAL OPERATIONS, INCLUDING BUT NOT LIMITED TO NOISE, DODDS, FLAMES, BURN, THE OPERATIONS OF MACHINERY OF ANY KIND DURING ANY TWENTY-FOUR-HOURS PERIOD (INCLUDING AEROSOLS), THE STORAGE AND DISPOSAL OF WASTE, AND THE APPLICATION BY SPRAYING ON OTHERWISE OF CHEMICAL FERTILIZERS, SOIL AMENDMENTS, HERBICIDES AND PESTICIDES, THE COMPANY SHALL NOT CONSIDER AN AGRICULTURAL OPERATION TO BE A PUBLIC OR PRIVATE NUISANCE, IF OPERATION COMPLIES WITH ENVIRONMENTAL REGULATIONS AND ALL FEDERAL, STATE OR COUNTY HEALTH OR ENVIRONMENTAL REGULATIONS.

A. STORMWATER MANAGEMENT NOTES:

- a. ALL EXISTING MUST BE CONNECTED TO A SURFACE OUTFALL WITHOUT IMPOSING AN ADVERSE IMPACT ON THE RECEIVING RECEIVING: WATERBODIES, WETLAND, STREAM OR/AN ADJACENT PROPERTY.
- b. LIMIT OF DISTURBANCE (LOD) IS SHOWN ON THIS PLAN. TOTAL AREA DISTURBED ON-SITE SHALLS OF (2.00 AC) IS SHOWN
- c. THEREFORE, PROPOSED ALL ADJACENT AREAS SHOULD BE CONNECTED AS SHEET PLOW THROUGH VEGETATED
- d. EXISTING DRAINAGE CONDUIT OR LAUNCHES EXISTING.
- e. HIGHER DOWN SLOPES ARE TO BE DISCHARGED INTO PERMANENT AREAS, WHERE FEASIBLE.
- f. EXISTING DRAINAGE CONDUIT OR LAUNCHES EXISTING.
- g. EXISTING DRAINAGE CONDUIT OR LAUNCHES EXISTING.
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- x. EXISTING DRAINAGE CONDUIT OR LAUNCHES EXISTING.
- y. EXISTING DRAINAGE CONDUIT OR LAUNCHES EXISTING.
- z. EXISTING DRAINAGE CONDUIT OR LAUNCHES EXISTING.

CURVE TABLE (AT FALLS)			
CURVE	LENGTH	RADIUS	CHORD BEAG.
C1	87.70	1224.09	N04°50'10"W

BEARING & DIST. TABLE (AT FALLS ROAD)		
18	N 1218°58'W	30.81'
19	N 1030°36'W	52.69'
20	N 613°48'W	81.21'
123	S 8308°17'E	297.55'
124	N 051°43'E	248.14'
128	N 8908°17'W	185.60'
127	S 7736°43'W	75.00'



LOCATION MAP . SCALE : 1" = 2,000'

[illegible][illegible]

Baltimore County Minor Subdivision
Project No. 107777-M

— Paragraph, excerpt from Section 32-4-211 through 32-4-217 and Sections 32-4-226 and 32-4-227, GSC

UAGS CLEARANCE
In: _____ Date: _____

POM CERTIFICATION

By: _____ Date: _____
APPROVED; DEFRM

By _____ Date _____

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	101	102	103	104	105	106	107	108	109	110	111	112	113	114	115	116	117	118	119	120	121	122	123	124	125	126	127	128	129	130	131	132	133	134	135	136	137	138	139	140	141	142	143	144	145	146	147	148	149	150	151	152	153	154	155	156	157	158	159	160	161	162	163	164	165	166	167	168	169	170	171	172	173	174	175	176	177	178	179	180	181	182	183	184	185	186	187	188	189	190	191	192	193	194	195	196	197	198	199	200	201	202	203	204	205	206	207	208	209	210	211	212	213	214	215	216	217	218	219	220	221	222	223	224	225	226	227	228	229	230	231	232	233	234	235	236	237	238	239	240	241	242	243	244	245	246	247	248	249	250	251	252	253	254	255	256	257	258	259	260	261	262	263	264	265	266	267	268	269	270	271	272	273	274	275	276	277	278	279	280	281	282	283	284	285	286	287	288	289	290	291	292	293	294	295	296	297	298	299	300	301	302	303	304	305	306	307	308	309	310	311	312	313	314	315	316	317	318	319	320	321	322	323	324	325	326	327	328	329	330	331	332	333	334	335	336	337	338	339	340	341	342	343	344	345	346	347	348	349	350	351	352	353	354	355	356	357	358	359	360	361	362	363	364	365	366	367	368	369	370	371	372	373	374	375	376	377	378	379	380	381	382	383	384	385	386	387	388	389	390	391	392	393	394	395	396	397	398	399	400	401	402	403	404	405	406	407	408	409	410	411	412	413	414	415	416	417	418	419	420	421	422	423	424	425	426	427	428	429	430	431	432	433	434	435	436	437	438	439	440	441	442	443	444	445	446	447	448	449	450	451	452	453	454	455	456	457	458	459	460	461	462	463	464	465	466
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5 FALLS RD. TAX MAP 27 PARCEL 287
Minor Subdivision No.

PROJECT NO. 101	DISTRICT NO. 1	MARYLAND
PDM File # 1		DATE: 10/1/68
SURVEYOR: THOMAS J. DUNN		DWG. NO.

People's Counsel
CBA Exhibit

7

MARTLAND COORDINATE SYSTEM (MCS)

DATE	REVISION DESCRIPTION
------	----------------------

Forest Conservation Plan of the C. Gregory Elliott Property
15815 FALLS RD., TAX MAP 27 PARCEL 287

Minor Subdivision No. 12-17
BALTIMORE COUNTY, MARYLAND
SCALE: 1" = 1000'
DATE: 09-08-98

DRAWING:	SURVEYOR:	DWG. NO.
IN A DISTRICT OF MARYLAND	TOWNSHIP & RANGE (E.P.)	

LEGEND

	EXISTING CONTOUR
	PROPOSED CONTOUR
	PROPERTY LINE
	SOIL TYPE
	PROPOSED PAVING / DWELLING
	SLOPE > 25%
	LIMIT OF DISTURBANCE (LOD)
	APPROVED PERC TEST (PASSED)
	PERC TEST (FAILED)

[illegible][illegible]

Minimum Building Setback Req'd. (RC 2)
Front : 75ft. From E Street
Side : 35ft
Rear : 35ft
Minimum Building(s) Size : 15% of Lot Size
Minimum Site Lot : 1.00 Acre

Agrees to the forest preservation easement and the northern property boundary as shown on the

1. *Chlorophyll a* and *Chlorophyll b* were determined by the method of Arar and Collins (1971) using a Shimadzu 1010 spectrophotometer. The concentration of chlorophylls was expressed in mg g⁻¹ of dry weight.

100% Satisfaction Guaranteed
 - 100% Satisfaction Guaranteed
 - 100% Satisfaction Guaranteed

1. The first step is to identify the problem or question that needs to be addressed. This involves understanding the context and the specific requirements of the task.

Eco-Solvent
Manufactured by Sunco

FFL FOREST CONSERVATION EASEMENT LIMIT
 FB FOREST BUFFER EASEMENT LIMIT
 PERMANENT BENCH/DEVELOPMENT GRADE IN
 TEMPORARY PROTECTIVE FENCE

— *Journal of the American Medical Association*, 1997

BARTLAND
BPP 3rd ed

le's Counsel

P 4 Exhibit

DA Exhibit
10

2000

033442 414

RW 12-126708-02, 03, 04
 J.O. 5, 1, 750-
 Item (FBC)
 5th Election District c 3

**FOREST BUFFER AND FOREST CONSERVATION
 DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS
 AND RESTRICTIONS**

THIS DECLARATION, made this 1st day of December, 2012 by and between **Roger L. Elliott and C. Gregory Elliott**, (collectively referred to as the "Declarants"); and **BALTIMORE COUNTY, MARYLAND**, a body corporate and politic (the "County").

WHEREAS: the Declarants are the owners in fee simple of all that property, situate and lying in the 5th Election District of Baltimore County, Maryland, and more particularly described in a Deed dated April 19, 2004 and recorded in the Land Records of Baltimore County in Liber 20103, folio 514, from Roger L. Elliott, Personal Representative to Declarants (the "Property"); and

WHEREAS, in order to protect the environmental quality of the area of the Property, said area containing 4.825 acres (210,205 sq.ft.), more or less, as designated and shown as **FOREST BUFFER AND FOREST CONSERVATION EASEMENT** (the "Forest Buffer and Forest Conservation Easement") on Baltimore County Bureau of Land Acquisition Drawing No. RW 12-126708-02, which is attached hereto and made a part hereof, the Declarant's desire to protect said Forest Buffer and Forest Conservation Easement by imposing covenants, conditions and restrictions which will bind the lots and the present and future owners thereof. The County shall have the legal right to enforce the covenants, conditions and restrictions as set forth herein together with the enforcement rights referenced in Section 4.

NOW, THEREFORE, in consideration of the benefits derived by the Declarant's and their successors in interest, the said Declarant's, for themselves, their successors and/or assigns, do hereby agree as follows:

1. a. Existing vegetation within the Forest Buffer and Forest

033442 415

Conservation Easement shall not be disturbed, except as provided pursuant to Baltimore County Code, as amended (hereafter referred to as the "Code")., § 33-3-112;

b. Soil disturbance shall not take place within the Forest Buffer and Forest Conservation Easement;

c. Filling or dumping shall not occur within the Forest Buffer and Forest Conservation Easement;

d. Except as permitted by the Baltimore County Department of Environmental Protection and Sustainability ("DEPS"), the Forest Buffer and Forest Conservation Easement shall not be drained by ditching, under drains, or other drainage systems;

e. Pesticides shall not be stored, used or applied within the Forest Buffer and Forest Conservation Easement, except for the spot spraying of noxious weeds consistent with the recommendations of the University of Maryland Cooperative Extension Service;

f. Animals shall not be housed, grazed, or otherwise maintained within the Forest Buffer and Forest Conservation Easement;

g. Motorized vehicles shall not be stored or operated within the Forest Buffer and Forest Conservation Easement, except for maintenance, and emergency use approved by DEPS;

h. Materials shall not be stored with the Forest Buffer and Forest Conservation Easement;

2. **Waiver by DEPS.** The aforementioned covenants, conditions and restrictions may be waived or modified by variance only by DEPS as provided in Code § 33-3-106 of the Code.

3. **Easement for Access.** The Declarants hereby grant to Baltimore County, Maryland, an easement of access to the Forest Buffer and Forest Conservation Easement said area containing 0.423 acres+/- (18,411sq.ft.) as shown and indicated as **"BALTIMORE COUNTY ACCESS EASEMENT"** on Baltimore County Bureau of Land Acquisition Drawing No. RW 12-126-010208-04, which is attached hereto and made a part hereof, for the limited purposes of inspecting and maintaining the Forest Buffer and Forest Conservation Easement and providing for the abatement and correction of water pollution, erosion, and sedimentation of stream channels, wetlands and flood plains, and for no other use or purpose.

033442, 416

4. Miscellaneous.

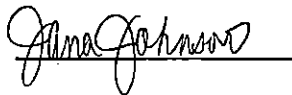
a. Enforcement shall be pursuant to the Enforcement Procedures of §§ 33-3-115 et seq. of the Code. Invalidity of any one or more of these covenants by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

b. Any failure by any party entitled to enforce any of the covenants, conditions and restrictions herein contained, shall in no event be deemed a waiver of the right to do so thereafter as to the same breach, or as to one occurring prior to, or subsequent thereto.

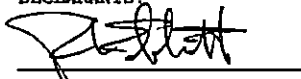
c. These covenants shall run with and be binding upon the Property and shall inure to the benefit of and be binding upon the Declarants, their successors and/or assigns. These covenants and the rights and liabilities arising hereunder are governed by and shall be determined in accordance with the laws of the State of Maryland.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

ATTEST/WITNESS



DECLARANTS:



ROGER L. ELLIOTT



C. GREGORY ELLIOTT

State of Maryland, Baltimore County, to wit:

I HEREBY CERTIFY that on this 1st day of December, 2012, before me, the subscriber, a Notary Public of the State of Maryland, in and for Baltimore County, personally appeared Roger L. Elliott, known to me to be the Declarant of

033442, 417

the within Declaration of Protective Covenants, Conditions and Restrictions, and acknowledged that, being authorized to do so, executed the same on his behalf for the purposes therein contained.

As Witness my hand and Notarial Seal.


Notary Public

My Commission expires:

8-7-2014State of Utah, Salt Lake County, to wit:

I HEREBY CERTIFY that on this 20 day of November 2012 before me the subscriber, a Notary Public of the State of Utah, in and for Salt Lake County, personally appeared C. Gregory Elliott, known to me to be the Declarant of the within Declaration of Protective Covenants, Conditions and Restrictions, and acknowledged that, being authorized to do so, executed the same on his behalf for the purposes therein contained.

As witness my hand and Notarial Seal

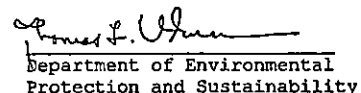

Notary Public

My Commission expires:

This is to certify that the within instrument was prepared by an attorney admitted to practice before the Court of Appeals of Maryland.

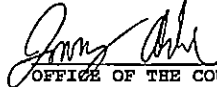

Roger L. Elliott

APPROVED:

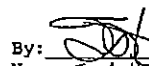
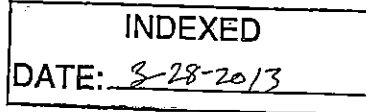

Department of Environmental
Protection and Sustainability

033442 418

APPROVED FOR LEGAL FORM AND SUFFICIENCY*

(Subject to Execution by A Duly Authorized County
Administrative Official and County Council, if Indicated) 3-22-13
OFFICE OF THE COUNTY ATTORNEY*Approval of Legal Form and Sufficiency Does Not Convey
Approval or Disapproval of Substantive Nature of this
Transaction.Approval is Based Upon Typeset Document. All Modifications
Require Re-Approval.

ATTEST/WITNESS

APPROVED AND ACCEPTED this 1st
Day of April, 2013.
Baltimore County, Maryland:By: 
Name: Fred Haman
County Administrative Officer

033442 419

ATTORNEY CERTIFICATION

SUBDIVISION/PROJECT NAME: Minor Subdivision of "C.Gregory Elliott property 10-018-M"PUBLIC WORKS AGREEMENT NO: N/A

CRG NO.: _____

FINAL DEVELOPMENT PLAN DATED: _____

FOR PROJECT KNOWN AS: 15815 Falls Rd-Dist.5C3Minor Sub. No. 10-018-MTHE UNDERSIGNED HEREBY CERTIFIES, REPRESENTS AND OPINES TO
BALTIMORE COUNTY, MARYLAND, that:1. The undersigned is an attorney duly admitted to practice before the Court of
Appeals of Maryland and in good standing thereunder.2. The undersigned maintains, or has maintained for the benefit of the
undersigned, professional liability insurance coverage under policy no: 34037-10 (200/600)issued by Minnesota Lawyers Mutual, Insurer
Such policy is in force and effect as of the date of this Certification,
benefiting the County in case of loss, injury or damage arising from any errors or omissions
related to the issuance of this Certificate by the undersigned and the County's reliance
thereon.3. The attached instruments [Forest Buffer and Forest Conservation
Declarations] (the "Instruments") were prepared by me or under my supervision, and
conforms in all material respects to the prescribed form for such Instrument as set forth in
The Baltimore County, Maryland, Department of Permits and Development Management,
Bureau of Land Acquisition Right of Way Documents Manual, 2007 edition.4. The undersigned has caused a diligent examination of the Land Records of
Baltimore County, Maryland, to be made to ascertain the status of record title to the real
property (the "Property") described in, and to be encumbered or conveyed by, the Instrument.
Based solely upon examination of such records as on file through the date of this
certification (the "Examination Date"), by the undersigned, the undersigned certifies,
represents and opines to Baltimore County, Maryland, that:

033442 420

033442 421

Rev. 5/07

a. Fee simple title of record is vested in Roger L. Elliott and C. Gregory Elliott by virtue of a Deed dated December 31, 2003 from Doris T. Elliott recorded in the land records of Baltimore County Liber 20103/Folio 519 and a Deed dated April 19, 2004 from Roger L. Elliott, Personal Representative recorded in the land records of Baltimore County Liber 20103/Folio 514.

- b. The Instrument is in appropriate form for the conveyance of, or creation of encumbrance on, the Property.
 - c. Following the due execution and acknowledgment of the Instrument by the parties named therein, the signatory(ies) thereon having the authority to so bind the grantor entity(ies) referenced therein (if applicable), and its delivery to and acceptance by the County, and its recordation among the Land Records, the Instrument will be effective in accordance with its terms to create or convey the interest in the Property which the Instrument purports to create or convey, without the requirement or joinder of any other party having an interest of record in the Property (including, but not limited to, beneficiaries of easements, rights of way, security instruments, and/or agreements) as of the Examination Date.
 - d. I have no personal knowledge of conflicting interests (including, but not limited to, rights or claims of parties in possession, adverse claims, and/or equitable interests not shown by the public records) that would interfere with or jeopardize Baltimore County's use of the herein granted easement or fee simple area for the purposes set forth in this Instrument.
5. This Certification is made and delivered subject to the express understandings and agreements:
- a. The execution and delivery of this Certification by the undersigned was an express condition precedent to the agreement of Baltimore County, Maryland, to accept the Instrument from the parties named therein as granting or joining in the same.
 - b. This Certification of title is rendered to Baltimore County, Maryland, for its benefit, with the understanding that Baltimore County, Maryland, will rely upon the truth, accuracy and completeness of the certifications, representations and opinions herein set forth.
 - c. This Certification of title may be relied upon by Baltimore County, Maryland, authorities. It may not be relied upon by any other person or entity without the prior written consent of the undersigned.
 - d. The undersigned assumes no liability for any lien, encumbrance, and/or defect in title to or ownership of the Property, of whatever nature or character, arising subsequent to the Examination Date of which the undersigned had no personal

033442 422

knowledge. The undersigned assumes no responsibility for any lien, encumbrance, title defect or any other matter affecting title to the Property of which the undersigned had no personal knowledge and not appearing of record among the Land Records of Baltimore County, Maryland, as of the Examination Date.

Date:

December 19, 2012

By:



Roger L. Elliott, Attorney at Law
P.O. Box 147
Butler, MD 21023
(410) 771-4244

R. A. Childress & Associates, Inc.

Civil Engineering Consultants

418 Clubside Drive Taneytown, Md. 21787

(443) 504-3367

ENGINEER CERTIFICATION

November 2, 2012

SUBDIVISION/PROJECT NAME: Minor Subdivision of the "C. Gregory Elliott" Property

PUBLIC WORKS AGREEMENT NO: None FINAL DEVELOPMENT PLAN DATED: None

FOR PROJECT KNOWN AS: 15815 Falls Road - Dist. 5C3 - Minor Subdivision No. 10-018-M

I HEREBY declare, affirm, and certify under penalties of perjury that the following listed record plat(s) and right-of-way plat(s) comply in all material respects with the above referenced Final Development Plan, Public Works Agreement, and/or County Review Group, as applicable, that the construction plans relative to said final development plan agree with the said listed subdivision plat(s) submitted herewith and right-of way plat(s), and that said subdivision plat(s) and right-of-way plat(s) were prepared in compliance with Baltimore County, Department of Permits and Development Management, Bureau of Land Acquisition, Drafting Section, Design Manual, dated September, 1996.

I FURTHER agree to indemnify, protect, and hold harmless Baltimore County, Maryland, its agents, employees, successors, and/or assigns from and against any and all costs, liability, penalties, fines, forfeitures, reasonable attorney's fees, judgments, and related litigation costs arising from any negligent errors and omissions contained in this certification, it being fully understood and acknowledged that Baltimore County intends to rely fully upon said certification. It is intended that Baltimore County, its successors and/or assigns, shall be a third party beneficiary of an agreement, whether oral or written, between my client

C. Gregory Elliott and myself for the preparation of this Certification.

Record Plats

Liber _____ folio _____

Liber _____ folio _____

Liber _____ folio _____

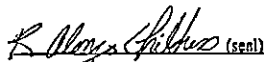
Right-of-Way Plats

RW 12-126-1

RW 12-126-2

RW 12-126-3

RW 12-126-4

 (seal)

Name: R. Alonzo Childress (print)

Firm: R. A. Childress & Assoc., Inc.

Address: 418 Clubside Drive

Taneytown, Md. 21787

Telephone No. 443-504-3367

Professional Liability Insurance:

Company: Fireman's Fund Ins. Co.

Policy No.: 8 91 MZO 80459925

Policy Limits: \$500,000 Per occurrence

\$1,000,000 General aggregate

033442 423

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 33442, p. 0424, MSA CE62 33298, Date available 04/22/2013, Printed 03/02/2018.

[illegible]

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 33442, p. 0425, MSA CE52 33298. Date available 04/22/2013, Printed 03/02/2018.

1. THERE SHALL BE NO CLEARING, GRADING, CONSTRUCTION OR DISTURBANCE OF VEGETATION IN THE FOREST CONSERVATION EASEMENT EXCEPT AS PERMITTED BY BALTIMORE COUNTY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND SUSTAINABILITY.

2. ANY FOREST CONSERVATION EASEMENT SHOWN HEREON IS SUBJECT TO PROTECTIVE COVENANTS WHICH MAY BE FOUND IN THE LAND RECORDS OF BALTIMORE COUNTY AND WHICH MAY RESTRICT DISTURBANCE AND USE OF THESE AREAS.

3. SEE LINE TABLE ON RW 12-126-04

FALLS ROAD
(STATE ROUTE 25)

BALTIMORE COUNTY ACCESS EASEMENT
(SEE SHEET 1)
(SEE RW 12-126-01)

FOREST BUFFER & FOREST CONSERVATION EASEMENT
(SEE RW 12-126-01)

FOREST CONSERVATION EASEMENT (AREA "A")
(138,910 SF / 3.212 AC)

PROPOSED LOT 2

FOR MONUMENT COUNTRY CLUB (WYOM) OFFICE & FOSTER (WYOM)

GOLF COURSE

WORLD GOLF CENTER STATE HUNTERS

ROGER L. ELLIOTT
C. GREGORY ELLIOTT
DEED REF: 20103/514
DORIS T. ELLIOTT
DEED REF: 20103/519

TOTAL FOREST CONSERVATION EASEMENT
AREA = 451,453sf / 10.364 acres±

PROPOSED LOT 1

MINOR SUBDIVISION OF THE
ELLIOTT PROPERTY
15815 Falls Road - Tax Map 27 Parcel 287
Minor Subdivision No. 10-018-M

DATE 3/20/14

DISTRICT NO. 5 C3 POSITION SHEET NO. FEDERAL PROJECT NO.
CONSTRUCT FROM PLAN NO. MARYLAND PROJECT NO.

APPROVED _____ DIRECTOR OF PUBLIC WORKS
DATE _____

APPROVED _____ CHIEF, LAND ACQUISITION
DATE _____

APPROVED _____ SUPERVISOR, DIVISION OF PLANNING
DATE _____

AREA TO BE ACQUIRED
☐ REVERTIBLE SLOPE EASEMENT
☒ TEMPORARY CONSTRUCTION AREA

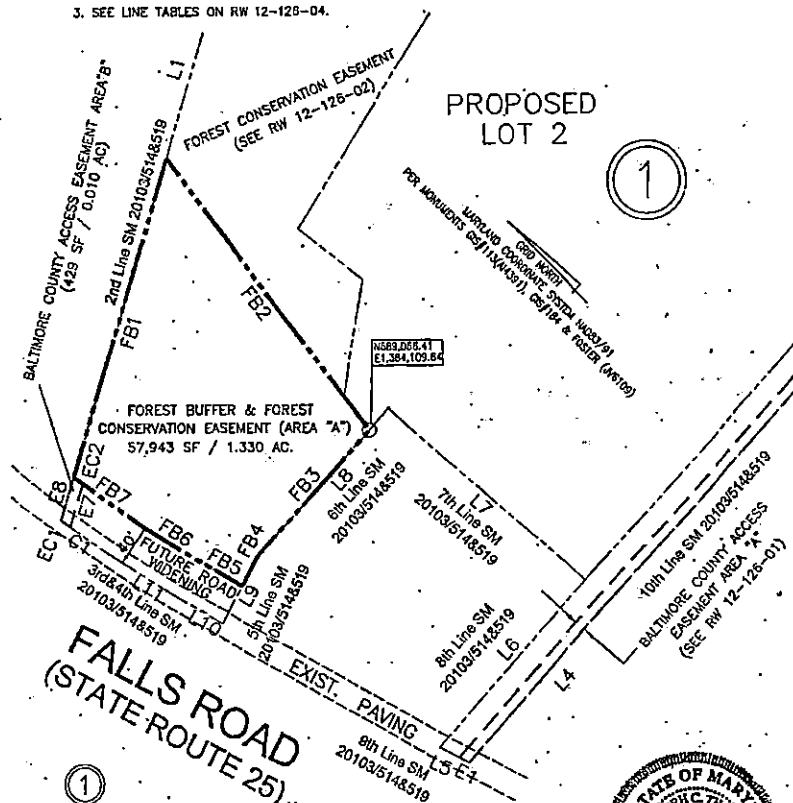
EXISTING COUNTY R/W
☒ AREA TO BE RELEASED
☒ TEMPORARY SLOPE EASEMENT

SHEET 2 of 4
SCALE: 1" = 200'
B.C. JOB ORDER NO.
5-i-7500
RW 12-126-02

RECORDS SECTION
FILED
MAR 27 2014
BALTIMORE COUNTY

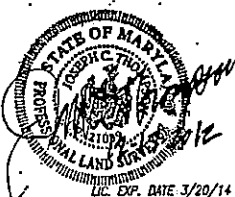
RECORDED
R.E.C.
R.A.C.
T.O.L.
CHECKED

3. SEE LINE TABLES ON RW 12-128-04.



FOR AREAS SEE
RW 12-126-01

Minor Subdivision of the
ELLIOTT PROPERTY
15815 Falls Road - Tax Map 27 Parcel 267
Minor Subdivision No. 10-018-M



BALTIMORE COUNTY		DEPARTMENT OF PERMITS, APPROVALS AND INSPECTIONS				LAND ACQUISITION	
DISTRICT NO. 5 C3		POSITION SHEET NO. CONSTRUCTION PLAN NO.		FEDERAL PROJECT NO. MARLAND PROJECT NO.		 RW 12-17-012-03 21039	
APPROVED COLLECTION OF PUBLIC WORKS		☐ AREA TO BE ACQUIRED ☐ REMOTEABLE SLOPE EASEMENT ☒ TEMPORARY CONSTRUCTION AREA		☒ EXISTING COUNTY V/W ☐ AREA TO BE RELEASED ☒ TEMPORARY SLOPE EASEMENT		SHEET 3 of 4 REVISIONS	
APPROVED CITY, LAND ACQUISITION		ITEM NO.		RECORDED		SCALE: 1" = 10' B.C. JOB ORDER NO. 5-1-7500	
DATE				DRAWN BY CHECKED AREA TITLE		R.C. B.C. JOB ORDER NO. 5-1-7500	
APPROVED SUPERVISOR, DIVISION OF DRAFTING						RW 12-126-03	

FB & FCE AREA, "B"		
LINE	BEARING	DISTANCE
FB8	N74°00'58"W	182.88
FB9	N40°48'55"W	213.36
FB10	N54°36'05"E	121.53
FB11	N31°59'44"W	125.07
FB12	N11°18'09"E	86.36
FB13	N48°18'13"W	192.00
FB14	N44°44'20"E	78.77
FB15	S75°30'18"E	172.24
FB16	S29°57'53"E	41.40
FB17	S29°57'53"E	572.68
FB18	S55°29'34"W	144.90

CURVE	LENGTH	RADIUS
EC1	10.70	1224.09
CHORD BRG.		CHORD
N03°27'42"W		10.70
CURVE	LENGTH	RADIUS
EC2	10.75	1184.09
CHORD BRG.		CHORD
S02°45'51"W		10.75

Minor Subdivision of the
ELLIOTT PROPERTY
15815 Falls Road - Tax Map 27 Parcel 267
Minor Subdivision No. 10-018-M

BALTIMORE COUNTY		DEPARTMENT OF PERMITS, APPROVALS AND INSPECTIONS.						LAND ACQUISITION	
DISTRICT NO. 5 C3		POSITION SHEET NO. _____ CONSTRUCTION PLAN NO. _____		FEDERAL PROJECT NO. _____ MARYLAND PROJECT NO. _____					
APPROVED BY _____ SUBJECT TO "PUBLIC NOTICE"		☐ AREA TO BE ACQUIRED	☒ EXISTING CONDUIT R/W	 DATE 11-17-2012 FILE NO. 24839 SCALE: 1" = 100' 4 of 4 REVISIONS					
DATE _____	☒ REVERTIBLE SLOPE EASEMENT	☐ AREA TO BE RELEASED							
APPROVED _____ CDD, LAND ACQUISITION	☒ TEMPORARY CONSTRUCTION AREA	☐ TEMPORARY EASEMENT							
DATE _____	FDM NO. _____	RECORDED _____	DRAWN BY _____ FILED BY _____ AREA CHANGED _____ TITLE _____	R.E.C. R.A.C.		B.C. JOB ORDER NO. 5-1-7500			
APPROVED _____ SUPERVISOR, DIVISION OF CONTRACTS					RW 12-126-04				



033442, 428

State of Maryland Land Instrument Intake Sheet

Baltimore City County: BALTIMORE

Information provided is for the use of the Clerk's Office, State Department of Assessments and Taxation, and County Finance Office Only.

(Type or Print in Black Ink Only—All Copies Must Be Legible) AR 13-14180

1	Type(s) of Instruments	☐ Check Box (If addendum Intake Form is Attached) ☐ Deed ☐ Mortgage ☒ Declaration ☐ Other _____ ☐ Deed or Trust ☐ Lease ☐ Declaration																																																	
2	Conveyance Type Check Box	☐ Improved Sale ☐ Unimproved Sale ☐ Multiple Accounts ☐ Not an Arms-Length [1] ☐ Arms-Length [2] ☐ Arms-Length [3] ☐ Length Sale [3]																																																	
3	Tax Exemptions (If Applicable)	Recordation <u>FOREST SUBSAL CONSERVATION</u> State Transfer <u>BALTIMORE TO BALTIMORE COUNTY</u> County Transfer _____																																																	
4	Consideration and Tax Calculations	<table border="1"> <tr> <th colspan="2">Consideration Amount</th> <th colspan="2">Finance Office Use Only</th> </tr> <tr> <td>Purchase Price/Consideration</td> <td>\$ <u>-0-</u></td> <td>Transfer Tax Consideration</td> <td>\$ _____</td> </tr> <tr> <td>Any New Mortgage</td> <td>\$ _____</td> <td>X () % = \$ _____</td> <td></td> </tr> <tr> <td>Balance of Existing Mortgage</td> <td>\$ _____</td> <td>Less Exemption Amount</td> <td>\$ _____</td> </tr> <tr> <td>Other:</td> <td>\$ _____</td> <td>Total Transfer Tax</td> <td>\$ _____</td> </tr> <tr> <td>Other:</td> <td>\$ _____</td> <td>Recordation Tax Consideration</td> <td>\$ _____</td> </tr> <tr> <td>Full Cash Value:</td> <td>\$ <u>-0-</u></td> <td>X () per \$500 = \$ _____</td> <td></td> </tr> <tr> <td></td> <td></td> <td>TOTAL DUE</td> <td>\$ _____</td> </tr> </table>		Consideration Amount		Finance Office Use Only		Purchase Price/Consideration	\$ <u>-0-</u>	Transfer Tax Consideration	\$ _____	Any New Mortgage	\$ _____	X () % = \$ _____		Balance of Existing Mortgage	\$ _____	Less Exemption Amount	\$ _____	Other:	\$ _____	Total Transfer Tax	\$ _____	Other:	\$ _____	Recordation Tax Consideration	\$ _____	Full Cash Value:	\$ <u>-0-</u>	X () per \$500 = \$ _____				TOTAL DUE	\$ _____																
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	Location/Address of Property Being Conveyed (2)	<u>15815 FALLS RD SPARKS, MD 21153</u> Other Property Identifiers (if applicable) _____ Water Meter Account No. _____																																																	
	Residential ☒ or Non-Residential ☐ Fee Simple ☐ or Ground Rent ☐ Amount: _____																																																		
	Partial Conveyance? ☐ Yes ☒ No Description/Am. of SqFt/Acreage Transferred: <u>4.825 Acres (210,755 sq ft)</u>																																																		
	If Partial Conveyance, List Improvements Conveyed: <u>Access</u>																																																		
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JLE BMS
APR 03, 2013 03:33 PM

Space Reserved for Clerk's Office

 Distribution: Write - Clerk's Office
 Canary - SOAT
 Post - Office of Finance
 Goldsboro - Preparer
 AOC-CG-300 (5/2007)

033442 429

RW 12-126-01-02-03-04
 J.O. 5-1-7500
 Item 1(FCK)
 5th Election District c3

**FOREST CONSERVATION
 DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS
 AND RESTRICTIONS**

THIS DECLARATION, made this 1st day of December, 2012 by and between Roger L. Elliott and C. Gregory Elliott, (collectively referred to as the "Declarants"); and BALTIMORE COUNTY, MARYLAND, a body corporate and politic (the "County").

WHEREAS: the Declarants are the owners in fee simple of all that property, situate and lying in the 5th Election District of Baltimore County, Maryland, and more particularly described in a Deed dated April 19, 2004, and recorded in the Land Records of Baltimore County in Liber 20103, folio 514, from Roger L. Elliott, Personal Representative to Declarants (the "Property"); and

WHEREAS, Code of Maryland Regulations, as amended (hereafter referred to as "COMAR") Section 08.19.05.02 requires the establishment of long-term protective measures for all land retained as forest, afforested, or reforested areas defined in Md. Code Ann. Nat. Res. § 5-1601.

WHEREAS, the Baltimore County Department of Environmental Protection and Sustainability ("DEPS") has primary responsibility for developing and implementing a local forest conservation program within Baltimore County pursuant to Md. Code Ann. Nat. Res. § 5-1603; and

WHEREAS, in order to protect the environmental quality of the area of Property, said area containing 10.364 acres +/- (451,453sq. ft.), more or less, as designated and shown as FOREST CONSERVATION EASEMENT (the "Forest Conservation Easement") on Baltimore County Bureau of Land Acquisition Drawing No. RW 12-126-01-02-03-04, which is attached hereto and made a part hereof, the Declarants desire to protect said Forest Conservation Easement by imposing covenants, conditions and

restrictions which will bind the lots and the present and future owners thereof. The County shall have the legal right to enforce the covenants, conditions, and restrictions as set forth herein together with the enforcement rights referenced in Section 4.

NOW, THEREFORE, in consideration of its benefits derived by the Declarants and their successors in interest, the said Declarants, for themselves, their personal representatives and assigns, do hereby agree as follows:

1. Except as provided for in an approved Forest Conservation Plan pursuant to § 33-6-110 of the Baltimore County Code, as amended (hereafter referred to as "the Code"):

a. Existing vegetation within the Forest Conservation Easement shall not be disturbed. This includes, but is not limited to, disturbance by tree removal, shrub removal, clearing, mowing, burning, spraying and grazing;

b. Soil disturbance shall not take place within the Forest Conservation Easement by grading, stripping of topsoil, plowing, cultivating or other practices;

c. Filling or dumping shall not occur within the Forest Conservation Easement;

d. Animals shall not be housed, grazed, or otherwise maintained within the Forest Conservation Easement;

e. Pesticides shall not be stored, used, or applied within the Forest Conservation Easement, except for the spot spraying of noxious weeds consistent with the recommendations of the University of Maryland Cooperative Extension Service;

f. Motorized vehicles shall not be stored or operated within the Forest Conservation Easement, except for maintenance, and emergency use approved by DEPS;

g. Materials shall not be stored with the Forest Conservation Easement;

h. Logging and timber harvesting operations shall not occur within the Forest Conservation Easement except in accordance with a Forest Management Plan that has been approved by DEPS as part of the Forest Conservation Plan.

2. Waiver by DEPS. The aforementioned covenants, conditions and restrictions may be waived or modified by variance only by DEPS as provided in Code § 33-6-116.

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3. Easement for Access. The Declarants hereby grant to Baltimore County, Maryland, an easement of access to the Forest Conservation Easement said area containing 0.423 acres (18,411sf) as shown and indicated "BALTIMORE COUNTY ACCESS EASEMENT" on Baltimore County Bureau of Land Acquisition Drawing No. RW D-124-01PA/1, which is attached hereto and made a part hereof), for the limited purposes of inspecting and maintaining the Forest Conservation Easement and to ensure compliance with the Forest Conservation Plan and Title 6 of Article 33 of the Code, and for no other use or purpose.

4. Miscellaneous.

a. Enforcement shall be pursuant to the Enforcement Procedures of §§ 33-6-118 et seq. of the Code. Invalidation of any one or more of these covenants by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

b. Any failure by any party entitled to enforce any of the covenants, conditions and restrictions herein contained, shall in no event be deemed a waiver of the right to do so thereafter as to the same breach, or as to one occurring prior to, or subsequent thereto.

c. These covenants shall run with and be binding upon the Property and shall inure to the benefit of and be binding upon the Declarants, their successors and/or assigns. These covenants and the rights and liabilities arising hereunder are governed by and shall be determined in accordance with the laws of the State of Maryland.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

ATTEST/WITNESS

M. Heather L. Which

Jana Johnson

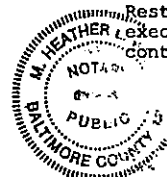
DECLARANTS:

R. Elliott
ROGER L. ELLIOTT

C. Gregory Elliott
C. GREGORY ELLIOTT

State of Maryland, Baltimore County, to wit:

I HEREBY CERTIFY that on this 1st day of December, 2012, before me, the subscriber, a Notary Public of the State of Maryland, in and for Baltimore County, personally appeared Roger L. Elliott, known to me to be the Declarant of the within Declaration of Protective Covenants, Conditions and Restrictions, and acknowledged that, being authorized to do so, executed the same on his behalf for the purposes therein contained.



As Witness my hand and Notarial Seal.

M. Heather L. Which
Notary Public

My Commission expires:

8-7-2014

State of Utah, Salt Lake County, to wit:

I HEREBY CERTIFY that on this 20 day of November, 2012, before me, the subscriber, a Notary Public of the State of Utah, in and for Salt Lake County, personally appeared C. Gregory Elliott, known to me to be the Declarant of the within Declaration of Protective Covenants, Conditions and Restrictions, and acknowledged that, being authorized to do so, executed the same on his behalf for the purposes therein contained.

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AS witness my hand and Notarial Seal.



Cami J. Bills
Notary Public

This is to certify that the within instrument was prepared by an attorney admitted to practice before the Court of Appeals of Maryland.

R. Elliott
Roger H. Elliott

APPROVED:

Fred F. Homan
Department of Environmental
Protection and Sustainability

APPROVED FOR LEGAL FORM AND SUFFICIENCY*

(Subject to Execution by A Duly Authorized County
Administrative Official and County Council, if Indicated)

James A. Kelly 3-22-13
OFFICE OF THE COUNTY ATTORNEY

*Approval of Legal Form and Sufficiency Does Not Convey
Approval or Disapproval of Substantive Nature of this
Transaction.
Approval is Based Upon Typeset Document. All Modifications
Require Re-Approval.

ATTEST/WITNESS

Denna Morrison

APPROVED AND ACCEPTED this 1
Day of April, 2013.
Baltimore County, Maryland:

By: [Signature]
Name: Fred Homan
County Administrative Officer

INDEXED
DATE: 3-28-2013

033442-435

ATTORNEY CERTIFICATION

SUBDIVISION/PROJECT NAME: Minor Subdivision of "C. Gregory Elliott property 10-018-M"

PUBLIC WORKS AGREEMENT NO: N/A

CRG NO.: _____

FINAL DEVELOPMENT PLAN DATED: _____

FOR PROJECT KNOWN AS: 15815 Falls Rd-Dist 5C3 Minor Sub. No. 10-018-M

THE UNDERSIGNED HEREBY CERTIFIES, REPRESENTS AND OPINES TO BALTIMORE COUNTY, MARYLAND, that:

1. The undersigned is an attorney duly admitted to practice before the Court of Appeals of Maryland and in good standing thereunder.

2. The undersigned maintains, or has maintained for the benefit of the undersigned, professional liability insurance coverage under policy no: 34037-10 (200/600)

issued by Minnesota Lawyers Mutual, Insurer

Such policy is in force and effect as of the date of this Certification, benefiting the County in case of loss, injury or damage arising from any errors or omissions related to the issuance of this Certificate by the undersigned and the County's reliance thereon.

3. The attached instruments [Forest Buffer and Forest Conservation Declarations] (the "Instruments") were prepared by me or under my supervision, and conforms in all material respects to the prescribed form for such Instrument as set forth in The Baltimore County, Maryland, Department of Permits and Development Management, Bureau of Land Acquisition Right of Way Documents Manual, 2007 edition.

4. The undersigned has caused a diligent examination of the Land Records of Baltimore County, Maryland, to be made to ascertain the status of record title to the real property (the "Property") described in, and to be encumbered or conveyed by, the Instrument. Based solely upon examination of such records as on file through the date of this certification (the "Examination Date"), by the undersigned, the undersigned certifies, represents and opines to Baltimore County, Maryland, that:

a. Fee simple title of record is vested in Roger L. Elliott and C. Gregory Elliott by virtue of a Deed dated December 31, 2003 from Doris T. Elliott recorded in the land records of Baltimore County Liber 20103/Folio 519 and a Deed dated April 19, 2004 from Roger L. Elliott, Personal Representative recorded in the land records of Baltimore County Liber 20103/Folio 514.

Rev. 5/07

1

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- b. The Instrument is in appropriate form for the conveyance of, or creation of encumbrance on, the Property.
- c. Following the due execution and acknowledgment of the Instrument by the parties named therein, the signatory(ies) thereon having the authority to so bind the grantor entity(ies) referenced therein (if applicable), and its delivery to and acceptance by the County, and its recordation among the Land Records, the Instrument will be effective in accordance with its terms to create or convey the interest in the Property which the Instrument purports to create or convey, without the requirement or joinder of any other party having an interest of record in the Property (including, but not limited to, beneficiaries of easements, rights of way, security instruments, and/or agreements) as of the Examination Date.
- d. I have no personal knowledge of conflicting interests (including, but not limited to, rights or claims of parties in possession, adverse claims, and/or equitable interests not shown by the public records) that would interfere with or jeopardize Baltimore County's use of the herein granted easement or fee simple area for the purposes set forth in this Instrument.

5. This Certification is made and delivered subject to the express understandings and agreements:

- a. The execution and delivery of this Certification by the undersigned was an express condition precedent to the agreement of Baltimore County, Maryland, to accept the Instrument from the parties named therein as granting or joining in the same.
- b. This Certification of title is rendered to Baltimore County, Maryland, for its benefit, with the understanding that Baltimore County, Maryland, will rely upon the truth, accuracy and completeness of the certifications, representations and opinions herein set forth.
- c. This Certification of title may be relied upon by Baltimore County, Maryland, authorities. It may not be relied upon by any other person or entity without the prior written consent of the undersigned.
- d. The undersigned assumes no liability for any lien, encumbrance, and/or defect in title to or ownership of the Property, of whatever nature or character, arising subsequent to the Examination Date of which the undersigned had no personal

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knowledge. The undersigned assumes no responsibility for any lien, encumbrance, title defect or any other matter affecting title to the Property of which the undersigned had no personal knowledge and not appearing of record among the Land Records of Baltimore County, Maryland, as of the Examination Date.

Date: December 19, 2012

By: 

Roger L. Elliott, Attorney at Law
P.O. Box 147
Butler, MD 21023
(410)771-4244

033442, 439

R. A. Childress & Associates, Inc.

Civil Engineering Consultants

418 Clubside Drive Taneytown, Md. 21787

(443) 504-3357

ENGINEER CERTIFICATION

November 2, 2012

SUBDIVISION/PROJECT NAME: Minor Subdivision of the "C. Gregory Elliott" Property

PUBLIC WORKS AGREEMENT NO: None FINAL DEVELOPMENT PLAN DATED: None

FOR PROJECT KNOWN AS: 15815 Falls Road - Dist. 5C3 - Minor Subdivision No. 10-018-M

I HEREBY declare, affirm, and certify under penalties of perjury that the following listed record plat(s) and right-of-way plat(s) comply in all material respects with the above referenced Final Development Plan, Public Works Agreement, and/or County Review Group, as applicable, that the construction plans relative to said final development plan agree with the said listed subdivision plat(s) submitted herewith and right-of way plat(s), and that said subdivision plat(s) and right-of-way plat(s) were prepared in compliance with Baltimore County, Department of Permits and Development Management, Bureau of Land Acquisition, Drafting Section, Design Manual, dated September, 1996.

I FURTHER agree to indemnify, protect, and hold harmless Baltimore County, Maryland, its agents, employees, successors, and/or assigns from and against any and all costs, liability, penalties, fines, forfeitures, reasonable attorney's fees, judgments, and related litigation costs arising from any negligent errors and omissions contained in this certification, it being fully understood and acknowledged that Baltimore County intends to rely fully upon said certification. It is intended that Baltimore County, its successors and/or assigns, shall be a third party beneficiary of an agreement, whether oral or written, between my client _____

C. Gregory Elliott and myself for the preparation of this Certification.

Record Plats

Liber _____ folio _____

Liber _____ folio _____

Liber _____ folio _____

Right-of-Way Plats

RW 12-126-1

RW 12-126-2

RW 12-126-3

RW 12-126-9

Professional Liability Insurance:

Company: Fireman's Fund Ins. Co.

Policy No.: 8 91 MZO 80459925

Policy Limits: \$500,000 Per occurrence

\$1,000,000 General aggregate

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 39342, p. 0440, MSA_CEB2_39328 Date available 04/22/2013. Printed 05/02/2018.

1. THERE SHALL BE NO CLEARING, GRADING, CONSTRUCTION OR DISTURBANCE OF VEGETATION IN THE FOREST BUFFER AND FOREST CONSERVATION EASEMENT EXCEPT AS PERMITTED BY BALTIMORE COUNTY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND SUSTAINABILITY.

2. ANY FOREST BUFFER AND FOREST CONSERVATION EASEMENT SHOWN HEREON IS SUBJECT TO PROTECTIVE COVENANTS WHICH MAY BE FOUND IN THE LAND RECORDS OF BALTIMORE COUNTY AND WHICH MAY RESTRICT DISTURBANCE AND USE OF THESE AREAS.

3. SEE LINE TABLE ON RW 12-126-04

FOR MONITORING COST (\$1,000/YR), design & tower (w/rtty)

PROPOSED LOT 1

PROPOSED LOT 2

FOREST BUFFER & FOREST CONSERVATION EASEMENT (AREA "A")
57,943 SF / 1,330 AC.
(SEE RW 12-126-03)

FOREST BUFFER & FOREST CONSERVATION EASEMENT (AREA "B")
152,262 SF / 3,495 AC.
(SEE RW 12-126-02)

BALTIMORE COUNTY ACCESS EASEMENT AREA "B"
(429 SF / 0.010 AC)
(SEE RW 12-126-03)

FALLS ROAD
(STATE ROUTE 25)

Minor Subdivision of the
ELLIOTT PROPERTY
15815 Falls Road - Tax Map 27 Parcel 267
Minor Subdivision No. 10-016-31

ROGER L. ELLIOTT
C. GREGORY ELLIOTT
DEED REF: 20103/514
DORIS T. ELLIOTT
DEED REF: 20103/519

TOTAL FOREST BUFFER &
FOREST CONSERVATION EASEMENT
AREA = 210,205sf / 4.825 acre±

TOTAL BALTIMORE COUNTY ACCESS EASEMENT
AREA = 18,411sf / 0.423 acre±

DEPARTMENT OF PERMITS, APPROVALS AND INSPECTIONS

DISTRICT NO. 5 C.J.

POSITION SHEET NO. CONSTRUCTION PLAN NO.

FEDERAL PROJECT NO. MARYLAND PROJECT NO.

APPROVED _____ DIRECTOR OF PUBLIC WORKS

DATE _____

APPROVED _____ CHIEF LAND ACQUISITION DIVISION

DATE _____

APPROVED _____ SUPERVISOR, DIVISION OF DRAFTING

DATE _____

LEGEND:

- [] AREA TO BE ACQUIRED
- [] REVERSIBLE SLOPE CASCAIDITY
- [] TEMPORARY CONSTRUCTION AREA
- [] EXISTING COUNTY R/W
- [] AREA TO BE RELEASED
- [] TEMPORARY SLOPE EASEMENT

SHEET 1 of 4

SCALE: 1" = 200'

B.C. JOB ORDER NO. 5-1-7500

RW 12-126-01

DATE 12-17-2012 REC NO. 21039

EXHIBIT 1-2-2013

REVISIONS

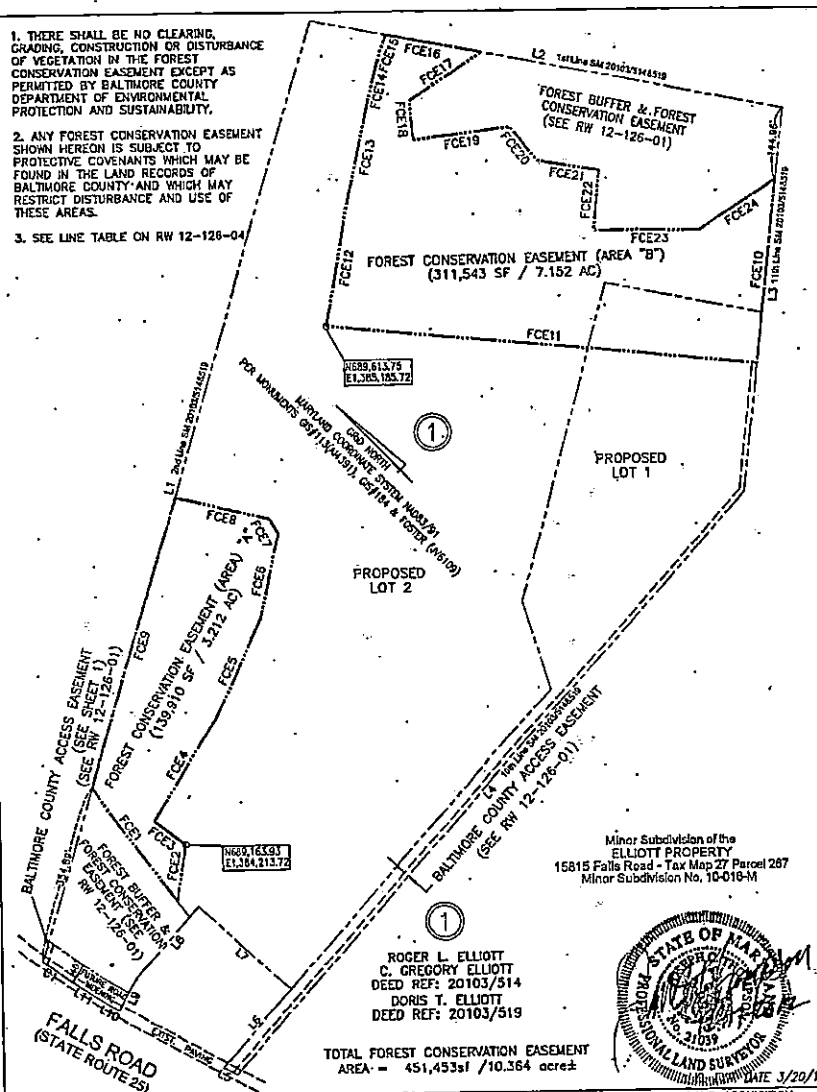
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1. THERE SHALL BE NO CLEARING, GRADING, CONSTRUCTION OR DISTURBANCE OF VEGETATION IN THE FOREST CONSERVATION EASEMENT EXCEPT AS PERMITTED BY BALTIMORE COUNTY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND SUSTAINABILITY.

2. ANY FOREST CONSERVATION EASEMENT SHOWN HEREON IS SUBJECT TO PROTECTIVE COVENANTS WHICH MAY BE FOUND IN THE LAND RECORDS OF BALTIMORE COUNTY AND WHICH MAY RESTRICT DISTURBANCE AND USE OF THESE AREAS.

3. SEE LINE TABLE ON RW 12-126-04



Minor Subdivision of the
ELLIOTT PROPERTY
15815 Falls Road - Tax Map 27 Parcel 267
Minor Subdivision No. 10-018-M

ROGER L. ELLIOTT
C. GREGORY ELLIOTT
DEED REF: 20103/514
DORIS T. ELLIOTT
DEED REF: 20103/519

TOTAL FOREST CONSERVATION EASEMENT
AREA = 451,453 sf / 10.364 acres

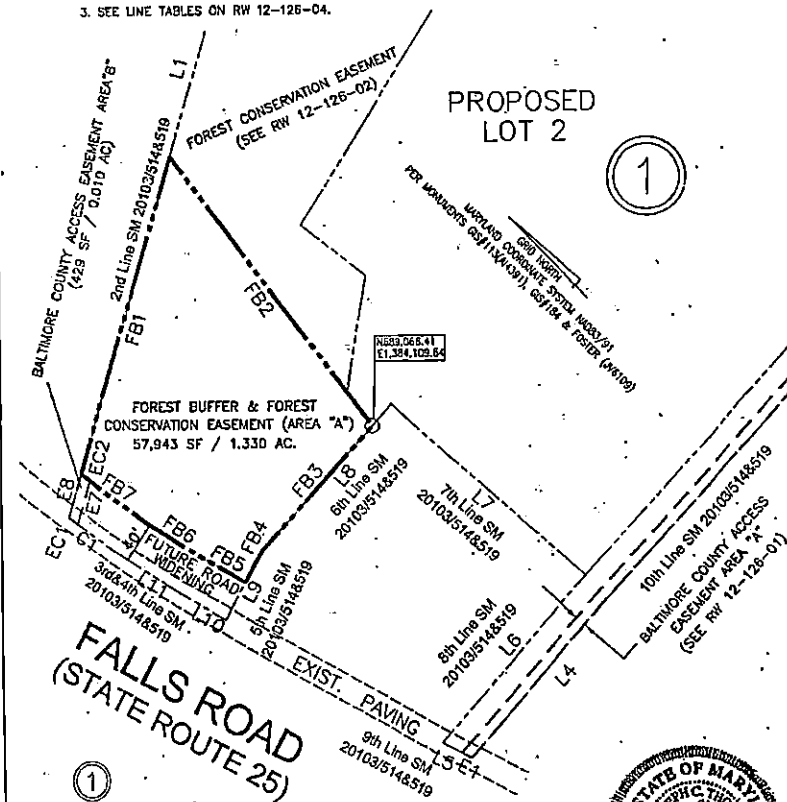


BALTIMORE COUNTY		DEPARTMENT OF PERMITS, APPROVALS AND INSPECTIONS		LAND ACQUISITION	
DISTRICT NO.	POSITION SHEET NO.	FEDERAL PROJECT NO.	CONSTRUCTION PLAN NO.	WATLAND PROJECT NO.	
5 C3					
APPROVED	DIRECTOR OF PUBLIC WORKS	AREA TO BE ACQUIRED	EXISTING COUNTY R/W	AREA TO BE RELEASED	EXISTING COUNTY R/W
DATE		REVERTIBLE SLOPE EASEMENT	AREA TO BE RELEASED	TEMPORARY SLOPE EASEMENT	EXISTING COUNTY R/W
APPROVED	DEPT. LAND ACQUISITION	TEMPORARY CONSTRUCTION AREA	TEMPORARY SLOPE EASEMENT	TEMPORARY SLOPE EASEMENT	EXISTING COUNTY R/W
DATE		ITEM NO.	RECORDED	DATE	R.E.G.
APPROVED	SUBDIVISION DIVISION OF SURVEY	DATE	RECORDED	DATE	R.E.G.
DATE		DATE	RECORDED	DATE	R.E.G.
		SCALE: 1" = 200'			
		B.C. JOB ORDER NO.			
		5-1-7500			
		RW 12-126-02			

1. THERE SHALL BE NO CLEARING, GRADING, CONSTRUCTION OR DISTURBANCE OF VEGETATION IN THE FOREST BUFFER AND FOREST CONSERVATION EASEMENT EXCEPT AS PERMITTED BY BALTIMORE COUNTY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND SUSTAINABILITY.

2. ANY FOREST BUFFER AND FOREST CONSERVATION EASEMENT SHOWN HEREON IS SUBJECT TO PROTECTIVE COVENANTS WHICH MAY BE FOUND IN THE LAND RECORDS OF BALTIMORE COUNTY AND WHICH MAY RESTRICT DISTURBANCE AND USE OF THESE AREAS.

3. SEE LINE TABLES ON RW 12-126-04.



ROGER L. ELLIOTT
C. GREGORY ELLIOTT
DEED REF: 20103/514
DORIS T. ELLIOTT
DEED REF: 20103/519

FOR AREAS SEE
RW 12-126-01

Minor Subdivision of the
ELLIOTT PROPERTY
15815 Falls Road - Tax Map 27 Parcel 267
Minor Subdivision No. 10-018-M



BALTIMORE COUNTY		DEPARTMENT OF PERMITS, APPROVALS AND INSPECTIONS		LAND ACQUISITION	
DISTRICT NO.	POSITION SHEET NO.	FEDERAL PROJECT NO.	CONSTRUCTION PLAN NO.	WATLAND PROJECT NO.	
5 C3					
APPROVED	DIRECTOR OF PUBLIC WORKS	AREA TO BE ACQUIRED	EXISTING COUNTY R/W	AREA TO BE RELEASED	EXISTING COUNTY R/W
DATE		REVERTIBLE SLOPE EASEMENT	AREA TO BE RELEASED	TEMPORARY SLOPE EASEMENT	EXISTING COUNTY R/W
APPROVED	DEPT. LAND ACQUISITION	TEMPORARY CONSTRUCTION AREA	TEMPORARY SLOPE EASEMENT	TEMPORARY SLOPE EASEMENT	EXISTING COUNTY R/W
DATE		ITEM NO.	RECORDED	DATE	R.E.G.
APPROVED	SUBDIVISION DIVISION OF SURVEY	DATE	RECORDED	DATE	R.E.G.
DATE		DATE	RECORDED	DATE	R.E.G.
		SCALE: 1" = 100'			
		B.C. JOB ORDER NO.			
		5-1-7500			
		RW 12-126-03			

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State of Maryland Land Instrument Intake Sheet

Baltimore City & County: BALTIMORE

Information provided is for the use of the Clerk's Office, State Department of

Assessments and Taxation, and County Finance Office Only.)

(Type or Print in Black Ink Only—All Copies Must Be Legible)

A12 2479

JLE 2485
Apr 03 2013 03:36 PM

Space Reserved for Clerk/Clerk Recording Validation

TABLES FOR RW 12-126-01

LINE	BEARING	DISTANCE
FB1	N65°42'50"E	311.93
FB2	S12°25'05"W	319.49
FB3	N89°08'17"W	157.48
FB4	S77°36'43"W	34.98
FB5	N10°30'36"W	50.51
FB6	N08°13'46"W	59.78
CURVE LENGTH RADIUS		
FB7	80.29	1184.09
CHORD BRG. CHORD		
N04°26'47"W	80.27	

LINE	BEARING	DISTANCE
FB8	N74°00'58"W	182.88
FB9	N40°48'55"W	213.38
FB10	N54°36'05"E	121.53
FB11	N31°59'44"W	125.07
FB12	N11°18'09"E	86.36
FB13	N48°18'13"W	192.01
FB14	N44°14'20"E	78.77
FB15	S75°30'18"E	172.24
FB16	S29°57'53"E	41.40
FB17	S29°57'53"E	572.60
FB18	S55°29'34"W	144.96

ACCESS EASEMENTS

LINE	BEARING	DISTANCE
ACCESS EASEMENT "A"		
E1	N12°33'52"W	10.28
E2	S89°08'17"E	1544.71
E3	N55°29'34"E	251.37
E4	S35°34'38"E	10.00
E5	S55°29'34"W	254.74
E6	N89°08'17"W	1545.51
ACCESS EASEMENT "B"		
E7	N65°42'50"E	42.82
E8	S65°42'50"W	42.96
CURVE LENGTH RADIUS		
EC1	10.70	1224.09
CHORD BRG. CHORD		
N03°27'42"W	10.70	
CURVE LENGTH RADIUS		
EC2	10.75	1184.09
CHORD BRG. CHORD		
S02°45'51"W	10.75	

TABLES FOR RW 12-126-02

LINE	BEARING	DISTANCE
FCE1	S12°25'05"W	279.71
FCE2	N58°26'31"E	112.11
FCE3	N02°33'53"W	77.16
FCE4	N81°05'20"E	237.66
FCE5	N73°55'47"E	223.41
FCE6	N61°21'04"E	171.98
FCE7	N19°48'41"E	34.16
FCE8	N28°08'58"W	196.15
FCE9	S65°42'50"W	604.89

FCE AREA "B"

LINE	BEARING	DISTANCE
FCE10	S55°29'34"W	356.74
FCE11	N35°34'38"W	862.85
FCE12	N59°17'52"E	250.80
FCE13	N61°14'22"E	208.47
FCE14	N63°08'19"E	101.02
FCE15	N70°44'15"E	35.01
FCE16	S29°57'53"E	191.06
FCE17	N75°30'18"W	172.24
FCE18	S44°14'20"W	78.77
FCE19	S48°18'13"E	192.01
FCE20	S11°18'09"W	86.36
FCE21	S31°59'44"E	125.07
FCE22	S54°36'05"W	121.53
FCE23	S40°48'55"E	213.38
FCE24	S74°00'58"E	182.88

TABLE FOR ALL SHEETS

LINE	BEARING	DISTANCE
L1	N65°42'50"E	1947.49
L2	S29°57'53"E	959.88
L3	S55°29'34"W	766.44
L4	N89°08'17"W	1545.51
L5	N12°33'52"W	30.84
L6	S89°08'17"E	207.68
L7	N00°51'43"E	248.14
L8	N89°08'17"W	185.00
L9	S77°36'43"W	75.00
L10	N10°30'36"W	52.61
L11	N08°13'46"W	61.21
CURVE LENGTH RADIUS		
C1	67.70	1224.09
CHORD BRG. CHORD		
N04°50'10"W	67.69	



LIC. EXP. DATE 3/20/14

Minor Subdivision of the
ELLIOTT PROPERTY
15815 Falls Road - Tax Map 27 Parcel 267
Minor Subdivision No. 10-018-M

BALTIMORE COUNTY		DEPARTMENT OF PERMITS, APPROVALS AND INSPECTIONS		LAND ACQUISITION	
DISTRICT NO. 5 CJ	POSITION SHEET NO.	FEDERAL PROJECT NO.	MARYLAND PROJECT NO.		
APPROVED DIRECTOR OF PUBLIC WORKS	APPROVED CHIEF, LAND ACQUISITION	APPROVED SUPERVISOR, DIVISION OF BUYING	APPROVED	APPROVED	APPROVED
DATE	DATE	DATE	DATE	DATE	DATE
AREA TO BE ACQUIRED		EXISTING COUNTY R/W		REVERTIBLE SLOPE EASEMENT	
TEMPORARY CONSTRUCTION AREA		AREA TO BE RELEASED		TEMPORARY SLOPE EASEMENT	
ITEM NO.		RECORDED		R.E.C.	
SCALE: 1" = 100'		B.C. JOB ORDER NO.		5-1-7500	
RW 12-126-04					

1	Type(s) of Instruments	() Check Box if addendum Intake Form is Attached	
	Deed or Trust	Mortgage	Other
2	Conveyance Type Check Box	Improved Sale	Unimproved Sale
	Arms-Length (1)	Arms-Length (2)	Arms-Length (3)
3	Tax Exemptions (If Applicable)	FOREST CONSERVATION EASEMENTS	
	State Transfer	TO BALTIMORE COUNTY	
4	Consideration and Tax Calculations	Consideration Amount	
	Purchase Price/Consideration	\$ -0-	
	Any New Mortgage	\$	
	Balance of Existing Mortgage	\$	
	Other:	\$	
	Other:	\$	
	Full Cash Value:	\$ -0-	
5	Fees	Doc. 1 Doc. 2	
	Recording Charge	\$ -0-	
	Surcharge	\$	
	State Recording Tax	\$	
	State Transfer Tax	\$	
	County Transfer Tax	\$	
	Other	\$	
	Other	\$	
6	Description of Property SDAT requires submission of all applicable information. A maximum of 40 characters will be indexed in accordance with the priority cited in Real Property Article Section 3-104(g)(3)(i).	Districts <u>16-0000-5049</u> <u>20103/514</u> <u>27</u> <u>267</u> Subdivision Name <u>15815 FALLS RD SPARKS MD 21152</u> Lot (2a) Block (3b) Sect/AR (3c) Plat Ref. SqFt/Acreage (4) Location/Address of Property Being Conveyed (2) Other Property Identifiers (if applicable) <u>Water Meter Account No.</u> Residential () or Non-Residential () Free Simple () or Ground Rent () Amount: <u>10,264 Acres (451,458.50)</u> Partial Conveyance? () Yes () No Description/Amt. of SqFt/Acreage Transferred: <u>1433 ACRES (411.55) Forest Conservation Easements</u> If Partial Conveyance, List Improvements Conveyed: <u>Access Easement</u>	
7	Transferred From	Doc. 1 - Grantor(s) Name(s) <u>C. GREGORY ELLIOTT</u> Doc. 2 - Grantor(s) Name(s) <u>ROGER L. ELLIOTT</u> Doc. 1 - Owner(s) of Record, if Different from Grantor(s) Doc. 2 - Owner(s) of Record, if Different from Grantor(s)	
8	Transferred To	Doc. 1 - Grantee(s) Name(s) <u>Baltimore MD.</u> Doc. 2 - Grantee(s) Name(s) New Owner's (Grantee's) Mailing Address <u>Old Courthouse, Towson, MD 21204</u>	
9	Other Names to Be Indexed	Doc. 1 - Additional Names to Be Indexed (Optional) Doc. 2 - Additional Names to Be Indexed (Optional)	
10	Contact/Mail Information	Instrument Submitted By or Contact Person Name: <u>Raj P. Estate Compliance</u> Firm: <u>Baltimore County</u> Address: <u>Towson MD 21204</u> Phone: <u>(410) 887-3284</u> Return to Contact Person () Hold for Pickup () Return Address Provided ()	
11	IMPORTANT: BOTH THE ORIGINAL DEED AND A PHOTOCOPY MUST ACCOMPANY EACH TRANSFER	Assessment Information Yes () No () Will the property being conveyed be the grantee's principal residence? Yes () No () Does transfer include personal property? If yes, identify: Yes () No () Was property surveyed? If yes, attach copy of survey (if recorded, no copy required).	
Assessment Use Only - Do Not Write Below THIS REQUIRED Transfer Number: <u>29</u> Date Received: <u>20</u> Geo. <u>11</u> Zoning <u>11</u> Use <u>11</u> Town Cd. <u>11</u> Land <u>29</u> Buildings <u>29</u> Total <u>29</u> REMARKS: <u>RECORDATION TAX 121</u> Date: <u>4-5-13</u>			

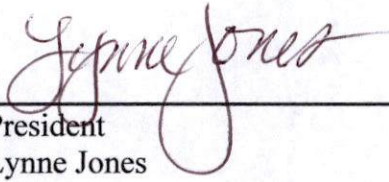
BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 33442, p. 0444, MSA_CEE2_33298, Date available 04/22/2013. Printed 03/02/2018.

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 33442, p. 0443, MSA_CEE2_33298, Date available 04/22/2013. Printed 03/02/2018.

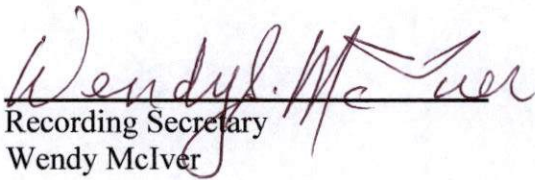
THE SPARKS GLENCOE COMMUNITY PLANNING COUNCIL, INC.

RESOLVED: That at the ANNUAL MEETING of The Sparks Glencoe Community Planning Council, Inc. held on April 19, 2017, it was decided that responsibility for review and action on all zoning and development matters for the period 2017-2018 be placed on the Board of Directors and members of the duly elected Zoning Committee.

ATTEST: The Sparks Glencoe Community Planning Council, Inc.



President
Lynne Jones



Recording Secretary
Wendy McIver

People's Counsel
CBA Exhibit

5

AFFIDAVIT

STATE OF MARYLAND

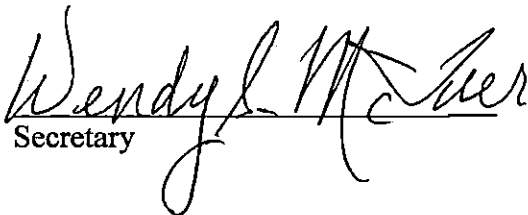
BALTIMORE COUNTY, SS:

TO WIT:

I hereby swear upon penalty of perjury that I, Lynne Jones, am currently President and Member of the Board of Directors of The Sparks Glencoe Community Planning Council, Inc.

AS WITNESS OUR HANDS AND SEAL THIS __7th__ DAY OF March, 2018.

ATTEST: The Sparks Glencoe Community Planning Council, Inc.


Secretary


President

THE SPARKS GLENCOE COMMUNITY PLANNING COUNCIL, INC.

RESOLVED: That the position of the The Sparks Glencoe Community Planning Council, Inc. as adopted by the Board of Directors on the zoning matter known as:

Baltimore County Case No. 2017-332-SPHXA(Roger L. Elliott)

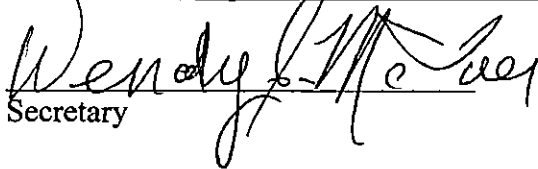
The Sparks-Glencoe Community Planning Council ("Sparks-Glencoe" or "SGCPC") is a nonprofit organization dedicated to preserving the rural character and natural resources of northern Baltimore County.

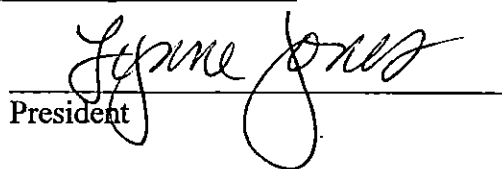
Sparks-Glencoe is opposed to the request by Mr. Elliott to modify the conditions of a special exception granted in 2015. There have been no changes in the factual circumstances or in the law to justify a change; res judicata requires finality of judicial and administrative decisions. The special exception prohibits horse-riding in the conservation easement and buffer areas to protect these environmentally sensitive lands; this protection is needed now as much as it was when the case was decided in 2015.

Therefore, we ask that the Board of Appeals to deny the request for special hearing.

AS WITNESS OUR HANDS AND SEAL THIS __7th__ DAY OF March, 2018.

ATTEST: The Sparks Glencoe Community Planning Council, Inc.


Secretary


President

Board of Appeals

Case No: 17-332-SPHXA Case Name: Roger L. Elliott

Exhibit List

Argument on Motion to Dismiss

Party: People's Counsel Date: 12/12/17

Exhibit No:	Description:
✓ 1	Petition for Zoning Hearing (Case No. 2015-0196-XA)
✓ 2	²⁰¹⁵ Site Plan prepared by Bruce Doak (Case No. 2015-0196-XA)
✓ 3	Opinion and Order of ALJ (Case No. 2015-0196-XA)
✓ 4	Petition for Zoning Hearing (Case No. 2017-0332-SPHXA)
✓ 5	²⁰¹⁷ Site Plan prepared by Bruce Doak (Case No. 17-332-SPHXA)
✓ 6A	Back River, LLC v. Baltimore County (full opinion)
✓ 6B	Back River, LLC v. Baltimore County (except a res judicata)
✓ 7	Delean v. Slear, 328 Md. 569 (1992)
✓ 8	Seminary Galleria, LLC v. Dulany Valley Improvement Ass'n, 192 Md App. 719 (2010)
VERIFIED BY <u>KC</u> DATE: <u>12/12/17</u>	



PETITION FOR ZONING HEARING(S)

To be filed with the Department of Permits, Approvals and Inspections

To the Office of Administrative Law of Baltimore County for the property located at:

Address 15815 Falls Road which is presently zoned RC2
Deed References: SM 33811 / 414 10 Digit Tax Account # 1 6 0 0 0 0 5 0 9 9
Property Owner(s) Printed Name(s) ROGER L. ELLIOTT

(SELECT THE HEARING(S) BY MARKING ☒ AT THE APPROPRIATE SELECTION AND PRINT OR TYPE THE PETITION REQUEST)

The undersigned legal owner(s) of the property situate in Baltimore County and which is described in the description and plan attached hereto and made a part hereof, hereby petition for:

1. ☐ a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

2. ☒ a Special Exception under the Zoning Regulations of Baltimore County to use the herein described property for:

SEE ATTACHED SHEET

3. ☒ a Variance from Section(s)

SEE ATTACHED SHEET

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons:
(Indicate below your hardship or practical difficulty or indicate below "TO BE PRESENTED AT HEARING". If you need additional space, you may add an attachment to this petition)

TO BE PRESENTED AT THE HEARING

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above petition(s), advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.
Legal Owner(s) Affirmation: I / we do so solemnly declare and affirm, under the penalties of perjury, that I / We are the legal owner(s) of the property which is the subject of this / these Petition(s).

Contract Purchaser/Lessee:

Name- Type or Print

Signature

Mailing Address City State

Zip Code Telephone # Email Address

Attorney for Petitioner:

Name- Type or Print

Signature

Mailing Address City State

Zip Code Telephone # Email Address

Legal Owners (Petitioners):

ROGER L. ELLIOTT 1
Name #1 - Type or Print

Name #2 - Type or Print

Signature #1

Signature #2

15817 Falls Road Sparks MD
Mailing Address City State

21152 410-419-4906 BDOAK@BRUCEDOAK
Zip Code Telephone # Email Address CONSULTING.COM

Representative to be contacted:

BRUCE E. DOAK
BRUCE E. DOAK CONSULTING
Name - Type or Print

Name - Type or Print

Signature

3801 BAKER SCHOOLHOUSE ROAD FREELAND MD
Mailing Address City State

21053 410-419-4906 BDOAK@BRUCEDOAK CONSULTING.COM
Zip Code Telephone # Email Address

Do Not Schedule Dates:

Reviewer RDD

CASE NUMBER 2015-0196-XA Filing Date 3/6/15

REV. 10/4/11

PETITION REQUESTS

Special Exception

To permit the subject property and the improvements to be used for a riding stable.

Variances

1. To permit a parking area with no screening or landscaping in lieu of the required screening and landscaping per Section 409.8.A.1 BCZR
2. To permit a parking area to be surfaced with stone in lieu of the required durable and dustless surface per Section 409.8.A.2 BCZR
3. To permit a parking area not to be striped in lieu of the striping requirement per Section 409.8.A.6 BCZR
4. To allow a two-way access driveway to have a width of 16 feet in lieu of the required 20 feet per Section 409.4A BCZR

6/17/15

**IN RE: PETITIONS FOR SPECIAL
EXCEPTION AND VARIANCE
(15815 Falls Road)
5th Election District
3rd Council District
Roger Elliott
Legal Owner
Petitioner**

* BEFORE THE
* OFFICE OF
* ADMINISTRATIVE HEARINGS
* FOR BALTIMORE COUNTY
* **Case No. 2015-0196-XA**

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) as Petitions for Special Exception and Variance filed for property located at 15815 Falls Road. The Petitions were filed on behalf of Roger Elliott, the legal owner of the subject property. The Petitioner seeks special exception relief per Baltimore County Zoning Regulations (B.C.Z.R.) to permit the subject property and the improvements to be used for a riding stable. The petition for variance seeks the following relief: (1) to permit a parking area with no screening or landscaping in lieu of the required screening and landscaping; (2) to permit a parking area to be surfaced with stone in lieu of the required durable and dustless surface; (3) to permit a parking area not to be striped in lieu of the striping requirement; and (4) to allow a two-way access driveway to have a width of 16 ft. in lieu of the required 20 ft. A site plan was marked as Petitioner's Exhibit 1.

Appearing at the hearing in support of the petitions was Roger Elliott and surveyor Bruce E. Doak, from Bruce E. Doak Consulting LLC, the firm which prepared the site plan. A neighbor (Ms. Waller) represented by J. Carroll Holzer, Esq. opposed the requests. The Petition was advertised and posted as required by the B.C.Z.R. Zoning Advisory Committee (ZAC) comments were received from the Bureau of Development Plans Review (DPR) and the Department of Planning (DOP). Those will be discussed below.

**People's Counsel
CBA Exhibit**

The subject property is approximately 33.829 acres and is zoned RC 2. The rural site is improved with a large barn, shed and adjoining parking area. These improvements would be used in connection with the riding stable. Petitioner's daughter will operate the riding stable, and she resides in a single family dwelling which is also located on the subject property.

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.

I do not believe the Protestant presented such evidence. Ms. Waller testified the riding stable operation would cause noise, increased traffic, odors and a potential decrease in property value. As to that last issue, Steven Edelin, a licensed realtor presented by the Protestant, testified the stable operation would on balance be a "negative" that could impact the future sale of the home. Joyce Corcoran, a realtor called by the Petitioner, testified that people looking to purchase homes in the northern Baltimore County area (i.e., Butler) would consider a horse riding stable to be a positive feature that would in her opinion enhance property values.

Though the testimony was conflicting, the potentially negative factors identified by Protestant are all inherent in the operation of a horse riding stable, a use permitted by special exception in the RC 2 zone. B.C.Z.R. §1A01.2.C.21. These are the types of inherent adverse effect that the legislature was presumed to have anticipated when it allowed the use by special exception. In other words, most uses for which a special exception is required are regarded as

“potentially troublesome because of noise, traffic, congestion....” Montgomery County v. Butler, 417 Md. 271, 297 (2010). As such, the Petition will be granted, subject to the conditions noted below.

VARIANCES

To obtain variance relief requires a showing that:

- (1) The property is unique; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Trinity Assembly of God v. People’s Counsel, 407 Md. 53, 80 (2008).

Petitioner has met this test. The large property is irregular shaped and contains significant topographical features. As such it is unique. If the B.C.Z.R. were strictly interpreted Petitioner would suffer a practical difficulty, in that he would be unable to use the existing parking area. While it may be that with a great deal of difficulty and expense the parking area could be relocated, additional grading and paving (impervious surface) should be avoided if possible in a rural, agricultural setting such as this.

Finally, I find that the variances can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare. The DOP recommended that a vegetative buffer be provided to screen the view from Falls Road and the adjoining property (owned by Ms. Waller), and thus the first variance will not be granted. In addition, the DPR requested the driveway be at least 16' wide between Falls Road and the proposed parking area, and a condition will be added to that effect.

The only other issue pertains to the large forest buffer and forest conservation easements shown on the site plan. While the Department of Environmental Protection did not submit a ZAC comment, the law prohibits recreational activities within these environmentally-sensitive areas.

Ms. Elliott was asked by Protestant's counsel to outline the approximate location of the trails she intends to use for her business, and the course shown in blue ink on the site plan does not encroach upon any of the buffer areas. Even so, a condition will be added to make clear that horse riding shall not take place in those areas.

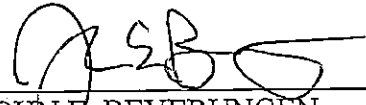
THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 17th day of June, 2015, that the Petition for Special Exception to permit the subject property and the improvements to be used for a riding stable, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Variance: (1) to permit a parking area to be surfaced with stone in lieu of the required durable and dustless surface; (2) to permit a parking area not to be striped in lieu of the striping requirement; and (3) to allow a two-way access driveway to have a width of 16 ft. in lieu of the required 20 ft., be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon 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 his 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 provide screening and/or other landscaping between the proposed parking area and the property owned by Ms. Waller. The configuration of and specific requirements for the landscaping shall be determined in the sole discretion of the Baltimore County landscape architect.
3. The driveway accessing the proposed parking lot shall be at least 16' wide for its entire length.
4. Petitioner shall, prior to issuance of any necessary permits/licenses, secure approval from the Baltimore County Soil Conservation District.
5. No trail riding or horses shall be permitted within the forest buffer and forest conservation easement areas shown on the site plan.
6. Petitioner shall keep no more than five (5) horses on the subject property.

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

A handwritten signature in black ink, appearing to read 'JEB', is written over a horizontal line.

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/sln



PETITION FOR ZONING HEARING(S)

To be filed with the Department of Permits, Approvals and Inspections

To the Office of Administrative Law of Baltimore County for the property located at:

Address 15815 Falls Road which is presently zoned RC2
Deed References: SM 33811/414 10 Digit Tax Account # 1600005049
Property Owner(s) Printed Name(s) ROGER L. ELLIOTT

(SELECT THE HEARING(S) BY MARKING X AT THE APPROPRIATE SELECTION AND PRINT OR TYPE THE PETITION REQUEST)

The undersigned legal owner(s) of the property situate in Baltimore County and which is described in the description and plan attached hereto and made a part hereof, hereby petition for:

1. X a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

SEE ATTACHED SHEET

2. X a Special Exception under the Zoning Regulations of Baltimore County to use the herein described property for

SEE ATTACHED SHEET

3. X a Variance from Section(s)

SEE ATTACHED SHEET

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons:
(Indicate below your hardship or practical difficulty or indicate below "TO BE PRESENTED AT HEARING". If you need additional space, you may add an attachment to this petition)

TO BE PRESENTED AT THE HEARING

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above petition(s), advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.
Legal Owner(s) Affirmation: I / we do so solemnly declare and affirm, under the penalties of perjury, that I / We are the legal owner(s) of the property which is the subject of this / these Petition(s).

Contract Purchaser/Lessee:

Name- Type or Print

Signature

Mailing Address

City

State

Zip Code

Telephone #

Email Address

Attorney for Petitioner:

Name- Type or Print

Signature

Mailing Address

City

State

Zip Code

Telephone #

Email Address

Legal Owners (Petitioners):

ROGER L. ELLIOTT 1
Name #1 - Type or Print

Name #2 - Type or Print

Signature #1

Signature #2

15817 Falls Road
Mailing Address

SPARKS
City

MD
State

21152 | 410-419-4906
Zip Code Telephone #

BDOAK@BRUCEEDQAK
Email Address

Representative to be contacted:

BRUCE E. DOAK
Name - Type or Print

Signature

3801 BAKER SCHOOLHOUSE ROAD FREELAND MD
Mailing Address City State

21053 | 410-419-4906
Zip Code Telephone #

Email Address

BDOAK@BRUCEEDQAK CONSULTING. COM
Reviewer

CASE NUMBER 2017-0332-SP4XA Filing Date 6/13/17

Do Not Schedule Dates:

REV. 10/4/11

Petition Requests

Special Hearing

1. To amend the approved special exception in Case #2015-0196-XA

2. To amend by expanding and clarifying the previously approved Special Exception by:

a) allowing for additional horses for boarding and other lawful purposes and striking the previous condition # 6 of only allowing 5 horses;

b) adding to or modifying the previous condition # 5 with language prohibiting trail riding in the Forest Buffer and Forest Conservation areas unless and / or as permitted by the Director /Department of Environmental Protection and Sustainability or other appropriate governing agency.

Special Exception

1. To permit a riding stable / boarding stable on an existing agricultural farm, as a riding stable is defined in Section 101.1 BCZR per Section 1A01.2.C.22 BCZR.

Variances

1. To permit a parking area with no screening or landscaping in lieu of the required screening and landscaping per Section 409.8.A.1 BCZR

2. To permit a parking area to be surfaced with stone in lieu of the required durable and dustless surface per Section 409.8.A.2 BCZR

3. To permit a parking area not to be striped in lieu of the striping requirement per Section 409.8.A.6 BCZR

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2495

September Term, 2013

BACK RIVER, LLC, ET AL.

v.

BALTIMORE COUNTY,
MARYLAND, ET AL.

Zarnoch,
Arthur,
Salmon, James P.
(Retired, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: December 30, 2014

This appeal is the second appeal before this Court concerning the retention of a wireless telecommunications tower in Baltimore County.

In 2002, landowner Back River LLC and its tenant Sprint PCS (hereinafter collectively referred to as "Sprint")¹ constructed a cell tower on a commercially-zoned property. In an administrative proceeding before the County Board of Appeals, Sprint requested variances to permit noncompliance with a local zoning ordinance that required the tower to be "set back at least 200 feet from any other owner's residential property line." Baltimore County Zoning Regulations § 426.6.A.1. The Board rejected that request, a circuit court affirmed the decision, and this Court ultimately affirmed the judgment in an unreported opinion: *Sprint PCS v. Baltimore County*, No. 47, Sept. Term 2004 (filed Aug. 3, 2005).

In 2012, Sprint filed a petition for special hearing, asserting a new legal theory under which the existing tower was actually in compliance with the setback regulations. An administrative law judge ruled otherwise and also held that the new petition was barred under the doctrine of res judicata. Sprint appealed to the Board of Appeals, which dismissed the appeal on res judicata grounds. The circuit court affirmed that decision. Because the Board's determination was legally correct, we also affirm.

¹ During the course of this series of zoning cases, Sprint merged with Nextel Communications in 2005 to form Sprint Nextel Corporation. See, e.g., *In re Sprint Corp. ERISA Litig.*, 443 F. Supp. 2d 1249, 1256 (D. Kan. 2006).

People's Counsel
CBA Exhibit

6A

FACTUAL AND PROCEDURAL BACKGROUND

A. The 1998 Zoning Regulations

In 1998, the County Council of Baltimore County enacted Bill 30-1998 ("An Act concerning Zoning – Wireless Telecommunications Towers and Antennas"). The act amended the Baltimore County Zoning Regulations ("BCZR") by establishing guidelines for the regulation of certain towers and antennas. Part of the express intent of the County Council was to ensure that any new wireless telecommunications towers would be located in commercial zones and would be "[l]ocated and designed to minimize [] visibility from residential and transitional zones." BCZR § 426.2.B.

To accomplish that purpose, the regulations imposed certain "setback" requirements² that restricted the placement of wireless telecommunications towers:

§ 426.6 Requirements for wireless communications towers.

A. Setbacks

1. If a tower is located in a residential zone, the tower shall be set back at least 200 feet from any other owner's residential property line.
2. If a tower is located in a transitional zone, the tower shall be set back at least 200 feet from any residential zone.
3. If a tower is located in a medium or high intensity commercial zone the tower shall be set back from an adjoining

property line a distance equal to the setback required for other structures in the zone. However, if the property adjoins a residential zone, the tower shall be set back at least 200 feet from the residential zone line.

4. A structure housing equipment for a tower shall meet the minimum setback requirements from any other owner's property or zone line.

The Act also authorized the Zoning Commissioner or the County Board of Appeals to "grant a variance to a height or area requirement, including any setback, for a tower or structure housing equipment for a tower[.]" in accordance with the overall standards for the granting of variances. BCZR § 426.11. The Commissioner and the Board are empowered to grant variances "only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship." BCZR § 307.1.

B. Sprint's Petition for Variances

As of 2001, the property known as 810 Back River Neck Road in eastern Baltimore County was owned by Back River LLC. The surrounding area is heavily wooded. The property is located in close proximity to tributaries of the Chesapeake Bay. Most of the neighborhood falls within the Chesapeake Bay Critical Area and, accordingly is subject to significant restrictions from environmental regulations. *See generally* Md. Code (2000, 2012 Repl. Vol.), Natural Resources Art., §§ 8-1801 *et seq.*; Code of Maryland Regulations ("COMAR") 27.01; Baltimore County Code §§ 33-2-101 *et seq.*

² As used in the BCZR, the term "setback" is defined as the "required minimum horizontal distance between the building line . . . and the related front, side or rear property line." BCZR § 101.1.

In 2001, the parcel covered roughly 4.3 acres, in the shape of a rectangle about 223 feet in width and about 768 feet in length. A one-story commercial building stood at the east end of the property, with a retail storefront facing Back River Neck Road. The area behind that building was used for storage and other commercial purposes. The property was zoned as "Manufacturing, Light" or "M.L.," a medium-intensity, commercial classification that permits certain industrial, retail, transportation, storage, and other related uses. *See* BCZR § 253.1. Operating a wireless telecommunications tower on M.L. property is permitted by right, subject to the setback requirements. *See* BCZR §§ 253.1.B.23, 426.5.D.

Back River LLC leased part of the property to Sprint PCS, a telecommunications provider. Sprint PCS had selected the property as a potential location for a cell tower to fill a gap in its cellular coverage network. The two companies planned to construct a 115-foot tower near the west end of the property. The three adjoining properties to the north, west, and south, were each zoned under a residential zoning classification "R.C. 20," meaning "Resource Conservation – Critical Area." *See* BCZR § 1A05.³

In October 2001, Back River LLC and Sprint PCS (collectively "Sprint") filed a petition seeking a number of variances to accommodate construction of the proposed tower. Specifically, Sprint sought relief from BCZR § 426.6.A.3, to permit setbacks for the

proposed tower of 148 feet from the northern property line, 75 feet from the western property line, and 75 feet from the southern property line, each in lieu of the required 200 feet "from the residential zone line." In addition, Sprint requested variances to permit setbacks for equipment cabinets supporting the proposed tower, of 40 feet each from the west and south property lines, in lieu of the 125 feet for those structures required by BCZR § 426.6.A.4.

After a hearing, the Zoning Commissioner for Baltimore County granted the requested variances. The Commissioner reasoned that compliance with the zoning regulations would not be possible on the site. In his January 4, 2002, order granting the variances, he wrote: "Although the property contains in excess of 4.0 acres in area, it is but 223 feet wide. Section 426.6 of the B.C.Z.R. requires a 200-foot setback from the nearest property line to the tower. In view of the width of the property, this setback cannot be maintained." Nonetheless, the Commissioner reasoned that the narrowness of the property made compliance uniquely difficult, and thus he concluded that variances from the setback requirements were appropriate.

The Office of People's Counsel filed a timely appeal from that decision.

C. The 2002 Amendment to the Zoning Regulations

In March 2002, while the appeal of the variance decision was pending, the County Council enacted Bill 17-2002 ("An Act concerning Wireless Telecommunications Towers – Setbacks"). The stated purpose of the act was to "revis[e] the setback requirements for wireless telecommunications towers" by repealing and reenacting § 426.6.A of the BCZR.

³ In general, permitted uses of R.C.20 property include residential uses as well as natural resources, agricultural, recreational, institutional, and other public or quasi-public uses. *See* BCZR § 1A05.2. A special exception is required to use R.C. 20 property for a wireless telecommunications tower. *See* BCZR §§ 1A05.2.C.8, 426.5.D.

As amended, the regulation provided:

§ 426.6 Setback requirements for wireless telecommunications towers.

A. Setbacks

1. A tower shall be set back at least 200 feet from any other owner's residential property line.
2. A structure housing equipment for a tower shall meet the minimum setback requirements from any other owner's property or zone line.

The amendment took effect on May 5, 2002. In effect, the amendment simplified the setback requirements by combining subsections (1) through (3) into a single subsection. Those previous subsections had drawn distinctions between towers that were located in residential zones, towers that were located in transitional zones, and towers that were located in medium or high-intensity commercial zones. In each instance, however, the previous subsections permitted the tower if it were set back at least 200 feet from either a "residential property line" (in the case of a tower in a residential zone) or a "residential zone line" (in the case of a tower outside of a residential zone). Perhaps because the laborious distinctions were largely immaterial, the 2002 amendment replaced the three subsections with a single, new subsection that required towers, wherever they were located, to be set back at least 200 feet from a "residential property line."

On May 7, 2002, two days after the adoption of the amended setback requirements, the Baltimore County Department of Environmental Protection and Resource Management requested that Sprint change its site plan to minimize its environmental impact on nearby

bodies of water. Subsequently, Sprint revised its site plan, by relocating the proposed tower 60 feet to the east. Sprint submitted a revised variance request to the Board of Appeals, referring to the new setback regulations as they had been amended and renumbered by Bill 17-2002. With the administrative appeal still pending, Sprint then constructed the tower at its own risk.

D. Reversal of Order Granting Variances ("Back River P")

The Baltimore County Board of Appeals conducted a de novo hearing on Sprint's variance petition on September 25, 2002, and January 21, 2003. The Board issued an opinion on May 14, 2003, denying the requested variances. The Board rejected Sprint's arguments that "special circumstances or conditions exist[ed] that [were] peculiar to the land" (BCZR § 307.1) and that the property's shape made it "unique" under the meaning established by *Cromwell v. Ward*, 102 Md. App. 691 (1995). The Board specified that it was "not denying Sprint the right to erect a telecommunications tower in the . . . area," but "only saying that there may be a more appropriate piece of property where the tower could be erected and not require the variances that would be necessary on the instant property."

Subsequently, Sprint petitioned for judicial review of the Board's decision in the Circuit Court for Baltimore County. The circuit court affirmed the decision on February 5, 2004. Sprint appealed to the Court of Special Appeals, and this Court affirmed that judgment in an unreported opinion: *Sprint PCS v. Baltimore County*, No. 47, Sept. Term 2004 (filed Aug. 3, 2005).

Both the circuit court and this Court held that the Board's conclusion – namely, that the property possessed no “unique” characteristics that would justify variance relief – was supported by substantial evidence. Judge Adkins explained: “[I]f we were to hold that a variance must be granted, simply because a property cannot accommodate one otherwise permitted use without an area variance, we would be permitting ‘the exception to swallow the rule.’” *Sprint PCS*, slip op. at 30-31.

D. Subsequent Developments

Despite the denial of Sprint's request for a variance, the tower remained on the property over the years that followed while the owners attempted to cure the setback deficiencies by acquiring land from the adjacent properties. In February 2008, Back River LLC purchased portions of the properties to the north and to west of the tower. With the additional acreage (approximately 0.6 additional acres), the tower is now located more than 200 feet from the northern property line and more than 200 feet from the western property line. However, Back River LLC was unable to purchase any of the land to the south of the tower. The tower continues to stand approximately 75 feet from the southern property line.

In May 2008, Sprint filed a petition for special hearing to permit a transfer of the portions of the property zoned R.C. 20 (*i.e.*, the property that had been purchased from the two adjacent parcels) into the property zoned M.L.; the transfer, if approved, would have had the effect of incorporating the newly-acquired property into the commercially-zoned property, thereby moving the “residential property line” farther away from the tower. Sprint

also filed a petition for special exception to increase the height of the existing tower from 115 feet to 125 feet. At the parties' request, consideration of those petitions was postponed, and a hearing was never rescheduled.

In November 2008, the Baltimore County Department of Permits and Development Management issued a citation to Back River LLC “for violations under [BCZR] § 426.6.A.1, failure to provide and maintain [a] 200 ft. set back from another's residential property line[.]” In January 2009, the County's Code Enforcement Hearing Officer issued a civil penalty of \$9,200.00 for the zoning violation, which Sprint paid.⁴

E. Sprint's Amended Petition for Special Hearing (“Back River II”)

In May 2012, Sprint filed an amended petition for special hearing, in which Sprint requested additional relief: “To confirm that an existing cellular tower is in compliance with setback and all other applicable zoning regulations[.]”⁵ Both the Office of People's Counsel and Baltimore County opposed the petition.

⁴ Findings of fact from the Code Enforcement Hearing Officer indicate that Back River LLC had reached an “agreement with family members [who owned the property to the south] to purchase [the] final piece of real estate needed to meet [the] set back requirement,” but that the sale had not been finalized. The record here includes no indication that the sale and transfer were ever completed.

⁵ Beginning with the 2012 amended petition and continuing through this appeal, Sprint has been represented by Lawrence E. Schmidt. Mr. Schmidt was the Zoning Commissioner whose ruling was reversed by the Board of Appeals in the 2002 decision that both the circuit court and this Court later upheld.

The hearing was conducted before the Office of Administrative Hearings for Baltimore County.⁶ Sprint advanced the new theory that the location of the tower complied with BCZR § 426.6, as it had been amended in 2002 to require that a tower be “set back at least 200 feet from any other owner’s residential property line.” Sprint presented testimony that no residence was currently located on the residentially-zoned property 75 feet south of the tower. A witness for Sprint purported to opine that the zoning regulations require a 200-foot setback from an adjacent property line only if that property has actually been improved with a dwelling and is currently used as a residence.

In an opinion issued on August 2, 2012, the Administrative Law Judge denied Sprint’s petition. The ALJ determined that the placement of the tower did not comply with the zoning regulations and also that the doctrine of res judicata barred Sprint from obtaining special hearing relief after the prior denial of its variance petition.

Sprint appealed the denial of its petition to the Board of Appeals. Baltimore County and the Office of People’s Counsel jointly moved to dismiss the appeal on the grounds of res judicata. The Board of Appeals did not hear testimony, but instead accepted memoranda and considered oral arguments from the parties at a hearing on December 4, 2012. The Board

⁶ In 2010, the County Council established the Office of Administrative Hearings, and authorized the administrative law judges of that Office to conduct zoning hearings and to exercise the powers formerly vested in the Zoning Commissioner. See Baltimore County Code §§ 3-12-101 *et seq.*

considered exhibits, including copies of the 2002 legislation and this Court’s opinion in the prior variance case.

Sprint argued that it was not precluded from raising its claim, because (Sprint contended) it was advancing a legal theory (regarding the 2002 amendments) that had somehow not been available at the time of the administrative and judicial appeals from its variance petition from 2002 through 2005. Sprint’s primary contention was that, in the prior proceedings, “neither the Board of Appeals, the Circuit Court, nor the Court of Special Appeals considered the impact of [the] change in law” that occurred while the prior administrative appeal was pending in 2002.

In an opinion and order dated April 19, 2013, the Board of Appeals concluded that res judicata barred Sprint’s petition from bringing its petition for special hearing after the denial of the variance petition, because “the end result being [] sought as well as the underlying facts which are contained in both avenues of relief are the same[.]”⁷ The Board further rejected Sprint’s argument that a change of circumstances after the initial litigation justified an exception to the rule of res judicata.

After examining the 2002 amendment, the Board expressly rejected Sprint’s argument that the current version of the law “bears little resemblance” to the law in effect at the time of the initial variance proceeding before the Zoning Commissioner. Although the 2002

⁷ Although the Board’s opinion noted that Back River LLC had received a code enforcement citation for violating the setback requirements of BCZR § 426.6.A.1, the Board’s analysis focused only on the preclusive effect of the variance decisions.

amendment changed the setback requirement from 200 feet from the "residential zone line" in former § 426.6.A(3) to 200 feet from the "residential property line" in amended § 426.6.A(1), the Board reasoned that the change made no substantive difference:

The terms 'property line' and 'zoning line' do refer to different things, but here the distinction is not relevant because the tower is not set back 200' from either the RC 20 "zone line" or the "property line" of the adjacent parcel. . . . [E]ven if the new version of the law were deemed slightly changed, its current terminology still bars [Sprint] from its present request for relief no matter what label that request for relief has taken on.

Accordingly, the Board granted the County's motion to dismiss Sprint's appeal.

Sprint petitioned for judicial review of the Board's decision in the Circuit Court for Baltimore County. After another hearing, the circuit court issued an order on January 10, 2014, denying the petition for judicial review and affirming the decision of the Board of Appeals. Finally, Sprint filed a timely appeal of that judgment to this Court.

SCOPE OF REVIEW

Sprint has submitted four questions for our review, which we now quote verbatim:

- I. Did the Board properly apply the current setback requirements to the property at issue?
- II. Did the Board err in dismissing Sprint's petition for special hearing as barred by res judicata, considering that the Board refused to hear evidence necessary to analyze whether Back River I and Back River II present different causes of action?
- III. Does the Board's failure to conduct a de novo hearing and fully explain its reasons for its decision constitute reversible error?

- IV. Is the circuit court's failure to issue a written decision reversible error pursuant to the Land Use Article of the Annotated Code Section 4-405?

The fourth question concerns an isolated procedural issue; the first three questions are closely interconnected.

The scope of our review of an agency's decision is defined by the record. "[I]n examining the record made below, we do not engage in an independent analysis of the evidence, . . . and we proceed from the premise that an agency's decision is prima facie correct and presumed valid[.]" *Montgomery Cnty. v. Butler*, 417 Md. 271, 284 (2010) (citations and quotation marks omitted). Ordinarily, "[o]ur role in reviewing the final decision of an administrative agency, such as the Board of Appeals, is 'limited to determining if there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law.'" *Critical Area Comm'n for Chesapeake & Atl. Coastal Bays v. Moreland, LLC*, 418 Md. 111, 122-23 (2011) (quoting *Maryland Aviation Admin. v. Noland*, 386 Md. 556, 571 (2005)). "When reviewing the decision of a local zoning body, such as the Board, we evaluate directly the agency decision, and, in doing so, we apply the same standards of review as the circuit court[.]" *Trinity Assembly of God of Baltimore City, Inc. v. People's Counsel for Baltimore Cnty.*, 407 Md. 53, 77 (2008).

Judicial review of an agency action typically concerns the narrow question of whether or not the agency order can be sustained on the agency's findings and for the reasons stated by the agency. See *Armstrong v. Mayor & City Council of Baltimore*, 410 Md. 426, 443,

461-62 (2009) (quoting *Trinity Assembly*, 407 Md. at 77-78). In general, it is improper for the reviewing court to search the record for alternative grounds to sustain the agency's decision other than those reasons relied upon by the agency. See *Anselmo v. Mayor & City Council of Rockville*, 196 Md. App. 115, 128 (2010).

The Board summarized its conclusion as follows: "As this Board is not swayed by the Petitioners' argument that this case involves an exception to the doctrine of res judicata, and somehow involves the application of new law that would change the outcome of prior decisions in this matter, the Motion to Dismiss filed by Baltimore County and joined by People's Counsel is GRANTED." By its own terms, the decision currently under review is not a denial of special hearing relief, but a dismissal of Sprint's appeal on the grounds of res judicata.⁸ When the Board interpreted BCZR § 426.6, it did so within the narrow context of rejecting Sprint's argument that a significant "change in law" had occurred after the original litigation. Accordingly, it would be inappropriate for this Court to conduct an unbridled examination of the zoning regulations outside of the res judicata issue.

In *Seminary Galleria, LLC v. Dulaney Valley Improvement Ass'n, Inc.*, 192 Md. App. 719 (2010), this Court considered the question of "[w]hether an administrative agency's determination of the applicability of the doctrine of res judicata should be assessed pursuant

⁸ Sprint's brief evidently concedes as much, by correctly stating: "Although the Board analyzed the amendment of BCZR § 426.6 in its written opinion, its[] decision granting Baltimore County's Motion to Dismiss was based upon the application of the doctrine of res judicata." Appellants' Br. at 17.

to the substantial evidence standard of review[.]" *Id.* at 722. The *Seminary* case concerned the preclusive effect of the denial of a petition for special hearing (and alternatively for variances) on a subsequent petition to legitimize the same use on the same property. The appellant contended that an administrative ruling on res judicata was "a mixed question of law and fact" that required review for reasonableness under the substantial evidence test. *Id.* at 734.

Our opinion recognized that the default standard of review of an administrative agency's decision is narrow and highly deferential. *Id.* at 733. Nevertheless, we held that the issue of whether res judicata barred the second special hearing petition was a question of law and that it was appropriate to conduct a plenary, de novo review of the Board's legal conclusion on that issue. *Id.* at 734. In doing so, we also "reject[ed] the appellant's implied assertion that the agency was required to resolve any disputed factual issue in th[e] case in order to determine whether the doctrine of res judicata was applicable." *Id.* at 722-23.

Accordingly, we will consider de novo the following questions, which we consolidate and restate in this form:

- I. Did the Board err in dismissing Sprint's appeal from the denial of Sprint's petition for special hearing as barred by res judicata?
- II. Is the circuit court's failure to issue a written decision reversible error pursuant to Md. Code (2012), § 4-405 of the Land Use Article?

As explained below, the answer to both questions is, no. Because we determine that the Board's legal conclusion was correct and also that the circuit court was not required to

issue a written opinion, it is unnecessary to remand to either body to receive additional evidence or to provide more detailed reasoning.

DISCUSSION

I.

A. The Doctrine of Res Judicata

"[I]t is crystal clear that a final judgment of a circuit court affirming a decision of an administrative agency . . . is entitled to full preclusive effect." *Esslinger v. Baltimore City*, 95 Md. App. 607, 621 (1993); *see also Stavelly v. State Farm Mut. Auto. Ins. Co.*, 376 Md. 108, 116 (2003) (holding that, under principles of res judicata, earlier agency determination that is affirmed by Court of Special Appeals binds agency in later controversy between same parties).

A long and uninterrupted line of Maryland cases has established that a circuit court judgment affirming a decision by a local zoning body will bar a subsequent attempt to relitigate the matter, where there is only a slight distinction in the form of the second action. *See Fertitta v. Brown*, 252 Md. 594, 599 (1969) (prior determination that particular use of property violated zoning ordinance barred later action seeking declaratory relief to legitimize same use even if prior determination is unsound); *Alvey v. Hedin*, 243 Md. 334, 340 (1966) (appellants barred from second attempt to allege mistake in original zoning of land even though appellants were "attempting to get a different type of commercial classification than in the first case"); *Whittle v. Bd. of Zoning Appeals of Baltimore Cnty.*, 211 Md. 36, 48-49

(1956) (prior adverse ruling on permit application barred later permit application that attached additional conditions); *Bensel v. Mayor & City Council of Baltimore*, 203 Md. 506, 508-17 (1954) (denial of permit for nonconforming use barred subsequent action seeking to enjoin City from interfering with nonconforming use); *Mayor & City Council of Baltimore v. Linthicum*, 170 Md. 245, 249-50 (1936) (denial of prior application to allow proposed use of lot disposed of questions in subsequent application based on different theory); *see also Century I Condo. Ass'n, Inc. v. Plaza Condo. Joint Venture*, 64 Md. App. 107, 113-14 (1985) (earlier decision governing use exceptions acted as res judicata in later case involving building permit for same structure).

Generally, the doctrine of res judicata precludes a party from raising a claim in a second litigation "if there is a final judgment in a previous litigation where the parties, the subject matter and causes of action are identical or substantially identical as to issues actually litigated and as to those which could have or should have been raised in the previous litigation." *Cochran v. Griffith Energy Servs., Inc.*, 426 Md. 134, 140 (2012) (quoting *R & D 2001, LLC v. Rice*, 402 Md. 648, 663 (2008)). Res judicata, or claim preclusion, "ensures that courts do not waste time adjudicating matters which have been decided or *could have been* decided fully and fairly." *Anne Arundel Cnty. Bd. of Educ. v. Norville*, 390 Md. 93, 107 (2005) (emphasis in original). For this reason, the final judgment in a prior litigation will bind the parties even if a ruling in the original litigation is found later to be in error. *Powell v. Breslin*, 430 Md. 52, 64-65 (2013).

As the Court of Appeals has summarized, the doctrine of res judicata embodies three elements:

(1) the parties in the present litigation are the same or in privity with the parties to the earlier litigation; (2) the claim presented in the current action is identical to that determined or that which could have been raised and determined in the prior litigation; and (3) there was a final judgment on the merits in the prior litigation.

Rice, 402 Md. at 663.

In this case, Sprint concedes that the first and third elements are present: the parties to its special hearing petition are substantially identical to the parties to the original action, which concluded in a final judgment on the merits. Sprint argues only that the claim presented in its current action could not have been raised and determined in the prior litigation.

B. Identity of Claims

To determine whether a case involves the same claims that were or could have been decided in earlier litigation, Maryland has adopted the “transaction test,” set forth in § 24 of the Restatement (Second) of Judgments. *See Kent Cnty. Bd. of Educ. v. Bilbrough*, 309 Md. 487, 499-500 (1987). “Under the transaction test, what factual grouping constitutes a ‘transaction’ and what groupings constitute a series of connected ‘transactions’ are to be determined ‘pragmatically, giving weight to such considerations as whether facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties’ expectations or business understanding or

usage.’” *Boyd v. Bowen*, 145 Md. App. 635, 656 (2002) (quoting *Bilbrough*, 309 Md. at 498). Under this approach, “if the two claims or theories are based upon the same set of facts and one would expect them to be tried together ordinarily, then a party must bring them simultaneously.” *Norville*, 390 Md. at 109. The modern view is that the dimensions of a claim are measured in factual terms, “regardless of the number of substantive theories, or variant forms of relief flowing from those theories, that may be available to the [litigant]; regardless of the number of primary rights that may have been invaded; and regardless of the variations in the evidence needed to support the theories or rights.” *Bilbrough*, 309 Md. at 497-98 (quoting Restatement (Second) of Judgments § 24, cmt. a).

Under that approach, we must conclude that the claim raised in Sprint’s 2012 petition for special hearing (“[t]o confirm that an existing cellular tower is in compliance with setback and all other applicable zoning regulations”) is substantially identical to a claim that could have been raised and determined in the earlier litigation. When Sprint came before the Board in 2002, Sprint sought variances from the same setback regulations to permit retention of the same cell tower in the same location. The two petitions involve a single transaction: Sprint’s attempt to secure permission from the local zoning bodies to retain a wireless telecommunications tower on the property.

Appellees in this case have pointed to no Maryland authority specifically holding that a property owner’s petition seeking to confirm compliance with zoning regulations involves the “same claim,” for res judicata purposes, as an earlier petition seeking variances from the

same zoning regulations. Nonetheless, that holding is compelled by the reasoning under comparable circumstances in three cases: *Jack v. Foster Branch Homeowners Ass'n No. 1, Inc.*, 53 Md. App. 325, 334 (1982), which reasoned that, under the transaction approach, a request for modification, reduction, or waiver of zoning regulations presents the same cause of action as an earlier petition for variance from the same zoning regulations; *Esslinger*, 95 Md. App. at 618, which adopted the transaction approach and held that claims for declaratory relief to allow a nonconforming use on a property presented the same claim as earlier zoning action seeking a permit for the same use; and *Seminary Galleria*, 192 Md. App. at 741-42, which held that even though a property owner's second special hearing petition involved a different zoning regulation from the regulation involved in the first, both petitions involved the same claim for approval of the same use.

In *Jack*, this Court considered the preclusive effect of a prior denial of a variance petition. The property owner in that case, Dr. Joseph Jack, operated a professional office at his residence, but did not furnish the off-street parking spaces required by a local zoning ordinance. *Jack*, 53 Md. App. at 327. Jack's application for variances was ultimately denied in a judgment of a circuit court. *Id.* at 330. A year later, Jack attempted to legitimize the use of his property through a different provision of the local zoning ordinance, by applying for a modification, reduction, or waiver of the parking requirements. *Id.*

On review of a circuit court's denial of the second application on grounds of res judicata, this Court reasoned:

[I]f the transactional analysis espoused by the American Law Institute is applied, *Restatements (Second) of Judgments*, § 24 (1982), the appellees would prevail. Here, the "transactions" would be attempts to secure permission to operate with less than eight off-street parking spaces, and would be the same in each proceeding.

Jack, 53 Md. App. at 334. Nevertheless, we noted that the rule for determining the identity of claims was, at that time, the "same evidence" test. *Id.* (citing *MPC, Inc. v. Kenny*, 279 Md. 29 (1977)). Because this Court reasoned that the evidence necessary to sustain the variance action was not identical to the evidence necessary to support the second action, we held that res judicata did not bar Jack's claims. *Id.* at 334-36.

A few years later, however, the Court of Appeals endorsed the transactional approach when it decided *Bilbrough*. In adopting § 24 of the Restatement (Second) of Judgments, the Court expressed concern that "sole reliance on the same evidence or required evidence analysis to determine if the same claim is involved in two actions may improperly narrow the scope of a 'claim' in the preclusion context." *Id.* at 494.

Accordingly, the analysis evolved when this Court decided *Esslinger*. The property owner in that case, Donald Esslinger installed a free-standing satellite dish on his property. *Esslinger*, 95 Md. App. at 610. The City's Zoning Board denied three separate applications for a special exception to permit him to erect or retain the satellite dish. The denial of the first application was ultimately affirmed by a circuit court, and the denial of the last application was ultimately affirmed by this Court. *Id.* at 610-12. Later, Esslinger instituted an action pursuant to 42 U.S.C. § 1983, in which he alleged that the City's refusal to allow

him to erect and maintain a satellite receiving dish violated various constitutional rights. *Id.* at 613-14.

Much like the property owner in *Jack*, Esslinger argued that res judicata did not apply to the second action under the “same evidence” test. On review, however, we rejected that position, because the Court of Appeals had since approved of the transactional approach. *See Esslinger*, 95 Md. App. at 617 (citing *Bilbrough*, 309 Md. at 494, 498). We explained:

Under the “transaction” approach, it is clear that the claim in the 1987 zoning case is identical to the present claim. Indeed, it is undisputed that both arise from precisely the same transaction, *i.e.*, Esslinger’s attempt to place a free-standing satellite dish on his property. The facts of the two actions are thus related in “space, origin and motivation.” Both involve Esslinger’s request for and the Zoning Board’s denial of a conditional use permit to allow the same satellite dish on the same property. The only difference between the 1987 zoning action and the 1992 civil rights action is that the latter protests a 1989 Zoning Board decision not to grant Esslinger a conditional use permit so that he could *erect* the dish and the former involved a 1986 Zoning Board decision not to grant Esslinger a conditional use permit so that he could *retain* the same dish. Maryland courts have long recognized that such small differences in the posture of the zoning request do not prevent application of *res judicata*.

Esslinger, 95 Md. App. at 618-19 (footnote omitted).

Accordingly, we held that res judicata barred Esslinger’s claims for declaratory and injunctive relief, because he could have asserted those claims as the basis for overturning the original zoning decision. *Id.* at 620-24.

This Court further explained that “[b]oth § 24 of the Restatement and the Court of Appeals in approving the transactional test . . . make it clear that ‘[e]quating claim with

transaction’ is ‘justified only when the parties have ample procedural means for fully developing the entire transaction in the one action going to the merits to which the plaintiff is ordinarily confined.’” *Id.* at 619 (quoting *Bilbrough*, 309 Md. at 499). We reasoned that Esslinger could have obtained declaratory and injunctive relief from the circuit court in the earlier litigation, but that he could not have joined a claim for monetary damages to a petition for judicial review of the original zoning actions. *Esslinger*, 95 Md. App. at 623-24. “Accordingly, although Esslinger’s claims for injunctive and declaratory relief [were] barred by *res judicata*, his claims for damages [were] not barred by *res judicata* since the latter could not have been asserted in the circuit court action reviewing the initial zoning case.” *Id.* at 624.

In the instant case, the claim raised in Sprint’s petition is not a claim for monetary relief, but one for relief of a declaratory nature. *See Antwerpen v. Baltimore Cnty.*, 163 Md. App. 194, 200 (2005) (“[a] request for special hearing is, in legal effect, a request for a declaratory judgment”). Under the reasoning of *Esslinger*, Sprint possessed sufficient procedural means to pursue a declaratory remedy when the circuit court reviewed the earlier zoning decision. Thus, res judicata bars the attempt to seek declaratory relief upon the same legal theory that a party could have asserted during a circuit court’s review of a prior zoning case. *See Esslinger*, 95 Md. App. at 624.

This Court’s more recent opinion in *Seminary Galleria* fortifies the conclusion that the claims raised in Sprint’s two petitions are identical for the purposes of res judicata. In

that case, the property owner, Seminary, created 14 new parking spaces in a residentially-zoned portion of its property, without obtaining a permit. *Seminary Galleria*, 192 Md. App. at 723. Seminary then sought retroactive approval of the construction of the parking spaces, by filing a petition for special hearing and alternatively for a variance. *Id.* at 724. The Board of Appeals entered a final order denying the first request, and then Seminary filed a slightly different petition. *Id.* at 726-27. Seminary attempted to differentiate the new petition by introducing a new legal theory: that another section of the BCZR actually required Seminary to furnish the additional parking and that Seminary should be allowed to meet those minimum parking requirements to the extent possible. *Id.* at 727. The Board of Appeals held that Seminary was not precluded from bringing the second petition, and then it approved the parking plan. *Id.* at 729-30.

On review, this Court disagreed with that decision and held that Seminary was precluded from raising the claim in its second petition. We first concluded that the Board's final order in the first petition was entitled to preclusive effect, noting that "[t]he issue of whether the 14 parking spaces could remain was actually litigated" in the first litigation, and "[t]he ruling was necessary to – indeed, the essence of – the Board's decision" in the first case. *Id.* at 736. Despite the slight distinctions in Seminary's two requests, we reasoned that, "[i]n both cases, Seminary's request for relief was the retroactive approval of the same 14 spaces it had constructed in the [residential] zone." *Id.* at 741. The dispositive issue was that, "[w]ith reasonable diligence, Seminary could have discovered and asserted in support

of the original [] filing" the same evidence and legal theory that it raised in its later filing. *Id.* at 741-42. In other words, "Seminary's failure to accurately and contemporaneously survey the Galleria in connection with its first application to approve the additional spaces [was] not a reason to consider a second application seeking the same relief." *Id.* at 742.⁹

Sprint nonetheless contends that *res judicata* is inapplicable here. In support of that position, Sprint advances a number of overlapping arguments that fall into two general categories: (1) that, as a factual matter, the 2002 amendment to the applicable zoning regulations was *not* considered at the time of the earlier variance proceedings; and (2) that, as a legal matter, Sprint *could not* have asserted its current theory to obtain relief at the earlier proceedings. Sprint's first argument involves an erroneous characterization of the record; the second argument involves an erroneous interpretation of the law.

C. Prior Consideration of the Amended Regulation

During Sprint's original variance action, the Zoning Commissioner, the Baltimore County Board of Appeals, the Circuit Court for Baltimore County, and the Court of Special Appeals (in addition to each of the parties, including Sprint) all independently agreed that

⁹ The *Seminary* Court did not expressly apply either the "same evidence" test or the transactional approach. See *Seminary Galleria*, 192 Md. App. at 741. Instead, the Court focused on the availability of the evidence and legal theory during the earlier litigation. The Court reasoned that the result was controlled by prior case law that precludes successive zoning applications as a general matter in the absence of any substantial change in circumstances. See *id.* at 740 (citing *Alvey v. Hedin*, 243 Md. 334 (1966); *Chatham Corp. v. Beltram*, 243 Md. 138 (1966); *Woodlawn Area Citizens Ass'n v. Bd. of Cnty. Comm'rs for Prince George's Cnty.*, 241 Md. 187 (1966)).

the placement of the tower violated the existing zoning regulations. Each of these prior decisions "hinged on the presumption" (Appellants' Br. at 5) that the BCZR required that the tower be set back 200 feet from each of the three property lines to the north, west, and south. Sprint now posits that, under its new interpretation of the 2002 amendment, this presumption must have been mistaken.

The foundation of Sprint's position is Sprint's contention that "it is apparent that the Board of Appeals, the Circuit Court, and the Court of Special Appeals each failed to consider the impact of th[e] change in the law" that allegedly resulted from the 2002 amendment. Appellants' Br. at 9-10. Sprint suggests that those prior administrative and judicial determinations were reviewed under the language of the earlier, 1998 regulation that predated the 2002 amendment: "Given the absence of any specific language stating, 'the law has been amended since this case was instituted' or 'Bill 17-02 has been enacted'; it is apparent that this amendment to the law (and most importantly, its impact on this case) was never considered by any of the administrative and judicial bodies that considered Sprint's variance petition in *Back River I.*" Appellants' Br. at 10.

This theory of the record is fundamental to Sprint's appeal. It is also incorrect.

To illustrate how and why Sprint's theory is incorrect, some facts bear repeating. At the 2001 hearing before the Zoning Commissioner, Sprint originally requested variances under the zoning regulations that had been enacted by the 1998 bill. In particular, Sprint requested variances from § 426.6.A.3, which had required that, "if the [commercially-zoned]

property adjoins a residential zone, the tower shall be set back at least 200 feet from the residential zone line"; and a variance from § 426.6.A.4, which had required "a structure housing equipment for a tower shall meet the minimum setback requirements from any other owner's property or zone line."

While an appeal was pending before the Board of Appeals, Baltimore County amended § 426.6.A.4. The amendment, which took effect on May 5, 2002, re-codified former subsections A.1, A.2., and A.3 into a single standard in a new subsection A.1: "A tower shall be set back at least 200 feet from any other owner's residential property line." The amendment also renumbered former subsection A.4 (concerning setbacks from the equipment structures supporting a tower) as current subsection A.2.

After the effective date of the 2002 amendment, Sprint relocated the proposed tower site an additional 60 feet from the western property line. Subsequently, Sprint submitted a memorandum to the Board of Appeals that included its revised variance requests. The very first page of Sprint's 2002 memorandum explained: "the Baltimore County Council adopted Bill 17-2002 which revised BCZR § 426 such that the references within BCZR § 426.6.A for setbacks, which are the subject of Sprint's Petition for Variance, have been re-numbered." In the same memorandum, Sprint notified the Board of its requested variances from subsections A.1 and A.2, for reduced setbacks to the neighboring property lines, "in light of the revisions to BCZR § 426 pursuant to Bill 17-2002[.]" In other words, in Sprint's

memorandum to the Board of Appeals, Sprint presumed that the 2002 amendments governed the appeal.

On September 25, 2002, more than four months after the effective date of the 2002 amendment, the Board of Appeals conducted a hearing to consider Sprint's revised variance requests. During the administrative appeal, the Board was required to apply the updated regulations. See *Scrimgeour v. Fox Harbor, LLC*, 410 Md. 230, 240-41 (2009); *Layton v. Howard Cnty. Bd. of Appeals*, 399 Md. 36, 38 (2007) (re-affirming that, under the rule established by *Yorktown Corp. v. Powell*, 237 Md. 121 (1964), a "legislated change of pertinent law, which occur[ed] during the ongoing litigation of a land use or zoning case, generally, shall be retrospectively applied").¹⁰

The text of the Board's 2003 opinion, in which the Board rejected Sprint's variance request, confirms that the Board considered the setback regulation as it had been amended and renumbered in 2002. The Board specifically noted that Sprint had originally requested variances under subsections A.3 and A.4, but that Sprint itself later revised its plan and requested variances under the renumbered subsections A.1 and A.2. The Board's opinion includes no references to the term "residential zone line," from the 1998 version of the regulation. Instead, employing the language of the 2002 amendment, the Board referred only

¹⁰ The *Yorkdale* rule, which "provides for the retrospective application of changes to statutes that impact land use issues made during the course of litigation in land use and zoning cases" (see *Layton*, 399 Md. at 51), affects not only the Board of Appeals, but also the circuit court and the appellate courts. See *id.* at 69.

to the required 200-foot setbacks from each "property line" to the north, west, and south. In short, the Board did exactly what it was required to do in 2002: it evaluated Sprint's revised variance requests with reference to the setback requirements of the zoning regulation in effect at the time – the 2002 amendments.¹¹

In Sprint's 2003 petition for judicial review, Sprint also informed the circuit court of the 2002 amendment, and Sprint quoted in full the updated sub-sections 426.6.A.1 and A.2, under the heading "Applicable Zoning Regulations." Similarly, in Sprint's 2004 appellate brief in its unsuccessful appeal to the Court of Special Appeals, Sprint again stated its requests for variances from subsections A.1 and A.2 "in light of the revisions of BCZR § 426 pursuant to Bill 17-2002[.]" The appendix to Sprint's brief even included the full text of the regulation, expressly as amended by "Bill No. 17-2002."

This Court's unreported opinion, authored by Judge Adkins, accurately cited the number of the subsection at issue. *Sprint PCS*, slip op. at 8 (citing "BCZR 426.6.A.1," and explaining that, in contrast to the factors considered for standard setbacks under the BCZR, "a wireless telecommunications tower on such a site must satisfy a greater setback – at least

¹¹ In an unconvincing exercise in sophistry, Sprint now contends that the Board's use of the phrase "property line" reveals that the Board actually must have been considering the location of the "residential zone line" under the pre-2002 legislation. Sprint theorizes that Zoning Commissioner had (imprecisely) referred to a "property line" in describing the setback required from the "residential zoning line" under the pre-2002 requirements. Sprint then theorizes that, in referring to the "property line," the Board of Appeals was not employing the language of the 2002 amendment (which refers to the "residential property line"), but was replicating the Zoning Commissioner's erroneous formulation of the pre-2002 legislation. We reject Sprint's convoluted argument.

200 feet from any residential boundary"). Later, the opinion even quoted the amended language: "The ML zone permits cellular towers by right, subject to a 200 foot setback requirement 'from any other owner's residential property line.' BCZR § 426.6(A)(1)." *Sprint PCS*, slip op. at 31.¹²

Contrary to Sprint's contentions, the reality is that, during the *Back River I* proceedings from 2002 through 2005, the Board and the reviewing courts considered *only* the setback requirements of the amended regulation. The term "residential zoning line" from the repealed version of BCZR § 426.6.A.3 was absolutely inconsequential in the variance review proceedings from 2002 to 2005. The obvious reason why the Board and the courts found it unnecessary to extensively discuss "the impact of this change in law" (Appellants' Br. at 9-10) was that the law did not change during the course of those proceedings. There was no mistake or oversight here (at least none by the reviewing bodies).

Sprint unsuccessfully attempts to draw an analogy between this case and *Gertz v. Anne Arundel County*, 339 Md. 261 (1995). In that case, the Court of Appeals held that an adverse

judgment against Anne Arundel County in an earlier contempt action involving the County and a property owner did not bar the County from proceeding in a later injunctive action against the property owner, where the second action was based on an emergency ordinance passed after the first case. *Id.* at 270. The Court explained that the rule of res judicata did not apply: "When the contempt action was litigated, the County had no right to proceed against Gertz under the Ordinance because it had not yet been enacted." *Id.* In the instant case, by contrast, Sprint had every right to raise claims based on the regulation that took effect several months before the de novo hearing. More precisely, from 2002 through 2005, Sprint did in fact bring a claim based on the amended regulation.

In sum, Sprint alleges that each of the administrative and judicial bodies that denied its variance petition in 2003, 2004, and 2005 erroneously "applied the old law when analyzing the variance issue." Appellants' Br. at 11. Sprint stakes out that position even though Sprint had revised its variance request to reflect the current law, even though Sprint informed each reviewing body of the 2002 amendment while contending that variances were needed, even though none of the written opinions applied the repealed subsection 426.6.A.3, even though none of those opinions used the term "residential zone line" or other language from that repealed sub-section, even though the Board and this Court both cited the amended subsection 426.6.A.1, and even though the Board and this Court employed the language of the 2002 amendment in referring to the required 200-foot setbacks from the three adjacent "property lines." Sprint's argument is, unarguably, incorrect.

¹² In its memorandum to the Board of Appeals in *Back River II*, Sprint incorrectly asserted that this Court failed to cite the language of the 2002 regulation. In the same memorandum, Sprint argued that this Court "mistakenly described the setback requirements as they existed under the law then in effect." Sprint now admits that this Court's opinion quoted the correct regulation. Nonetheless, Sprint goes on to misquote this Court's earlier opinion, altering and re-ordering the Court's words in a thoroughly unpersuasive effort to establish that this Court was actually applying the pre-2002 requirements. Appellants' Br. at 10 n.6. Anyone with an elementary ability to read the English language could determine that this Court's earlier opinion proceeded on the supposition that the 2002 amendments, and not the earlier the legislation, governed the outcome of the case.

In the midst of making its res judicata determination in this case, the Board of Appeals accepted at face value Sprint's suggestion that the applicable regulation had changed after the 2002 proceedings. Nonetheless, the Board expressly rejected Sprint's argument that the 2002 amendment significantly changed the setback requirements as applied to the property. The Board concluded that the distinction between the two versions of the regulation was "not relevant because the tower is not set back 200' from either the RC 20 'zone line' or the 'property line' of the adjacent parcel." The Board added: "even if the new version of the law were to be deemed slightly changed, its current terminology still bars [Sprint] from its present request for relief[.]"

Ordinarily, a degree of deference should be accorded to an administrative agency's interpretation and application of the statute that it is tasked with administering. *See Bd. of Physician Quality Assurance v. Banks*, 354 Md. 59, 68-69 (1999). Specifically, the Court of Appeals has recognized that the Baltimore County Board of Appeals has considerable expertise in interpreting the BCZR. *Marzullo v. Kahl*, 366 Md. 158, 173 & n.11 (2001); *see id.* at 173-74 (holding that Court of Special Appeals erred by failing to give proper deference to Board's presumed expertise in construing the BCZR). For this reason, the Office of People's Counsel argues that this Court should uphold the Board's decision by deferring to the Board's interpretation of the BCZR amendment. On the other hand, Sprint asserts that the Board's interpretation of the regulations deserves no deference and, in any event, that a

remand is needed to allow the Board to re-analyze "the question of whether the phrase 'residential property line' amounts to a material change" in law. Appellants' Br. at 31.

The answer to both parties is that there was no change in the applicable law between the 2002 review proceedings and the current action. It was unnecessary for the Board to analyze the difference between the 1998 language and the 2002 language, because the 1998 language was never an issue in the prior administrative and judicial appeals. Accordingly, there is no reason to defer to the Board's answer to a legal question that should not have been considered, nor any reason to remand to allow the Board to provide a more detailed explanation on this inconsequential issue.

D. Availability of Sprint's New Legal Theory at Earlier Proceedings

The applicable law has not changed since the Board of Appeals reviewed Sprint's revised variance requests in 2002. Some time in the past decade, however, Sprint retained a new attorney and developed a new theory of that regulation. Sprint now contends that it could not have presented this argument to the Board in *Back River I*. Before analyzing whether Sprint could have asserted this claim in the earlier proceeding, it is necessary to describe, briefly, Sprint's current theory.

In 2002, the proposed site of the tower was within 200 feet of each of the property lines to the north, west, and south. These three property lines coincided with the zoning lines, which divided the commercially-zoned (M.L.) land from the adjoining residentially-zoned (R.C. 20) land. The 2002 amendment revised the language of the applicable setback

requirements from "the tower shall be set back at least 200 feet from the residential zone line" (former BCZR § 426.6.A.3), to "[a] tower shall be set back at least 200 feet from any other owner's residential property line." BCZR § 426.6.A.1.

Sprint contends that BCZR § 426.6.A.1, under its plain meaning, incorporates a "residential use requirement." Sprint argues: "The clear purpose of the amended regulation was to keep cell towers away from dwellings. A 200 foot setback is required only when property within 200 feet of a tower is owned by another *and has a dwelling thereon*." Appellants' Br. at 14. Under this interpretation, the regulation does not require that a tower be set back any distance from an adjoining residentially-zoned property, as long as no one currently resides in a dwelling on that property.¹³

Sprint further asserts that, at the time of the review of its variance petition, the neighboring R.C. 20 properties to the north and west were vacant, but the property to the south was improved with a dwelling. In addition, Sprint proffered to the Board of Appeals in *Back River II* that, if it had been permitted to adduce evidence, its witnesses would have testified that the dwelling no longer stands on the property to the south. The Board took no testimony and made no factual findings on this disputed fact. Because the Board purported

¹³ Sprint has drawn our attention to a pair of administrative decisions issued by the Deputy Zoning Commissioner for Baltimore County, which Sprint argues support its interpretation of BCZR § 426.6.A.1. One decision was expressly limited to the facts of the subject property, while the other decision involved split-zoned property. Even if these decisions were indistinguishable, we would see no reason why the Board of Appeals, let alone this Court, would be bound to follow them.

to dismiss an appeal after considering only legal issues, we shall assume, *arguendo*, that Sprint made accurate representations to the Board about the existence of the house on the southern property. *See Antwerpen*, 163 Md. App. at 203 (explaining that, where Board of Appeals ruled only on motion to dismiss and did not take evidence, this Court would assume that appellant's proffer to Board was correct).

Moreover, we shall take no position here on the correctness or incorrectness of Sprint's interpretation of BCZR § 426.6.A.1. The only relevant issue for our analysis is whether Sprint could have made the legal argument during the earlier proceeding. Under Sprint's theory, there was only one adjacent "residential property line" in 2002, the property line south of the tower. No setbacks would have been required from the property lines of the unimproved, residentially-zoned properties to the north and west of the tower. Thus, through only an ordinary degree of diligence (indeed, simply by examining the regulation and the site plan), Sprint could have realized that, under what Sprint now calls the "plain meaning" of the regulation, two of the requested variances would no longer be needed. Because the property itself was approximately 223 feet wide, Sprint could have revised its proposal by relocating the tower more than 200 feet north of the southern residential property line. Finally, Sprint could have argued before the Board that, as an alternative to variance relief, the Board should determine that no setbacks were required from the adjacent, vacant, residentially-zoned properties.

These two procedural means (revising the variance requests in light of the amended regulations and asking the Board to determine that variances were not legally necessary under the regulations) were not only available to Sprint. Sprint actually employed both mechanisms after the effective date of the amendment. When Sprint submitted its 2002 memorandum to the Board, Sprint revised its variance requests "in light of the revisions to BCZR § 426 pursuant to Bill 17-2002." At the same time, Sprint also argued that "setback variances for the equipment cabinets [were] not legally necessary since they [did] not qualify as 'structures' . . . as that term is defined by the BCZR." There is no merit to Sprint's contention that "treating the facts as separate trial units would not [sic] conform to the party's expectations because [Sprint's] rights under the new law could not have been litigated in the initial action." Appellants' Br. at 24.

Sprint argues here that it did not possess the procedural means to change its theory in the context of a *de novo* review of the variance petition. Sprint submits: "Although the Board's hearing was a *de novo* proceeding, the new theory (special hearing) could not have been considered because of the relief sought (variance) in the case then at issue." Appellants' Br. at 22. Sprint further argues that the transaction approach cannot be applied to this case, because (Sprint claims) it lacked the means to obtain relief during review of the variance petition. Appellants' Br. at 18-19.

In making these arguments, Sprint conflates the relief requested with a particular process to obtain that relief. The specific remedy requested in Sprint's 2012 petition was not

the hearing itself, but official confirmation that certain setbacks were not required from adjacent, unimproved properties. If Sprint believed that the language of the 2002 amendment somehow eliminated some of the setback requirements from adjacent properties, Sprint could have and should have presented those arguments in the earlier proceeding so that the Board could have resolved all issues in a single piece of litigation.¹⁴

Sprint attempts to place the issue under a technical lens rather than a pragmatic one, by contending: "Petitioners could not have been permitted to introduce a new petition for special hearing when only a petition for variance was under consideration during the appellate proceedings at the Board." Appellants' Br. at 22-23. Sprint attempts to distinguish *Cassidy v. Cnty. Bd. of Appeals of Baltimore Cnty.*, 218 Md. 418 (1958). In *Cassidy*, the Court of Appeals rejected an appellant's argument that the County Board of Appeals lacked jurisdiction to grant a special exception to a property owner because the public notice had mentioned only reclassification of the property. *Id.* at 421-25. The Court reasoned that, despite different standards of proof in the two petitions, the actual notice to the public substantially complied with the requirements, because the method of notice for both types

¹⁴ There are many possible reasons why Sprint did not make such an argument. Perhaps the interpretation did not occur to Sprint's attorneys at the time, or perhaps the attorneys considered that interpretation to be untenable. Perhaps they saw no benefit in moving back the boundaries of the unoccupied residential properties on the north and the west, because Sprint had already constructed the tower, at its own risk, 75 feet from the (then-occupied) residential property to the south. Whatever Sprint's reasons for declining to present this theory at the time, those restrictions were self-created, and not imposed by the agencies or the courts.

of petition was identical, and because the notice clearly apprised the public of the character of the proposed action. *Id.* at 424-25.¹⁵

Sprint argues that *Cassidy* should be distinguished. Sprint contends that the only way to confirm whether or not the BCZR required setbacks from unimproved properties was through a petition for special hearing, but that additional public notice would have been required before granting that relief. But even assuming that additional notice would have been required for Sprint to introduce its theory, such an obstacle was purely temporary. Given the four months that elapsed between the effective date of the amendment in May 2002 and the Board's de novo hearing, Sprint had ample time to cure any defective notice. At most, the Board would have been required to post additional notice on the property and to publish notice in two newspapers of general circulation for 15 days before hearing the matter. *See* BCZR § 500.7.

Neither the Baltimore County Zoning Regulations nor the Rules of Practice and Procedure issued by the Baltimore County Board of Appeals outline a specific procedure for amending a petition at the Board level. If Sprint had argued that the 2002 zoning amendment drastically changed the nature of the setback requirements at issue in the case, then the Board

¹⁵ Although Sprint mentioned the issue of public notice in a single page of its appellate brief, almost all of the substance of Sprint's argument on this issue was first presented in a 12-page section of a reply brief. This Court has no obligation to address the additional arguments that were not presented in the original brief. *See, e.g., Chang v. Brethren Mut. Ins. Co.*, 168 Md. App. 534, 550 n.7 (2006); *see also May v. Air & Liquid Systems Corp.*, 219 Md. App. 424, 440 & n.12 (2014).

could have selected an appropriate course of action: dismissing the case without prejudice to allow a new petition to be filed, remanding the case back to the Zoning Commissioner, staying the appeal to allow the Zoning Commissioner to conduct a special hearing before consolidating the appeal, or simply issuing notice and resolving the matter at the de novo hearing. We do not speculate as to which procedure would have been most appropriate. At most, a few additional steps would have been required before the exact remedy could be granted.¹⁶

In sum, the time to present Sprint's theory that the BCZR required no setbacks from the vacant, adjacent properties was during the 2002 litigation, not in the separate, multi-year litigation that Sprint commenced in 2012. It cannot be disputed that both of Sprint's claims seeking approval for the cell tower were so closely related in space, origin, and motivation that the claims formed a convenient trial unit. *See Esslinger*, 95 Md. App. at 618. Therefore, Sprint is precluded from bringing substantially the same claim that the Board and the reviewing courts could have resolved in the earlier litigation, if only Sprint had presented its argument at that time. *See Seminary Galleria*, 192 Md. App. at 741-42 (holding that res judicata barred special hearing petition, because "[w]ith reasonable diligence, [petitioner]

¹⁶ As explained previously, in *Esslinger*, 95 Md. App. at 623-24, this Court held that res judicata bars a litigant from raising claims for declaratory relief based upon legal theories that he or she could have asserted in a prior judicial review of an administrative decision. *Esslinger* focused on the circuit court's power to grant that particular remedy, rather than the Board's power. Thus, even if the Board in 2002 could not have granted special hearing relief, the circuit court could have granted equivalent declaratory relief in 2003.

could have discovered and asserted in support of the original [] filing its current argument”); *see also Alvey*, 243 Md. at 340 (res judicata barred second rezoning application “because any of the testimony relied upon in the [second] case as to this question could and should have been presented in the first case”); *Whittle*, 211 Md. at 49 (res judicata barred second rezoning application because “all the information which could have been produced should have been produced [in the first case] and the second case cannot be decided on testimony whi[c]h might have been introduced in the first case”); *Linthicum*, 170 Md. at 249 (holding that prior judgment regarding proposed use of property “dispose[d] of all questions [] presented [in second case], for they were all involved in the general question of exclusion of use, whether they were actually raised or not”).

II.

A. Issuance of Written Opinion by Circuit Court

Sprint’s final contention is that the circuit court erred when it affirmed the decision of the Board of Appeals without issuing a written opinion. Sprint directs our attention to § 4-405(a) of the Land Use Article, which mandates that a circuit court must “file a written order and opinion embodying the reasons for its decision” after conducting judicial review of certain zoning decisions by a board of appeals. Sprint further argues that the circuit court’s order failed to include its reasons, and thus that the case should be remanded with instructions that the circuit court issue a separate opinion.

These contentions are misguided. As the Office of People’s Counsel correctly points out, the provision cited by Sprint is inapplicable to this case. Baltimore County is a charter county that has adopted home rule under Article XI-A of the Maryland Constitution. *See, e.g., Hope v. Baltimore Cnty.*, 288 Md. 656, 659-60 (1980); *see also Falls Rd. Cmty. Ass’n, Inc. v. Baltimore Cnty.*, 437 Md. 115, 136, 141 n.28 (2014). Section 4-405(a) of the Land Use Article is codified within a division that expressly does not apply to zoning matters in charter counties. *See* Md. Code (2012), § 1-401(a) of the Land Use Article.¹⁷

Judicial review over zoning cases in a charter county is governed by the Express Powers Act, currently codified in Title 10 of the Local Government Article. Under that Act, each charter county is authorized to establish a board of appeals with jurisdiction over zoning exception cases and other matters. *See* Md. Code (2013 Repl. Vol.), Local Government Art., § 10-305(a)-(b). In such cases, the county board of appeals is required to file an opinion that must include factual findings and the grounds for the decision. *Id.* § 10-305(c). There is no corresponding requirement that the circuit court issue its own separate opinion when reviewing a decision by a board of appeals. *See id.* § 10-305(d).

In addition, § 10-324(a) of the Local Government Article empowers a charter county to enact local laws providing for the right to seek review in the circuit court of any other

¹⁷ Section 1-401 of the Land Use Article is titled “Charter counties; limited application of division.” Subsection (a) reads: “General limited application. Except as provided in this section, this division does not apply to charter counties.” Subsection (b) lists a number of exceptions (*i.e.* certain provisions that do apply to charter counties), but that list does not include § 4-405.

matter arising under local zoning laws. Section 604 of the Baltimore County Charter grants parties a right to obtain judicial review of decisions of the board of appeals by appealing to the circuit court. These provisions include no requirement that the circuit court file a separate opinion when reviewing zoning cases.

Sprint commenced the instant case by filing a petition for special exception and special hearing in 2008. The administrative law judge ultimately considered only the petition for special hearing, and then Sprint appealed to the county board of appeals and to the circuit court. Neither § 10-305 nor § 10-324 of the Local Government Article requires that the circuit court must embody its reasons in a written opinion. Thus, the circuit court's order affirming the decision of the board of appeals was not deficient. Sprint's request for a remand to the circuit court has no statutory basis.

CONCLUSION

For the reasons stated in this opinion, we affirm the judgment of the circuit court, which affirmed the decision of the Board of Appeals. Our ruling is based upon a de novo legal conclusion that, even if Sprint's factual proffers to the Board were accurate and even if Sprint's interpretation of the zoning regulations were correct, res judicata would still bar Sprint's present claim. Accordingly, there is no reason to remand for further proceedings to resolve any remaining factual or legal dispute. See *Seminary Galleria*, 192 Md. App. at 723, 742 (affirming circuit court's judgment reversing Board's zoning decision on grounds of res

judicata, without remand); *Antwerpen*, 163 Md. App. at 203-04, 210 (affirming circuit court's judgment affirming Board's decision on purely legal grounds, without remand).

**JUDGMENT OF THE CIRCUIT
COURT FOR BALTIMORE COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2495

September Term, 2013

BACK RIVER, LLC, ET AL.

v.

BALTIMORE COUNTY,
MARYLAND, ET AL.

Zarnoch,
Arthur,
Salmon, James P.
(Retired, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: December 30, 2014

This appeal is the second appeal before this Court concerning the retention of a wireless telecommunications tower in Baltimore County.

In 2002, landowner Back River LLC and its tenant Sprint PCS (hereinafter collectively referred to as "Sprint")¹ constructed a cell tower on a commercially-zoned property. In an administrative proceeding before the County Board of Appeals, Sprint requested variances to permit noncompliance with a local zoning ordinance that required the tower to be "set back at least 200 feet from any other owner's residential property line." Baltimore County Zoning Regulations § 426.6.A.1. The Board rejected that request, a circuit court affirmed the decision, and this Court ultimately affirmed the judgment in an unreported opinion: *Sprint PCS v. Baltimore County*, No. 47, Sept. Term 2004 (filed Aug. 3, 2005).

In 2012, Sprint filed a petition for special hearing, asserting a new legal theory under which the existing tower was actually in compliance with the setback regulations. An administrative law judge ruled otherwise and also held that the new petition was barred under the doctrine of res judicata. Sprint appealed to the Board of Appeals, which dismissed the appeal on res judicata grounds. The circuit court affirmed that decision. Because the Board's determination was legally correct, we also affirm.

¹ During the course of this series of zoning cases, Sprint merged with Nextel Communications in 2005 to form Sprint Nextel Corporation. See, e.g., *In re Sprint Corp. ERISA Litig.*, 443 F. Supp. 2d 1249, 1256 (D. Kan. 2006).

People's Counsel
CBA Exhibit

issue a written opinion, it is unnecessary to remand to either body to receive additional evidence or to provide more detailed reasoning.

DISCUSSION

I.

A. The Doctrine of Res Judicata

"[I]t is crystal clear that a final judgment of a circuit court affirming a decision of an administrative agency . . . is entitled to full preclusive effect." *Esslinger v. Baltimore City*, 95 Md. App. 607, 621 (1993); *see also Stavelly v. State Farm Mut. Auto. Ins. Co.*, 376 Md. 108, 116 (2003) (holding that, under principles of res judicata, earlier agency determination that is affirmed by Court of Special Appeals binds agency in later controversy between same parties).

A long and uninterrupted line of Maryland cases has established that a circuit court judgment affirming a decision by a local zoning body will bar a subsequent attempt to relitigate the matter, where there is only a slight distinction in the form of the second action. *See Fertitta v. Brown*, 252 Md. 594, 599 (1969) (prior determination that particular use of property violated zoning ordinance barred later action seeking declaratory relief to legitimize same use even if prior determination is unsound); *Alvey v. Hedlin*, 243 Md. 334, 340 (1966) (appellants barred from second attempt to allege mistake in original zoning of land even though appellants were "attempting to get a different type of commercial classification than in the first case"); *Whittle v. Bd. of Zoning Appeals of Baltimore Cnty.*, 211 Md. 36, 48-49

(1956) (prior adverse ruling on permit application barred later permit application that attached additional conditions); *Bensel v. Mayor & City Council of Baltimore*, 203 Md. 506, 508-17 (1954) (denial of permit for nonconforming use barred subsequent action seeking to enjoin City from interfering with nonconforming use); *Mayor & City Council of Baltimore v. Linticum*, 170 Md. 245, 249-50 (1936) (denial of prior application to allow proposed use of lot disposed of questions in subsequent application based on different theory); *see also Century I Condo. Ass'n, Inc. v. Plaza Condo. Joint Venture*, 64 Md. App. 107, 113-14 (1985) (earlier decision governing use exceptions acted as res judicata in later case involving building permit for same structure).

Generally, the doctrine of res judicata precludes a party from raising a claim in a second litigation "if there is a final judgment in a previous litigation where the parties, the subject matter and causes of action are identical or substantially identical as to issues actually litigated and as to those which could have or should have been raised in the previous litigation." *Cochran v. Griffith Energy Servs., Inc.*, 426 Md. 134, 140 (2012) (quoting *R & D 2001, LLC v. Rice*, 402 Md. 648, 663 (2008)). Res judicata, or claim preclusion, "ensures that courts do not waste time adjudicating matters which have been decided or *could have been decided* fully and fairly." *Anne Arundel Cnty. Bd. of Educ. v. Norville*, 390 Md. 93, 107 (2005) (emphasis in original). For this reason, the final judgment in a prior litigation will bind the parties even if a ruling in the original litigation is found later to be in error. *Powell v. Breslin*, 430 Md. 52, 64-65 (2013).

As the Court of Appeals has summarized, the doctrine of res judicata embodies three elements:

(1) the parties in the present litigation are the same or in privity with the parties to the earlier litigation; (2) the claim presented in the current action is identical to that determined or that which could have been raised and determined in the prior litigation; and (3) there was a final judgment on the merits in the prior litigation.

Rice, 402 Md. at 663.

In this case, Sprint concedes that the first and third elements are present: the parties to its special hearing petition are substantially identical to the parties to the original action, which concluded in a final judgment on the merits. Sprint argues only that the claim presented in its current action could not have been raised and determined in the prior litigation.

B. Identity of Claims

To determine whether a case involves the same claims that were or could have been decided in earlier litigation, Maryland has adopted the "transaction test," set forth in § 24 of the Restatement (Second) of Judgments. *See Kent Cnty. Bd. of Educ. v. Bilbrough*, 309 Md. 487, 499-500 (1987). "Under the transaction test, what factual grouping constitutes a 'transaction' and what groupings constitute a series of connected 'transactions' are to be determined 'pragmatically, giving weight to such considerations as whether facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations or business understanding or

usage.'" *Boyd v. Bowen*, 145 Md. App. 635, 656 (2002) (quoting *Bilbrough*, 309 Md. at 498). Under this approach, "if the two claims or theories are based upon the same set of facts and one would expect them to be tried together ordinarily, then a party must bring them simultaneously." *Norville*, 390 Md. at 109. The modern view is that the dimensions of a claim are measured in factual terms, "regardless of the number of substantive theories, or variant forms of relief flowing from those theories, that may be available to the [litigant]; regardless of the number of primary rights that may have been invaded; and regardless of the variations in the evidence needed to support the theories or rights.'" *Bilbrough*, 309 Md. at 497-98 (quoting Restatement (Second) of Judgments § 24, cmt. a).

Under that approach, we must conclude that the claim raised in Sprint's 2012 petition for special hearing ("[t]o confirm that an existing cellular tower is in compliance with setback and all other applicable zoning regulations") is substantially identical to a claim that could have been raised and determined in the earlier litigation. When Sprint came before the Board in 2002, Sprint sought variances from the same setback regulations to permit retention of the same cell tower in the same location. The two petitions involve a single transaction: Sprint's attempt to secure permission from the local zoning bodies to retain a wireless telecommunications tower on the property.

Appellees in this case have pointed to no Maryland authority specifically holding that a property owner's petition seeking to confirm compliance with zoning regulations involves the "same claim," for res judicata purposes, as an earlier petition seeking variances from the

same zoning regulations. Nonetheless, that holding is compelled by the reasoning under comparable circumstances in three cases: *Jack v. Foster Branch Homeowners Ass'n No. 1, Inc.*, 53 Md. App. 325, 334 (1982), which reasoned that, under the transaction approach, a request for modification, reduction, or waiver of zoning regulations presents the same cause of action as an earlier petition for variance from the same zoning regulations; *Esslinger*, 95 Md. App. at 618, which adopted the transaction approach and held that claims for declaratory relief to allow a nonconforming use on a property presented the same claim as earlier zoning action seeking a permit for the same use; and *Seminary Galleria*, 192 Md. App. at 741-42, which held that even though a property owner's second special hearing petition involved a different zoning regulation from the regulation involved in the first, both petitions involved the same claim for approval of the same use.

In *Jack*, this Court considered the preclusive effect of a prior denial of a variance petition. The property owner in that case, Dr. Joseph Jack, operated a professional office at his residence, but did not furnish the off-street parking spaces required by a local zoning ordinance. *Jack*, 53 Md. App. at 327. Jack's application for variances was ultimately denied in a judgment of a circuit court. *Id.* at 330. A year later, Jack attempted to legitimize the use of his property through a different provision of the local zoning ordinance, by applying for a modification, reduction, or waiver of the parking requirements. *Id.*

On review of a circuit court's denial of the second application on grounds of res judicata, this Court reasoned:

[I]f the transactional analysis espoused by the American Law Institute is applied, *Restatements (Second) of Judgments*, § 24 (1982), the appellees would prevail. Here, the "transactions" would be attempts to secure permission to operate with less than eight off-street parking spaces, and would be the same in each proceeding.

Jack, 53 Md. App. at 334. Nevertheless, we noted that the rule for determining the identity of claims was, at that time, the "same evidence" test. *Id.* (citing *MPC, Inc. v. Kenny*, 279 Md. 29 (1977)). Because this Court reasoned that the evidence necessary to sustain the variance action was not identical to the evidence necessary to support the second action, we held that res judicata did not bar Jack's claims. *Id.* at 334-36.

A few years later, however, the Court of Appeals endorsed the transactional approach when it decided *Bilbrough*. In adopting § 24 of the Restatement (Second) of Judgments, the Court expressed concern that "sole reliance on the same evidence or required evidence analysis to determine if the same claim is involved in two actions may improperly narrow the scope of a 'claim' in the preclusion context." *Id.* at 494.

Accordingly, the analysis evolved when this Court decided *Esslinger*. The property owner in that case, Donald Esslinger installed a free-standing satellite dish on his property. *Esslinger*, 95 Md. App. at 610. The City's Zoning Board denied three separate applications for a special exception to permit him to erect or retain the satellite dish. The denial of the first application was ultimately affirmed by a circuit court, and the denial of the last application was ultimately affirmed by this Court. *Id.* at 610-12. Later, Esslinger instituted an action pursuant to 42 U.S.C. § 1983, in which he alleged that the City's refusal to allow

him to erect and maintain a satellite receiving dish violated various constitutional rights. *Id.* at 613-14.

Much like the property owner in *Jack*, Esslinger argued that res judicata did not apply to the second action under the "same evidence" test. On review, however, we rejected that position, because the Court of Appeals had since approved of the transactional approach. *See Esslinger*, 95 Md. App. at 617 (citing *Bilbrough*, 309 Md. at 494, 498). We explained:

Under the "transaction" approach, it is clear that the claim in the 1987 zoning case is identical to the present claim. Indeed, it is undisputed that both arise from precisely the same transaction, *i.e.*, Esslinger's attempt to place a free-standing satellite dish on his property. The facts of the two actions are thus related in "space, origin and motivation." Both involve Esslinger's request for and the Zoning Board's denial of a conditional use permit to allow the same satellite dish on the same property. The only difference between the 1987 zoning action and the 1992 civil rights action is that the latter protests a 1989 Zoning Board decision not to grant Esslinger a conditional use permit so that he could *erect* the dish and the former involved a 1986 Zoning Board decision not to grant Esslinger a conditional use permit so that he could *retain* the same dish. Maryland courts have long recognized that such small differences in the posture of the zoning request do not prevent application of *res judicata*.

Esslinger, 95 Md. App. at 618-19 (footnote omitted).

Accordingly, we held that res judicata barred Esslinger's claims for declaratory and injunctive relief, because he could have asserted those claims as the basis for overturning the original zoning decision. *Id.* at 620-24.

This Court further explained that "[b]oth § 24 of the Restatement and the Court of Appeals in approving the transactional test . . . make it clear that '[e]quating claim with

transaction' is 'justified only when the parties have ample procedural means for fully developing the entire transaction in the one action going to the merits to which the plaintiff is ordinarily confined.'" *Id.* at 619 (quoting *Bilbrough*, 309 Md. at 499). We reasoned that Esslinger could have obtained declaratory and injunctive relief from the circuit court in the earlier litigation, but that he could not have joined a claim for monetary damages to a petition for judicial review of the original zoning actions. *Esslinger*, 95 Md. App. at 623-24. "Accordingly, although Esslinger's claims for injunctive and declaratory relief[were] barred by *res judicata*, his claims for damages [were] not barred by *res judicata* since the latter could not have been asserted in the circuit court action reviewing the initial zoning case." *Id.* at 624.

In the instant case, the claim raised in Sprint's petition is not a claim for monetary relief, but one for relief of a declaratory nature. *See Antwerpen v. Baltimore Cnty.*, 163 Md. App. 194, 200 (2005) ("[a] request for special hearing is, in legal effect, a request for a declaratory judgment"). Under the reasoning of *Esslinger*, Sprint possessed sufficient procedural means to pursue a declaratory remedy when the circuit court reviewed the earlier zoning decision. Thus, res judicata bars the attempt to seek declaratory relief upon the same legal theory that a party could have asserted during a circuit court's review of a prior zoning case. *See Esslinger*, 95 Md. App. at 624.

This Court's more recent opinion in *Seminary Galleria* fortifies the conclusion that the claims raised in Sprint's two petitions are identical for the purposes of res judicata. In

that case, the property owner, Seminary, created 14 new parking spaces in a residentially-zoned portion of its property, without obtaining a permit. *Seminary Galleria*, 192 Md. App. at 723. Seminary then sought retroactive approval of the construction of the parking spaces, by filing a petition for special hearing and alternatively for a variance. *Id.* at 724. The Board of Appeals entered a final order denying the first request, and then Seminary filed a slightly different petition. *Id.* at 726-27. Seminary attempted to differentiate the new petition by introducing a new legal theory: that another section of the BCZR actually required Seminary to furnish the additional parking and that Seminary should be allowed to meet those minimum parking requirements to the extent possible. *Id.* at 727. The Board of Appeals held that Seminary was not precluded from bringing the second petition, and then it approved the parking plan. *Id.* at 729-30.

On review, this Court disagreed with that decision and held that Seminary was precluded from raising the claim in its second petition. We first concluded that the Board's final order in the first petition was entitled to preclusive effect, noting that "[t]he issue of whether the 14 parking spaces could remain was actually litigated" in the first litigation, and "[t]he ruling was necessary to – indeed, the essence of – the Board's decision" in the first case. *Id.* at 736. Despite the slight distinctions in Seminary's two requests, we reasoned that, "[i]n both cases, Seminary's request for relief was the retroactive approval of the same 14 spaces it had constructed in the [residential] zone." *Id.* at 741. The dispositive issue was that, "[w]ith reasonable diligence, Seminary could have discovered and asserted in support

of the original [] filing" the same evidence and legal theory that it raised in its later filing. *Id.* at 741-42. In other words, "Seminary's failure to accurately and contemporaneously survey the Galleria in connection with its first application to approve the additional spaces [was] not a reason to consider a second application seeking the same relief." *Id.* at 742.⁹

Sprint nonetheless contends that *res judicata* is inapplicable here. In support of that position, Sprint advances a number of overlapping arguments that fall into two general categories: (1) that, as a factual matter, the 2002 amendment to the applicable zoning regulations *was not* considered at the time of the earlier variance proceedings; and (2) that, as a legal matter, Sprint *could not* have asserted its current theory to obtain relief at the earlier proceedings. Sprint's first argument involves an erroneous characterization of the record; the second argument involves an erroneous interpretation of the law.

C. Prior Consideration of the Amended Regulation

During Sprint's original variance action, the Zoning Commissioner, the Baltimore County Board of Appeals, the Circuit Court for Baltimore County, and the Court of Special Appeals (in addition to each of the parties, including Sprint) all independently agreed that

⁹ The *Seminary* Court did not expressly apply either the "same evidence" test or the transactional approach. See *Seminary Galleria*, 192 Md. App. at 741. Instead, the Court focused on the availability of the evidence and legal theory during the earlier litigation. The Court reasoned that the result was controlled by prior case law that precludes successive zoning applications as a general matter in the absence of any substantial change in circumstances. See *id.* at 740 (citing *Alvey v. Hedin*, 243 Md. 334 (1966); *Chatham Corp. v. Beltram*, 243 Md. 138 (1966); *Woodlawn Area Citizens Ass'n v. Bd. of Cnty. Comm'rs for Prince George's Cnty.*, 241 Md. 187 (1966)).

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WESTLAW

Distinguished by Warner v. Gorman, Md.App., April 29, 1994

Original Image of 616 A.2d 380 (PDF)

deLeon v. Slear
Court of Appeals of Maryland, December 10, 1994, 328 Md. 569 (Approx. 14 pages)

Jose S. DELEON et ux.

v.

Elaine SLEAR et al.

No. 122, Sept. Term, 1990.
Dec. 10, 1994.

Doctor filed defamation action against nurses. The Circuit Court, City of Baltimore, Thomas Ward, J., granted summary judgment to nurses. Appeal was taken. The Court of Special Appeals affirmed in part and reversed in part. Certiorari was granted. The Court of Appeals, Eldridge, J., held that: (1) nurses were in privity with employing hospital for purposes of applying doctrine of res judicata to state defamation claim after doctor had lost federal suit against hospital for allegedly defamatory statements made by hospital employees, and (2) under the Restatement of Judgments, 2d, § 24, the previous federal transactions and, thus, state suit against nurses involved same transaction or same series of transactions and, thus, both suits involved same claim or claims and state suit was barred under res judicata.

Judgment of Court of Special Appeals affirmed in part and reversed in part, and remanded.

West Headnotes (6)

Change View

- 1 Judgment Nature and Requisites of Former Adjudication as Ground of Estoppel in General
Elements of res judicata are that parties in present litigation should be same or in privity with parties to earlier case, second suit must present same cause of action or claim as first, and there must have been valid final judgment in first suit by court of competent jurisdiction.

46 Cases that cite this headnote

- 2 Judgment Matters Which Could Not Have Been Adjudicated
Under Restatement 2d of Judgments, § 51(1)(a), exception to bar of res judicata in second suit was based upon grounds which could not have been asserted in first suit did not apply to doctor's state defamation suit against employees of hospital after he was unsuccessful in federal defamation suit against hospital.

2 Cases that cite this headnote

- 3 Judgment Operation and Effect
Under Restatement 2d of Judgments, § 51(1)(b), exception to bar of res judicata to prevent defendant in second suit from benefiting from defense that was personal to first defendant did not apply to doctor's state defamation suit against nurses employed by hospital after he was unsuccessful in federal defamation suit against hospital and chief of surgery. Judgment against doctor in federal suit was based on alternative grounds apart from personal defenses of chief of surgery, and nurses in state suit had same defense of conditional privilege as chief of surgery in federal suit.

4 Cases that cite this headnote

SELECTED TOPICS

Foreign Judgments
Prior Federal Securities Fraud Action
Judgment
Conclusiveness of Adjudication
Federal Court Dismissal of State Law Civil Rights Claims
Offensive Use of Doctrine of Collateral Estoppel

Secondary Sources

P1900 INTRODUCTION
Mandated Health Benefits - COBRA Guide §1900
...Tab 1900 provides a comprehensive list of the court decisions in which COBRA figured prominently, and the general legal principles involved in these cases. The tab includes the following sections: 1. A...

APPENDIX II FEDERAL REGULATIONS

ADA Compliance Guide Appendix II
...Additionally, subscribers will find other federal regulations in this appendix that are relevant to ADA compliance. ADA architectural standards are reprinted in Appendix III of the Guide. A note about...

APPENDIX IV - COURT CASES

Coordination of Benefits Handbook Appendix IV
...The table of cases provided in this appendix synthesizes court decisions in which coordination of benefits (COB) issues figured prominently. While other cases may relate to a COB issue and, for that reason...

See More Secondary Sources

Briefs

Petition for a Writ of Certiorari
1997 WL 3549271
AMERICAN CITIGAS CO., Petitioner, v. VORYS, SATER, SEYMOUR & PEASE, Respondent.
Supreme Court of the United States Oct. 10, 1997

...FN* Counsel of Record Petitioner American Citigas Co. is the defendant in this case; respondent Vorys, Sater, Seymour & Pease is the plaintiff. Petitioner American Citigas Co. states, pursuant to Rule ...

Appendix to Petition for a Writ of Certiorari

2011 WL 4479805
National Federation of Independent Business, et al., Petitioners, v. Sebelius, et al., Respondents.
Supreme Court of the United States Sep. 28, 2011

...PUBLISHED Before DUBINA, Chief Judge, and HULL and MARCUS, Circuit Judges, DUBINA, Chief Judge, and HULL, Circuit Judge, PH1. This opinion was written jointly by Judges Dubina and Hull. Cf. Waters v. T...

Joint Appendix

2009 WL 2601362
Mac's Shell Service, Inc., et al., Petitioners, v. Shell Oil Products Company LLC, et al., Respondents. Shell Oil Products Company

- 4 Judgment Operation and Effect
Nurses were in privity with employing hospital for purposes of applying doctrine of res judicata to state defamation claim brought by doctor against nurses after doctor had lost federal suit against hospital for allegedly defamatory statements made by hospital employees, where nurses were employed by hospital and acting within scope of employment at time of alleged defamations.

6 Cases that cite this headnote

- 5 Judgment Persons Not Parties or Privies
Strict requirements of privity and mutuality for purposes of res judicata and collateral estoppel have been relaxed so that defendant in second suit not in privity with defendant in first suit may still invoke defense of res judicata or collateral estoppel if plaintiff had full and fair opportunity to litigate same claim in prior proceeding.

33 Cases that cite this headnote

- 6 Judgment Operation and Effect
Under Restatement of Judgments, 2d, § 24, previous federal defamation suit brought by doctor against hospital and state defamation suit against nurses in privity with hospital involved same transaction or same series of transactions and, thus, both suits involved same claim or claims and state suit was barred under res judicata; alleged defamatory statements in federal case and alleged defamatory statements in state suit occurred over same period of time, in same place, and had essentially same origin and motivation.

21 Cases that cite this headnote

Attorneys and Law Firms

**381 *571 Howard J. Schulman, Baltimore, for petitioners/cross-respondents.

Catherine A. Potthast (John G. Prendergast, Jr., Smith Somerville & Case, all on brief), Baltimore, for respondents/cross-petitioners.

Argued before MURPHY, C.J., and ELDRIDGE, RODOWSKY, McAULIFFE, CHASANOW and KARWACKI, JJ.

Opinion

ELDRIDGE, Judge.

In this case we shall hold that the doctrine of res judicata generally applies to bar a plaintiff from suing employees for defamation occurring within the scope of employment, when that plaintiff has already unsuccessfully sued their employer for defamation, and when the alleged defamatory statements in both cases were part of the same transaction or transactions.

I.
Dr. Jose deLeon is a surgeon who was employed by St. Joseph's Hospital in Baltimore, Maryland. Dr. deLeon came to the hospital in July 1980 as a third year resident after failing to be reapointed to residency programs at two other hospitals.

Between January 1983 and June 1983, during Dr. deLeon's period of residency, Elaine Slear, C.R.N.P., relayed complaints about Dr. deLeon's work to Dr. William L. Macon, IV, Chief of Surgery at the hospital. Nurse Slear was the supervising nurse practitioner at the hospital, and it was her duty to act as the liaison between the nurse *572 practitioners and Dr. Macon. Nurse Slear told Dr. Macon that other hospital physicians had asked that Dr. deLeon not be called to see their patients, that Dr. deLeon had failed to respond to an emergency call, and that Dr. deLeon was late for his scheduled surgeries causing patients to be anesthetized for unnecessarily long times.¹

Beginning July 1, 1983, the hospital hired Dr. deLeon as a "house surgeon" on a contractual basis. As a house surgeon, he was permitted to see only hospital patients under the supervision of other physicians. In January 1984, Dr. deLeon applied for medical staff

LLC, et al., Petitioners, v. Mac's Shell Service, Inc., et al., Respondents.
Supreme Court of the United States Aug. 21, 2009

...FN1. All references to "Dist. Ct. CM." are in the docket in No. 1:07-cv-11300-RVZ. 1. In response to the filing in Civil Action number 00-11295-RVZ, the plaintiffs in the above-captioned matter are the...

See More Briefs

Trial Court Documents

In re Mail Systems Liquidation, Inc.

2011 WL 4807802
In re: MAIL SYSTEMS LIQUIDATION, INC., et al., Debtors.
United States Bankruptcy Court, D. Delaware.
July 13, 2011

...FN1. The debtors in these cases, along with the last four digits of the federal tax identification number for each of the debtors, are Mail Systems Liquidation, Inc. (d/b/a Boone System, Inc.) (1423), H...

In re Duratek Precast Technologies, Inc.

2012 WL 530989
In re: DURATEK PRECAST TECHNOLOGIES, INC., Duratek Precast Structures, LLC, Debtors.
United States Bankruptcy Court, M.D. Florida.
Feb. 15, 2012

...Chapter 11 This matter comes before the Court on March 31, 2010 at 3:30 p.m. on the Debtors' Motion for Order Authorizing the Sale of Some or All of Debtors' Assets at an Auction Sale Pursuant to 11 U.S.C...

In re Schwab Industries, Inc.

2010 WL 6982545
In re: SCHWAB INDUSTRIES, INC., et al., Debtors.
United States Bankruptcy Court, N.D. Ohio.
Feb. 28, 2010

...FN1. The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's tax identification number are: Schwab Industries, Inc. (2487); Medina Cartage Co. (9373); Medina Supply Comp...

See More Trial Court Documents

People's Counsel
CBA Exhibit

7

hospital. At the same time, he signed a release which read in part:

Hospital, Inc.

Gifts: 100 cards.

Dr. deLeon's cases in advance.

privileges be denied.

of the decision to deny his application for parole.

appealed the Board's decision and was successful in pending his appeal.

after this incident. Dr. Mason was scheduled to hear Dr. deLeon's appeal. It

12, 1988, and was denied. Dr. deLeon then submitted a supplemental affidavit on May 22, 1985.

action in the United States market.

also, unsubstantiated and untrue.

Plaintiff did not have

the falsity thereof, as well as the falsity of the foregoing.

and spent the course of his residence in the

Federal Staff

defamatory.

by the Hospital, and are

and defamation by Nurse Broussard. The nurse and her husband were awarded \$100,000 for their marital relationship.

in which Dr. deLeon and his wife

Nurse specifically, cannot even allege that Nurse Slier told Dr. Mason that Dr. deLeon had "failed to respond to a patient in the hospital and that on December 17, 1983, nurse practitioners in the hospital had tried to find the Plaintiff for 45 minutes who was later found addressing Ochsner's case." Count two asserted that Nurse Slier told Dr. Mason and others that the Plaintiff had refused to respond to an evening call to come to the hospital operating room. Count three stated that she told Dr. Mason that Dr. deLeon "could not be reached while on call to cover the hospital for a period of several hours and particularly at 9:00 p.m., 11:15 p.m., and 12:00 a.m. and that a private attending physician finally had to be called to the hospital to evaluate the patient, who complained of chest pains." Count four alleged that Nurse Slier told Dr. Mason that Dr. deLeon "could not be reached by the night surgical nurse practitioner on several occasions." The allegedly defamatory statements appeared in the first four counts were the same as the complaints reviewed by Dr. Mason in the memorandum, telephone calls, and letters to Dr. deLeon in December 1983 and 1984.

Count five charged that Nurse Slier told Dr. Mason that "various physicians had given orders that the Plaintiff was not to be called to see their patients." Count six asserted that also told Dr. Mason that "she attempted to reach the Plaintiff for over an hour to initiate life-saving measures and when she could not reach the Plaintiff she stated to Dr. Tombs that the Plaintiff failed to respond and that Dr. Tombs should come to the hospital to handle emergency care and life-saving measures." In count seven, Dr. deLeon claimed that Nurse Slier told Dr. Mason that Dr. deLeon "would fail to appear to perform surgeries as he was scheduled to do and thereby caused patients to be anesthetized for over thirty-five (35) minutes without all surgeons 5078 and personnel being present." The allegedly defamatory statements in counts five, six and seven are the same as statements described in Nurse Slier's deposition in the federal suit.

Count eight alleged that Nurse Broussard told Dr. Mason that Dr. deLeon had been called "to see a patient in severe distress after the patient had fallen and struck his head near the right of his ear and complained of chest pain and that the Plaintiff had failed to respond to this emergency for several hours and suggested that the patient died as a consequence of the Plaintiff's inaction." This complaint was the subject of the May 1993 letter by Dr. Mason to Dr. deLeon.

Nurses Slier and Broussard moved for summary judgment and for sanctions on the grounds that the action was barred by res judicata, collateral estoppel, and the statute of limitations. The state court action was then stayed pending Dr. deLeon's appeal in the federal case to the United States Court of Appeals for the Fifth Circuit.

After the conclusion of the appeal in the federal case, the Circuit Court for Baltimore City (Ward, J.), by several orders, granted the defendants' summary judgment motion with respect to all ten counts of Dr. deLeon's amended complaint. On August 22, 1985, the court granted judgment for the defendants with regard to the first four counts on the grounds that they were barred by res judicata, collateral estoppel, and the statute of limitations. In the same order, the district court denied the defendants' motion for sanctions. On September 11, 1989, the court granted judgment for the defendants as to counts five, six, seven and eight and adopted the defendants' arguments that these 5079 counts were barred by res judicata and collateral estoppel. On October 3, 1989, the court granted judgment for the defendants on counts nine and ten.

Dr. deLeon timely appealed to the Court of Special Appeals, which, in an unreported opinion, affirmed in part and reversed in part. The intermediate appellate court stated that the trial court erred in granting summary judgment in favor of the defendants 5125 on the basis of res judicata and collateral estoppel. In the view of the Court of Special Appeals, none of the counts were barred by res judicata or collateral estoppel because the defendants in the present case were not the same as any of the claims in the federal case, the claims in the present case were not the same as any of the claims in the federal case, and because the issues to be litigated in the present case "were not mutually exclusively litigated in the earlier suit." Consequently, the Court of Special Appeals reversed the judgments for the defendants on counts five through ten, as the judgments on those counts had been based solely on principles of res judicata and collateral estoppel. The Court of Special Appeals, however, agreed with the district courts' alternate holding that counts one through four were barred by limitations, and the intermediate appellate court affirmed the judgments for the defendants on those counts.

Dr. deLeon petitioned and Nurses Slier and Broussard cross-petitioned this Court for a writ of certiorari, and we granted both petitions. DeLeon v. Slier, 321 Md. 449, 553 A.2d 249 (1990). This issue raised concern whether the various counts were barred by res judicata,

collateral estoppel, and limitations. As we shall conclude that the district court correctly held that all counts were barred by res judicata, we shall not reach the parties' arguments with respect to collateral estoppel and limitations.

II.
In *Alley v. Alley*, 225 Md. 396, 398, 171 A.2d 82, 84 (1961), this Court set forth the traditional rule of res judicata as follows:

"5607 This doctrine of res judicata is that a judgment between the same parties and their parties is a final bar to any other suit upon the same cause of action, and is conclusive, not only as to all matters that have been decided in the original suit, but as to all matters which with propriety could have been litigated in the first suit...."

The rule is designed to avoid the "repetition and variation attending multiple lawsuits, the consequent waste of resources, and the undue reliance on judicial action by multiplying the possibilities of inconsistent decisions." *Murray International Freight Corp. v. Graham*, 315 Md. 543, 547, 555 A.2d 502, 503-504 (1989), quoting *Mortara v. United States*, 440 U.S. 147, 153-154, 59 S. Ct. 970, 973-974, 50 L.Ed.2d 210, 217 (1979).

1 The traditional principle of res judicata has three elements: (1) the parties in the present litigation should be the same or in privity with the parties to the earlier case; (2) the second suit must present the same cause of action or claim as the first; and (3) in the first suit, there must have been a valid final judgment on the merits by a court of competent jurisdiction. *Rowland v. Hunsley*, 230 Md. 223, 228, 577 A.2d 51, 54 (1990); *Sporn v. Goodman*, 317 Md. 49, 54, 582 A.2d 707, 709-710 (1990); *Carroll v. Board of Education*, 310 Md. 50, 57, 557 A.2d 227, 230 (1989); *Osada v. Disability Review Bd.*, 298 Md. 254, 263, 418 A.2d 205, 211 (1980); *MPC, Inc. v. Kenny*, 279 Md. 29, 32, 387 A.2d 486, 489-493 (1977); *Wheeler v. Boone*, 291 Md. 332, 341, 247 A.2d 380, 395 (1969); *Alley v. Alley*, 225 Md. 396, 398, 171 A.2d 82, 84; *Meyers v. Gordon*, 165 Md. 534, 538-539, 170 A. 183, 187-188 (1934).

Neither party disputes that the federal judgments are a valid final judgment on the merits by a court of competent jurisdiction. *See Meyer v. Boone*, *supra* (summary judgment has preclusive effect). Res judicata (Second of Judgments § 19, comment g (1980)) (summary judgment for the defendant is a valid and final judgment). Additionally, both parties recognize that the nurses were not parties to the 589 federal action. The arguments before us concerning res judicata have primarily centered on two questions: (1) whether the nurses were in privity with a party to the federal action so as to be entitled to avail themselves of the protection of res judicata, and (2) whether this case presents the same claim or claims which Dr. deLeon presented in the federal action.

A. Privity

This Court has not squarely decided whether an employee is in privity with the 588 employer for purposes of res judicata, where a plaintiff brings a tort suit for damages against the employer, based in the action against the employer, and then sues the employee for damages based upon tortious conduct occurring in the scope of employment and constituting the same "claim" as that provided in the earlier action. Numerous other courts have addressed the issue, however, and have concluded that res judicata bars the plaintiff's suit against the employee in this situation.

For example, in *Macey v. Forster*, 234 S. Ct. 81, 106 S.E.2d 895 (1989), a truck owner sued an individual whose automobile hit his truck. The automobile owner counterclaimed against the truck owner, alleging that the truck owner's employee had been negligent in driving the truck. The judgment on the counterclaim was for the employer truck owner. Thereafter, the automobile owner brought a separate tort suit against the employee. The Supreme Court of South Carolina framed the issue as follows (234 S. Ct. at 84, 106 S.E.2d at 897):

"Whether when one sues the master for personal injury, caused by the sole negligence of the servant, and, failing in such action, can he then bring another action against the servant, alleging the same act or negligence on the proximate cause of this injury and damage?"

"589 The court relied on decisions from other states in reaching its conclusion that the claim against the employee was barred by the judgment on the counterclaim in favor of the truck owner."

The Supreme Court of Arkansas in *Davis v. Perryman*, 225 Ark. 863, 868, 285 S.W.2d 844, 845-846 (1956), reached the same conclusion when it said that

"the cases from other jurisdictions are overwhelming in holding that an action like the present one cannot be maintained when a previous action by the same plaintiff against either the master or the servant for the same alleged act of negligence has been finally decided against the plaintiff in the Courts-State or Federal-of the same jurisdiction, and in which the scope of employment of the servant has been conceded of all times by the master and the only questions have been those of negligence and contributory negligence."

A case very much in point is *Michelson v. Exxon Research & Engineering*, 629 F.Supp. 418 (W.D.Pa.1986), *aff'd*, 803 F.2d 1005 (3d Cir.1987). *Michelson*, like the case at bar, involved separate defamation actions, one against the employer in federal court and one against another employee in state court. In *Michelson*, the plaintiff was the subject of an unfavorable performance review memorandum by a co-worker. The co-worker sent the memorandum to his superiors, one of whom sent copies to other managers. After being discharged for his low performance rating, the plaintiff *Michelson* sued his former co-worker in state court for damages resulting from alleged defamation, misrepresentation and intentional interference with contractual relations. At the same time, *Michelson* filed in federal court a suit against the supervisor and the corporate employer for damages based on alleged defamation, misrepresentation, interference with contractual relations, and wrongful discharge. The state proceedings resulted in a judgment for the defendant. The defendants in the federal suit moved for summary judgment, raising the defense of *res judicata*. The federal court granted the motion for summary judgment, holding that the state court decision against the plaintiff precluded his claims for defamation and interference with contract. The court said (629 F.Supp. at 423):

"As to the identity of parties, defendant here faces liability for republication of allegedly defamatory material by an employee [the supervisor who was] not named in the state suit. As noted above, both [the co-worker and supervisor] were acting within the scope of their duties in their actions involving the memo. [The employer's] potential liability therefore is exclusively vicarious. Any judgment involving an employee for these acts would apply with the same effect to the employer, and vice versa. See ***387 Restatement (2d) of Judgments § 51 (1982). We thus find an effective identity of parties since both are bound by a judgment involving either of them."

In *Landess v. Schmidt*, 115 Wn.2d 186, 340 N.W.2d 213 (1983), the Wisconsin appellate court held that a judgment in favor of a corporation in an action for tortious interference with business relations barred a later claim against the corporation's employees for the employees' alleged conspiracy to destroy the plaintiff's business. The court held that the conspiracy counts presented the same claim as had been presented by the action for tortious interference with business relations, and that the prior judgment in favor of the corporation barred the subsequent action against the employees.

Other authorities are in accord with the holdings in the above-discussed cases. See, e.g., *Chibank N.A. v. Data Lease Financial Corp.*, 804 F.2d 1498 (11th Cir.1990); *Gregory v. Chehl*, 843 F.2d 111 (3d Cir.1988); *Lobert v. Moore*, 417 F.2d 714 (D.C.Cir.1969); *Emery v. Fowler*, 39 Mo. 328, 63 Am.Dec. 627 (1855); *Gladzewicz v. Donovan*, 277 Mass. 563, 179 N.E. 246 (1932); *Myhrum v. Park*, 193 Minn. 260, 258 N.W. 515 (1935); *Thirty Pines, Inc. v. Bersaw*, 92 N.H. 69, 24 A.2d 500 (1942); *Melchion v. Burkart*, 84 Ohio Law Abs. 287, 67 N.E.2d 373, 374 (Ohio Ct. of App.1948); *"584 Jenkins v. Atlantic Coast Line R. Co."*, 89 S.C. 408, 71 S.E. 1010 (1911); *Allen D. Vestal, Res Judicata/Preclusion* 113-117 (1977) ("If the judgment for the principal was grounded on a determination that no tort was committed, then the judgment should protect the agent").

The Restatement (Second) of Judgments, § 51 (1982), also reflects this position. Section 51 of the Restatement provides in pertinent part:

"If two persons have a relationship such that one of them is vicariously responsible for the conduct of the other, and an action is brought by the injured person against one of them, the judgment in the action has the following preclusive effects against the injured person in a subsequent action against the other.

(1) A judgment against the injured person that bars him from asserting his claim against the defendant in the first action extinguishes any claim he has against the other person responsible for the conduct unless:

(a) The claim asserted in the second action is based upon grounds that could not have been asserted against the defendant in the first action; or

(b) The judgment in the first action was based on the defense that was personal to the defendant in the first action."

In the case at bar, Dr. deLeon argues that the exceptions set forth in (a) and (b) of § 51(1) are applicable. The comments and cases under § 51 make clear, however, that the present case does not fall within either of these exceptions.

2 As Comment c under § 51 points out, the exception in (a) contemplates the situation where the second action against the employee involves a claim that was not and could not have been asserted in the first action against the employer. Comment c states in pertinent part:

"The injured person's claims against the active wrongdoer and the person vicariously responsible for the latter's conduct are sometimes only partially congruent. ***585 There may be a basis of liability that he can assert against one but not the other. The rule of claim preclusion is properly applied with respect to the claim that he has against them commonly but it should not apply to his independent claim against the obligor not sued in the first action. If the rule of claim preclusion were applied to that independent claim, the effect would be to compel a joinder of parties therein which by hypothesis he is not required to make."

An example of an independent claim within this subsection is given in Illustration 4:

"P purchases goods from R, a retailer, who purchased them from M, a manufacturer. P brings an action against M, contending that the goods failed to conform to the standard of quality required by products liability law. A judgment for M precludes an action by P against R ***388 based on products liability law but does not preclude an action against R based on breach of a contractual representation by R that the goods were fit for the particular purpose intended."

Another example is found in Illustration 5:

"P, an employee of M, is injured as the result of a blow from S, a fellow employee. P brings an action against S for assault, but judgment is for S. The judgment precludes an action by P against M based on M's vicarious responsibility for the acts of S but does not preclude P from seeking worker's compensation from M on the basis that the injury occurred in the course of his employment."

The illustrations under § 51 show that the exception in (a) contemplates allowing the plaintiff to bring the subsequent action only when there is actually a different claim. For the reasons set forth in Part II B of this opinion, Dr. deLeon does not assert an independent or different claim in his second action.

3 The exception set forth in (b) under § 51(1) of the Restatement is intended to prevent the second defendant from gaining the benefit of a defense that was personal to "586 the first defendant. Comment c states in relevant part as follows:

"So also his claim against one of the obligors may be subject to a defense that is not available to the other obligor. When such a defense has been interposed in the first action, a judgment against the injured person is not incompatible with his obtaining a judgment against the other obligor, any more than it would be if they were sued in the same action."

The personal defenses contemplated by exception (b) include statutory immunity and privilege if they were available to the defendant in the first suit but are not available to the defendant in the second suit. For example, Illustration 8 sets forth the following scenario:

"P brings an action against M, alleging that S committed assault while in M's employ. M defends on the ground that his liability, if any, is under the worker's

compensation law. A judgment for M does not preclude an action by P against S, unless under applicable law in such circumstances an employee is immune from suit by a fellow employee if the latter is covered by worker's compensation."

Dr. deLeon argues that the judgments in favor of the hospital and Dr. Macon were based on defenses of statutory immunity and privilege. It is true that both the federal district court and the Fourth Circuit held that Dr. Macon's statements were subject to conditional privilege under Maryland law. Nevertheless, as earlier pointed out, the federal courts alternatively based the judgments on other grounds.

Moreover, the decision of the federal courts concerning conditional privilege would seem to be fully applicable to the statements by Nurses Slear and Broussard. The Fourth Circuit held that Dr. Macon's statements were conditionally privileged under what is now Maryland Code (1981, 1991 Repl. Vol.), §§ 14-501(f) and 14-504(c) of the Health Occupations Article, which, *inter alia*, grants an immunity from liability to persons "for giving information to ... or *587 contributing to the function of a medical review committee. The Fourth Circuit alternatively held (871 F.2d at 1237-1238) that Maryland common law

"recognizes that communications arising in an employment context or by common interest in the subject matter are privileged. See, e.g., *General Motors Corp. v. Piskor*, 277 Md. 165, 352 A.2d 810 (1976); *Harehan v. Kelly*, 269 Md. 21, 305 A.2d 151 (1973); *Exxon Corp. v. Schoene*, 67 Md.App. 412, 508 A.2d 142 (1986). The privilege is particularly apt in the present context, since the privilege, along with others, arose by way of recognition of the desirable public benefit of encouraging uninhibited communication where a public or private duty may lie. See *Simon v. Robinson*, 221 Md. 200, 206, 154 A.2d 911, 915 (1959)."

In the context of this case, Nurses Slear and Broussard would appear to enjoy the same conditional privileges applicable to the information furnished by Dr. Macon. **389 Therefore, in this case we are not dealing with a "defense" that was personal to Dr. Macon but not enjoyed by Nurses Slear and Broussard. For this reason also, the case does not fall within exception (b).

4 5 We conclude that the nurses, by virtue of their employment relationship with the hospital, are in privity with the hospital for purposes of applying the doctrine of res judicata. They were employed by the hospital at the time of the alleged defamations, and it is undisputed that the nurses were acting in the scope of their employment. The basis for Dr. deLeon's federal court defamation action against the hospital was that the hospital, a corporation, was liable for defamatory statements allegedly made by its employees. For the reasons set forth in Part II B below, the claims against the hospital and the claims against the two nurses are the same. Under the previously discussed cases and other authorities, there is privity between the *588 nurses and the hospital.⁶

*589 B. Same Claim

In order for res judicata to be applicable, Dr. deLeon must be attempting to relitigate the same "claim" or "cause of action" in the second action as in the first.

In determining whether claims are the same for purposes of res judicata, we have in the past sometimes utilized a "same evidence" test. See *MPC, Inc. v. Kenry*, *supra*, 279 Md. at 33, 367 A.2d at 489. We have indicated, however, that the concept of a "claim" is broad. See, e.g., *Edmonds v. Lupton*, 253 Md. 93, 252 A.2d 71 (1969) (defining a "claim" as "a group or aggregate of operative facts giving ground or occasion for judicial action, as distinguished from the narrow concept of a 'cause of action'").

Recently, in **390 *Kent County Bd. of Educ. v. Bilbrough*, 309 Md. 487, 525 A.2d 232 (1987), we adopted the "transaction" test, as set forth in § 24 of the Restatement (Second) of Judgments, as the basic test for determining when two claims or causes of action are the same for purposes of res judicata. See also *Rowland v. Harrison*, *supra*, 320 Md. at 230 n. 2, 577 A.2d at 54 n. 2; *Shum v. Gaudreau*, *supra*, 317 Md. at 54-55, 552 A.2d at 710.

In *Kent County Bd. of Educ. v. Bilbrough*, *supra*, 309 Md. at 497-498, 525 A.2d at 237-238, Judge Rodowsky for the Court explained as follows (footnote omitted):

"Restatement (Second) of Judgments describes the current approach of courts to answering the same claim-separate claim conundrum in § 24, comment a, at 197:

The present trend is to see claim in factual terms and to make it coterminous with the transaction regardless of the number of substantive theories, or variant forms of relief flowing from those theories, that may be available to the plaintiff, regardless of the number of primary rights that may have been invaded; and regardless of the variations in the evidence needed to *590 support the theories or rights. The transaction is the basis of the litigative unit or entity which may not be split.

Consequently, the American Law Institute in § 24 of Restatement (Second) of Judgments has adopted the following standards for determining the 'Dimensions of "Claim" for Purposes of Merger or Bar-General Rule Concerning "Splitting"':

(1) When a valid and final judgment rendered in an action extinguishes the plaintiff's claim pursuant to the rules of merger or bar (see §§ 18, 19) the claim extinguished includes all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose.

(2) What factual grouping constitutes a 'transaction', and what groupings constitute a 'series', are to be determined pragmatically, giving weight to such considerations as whether the facts are related in time, space, origin or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations or business understanding or usage."⁶

In light of these principles, the Court in *Bilbrough*, 309 Md. at 500, 525 A.2d at 238-239, held that the claims there were separate because two separate transactions were involved. In reaching this conclusion, the Court pointed out that the two actions concerned different matters, that "the core of the activities complained of by the respondent in the two *591 actions occurred at different times," and that the activities occurred at different places.

6 Applying the factors set forth in *Bilbrough* and in § 24 of the Restatement to the instant case, however, compels the conclusion that the earlier suit against the hospital and the present suit involve the same transaction or the same series of transactions. With respect to whether the facts of each case "are related in time, space, origin or motivation" (§ 24(2)), both the alleged defamatory statements in the federal case and the alleged defamatory statements in the present case occurred over the same period of time, in the same place, and had essentially the same origin and motivation. In fact, to a great extent, the two lawsuits are based on the same alleged defamatory statements.

As earlier discussed, Dr. deLeon's federal court complaint broadly charged that he was defamed by "many statements, written and oral" by hospital personnel, during **391 both the period of "his residency training" and the period of his "house staff appointment," to the effect that his judgment and clinical skills were unsatisfactory and that he had been incompetent. The federal court complaint encompassed both the allegedly false conclusory opinions and determinations to this effect, "as well as the fals[e] ... underlying medical and other information upon which such opinions and publications were based." The federal complaint expressly included the "information offered in support of [the hospital's] conclusions" which was "procured by Dr. Macon" and was allegedly "false, unsubstantiated and distorted." The federal complaint, therefore, was in part based on the very same allegedly defamatory statements, given to Dr. Macon by Nurses Slear and Broussard, which are the subject of the present case. The alleged defamatory statements in this case not only were made at the same time, at the same place, and with the same origin or motivation, but they are the same as many of the statements on which the federal litigation was based.

Dr. deLeon, in his brief in this Court, argues that his focus in the federal case was upon the hospital's denial of *592 privileges and upon the statements made by Dr. Macon. Dr. deLeon argues that the issues in the federal litigation were whether Dr. Macon acted with malice or in bad faith, whether Dr. Macon was guilty of "egregious conduct," and whether Dr. Macon's statements were constitutionally protected or privileged. Dr. deLeon continues (brief, at 17):

"Here, by contrast, the essential and material facts are statements made by Slear and Broussard and their knowledge that their statements were false or made with a reckless disregard of the truth. The Defendants' alleged statements and publications in this case are different from those made by Dr. Macon, although Dr. Macon may have republished the statements of the defendants."

That Dr. deLeon in the federal case may have focussed on the hospital's final action and on Dr. Macon's statements, which is understandable as Dr. Macon was the only individual defendant named in that case, does not change the nature of the claims set out in the

federal complaint. The defamation count against the hospital in the federal action was not limited to the hospital's ultimate decision or the statements by Dr. Macon; in fact, the count against the hospital did not even mention Dr. Macon. The federal complaint generally referred to numerous written and oral defamatory statements on behalf of the hospital, as well as the underlying information on which the statements were based. To reiterate, the complaint filed in the United States District Court clearly embraced the statements by Nurses Slear and Broussard which are the subject of this state court suit.

Moreover, as previously noted, *supra* n. 4, after filing the complaint, the plaintiff in the federal case did not limit himself to the hospital's final decision or to the statements by Dr. Macon. As Chief Judge Harvey indicated for the federal district court, Dr. deLeon deposed a multitude of persons, including Nurses Slear and Broussard, in "a desperate effort to uncover evidence which might support his claims," but Dr. deLeon was "completely unsuccessful." In ruling on the defendants' motion for summary judgment, "593 Chief Judge Harvey in his memorandum opinion considered *inter alia* 'the deposition testimony of the many ... nurses who had contact with Dr. deLeon.'" Both Chief Judge Harvey's opinion and the Fourth Circuit's opinion (e.g., 871 F.2d at 1235-1236) discussed some of the very incidents recounted by Nurses Slear and Broussard and which furnish the grounds for the present state court action. Chief Judge Harvey also pointed out that the "[p]laintiff has sought to relitigate in this Court each and every controverted incident discussed before the various hospital bodies that considered his application."

It is obvious that the alleged defamation in the present case, i.e., the statements during 1983-1985 by Nurses Slear and Broussard to Dr. Macon, about incidents involving Dr. deLeon and relating to Dr. deLeon's professional fitness and competency, constituted an integral part of the "332 claims in the earlier federal litigation. The incidents recounted by the two nurses were largely the foundation for the actions taken by Dr. Macon and the hospital; they were the core of the federal suit. In addition, the principal damage allegedly resulting from the defamation in the present case was Dr. deLeon's being denied privileges at St. Joseph's Hospital and the harm to his career and reputation resulting therefrom. This was identical to the principal damage claimed in the federal case. *Cf. Kent County Bd. of Educ. v. Bilbrough*, *supra*, 309 Md. at 501, 504, 525 A.2d at 239-241. Furthermore, the federal courts' rulings on certain specific issues, such as the effect of the release signed by Dr. deLeon and conditional privilege under Maryland law, would appear to be dispositive in the present case.

Under the principles set forth by this Court in *Kent County Bd. of Educ. v. Bilbrough*, *supra*, the earlier federal suit and the present action both arose out of the same transaction or series of transactions. Consequently, they involved the same claim or claims. The Circuit Court for Baltimore City, therefore, correctly held that the principle of res judicata bars Dr. deLeon and his wife from relitigating the same claim or claims.

*594 JUDGMENT OF THE COURT OF SPECIAL APPEALS AFFIRMED IN PART AND REVERSED IN PART, AND CASE REMANDED TO THE COURT OF SPECIAL APPEALS WITH DIRECTIONS TO AFFIRM THE JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY. COSTS IN THIS COURT AND IN THE COURT OF SPECIAL APPEALS TO BE PAID BY THE PLAINTIFFS.

All Citations

328 Md. 569, 616 A.2d 380

Footnotes

- 1 Dr. deLeon denies that any of these incidents complained of actually occurred.
- 2 For convenience, Dr. deLeon and his wife collectively will hereinafter sometimes be referred to as "Dr. deLeon" or the "plaintiff."
- 3 Maryland Code (1974, 1989 Repl. Vol.), § 5-105 of the Courts and Judicial Proceedings Article provides that "[a]n action for ... libel, or slander shall be filed within one year from the date it accrues." Generally with regard to when actions accrue, see *Paffenberger v. Riser*, 290 Md. 631, 431 A.2d 677 (1981). As to when an action for defamation (i.e. libel or slander) accrues, see *Sears, Roebuck & Co. v. Uman*, 287 Md. 397, 412 A.2d 1240 (1980).
- 4 See, however, *McKinzie v. Baltimore and Ohio Rail Road Company*, 28 Md. 161 (1868).

- 5 Even if the hospital and the nurses were not deemed to be in privity, the result in the present case would not likely be different. This Court has relaxed somewhat the strict requirements of privity and mutuality, for purposes of res judicata and collateral estoppel, in situations where the plaintiff had a full and fair opportunity to litigate the same claim in the prior proceeding. In these instances, a defendant not in privity with a defendant to the first suit may invoke the defense of res judicata, *Pat Perusse Realty v. Lingo*, 249 Md. 33, 238 A.2d 100 (1968), or collateral estoppel, *MFC, Inc. v. Kenny*, 279 Md. 29, 367 A.2d 486 (1977). For detailed discussions of the rationale behind modifying the privity and mutuality requirements, see *Pat Perusse Realty v. Lingo*, *supra*, and *Lober v. Moore*, 417 F.2d 714, 716-717 (D.C. Cir. 1969). See also, *Blonder-Tongue v. University Foundation*, 402 U.S. 313, 91 S.Ct. 1434, 28 L.Ed.2d 788 (1971); *Bernhard v. Bank of America Nat. Trust & Sav. Ass'n.*, 19 Cal.2d 807, 122 P.2d 892 (1942); *Lukacs v. Kueszner*, 154 Ind.App. 452, 290 N.E.2d 125 (1972); *Schwartz v. Public Administrator*, 24 N.Y.2d 65, 298 N.Y.S.2d 855, 248 N.E.2d 725 (1969); *Behler v. Fletcher*, 257 Or. 1, 474 P.2d 329 (1970); *Olivero v. Broadway Hardware, Inc.*, 554 S.W.2d 185 (Tex. 1978); *Restatement (Second) Judgments*, § 29 (1980) (Reporter's note); Allen D. Vestal, *Res Judicata/Preclusion* (1977); Fleming James, Jr. and Geoffrey C. Hazard, Jr., *Civil Procedure*, sec. 11.24 (1985) (discussion of mutuality rule).

As indicated above, a defendant who was not in privity with a defendant in the first action must show that the plaintiff had a full and fair opportunity to litigate the same claim in the first action. *Pat Perusse Realty*, *supra*, 249 Md. at 45, 238 A.2d at 107 ("Perusse, in its suit against Ted, had its full day in court and full opportunity to win on its claim.... Its claim was decided against it"). See *Kremer v. Chemical Construction Corp.*, 456 U.S. 461, 102 S.Ct. 1893, 72 L.Ed.2d 262 (1982). See also 18 Moore's Federal Practice § 0.441 [3.-3] at 740 (1982). In this case, Dr. deLeon clearly had a full and fair opportunity to litigate his claim in the federal court. The United States Court of Appeals for the Fourth Circuit pointed out (*DeLeon v. St. Joseph Hosp., Inc.*, *supra*, 871 F.2d at 1232 n. 5):

"The district court, in its opinion, observed:

"In a desperate effort to uncover evidence which might support his claims, plaintiff has in this court employed a strategy of deposing nearly everyone who had any contact with him while he worked at the Hospital. This approach, however, has been completely unsuccessful in uncovering evidence favorable to the plaintiff." "

The Fourth Circuit also observed that the discovery included "over twenty depositions" and that "[l]engthy memoranda and numerous exhibits were submitted by both sides." *Id.* at 1232. Nevertheless, the district court found that Dr. deLeon "failed to establish a triable issue of fact under any of the legal theories advanced." Dr. deLeon has had the fullest and fairest opportunity to litigate his claim. Consequently, it would appear that the nurses would be entitled to the benefit of the res judicata defense even if they were not in privity with a defendant in the prior action.

- 6 Numerous other jurisdictions have also adopted the "transaction" test. See, e.g., *Duhalme v. American Reserve Life Ins.*, 200 Conn. 300, 511 A.2d 333 (1986); *Signo v. Fla. Farm Bur. Cas. Ins. Co.*, 454 So.2d 3 (Fla.App. 1984); *Aldepe v. Akins*, 105 Idaho 254, 668 P.2d 130 (Cl.App. 1983); *Noel v. Noel*, 334 N.W.2d 146 (Iowa 1983); *Beezan v. Schmidt*, 451 A.2d 642 (Me. 1982); *Dwight v. Dwight*, 371 Mass. 424, 357 N.E.2d 772 (1976); *Lougee v. Beres*, 113 N.H. 712, 313 A.2d 422 (1973); *Rembe v. Freeway Transport*, 294 Or. 319, 656 P.2d 919 (1982); *Juneau Square v. First Ws. Nat. Bank of Md.*, 122 Wis.2d 873, 354 N.W.2d 154 (1985).

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192 Md.App. 719
Court of Special Appeals of Maryland.

SEMINARY GALLERIA, LLC
v.
DULANEY VALLEY
IMPROVEMENT ASS'N, INC., et al.

No. 2591 Sept.Term, 2008.

May 27, 2010.

Synopsis

Background: Improvement association sought review of decision by county board of appeals that retroactively approved new parking spots on split-zoned property. The Circuit Court, Baltimore County, Robert E. Cahill, Jr., J., 2008 WL 7291951, reversed. Property owner appealed.

[Holding:] The Court of Special Appeals, Meredith, J., held that owner of split-zoned property was precluded by *res judicata* from seeking retroactive approval for additional parking spaces.

Affirmed.

West Headnotes (8)

[1] Administrative Law and Procedure
◄ Limitation of scope of review in general
Review of an administrative agency's action generally is a narrow and highly deferential inquiry.

9 Cases that cite this headnote

[2] Administrative Law and Procedure
◄ Substantial evidence
Administrative Law and Procedure
◄ Law questions in general
Review of administrative action is limited to determining if there is substantial evidence in the record as a whole to support the agency's

findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law.

9 Cases that cite this headnote

[3] Administrative Law and Procedure
◄ Wisdom, judgment or opinion
Administrative Law and Procedure
◄ Substantial evidence

Appellate court may not substitute its judgment for the administrative agency's in matters where purely discretionary decisions are involved, particularly when the matter in dispute involves areas within that agency's particular realm of expertise, so long as the agency's determination is based on substantial evidence.

2 Cases that cite this headnote

[4] Administrative Law and Procedure
◄ Law questions in general
Judicial deference to an agency's legal determinations is less broad.

Cases that cite this headnote

[5] Administrative Law and Procedure
◄ Law questions in general
Where the legal conclusions reached by the agency are based on an erroneous interpretation or application of law, court may reverse those decisions.

2 Cases that cite this headnote

[6] Judgment
◄ Nature and requisites of former recovery as bar in general
The doctrine of "*res judicata*" provides that a judgment on the merits in a previous suit between the same parties or their privies precludes a second suit predicated upon the same cause of action.

3 Cases that cite this headnote

[7] Administrative Law and Procedure
◄ *Res judicata*
Whether an administrative agency's declaration should be given preclusive effect hinges on three factors: (1) whether the agency was acting in a judicial capacity; (2) whether the issue presented to the reviewing court was actually litigated before the agency; and (3) whether its resolution was necessary to the agency's decision.

2 Cases that cite this headnote

[8] Zoning and Planning
◄ Effect of determination; *res judicata* and collateral estoppel
Owner of split-zoned property was precluded by *res judicata* from seeking retroactive approval for additional parking spaces; evidence relating to calculation of required parking spaces that was produced for second petition for variance or special hearing before county board of appeals could have been offered with the owner's first petition to support efforts to retain the 14 spaces constructed without a permit, and the facts at the time of owner's first petition were no different than when owner brought second petition.

1 Cases that cite this headnote

Attorneys and Law Firms

**1069 Howard L. Alderman, Jr. (Aaron J. Turner, on the brief), Towson, MD, for Appellant.

Michael P. Tanczyn and Peter M. Zimmerman (Carole S. Demilio, on the brief), Towson, MD, for Appellee.

Panel: MEREDITH, WRIGHT and RAYMOND G. THIEME, JR. (Retired, specially assigned), JJ.

Opinion

MEREDITH, Judge.

*721 Appellant, Seminary Galleria, LLC ("Seminary"), owns a commercial property used for retail and offices. The property is located in Baltimore County, and is split-zoned, with most of the property located in the "Business Local" zone and the rest in a "Density Residential" zone. In 2003, without seeking prior approval from the County, Seminary reconfigured four of the existing parallel parking spaces that were located in the residentially zoned portion of the property, and created 14 new parking spaces in their place. The net effect was that Seminary gained ten additional spaces upon the portion of the property that was zoned Density Residential. After a complaint to the County was lodged by, among others, Dulaney Valley Improvement Association, Inc. ("DVIA"), one of the appellees, Seminary attempted to obtain retroactive approval of the parking spots, but its first application for a special hearing or a variance was denied by the Zoning Commissioner. Following **1070 *de novo* review by the Board of Appeals of Baltimore County ("the Board"), the Board issued an order denying Seminary's requests for retroactive approval of the new parking spots on September 19, 2005.

*722 Just five months later, on February 23, 2006, Seminary again filed petitions for approval of the ten new parking spaces, arguing this time that the additional spaces were needed to help it meet the County's parking requirements as amended in 1986. By the time the 2006 petitions came before the Board, the Board was composed of new members, and the Board approved Seminary's request to keep the new parking configuration on the property in the Density Residential zone. DVIA and the People's Counsel for Baltimore County, the second appellee, petitioned for judicial review in the Circuit Court for Baltimore County. The Circuit Court for Baltimore County agreed with the appellees' contention that approval of Seminary's second petition was precluded by *res judicata*. The circuit court reversed the Board.

In its appeal to this Court, Seminary challenges the circuit court's determination.

QUESTIONS PRESENTED

Seminary presents four questions:

1. Whether an administrative agency's determination of the applicability of the doctrine of *res judicata* should be

assessed pursuant to the substantial evidence standard of review when such determination constitutes a mixed question of law and fact[.]

2. Whether an assessment of the causes of action in the current and prior proceedings pursuant to a same evidence analysis establishes that the doctrine of *res judicata* does not preclude the relief granted by the Board[.]

3. Whether the substantial change of circumstances in this case establishes that the doctrine of *res judicata* does not preclude the relief granted by the Board[.]

4. Should the lower court have remanded the case to the Board for consideration of the alternative, Variance [sic] relief requested[.]

We answer "no" to questions 2, 3 and 4. With respect to question 1, we reject the appellant's implied assertion that the agency was required to resolve any disputed factual issue in *723 this case in order to determine whether the doctrine of *res judicata* was applicable. Consequently, the appropriate standard of review in this appeal is *de novo*. We affirm the judgment of the Circuit Court for Baltimore County.

FACTS AND PROCEDURAL HISTORY

Seminary owns the subject property, the "Galleria" building complex, comprised of 211,635 square feet of space leased primarily for offices, with retail stores on the ground level. The complex is located at the intersection of York Road (a major four-lane arterial road) and Seminary Avenue (a smaller two-lane road). The majority of the property is zoned as "Business Local" or "BL" and the balance of the property is "Density Residential" or "DR." The DR zone functions as a transition or buffer zone between the commercial buildings and the residences (mostly single-family) located across the street and in the nearby area.

Pursuant to a use permit granted in 1955, parking for the Galleria complex is located in both the BL and DR zones. In 1983, the County Review Group ("CRG") approved the layout of the parking for the complex as meeting the requirements of Baltimore County Zoning Regulation ("BCZR") § 409.6, which required, based on *1071 on the

complex's planned uses, 728 parking spaces. The Galleria parking lots provided 734 parking spaces.

There are certain parts of the parking lots which are available to, but not close to, the busiest areas of the complex. Consequently, the prime parking area is crowded, while certain less-convenient areas of the Galleria parking lots often remain empty.

In 2003, over a holiday weekend, Seminary's parking lot contractor reconfigured four parallel parking spaces into 10 head-in parking spaces, and then added four new parking spaces and a low retaining wall. The additional spaces were created in a location where there had previously been grassy space that was zoned DR. Seminary did not obtain a permit or seek to amend the 1983 CRG-approved plan before making *724 these additions and modifications. Nevertheless, Seminary sought retroactive approval and attempted to legitimize the 14 newly created spaces.

A. Seminary Galleria I.

On July 31, 2003, Seminary submitted a redlined version of the 1983 plan, and petitioned for both a special hearing and a variance to allow commercial parking adjacent to existing commercial parking in a residential zone.¹ See BCZR § 409.8.B. A hearing was held before the Deputy Zoning Commissioner for Baltimore County, who denied both petitions on October 2, 2003.

On July 1, 2004, Seminary filed an appeal to the Board, which heard the matter *de novo*, and denied Seminary's requested relief. The Board found that the additional spaces were being proposed for convenience only, and that the additional parking "might be 'detrimental to the health, safety, or general welfare of the public.'"

Seminary sought judicial review in the circuit court. On April 21, 2005, the circuit court issued an order stating that substantial evidence supported the Board's decision. But, because the Board's explanation of its analysis was not sufficiently detailed, the circuit court remanded the matter to the Board for more specific factual and legal analysis.

On September 19, 2005, the Board issued a Supplemental Opinion, denying Seminary's request to keep the 14 spaces it had constructed without a permit in 2003. The Board noted that Bruce Doak, a surveyor testifying as an expert

witness for Seminary, had testified that 728 spaces were required by the BCZR and that 734 had been approved. Approval of the additional spaces would result in 748 parking spaces. The Board held that, "based upon the testimony of the Petitioner's *725 own witnesses, the special hearing for commercial parking in a residential zone must be denied." Noting that "Petitioner's witness admitted that it satisfied the zoning regulations regarding parking on the site," the Board found "there is no 'undue hardship' and the modified parking plan is not available." There was therefore no need for a modification under BCZR § 409.8.B in order to satisfy legal requirements, nor was there "undue hardship" to justify a modification under BCZR § 409.12.B.

Moreover, the Board held that the petition did not satisfy the special exception criteria under BCZR § 502.1, which sets out nine conjunctive conditions for a special use permit. One of these conditions requires that "the use for which the special **1072 exception is granted will not ... [b]e detrimental to the health, safety, or general welfare of the locality involved." BCZR § 502.1.A. The Board stated in its Opinion:

In describing special exception uses, the BCZR states that "certain types of uses ... might cause unsatisfactory results of one kind or another ... and under certain conditions they could be detrimental to the health, safety, or general welfare of the public...." The citizens testifying before the Board explained the detrimental effects of [Seminary's] request under the criteria set forth in § 502.1. It is basically offensive to the neighbors because (1) they are located in the D.R. 5.5 zone; (2) they extend the commercial use into the buffer area, closing in on a settled residential neighborhood; and (3) they interfere[] with a designated fire lane. Mr. Fleisher, a neighbor living across the street, stated that [Seminary] dumps plowed snow onto his property when it runs out of space on its site. He felt that this situation would be exacerbated if the present open spaces were converted to parking spaces. He has experienced car alarms, noise and trash from parked vehicles on the site and such disturbing activity will actually be closer to his home if the 14 additional spaces are allowed. In addition, he stated that tenants from the site have picnicked on his yard and that the hours of operation for these tenants have been extended over the years, some of them open 24 hours a day, *726 such as the subway [sic] operation and health club. The HMO is open Saturdays and Sundays broadening

the commercial aspect of the residential uses. Richard Hurd, another neighbor across the street, also testified that the illegal parking spaces are occupied at 7:30 a.m. by tenants even when the rest of the lot is empty. Mr. Hurd disputes the need for additional parking since he has never seen all of the parking spaces occupied. Mr. Hurd explained that [Seminary] also dumped snow on his side of the street and on his property when there was no room in the open spaces. He fears that the problem will be exacerbated if the open spaces are further lost to parking spaces.

While it is true that the Fire Marshall's Office had no comment with respect to the additional 14 parking spaces which were constructed in the fire lane, the Board is of the opinion that the use of the fire lane for additional parking is detrimental to the health, safety, and welfare of the general public. The 14 spaces displace the original grass and planting area in the D.R. 5.5 zone. The neighbors have testified as to the adverse effects of the unauthorized parking spaces. The Board finds that the construction of these spaces without the proper authorization is detrimental to the health, safety, and welfare of the neighborhood. Therefore, it does not satisfy the requirements of § 502.1 of the BCZR and the plan should be denied.

(Emphasis added.)

No appeal or request for judicial review followed. Therefore, the Board's order dated September 19, 2005, became final. We shall follow the lead of appellee People's Counsel for Baltimore County and refer to this first case as *Seminary Galleria I*.

B. Seminary Galleria II.

On February 23, 2006, the present case, which we shall refer to as *Seminary Galleria II*, began with similar petitions requesting a special hearing for business parking in a residential *727 zone, a modified parking plan, and an alternative petition for variance. Seminary differentiated the **1073 2006 petitions from the previously-denied 2003 petitions by limiting the requests to just the 14 spaces which it had constructed without a permit in 2003.

Seminary also reframed its classification of the Galleria complex under the zoning regulations, contending that the complex was a "shopping center" based on its tenant

mix. Under BCZR § 409.6A.2, a "shopping center" with 100,000 feet or more of gross leasable area is required to provide 5 spaces per 1,000 feet. Seminary introduced a letter from a Zoning Supervisor at the Baltimore County Department of Permits and Development Management ("BCDPDM") stating that "it is the determination of this Office that the Seminary Galleria is a 'shopping center' as defined by the Baltimore County Zoning Regulations." Seminary argued that, under this "shopping center" classification, Seminary was required to provide more parking spaces than existed on the site.

Seminary sought approval of its as-built plan, including the 14 parking spaces constructed without a permit, "to meet to the extent possible the minimum parking requirements of BCZR § 409.6 utilizing all existing parking spaces shown," in lieu of complying with the minimum requirements of the BCZR for shopping centers. The petition for variance sought, in the alternative, "a variance from [] BCZR § 409.6.A to permit a total of 746 parking spaces in lieu of: i) the 1059 spaces required [w/o shopping center provision] or ii) the 1084 spaces required for a shopping center with more than 100,000 square feet of GLA."² Seminary now represented that the Galleria's existing parking capacity was deficient by approximately 300 spaces, as a consequence of which Seminary requested approval of the 14 spaces to partially offset that deficit.

DVIA filed a motion to dismiss the 2006 petitions, contending that Seminary's claims for relief were barred by *res *728 judicata*. On July 14, 2006, the Zoning Commissioner denied the motion to dismiss, stating: "The first case involved 14 additional parking spaces in the adjacent residential zone. This case makes that issue insignificant. In this case the Petitioner admits to being short 300 spaces. Therefore I will deny the Motion." Even so, the Commissioner noted in his Findings of Fact and Conclusions of Law: "I see nothing different in request for [sic] the 14 highlighted spaces on [Seminary's] exhibit 1 from that which was denied in Case No. 04-052-A [Seminary Galleria I]." The Commissioner further found that the Galleria did not come under the zoning definition of a shopping center because "[t]he buildings are not connected, the walkways are not intended to facilitate customer interchange between uses, and the site does not give the appearance of a continuous commercial area." The Commissioner recognized that the present actual tenant mix required 1084 parking spaces even though the approved site plan was based on a projected

tenant mix requiring much less parking. Nevertheless, the Commissioner found that the parking deficit problem was "wholly self imposed" by the management of the Galleria because "the mix of tenants is completely determined by management who undoubtedly wants to maximize return on investment" but did so by willfully entering into leases that required parking capacity that exceeded the total number of spaces available under the site plan. According to the Commissioner, Seminary (as of 2006) is "presently required to have 643[sic] spaces and more importantly to have a mix of tenants that corresponds to this parking." "The Petitioner created every **1074 bit of this problem by not controlling tenant mix."

Finding that Seminary's willful creation of the excess burden on the parking lot did not fall into any exception warranting approval, the Commissioner denied the variance requests. Nevertheless, the Commissioner approved the special hearing and modified parking plan (minus the 14 spots) with the additional condition that Seminary not lease vacant space in the building until the tenant mix adjusted and required no more than 1049 spaces. After commenting that Seminary "incredibly asks [the County] to approve a parking plan with *729 the 14 spaces previously denied in Case 04-052-SPH," the Commissioner ordered: "The Petitioner shall eliminate the 14 parking spaces shown in Petitioner's exhibit 1 highlighted in yellow...." Both Seminary and the appellees appealed to the Board of Appeals.

On March 20 and 21, 2007, the Board—now composed of totally different members than those who heard the *Seminary Galleria I* appeal—held a *de novo* hearing. The same surveyor who testified for Seminary in support of the 2003 application stated that the new calculations were made in response to updated tenant information; he offered his professional opinion that the complex was a shopping center and the petitions should be approved. Nevertheless, the surveyor admitted that neither he nor his firm performed any analysis of the tenant mix and square footage of the Galleria in connection with his 2003 testimony, nor had he verified the tenancy information he was given in 2003. Seminary also introduced a letter from the BCDPDM requiring the Galleria to comply with a newly enacted law that required surveillance cameras for shopping centers; Seminary argued that this letter demonstrated the County's acknowledgment that the Galleria was a shopping center.

A witness called by DVIA testified that removal of the 14 spaces and restoration of the original plan was preferable, even if it resulted in the loss of the ten new parking spaces. DVIA's main concern was minimizing or removing the disturbance of the DR-zoned area. A resident of a nearby home also testified about lights of tenants shining into his windows, and expressed his concerns about the decrease in value of his home, both as a result of the removal of vegetation and the addition of parking spaces on the Galleria site.

On February 11, 2008, the Board issued an order in which it approved both the classification of the Galleria as a shopping center and the amended parking plan. With respect to the appellees' assertion that Seminary's claim was barred by *res judicata*, the Board simply stated:

*730 This Board feels that the matter of *res judicata* does not apply due to the specific nature of the 14 parking spaces and the matter of parking in the D.R. zone, which this Board feels is permitted. We find this case not to be another attempt to repeat prior cases.

After a review of the facts, the testimony and evidence submitted, and the law, this Board finds that the issue of *res judicata* does not apply in this case....

Both DVIA and the People's Counsel for Baltimore County filed petitions for judicial review in the Circuit Court for Baltimore County. Because both petitions involved the same record and Board opinion, on the motion of the People's Counsel, the circuit court consolidated the cases. On September 4, 2008, the circuit court heard oral arguments. Appellees again argued *res judicata*, and Seminary again claimed that a newly-discovered parking deficiency justified approval of the additional parking spaces.

**1075 On December 17, 2008, the circuit court issued its opinion and order reversing the Board's 2008 decision. The circuit court stated: "The real question presented in this appeal is whether this 'short fall' was 'known, or knowable by Seminary Galleria before the first case was decided.'" The court ruled as follows:

It is well settled that the principle of *res judicata* applies to "administrative" proceedings. [Citations omitted.] Accordingly, if the issues sought to be litigated in

Seminary Galleria II either were litigated in Seminary Galleria I, or "with propriety could have been litigated" in Seminary [Galleria] I, prosecution of relief in Seminary Galleria II is barred.

The parties were identical in each matter. The property involved was identical in each matter. Approval of the identical ten (10) [net additional] parking spaces was the issue in each matter. Substantially the same witnesses testified for the same parties in each matter. And importantly, there was absolutely no change in the facts between *731 the date of the Board's decision in Seminary Galleria I and the hearing in Seminary Galleria II relating to the Board's finding in the first matter that construction of additional spaces "is detrimental to the health, safety and welfare of the neighborhood." Presumptively, therefore, the doctrine of *res judicata* would seem to preclude the second litigation between these parties over these same ten (10) parking spaces.

Seminary Galleria's argument, however, is that the "facts and circumstances have changed since the prior cases" [citation omitted], and that, therefore, the second litigation over these parking spaces was permitted. It argues that, at some point (exactly when or under what circumstances is not made clear in the record) Baltimore County required it to "file for review and approval a current as-built parking plan" [citation omitted] and that, after it did so, it discovered that it was actually required by zoning regulations to furnish over 1,000 parking spaces, as opposed to the 728 spaces which it had argued it was required to furnish by the County's zoning regulations in Seminary Galleria I. In effect, Seminary Galleria argues that it was *compelled* to file Seminary Galleria II as a *defensive* measure against a claim that it was not in compliance with minimum parking requirements which are calculated when the retail-office property is considered a "shopping center."

The short, and final answer to Seminary Galleria's argument is that all facts necessary to make the parking deficiency argument that it made in Seminary Galleria II were available to Seminary Galleria when it filed, litigated and lost Seminary Galleria I. There is no evidence in the record that either the tenant mix at the property or its character as a "shopping center" substantially changed between September [19], 2005 [the date the Board issued its final ruling in *Seminary Galleria I*] and February 23, 2006 [the date Seminary filed the current petitions] to justify the filing of

new litigation. Rather, it is clear that, had Seminary Galleria's witnesses been asked in the earlier case to perform the calculations and do the other *732 work which they ultimately did in the latter case, the theory of minimum parking requirements based on a new tenant mix and/or characterization of the property as a "shopping center" could have been advanced in the first case. Mr. Doak testified in the second case as follows:

Q. Did you do any analysis, or your firm, rather, or you do any analysis **1076 prior to your testimony in [Seminary Galleria I] to break down the tenancy or the square footage existing at that time in the Galleria?

A. No, sir. [Citation omitted.]

Q. What, if anything, did you do to verify the existing tenant mix was accurately reflected in the plan that you did review?

A. For the first case?

Q. For the first case.

A. Nothing, sir. [Citation omitted.]

This Court has reviewed all of the testimony of Seminary Galleria witnesses in Seminary Galleria II and specifically concludes that the issue of minimum parking requirements at the property, based on either "an amendment to a prior plan for the subject property that was approved in the 1980's" ([Seminary's] Reply Memo, p. 2) or on "current" requirements reflecting a new tenant mix and a characterization of the property as a shopping center, could plainly and clearly have been litigated in the earlier case had Seminary Galleria desired to avoid piecemeal litigation. While the Court will not conclude that Seminary Galleria's conduct after losing Seminary Galleria I amounted to an "artifice" or a "sham" as characterized by People's Counsel, the conclusion that all "minimum parking requirement", "parking deficiency" or "short fall" arguments could have and should have been made in the earlier litigation is inescapable. Prosecution of relief in Seminary Galleria II *733 was barred by the final determination made by the Board of Appeals in Seminary Galleria I.

(Emphasis in bold added.)

The circuit court reversed the holding of the Board and remanded the case to the Board with instructions to deny all relief sought by Seminary in *Seminary Galleria II*. Seminary noted an appeal to this Court.

STANDARD OF REVIEW

[1] [2] [3] [4] [5] Although this appeal comes to us from the circuit court, we review the decision of the Board. Our review of an administrative agency's action generally is a "narrow and highly deferential inquiry." *Park & Planning v. Greater Baden*, 412 Md. 73, 83, 985 A.2d 1160 (2009). Our review is "limited to determining if there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law." *United Parcel v. People's Counsel*, 336 Md. 569, 577, 650 A.2d 226 (1994). "[T]his Court may not substitute its judgment for the administrative agency's in matters where purely discretionary decisions are involved, particularly when the matter in dispute involves areas within that agency's particular realm of expertise, so long as the agency's determination is based on 'substantial evidence.'" *People's Counsel v. Surina*, 400 Md. 662, 681, 929 A.2d 899 (2007) (citations omitted). Judicial deference to an agency's legal determinations, however, is less broad. The Court of Appeals stated in *Belvoir Farms v. North*, 355 Md. 259, 267, 734 A.2d 227 (1999): "Generally, a decision of an administrative agency, including a local zoning board, is owed no deference when its conclusions are based on an error of law." Where the legal conclusions reached by the agency are based on an erroneous interpretation or application of law, we may reverse those decisions. See *Trinity v. People's Counsel*, 407 Md. 53, 78, 962 A.2d 404 (2008).

**1077 *734 DISCUSSION

Seminary contends that the Board's determination that *res judicata* was not applicable to the 2006 petitions in *Seminary Galleria II* was a mixed question of law and fact, which would necessitate our review under the "substantial evidence" test. *Charles County v. Vann*, 382 Md. 286, 296, 855 A.2d 313 (2004). Seminary contends that we must only evaluate "whether it was reasonable for the Board to conclude that the doctrine of *res judicata* does not preclude

Appellant's requested relief." But DVIA and the People's Counsel respond that *res judicata* is consistently analyzed by courts as an issue of law. We agree with the appellees that the issue of whether *res judicata* applies to *Seminary Galleria II* is a question of law, and that it was proper for the circuit court—and it is appropriate for this Court—to review the legal conclusion of the Board *de novo*.

[6] The doctrine of *res judicata* provides that "a judgment on the merits in a previous suit between the same parties or their privies precludes a second suit predicated upon the same cause of action." *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326 n. 5, 99 S.Ct. 645, 58 L.Ed.2d 552 (1979). In *Whittle v. Bd. of Zoning Appeals*, 211 Md. 36, 38, 125 A.2d 41 (1956), the Court of Appeals considered "whether or not a prior adverse ruling by the Circuit Court for Baltimore County on an application for a special permit for a funeral home on the same premises is *res judicata* as to [a second application for a similar special permit]." The Court of Appeals stated in *Whittle*: "If the second suit is between the same parties and is upon the same cause of action, a judgment in the earlier case on the merits is an absolute bar, not only as to all matters which were litigated in the earlier case, but as to all matters which *could have been litigated*." *Id.* at 49, 125 A.2d 41 (emphasis added).

A similar summary of this point appears in *Alvey v. Alvey*, 225 Md. 386, 390, 171 A.2d 92 (1961):

The doctrine of *res judicata* is that a judgment between the same parties and their privies is a final bar to any other *735 suit upon the same cause of action, and is conclusive, not only as to all matters that have been decided in the original suit, but as to all matters which with propriety could have been litigated in the first suit, where the court had jurisdiction, proceedings were regular, and his omission was due to his own negligence.

In *Alvey*, *supra*, 225 Md. at 391, 171 A.2d 92, the Court of Appeals quoted with approval the following statement from *Henderson v. Henderson*, 67 Eng. Rep. 313, 319, 3 Hare 100, 115 (1843):

[W]here a given matter becomes the subject of litigation in, and

of adjudication by, a Court of competent jurisdiction, the Court requires the parties to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted a part of their case. The plea of *res judicata* applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time.

Although there were cases decided several decades ago in which the Court of **1078 Appeals held that principles of *res judicata* did not apply to rulings of administrative agencies, the RESTATEMENT (SECOND) OF JUDGMENTS (1982) provides in § 83(1) that "a valid and final adjudicative determination by an administrative tribunal has the same effects under the rules of *res judicata*, subject to the same exceptions and qualifications, as a judgment of a court." The more recent Maryland cases have held that, when an administrative agency is performing a quasi-judicial function, the principles of *res judicata* are applicable. See, e.g., *Stavelly v. State Farm Mut. Auto. Ins. Co.*, 376 Md. 108, 116, 829 A.2d 265 (2003); *Sugarloaf v. Waste Disposal*, 323 Md. 641, 658-59, 594 A.2d 1115 (1991); *Cicala v. *736 Disability Review Bd.*, 288 Md. 254, 263-64, 418 A.2d 205 (1980).

[7] The Court of Appeals has confirmed that an administrative agency's decision will be entitled to preclusive effect if the test first enunciated in *Exxon Corp. v. Fischer*, 807 F.2d 842, 845-46 (9th Cir.1987), is met. See *Batson v. Shiflett*, 325 Md. 684, 705, 602 A.2d 1191 (1992). In *Batson*, *id.* at 701, 602 A.2d 1191, the Court of Appeals

quoted with approval the following test for determining whether an administrative agency's ruling "is entitled to preclusive effect":

Whether an administrative agency's declaration should be given preclusive effect hinges on three factors: (1) whether the [agency] was acting in a judicial capacity; (2) whether the issue presented to the [reviewing] court was actually litigated before the [agency]; and (3) whether its resolution was necessary to the [agency's] decision.

(Internal quotation marks omitted.) *Accord Neffert v. Dept. of Environment*, 395 Md. 486, 507, 910 A.2d 1100 (2006).

[8] The Board's decision in *Seminary Galleria I* meets this test. (1) The Board acted in a judicial capacity by conducting a *de novo* hearing, allowing the parties to present evidence, and ruling on the disputed legal issue. (2) The issue of whether the 14 parking spaces could remain was actually litigated in *Seminary Galleria I*. (3) The ruling was necessary to—indeed, the essence of—the Board's decision in *Seminary Galleria I*.

In *Whittle*, *supra*, 211 Md. at 45, 125 A.2d 41, the Court of Appeals reviewed a variant of *res judicata* that arises in connection with successive zoning applications:

The general rule, where the question has arisen, seems to be that after the lapse of such time as may be specified by the ordinance, a zoning appeals board may consider and act upon a new application for a special permit previously denied, but that it may properly grant such a permit only if there has been a substantial change in conditions. [Citations omitted.] This rule seems to rest not strictly on the doctrine of *res judicata*, but upon the proposition that it *737 would be arbitrary for the board to arrive at opposite conclusions on substantially the same state of facts and the same law.

It is our view that where the facts are subject to changes which might reasonably lead to an opposite result from that arrived at in an earlier case, and if there have been substantial changes in fact and circumstances between the first case and the second, the doctrine of *res judicata*

would not prevent the granting of the special permit sought by the appellees.

The Court of Appeals has emphasized that, before a party can apply to a zoning agency for relief previously denied by the agency, "substantial changes in fact and circumstances" must be, indeed, substantial. **1079 *Woodlawn Ass'n v. Board of County Contrs*, 241 Md. 187, 197, 216 A.2d 149 (1965), involved several neighboring landowners' challenge to the rezoning of 47 acres of nearby undeveloped woodland for garden-style high-occupancy apartments. The owner of the property applied for rezoning but was thwarted in his rezoning efforts three times between 1961 and 1964. When the application was finally granted in 1964, the nearby landowners appealed. The *Woodlawn* Court noted that, in *Whittle*, "[n]either neighborhood sentiment nor the slight distinction created by the additional restrictions were deemed to amount to a substantial change in circumstances." *Woodlawn*, *supra*, 241 Md. at 197, 216 A.2d 149. Finding *Whittle* to be "dispositive of the case before us," the Court stated that it found "no substantial or significant change in fact and law was shown to have occurred" between the applications at issue in *Woodlawn*. *Id.* at 197, 216 A.2d 149. The *Woodlawn* Court held that "the principles of *res judicata* were controlling," *id.* at 190, 216 A.2d 149, and barred the 1964 approval. The Court explained, *id.*, that it could

find in the record no evidence of significant change in the neighborhood of the property between 1961 and 1964, which means that the action of the Council in rezoning in 1964 on essentially the same facts and conditions it found insufficient *738 to permit rezoning in 1961 was arbitrary, capricious, and illegal.

Similarly, in *The Chatham Corp. v. Beltram*, 243 Md. 138, 220 A.2d 589 (1966), the Court of Appeals rejected a second attempt to rezone a property because, although the applicant made new arguments, the facts underlying the previous denial remained unchanged. The Court stated:

On the question of whether there had in fact been any significant change between the time of the first decision and the second, we think Judge Macgill's analysis in his opinion in the second case is impeccable in its perception and accuracy. He said:

"The resolution [of the Commissioners in the second application] made no specific finding of a change in circumstances in the neighborhood since the last decision, nor of any subsequently discovered mistake in the existing classification. The report and recommendation of the Planning Commission was a recapitulation of the report and recommendation which had been submitted, considered and rejected by the Board at the first hearing. The availability of public water and sewerage was also a factor presented and presumably considered by the Board at its earlier hearing. It was discussed by this Court in its opinion in the case thereafter filed. The fact that the property was contiguous to land zoned for garden apartments and for a shopping center was no less a fact when the first petition was denied. It must be concluded that the only substantial change which led to the later action of the Board was a change of mind of a majority of its members. The ability to reconsider and change one's mind is, in most aspects of human endeavor, a virtue more often than a vice. In matters such as this, however, it risks the danger of being labelled capricious."

Id. at 151-52, 220 A.2d 589 (emphasis added).

In the same year, that the Court of Appeals decided *Chatham*, the Court also decided *739 *Alvey v. Hedin*, 243 Md. 334, 221 A.2d 62 (1966) ("*Hedin*"). *Alvey* had successfully applied to rezone 4.75 acres on the property to Heavy Commercial and then built a marina. The rezoning was **1080 later declared void on appeal. *Alvey* then attempted to obtain Light Commercial zoning. *Alvey* had argued mistake in the original zoning classification of the property and made the same argument in *Hedin*. But in the previous case, on the same facts, the court had found no mistake in the original zoning. The *Hedin* Court ruled against *Alvey*, stating:

The above holding in the first case is an absolute bar to the present attempt by the *Alveys* to again raise the question of mistake in original zoning of the same tract of land, because any of the testimony relied upon in the instant case as to this question could and should have been presented in the first case, and the applicability of the doctrine of *res judicata* as to this mistake question

is not affected by the fact that they are here attempting to get a different type of commercial classification than in the first case.

Id. at 340, 221 A.2d 62.

Seminary contends that there was a material change in facts and circumstances because the denial in *Seminary Galleria I* of its request to keep the 14 constructed spaces thereafter "required" Seminary to "prepare and submit a completely new plan depicting all existing buildings and parking spaces and the total size of all buildings." As a consequence, Seminary applied current parking standards to the complex and calculated the spaces that would be required if (a) the entire complex was deemed a "shopping center," or (b) the complex was evaluated based on the types of uses of its actual tenant mix. Both of these calculations yielded a parking requirement of over 1,000 parking spaces. Moreover, Seminary had obtained a "zoning verification letter" from a zoning supervisor recognizing that the Galleria "is a 'shopping center' as defined in the Baltimore County Zoning Regulations," although the supervisor never testified in this case.

Nevertheless, the tenant mix remained substantially the same between 2003 and 2006, and so did the building structures. *740 In *Seminary Galleria II*, the Board never made a finding that the circumstances at the Galleria had changed since 2003; they had not. The only change was in Seminary's characterization of the entire complex as a "shopping center" for the purpose of calculating how many spaces were required to be provided, notwithstanding the fact that approximately 90% of the complex was used for offices rather than retail. Seminary appears to have resorted to the revised calculations of parking spaces after its application for approval of the 14 spaces was denied in *Seminary Galleria I*. Although the zoning supervisor's letter may have confirmed that the Galleria met a definition of a shopping center for at least some purposes, the evidence to support that classification was fully available in 2003. Seminary did not demonstrate any material change in the retail use at the Galleria subsequent to 2003. The same calculations of parking requirements could have been performed in 2003, before the hearings in *Seminary Galleria I*.

Moreover, like the circuit court, we cannot find in the record any evidence to shed light on the specific circumstances of the purported demand by Baltimore

County for Seminary to submit an as-built plan in 2006. But, even if there was such a directive issued by the County, Seminary makes no contention that such directive was based upon any change in law that occurred subsequent to *Seminary Galleria I*.

The result in the instant case is controlled by *Woodlawn, Chatham*, and *Hedin*. The facts in September 2005, when Seminary's first petition for a variance or **1081 special hearing was denied by the Board, were no different than in February 2008, when the second petition was granted by the Board in an arbitrary and capricious exercise of its authority. The use of a portion of the Galleria complex as a shopping center was no less a fact in 2005 than it was in 2008. Seminary's surveyor, Bruce Doak, testified that he had not considered the actual mix of tenants in the Galleria when he surveyed the complex in preparation for his testimony in the 2003 hearings. Instead, Doak was given numbers from the 1983 plan and was given "some information on the leases," but never performed *741 any analysis of the square footage or existing tenants prior to testifying. In addition, Seminary, by characterizing the entire complex as a "shopping center" in 2006, sought to reapply for the same relief (approval of the 14 parking spaces constructed without a permit) it had previously requested under a different theory.

Seminary cites *Jack v. Foster Br. Homeowners' Ass'n*, 53 Md.App. 325, 452 A.2d 1306 (1982), and contends that the circuit court erroneously used a "transactional" analysis rather than the "same evidence" analysis adopted in *Jack*. Seminary contends that *Seminary Galleria I* sought approval of fewer spaces, and *Seminary Galleria II* sought approval of more spaces. According to Seminary, these differing desired results required proof of different facts. Nevertheless, *Jack* stated: "[T]he judgment in the former action will be a bar, provided the evidence necessary to sustain the judgment for the plaintiff in the present [second] action would have authorized a judgment for him in the former." *Id.* at 334, 452 A.2d 1306 (quoting *Klein v. Whitehead*, 40 Md.App. 1, 18, 389 A.2d 374 (1978) (citations omitted)). We are persuaded that the same evidence produced in *Seminary Galleria II* could have been offered in *Seminary Galleria I* in support of Seminary's efforts to retain the 14 spaces constructed

without a permit. In both cases, Seminary's request for relief was the retroactive approval of the same 14 spaces it had constructed in the DR zone.

Further, the Board's opinion that *res judicata* did not apply "due to the specific nature of the 14 spaces and the matter of parking in the D.R. zone, which this Board feels is permitted," was "a broad conclusory statement and not based on sufficient facts in the record before it." *Greater Baden*, *supra*, 412 Md. at 109, 985 A.2d 1160. As the Court of Appeals said in *Greater Baden*, *id.*: "Such a half-baked conclusion is not entitled to deferential review."

With reasonable diligence, Seminary could have discovered and asserted in support of the original 2003 filing its current argument that the Galleria needs more parking spaces in *742 order to comply with requirements the County adopted in 1986. Seminary's failure to accurately and contemporaneously survey the Galleria in connection with its first application to approve the additional spaces is not a reason to consider a second application seeking the same relief.

Finally, Seminary contends that, instead of reversing the order of the Board and therefore disapproving the grant of the application, the circuit court should have instead remanded the case to the Board for consideration of the alternative variance relief. For the reasons we have discussed above, the request for a variance in *Seminary Galleria II* is also barred by *res judicata*. The determination of the Board in *Seminary Galleria I* was that the proposed modification of the parking spaces and green space would be detrimental to the surrounding area, and there are insufficient different facts or changed circumstances **1082 to justify a remand to consider an issue that was previously litigated.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY IS AFFIRMED; COSTS TO BE PAID BY APPELLANT.

All Citations

192 Md.App. 719, 995 A.2d 1068

- 1 The variance was requested to allow construction of an additional 16 spots that Seminary proposed to create (above and beyond the 14 already constructed without a permit). The application for approval of 16 additional spots was denied, and Seminary never appealed that denial.
- 2 "GLA" refers to gross leasable area. See BCZR § 409.6.A.2.

End of Document

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Footnotes

SITE INFORMATION

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- Area: 33.829 acres (SM 33811 / 414)
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ADC Map: 4345B2 GIS tile: 026C2 & 027A2
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Schools: Fifth District ES Hereford MS Hereford HS
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OFFICE OF ZONING

Zoning: R.C. 2

Previous zoning hearing: 2013-0052-A

Approval to permit an existing shed and barn to be located in the front yard in lieu of the required rear yard.

Approval to permit a barn to have a height of 42 feet in lieu of the required 15 feet as an accessory structure

Previous zoning hearing: 2015-0196-XA

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ENVIRONMENTAL IMPACT

Watershed: Loch Raven Reservoir URDL land type: 1

- The existing dwelling is currently serviced by a private well and septic system.
- There are no underground storage tanks on the subject property.
- The subject property is not in the Chesapeake Bay Critical Area.
- The subject property is not located within a 100 year flood plain.
- The proposed barn will be serviced by a private well

OFFICE OF PLANNING

Regional Planning District: Prettyboy District Code: 302

- The subject dwelling is not historic. The subject property is not in a historic district.

PROPOSED DEVELOPMENT

To construct an additional barn and add more parking and pastures for the continued use of the subject property as a riding stable and a boarding facility.

MARILYN E. BASIGIAN
BERTERO L. BASIGIAN, TRUSTEES
SM 15333/686
(VACANT)

ZONING POINT OF BEGINNING
27.915' TO CENTERLINE OF
BENSON MILL ROAD

FOREST BUFFER &
FOREST
CONSERVATION
EASEMENT
SM 33442/414

FOREST CONSERVATION
EASEMENT
(SEE R/W 12-126-02)

FOREST CONSERVATION
EASEMENT
(SEE R/W 12-126-02)

FOREST BUFFER &
FOREST
CONSERVATION
EASEMENT
SM 33442/414

SEE DETAIL

SEE EASEMENT AGREEMENT
SM 29505/25

PLAN
SCALE: 1"=100'

PLAN LEGEND

F1 - F6
TO
R
M
FIELDS FOR PASTURING HORSES
SHORT TERM PASTURING FOR HORSES
RIDING ARENA
MANURE STORAGE

REVISION
6/5/15 REVISED PROPERTY
INFORMATION

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Land Use Expert and Surveyor
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o 443-900-5535 m 410-419-4906
bdoak@bruceedoakconsulting.com

PLAN TO ACCOMPANY A PETITION
PROPERTY OF
ROGER L. ELLIOTT
#15815 FALLS ROAD
BALTIMORE COUNTY, MARYLAND
5th ELECTION DISTRICT 3rd COUNCILMANIC DISTRICT

Date: 5/27/17
Scale: AS SHOWN

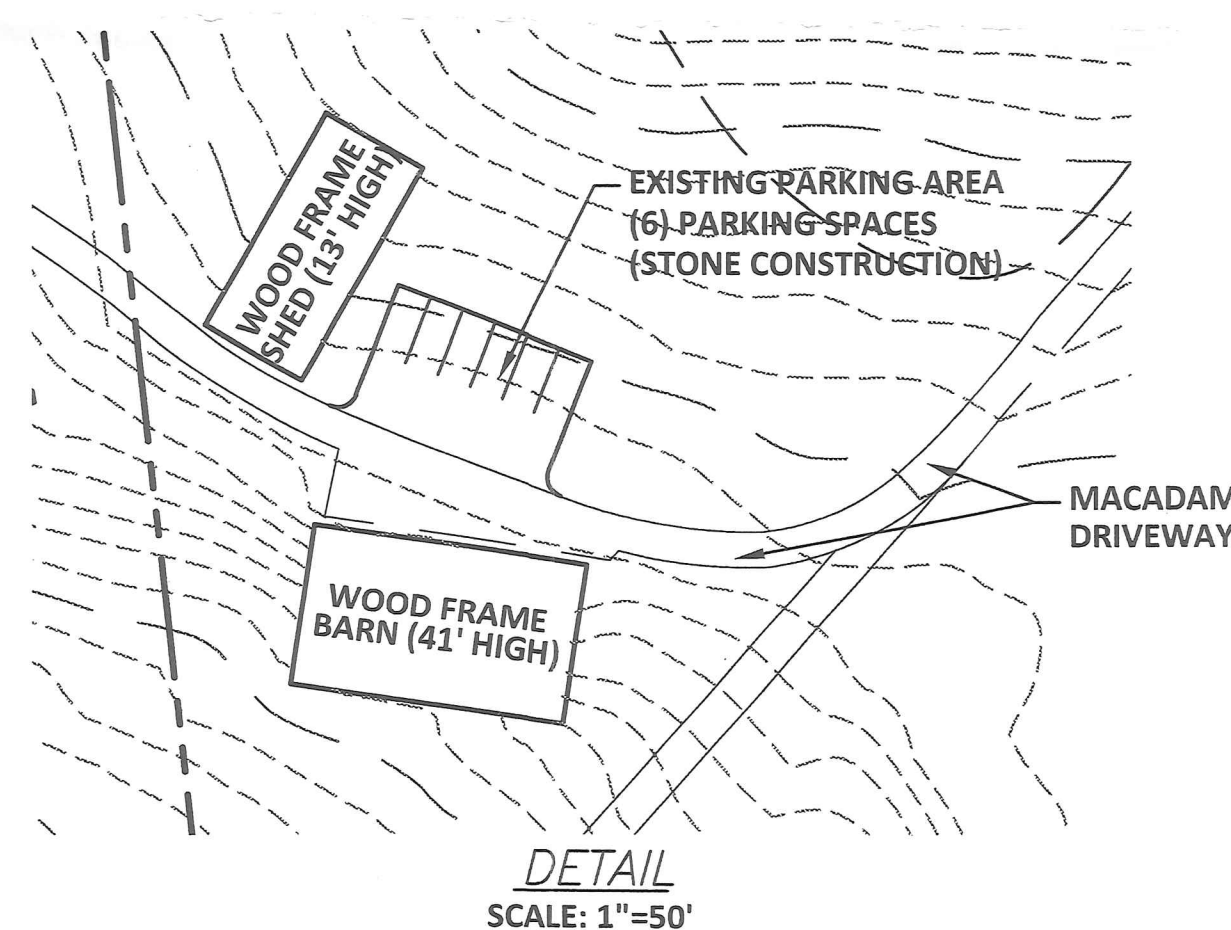


People's Counsel
CBA Exhibit
5

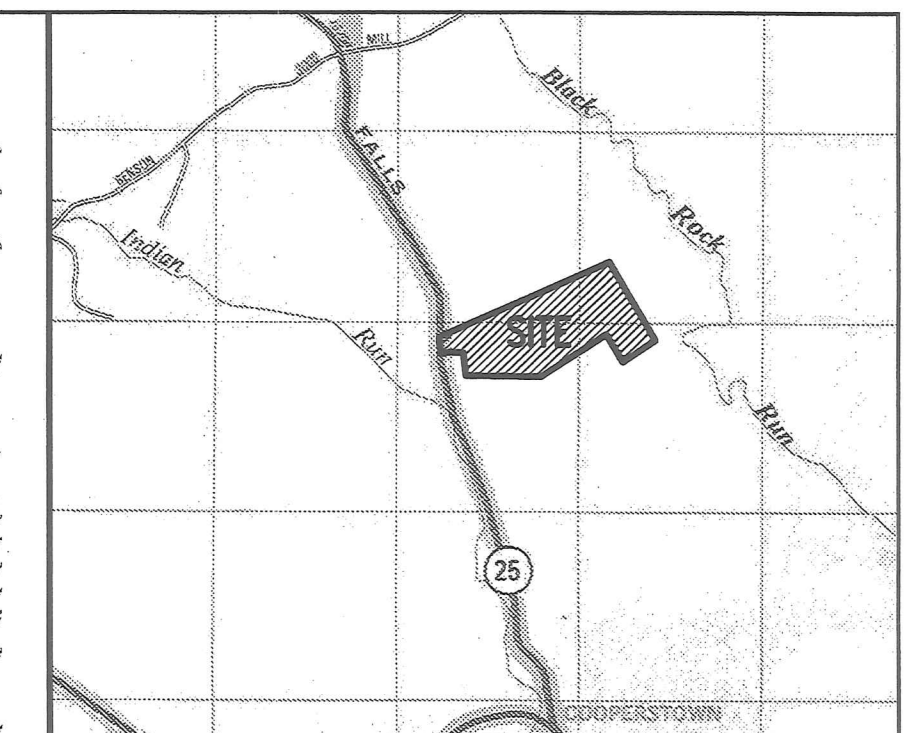
CASE # 2017-0332-SPAXA



EXAMPLE OF PROPOSED BARN



DETAIL
SCALE: 1"=50'



Vicinity Map - Scale: 1" = 2000'
ADC The Map People - Permitted Use # 20612205



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ZONING

Zoning: R.C. 2

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Approval to permit an existing shed and barn to be located in the front yard in lieu of the required rear yard.
Approval to permit a barn to have a height of 42 feet in lieu of the required 15 feet as an accessory structure

ENVIRONMENTAL

Watershed: Loch Raven Reservoir URDL land type: 1

- The existing dwelling is currently serviced by a private well and septic system.
- There are no underground storage tanks on the subject property.
- The subject property is not in the Chesapeake Bay Critical Area.
- The subject property is not located within a 100 year flood plain.

PLANNING

Regional Planning District: Prettyboy District Code: 302

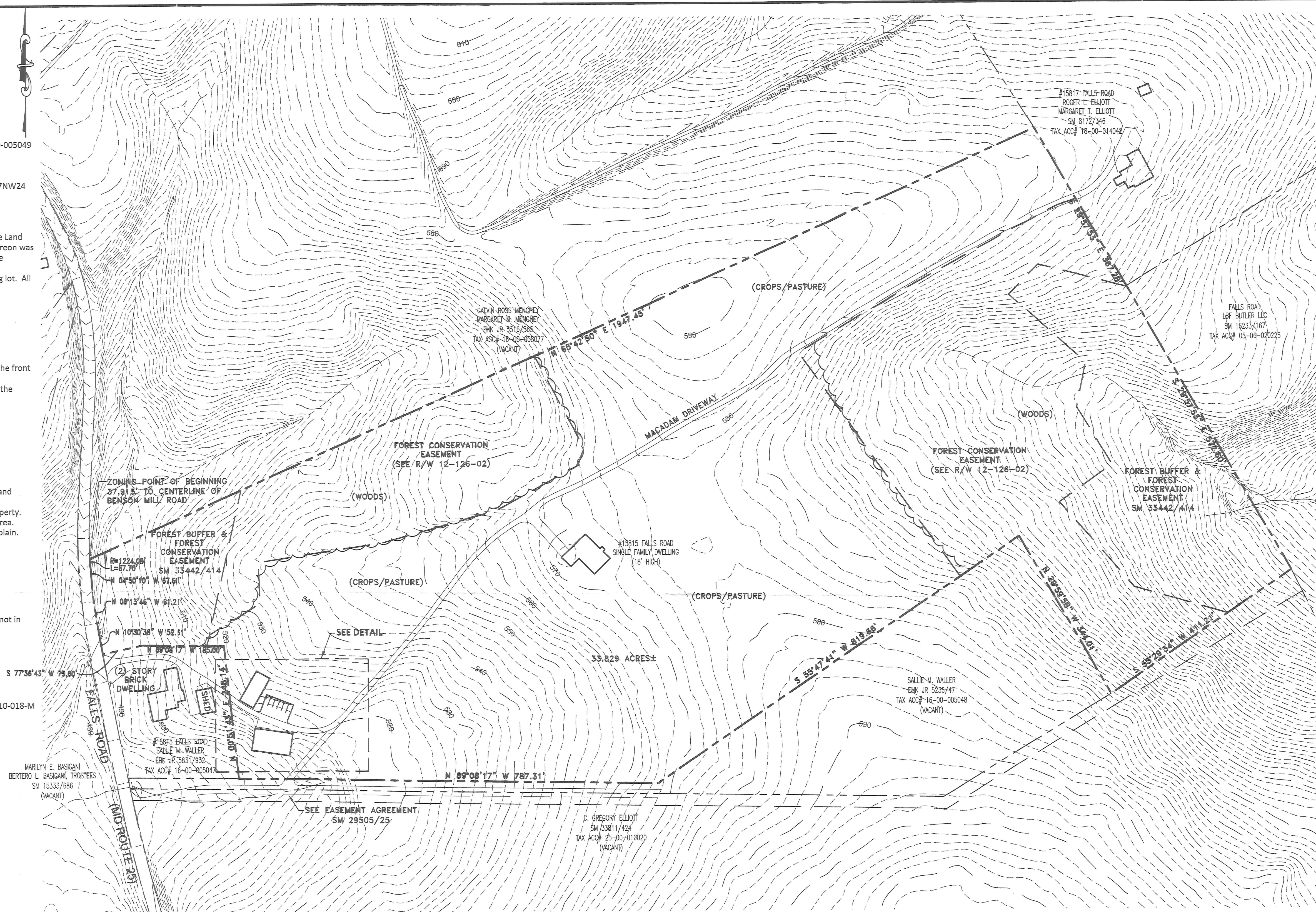
- The subject dwelling is not historic. The subject property is not in a historic district.

PREVIOUS DEVELOPMENT

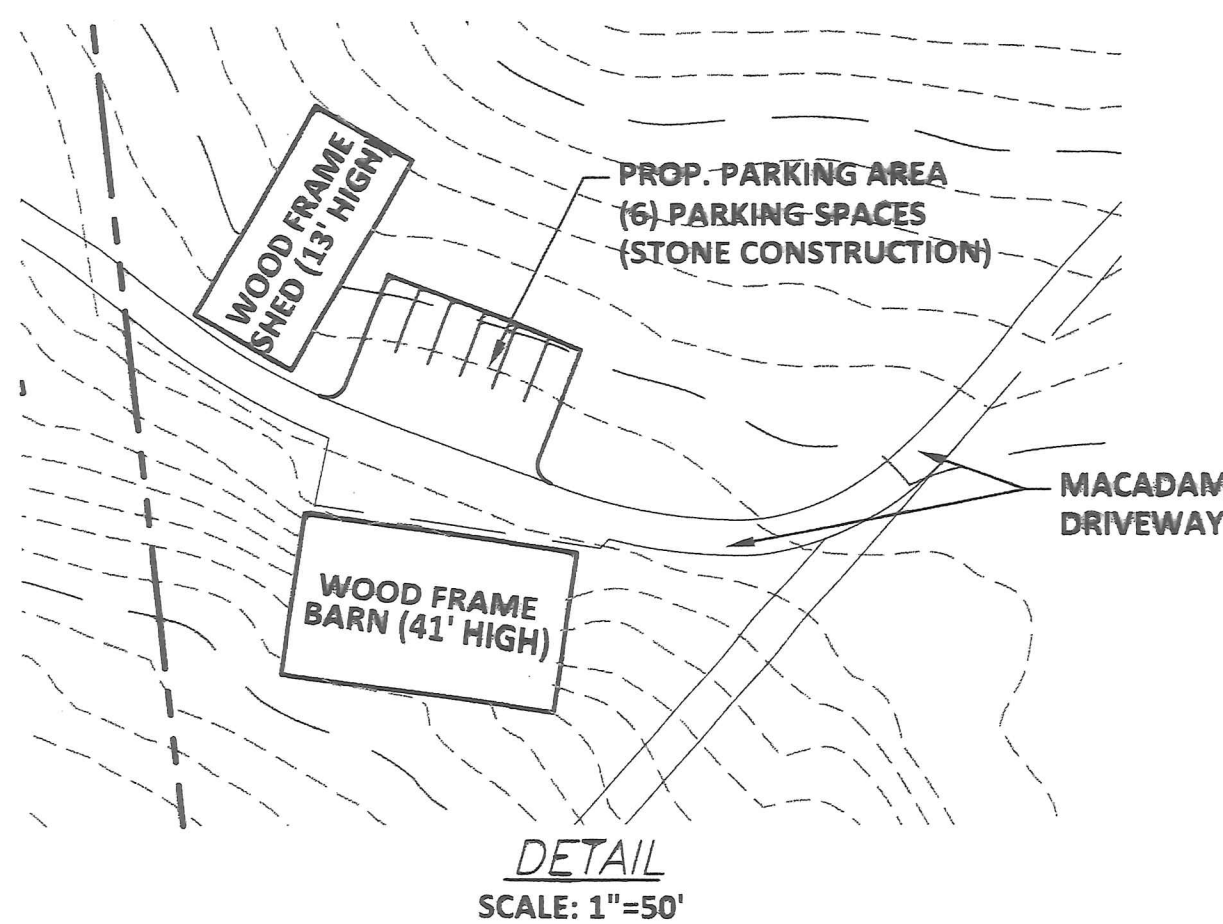
LOT 2 OF THE MINOR SUBDIVISION OF THE ELLIOTT PROPERTY #10-018-M

PROPOSED DEVELOPMENT

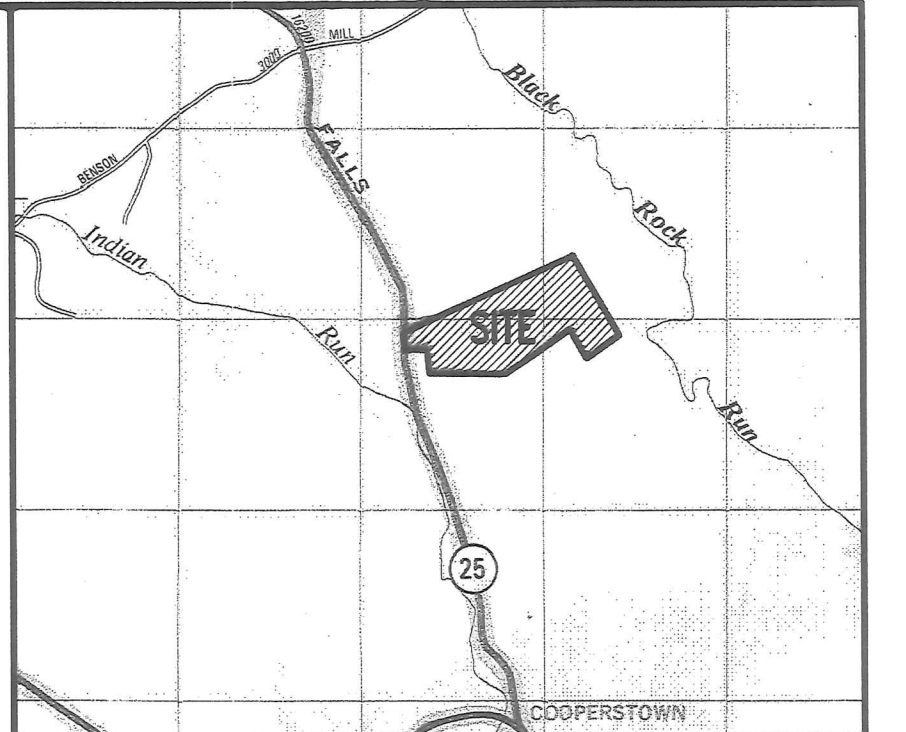
To provide boarding and run a riding stable on the entire farm.



PLAN
SCALE: 1"=100'



DETAIL
SCALE: 1"=50'



Vicinity Map - Scale: 1" = 2000'
ADC The Map People - Permitted Use # 20612205

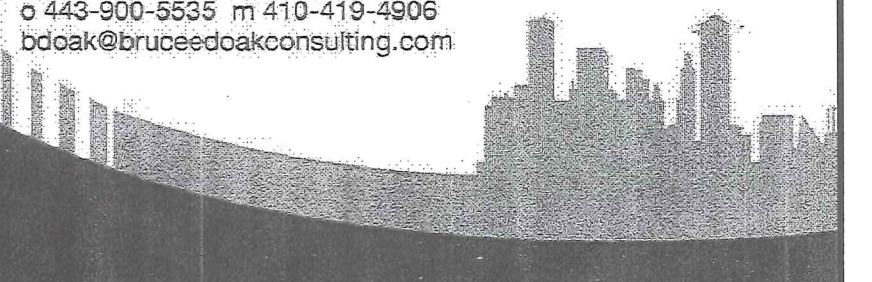
PETITION REQUESTS

Special Exception
To permit the subject property and the improvements to be used for a riding stable.

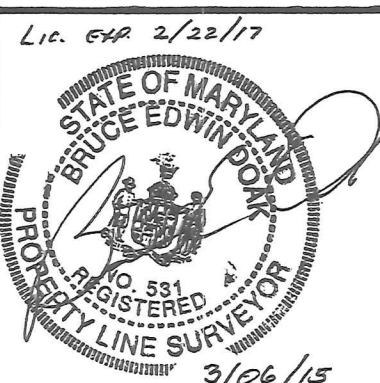
- Variances
- To permit a parking area with no screening or landscaping in lieu of the required screening and landscaping per Section 409.8.A.1 BCZR
 - To permit a parking area to be surfaced with stone in lieu of the required durable and dustless surface per Section 409.8.A.2 BCZR
 - To permit a parking area not to be striped in lieu of the striping requirement per Section 409.8.A.6 BCZR
 - To allow a two way access driveway to have a width of 16 feet in lieu of the required 20 feet per Section 409.4A BCZR

0' 100' 200' 300'

Bruce E. Doak Consulting, LLC
Land Use Expert and Surveyor
3801 Baker Schoolhouse Road
Freeland, MD 21053
o 443-900-5555 m 410-419-4906
bdoak@bruceedoakconsulting.com



PLAN TO ACCOMPANY A PETITION	
PROPERTY OF ROGER L. ELLIOTT #15815 FALLS ROAD BALTIMORE COUNTY, MARYLAND 5th ELECTION DISTRICT 3rd COUNCILMANIC DISTRICT	
DATE: 3/2/2015	Scale: AS SHOWN
People's Counsel CBA Exhibit 2	



SITE INFORMATION

- Ownership: Roger L. Elliott
15817 Falls Road Sparks, MD 21152
- Address: 15815 Falls Road Sparks, MD 21152
- Deed references: SM 33811 / 414
- Area: 33.829 acres (SM 33811 / 414)
- Tax Map / Grid / Parcel / Tax account #: 27 / 13 / 267 / 16-00-005049
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ZONING

Zoning: R.C. 2

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Approval to permit an existing shed and barn to be located in the front yard in lieu of the required rear yard.
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ENVIRONMENTAL

Watershed: Loch Raven Reservoir URDL land type: 1

- The existing dwelling is currently serviced by a private well and septic system.
- There are no underground storage tanks on the subject property.
- The subject property is not in the Chesapeake Bay Critical Area.
- The subject property is not located within a 100 year flood plain.

PLANNING

Regional Planning District: Prettyboy District Code: 302

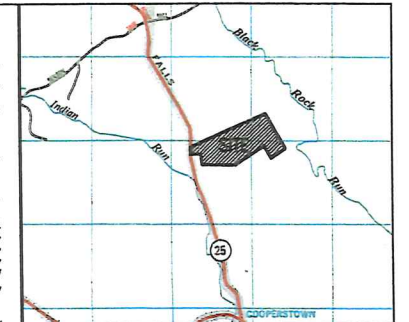
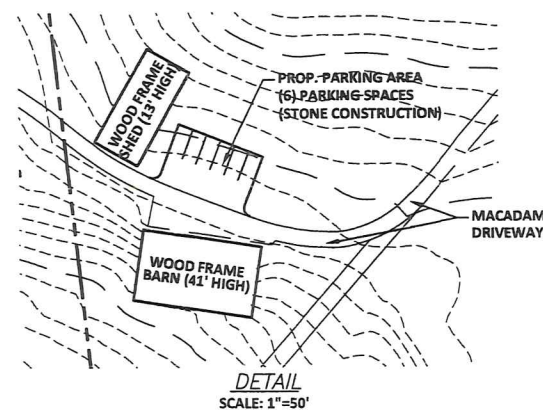
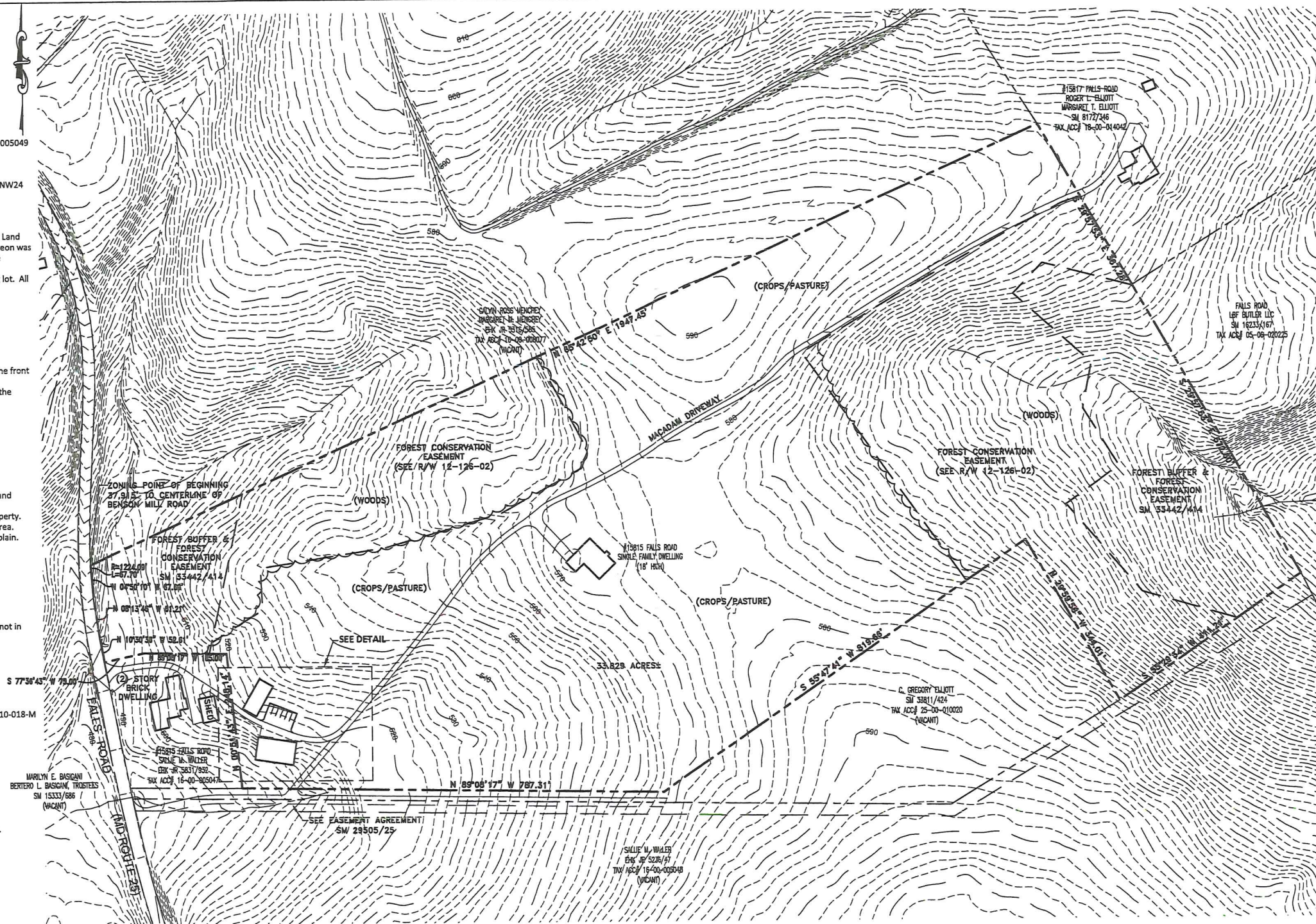
- The subject dwelling is not historic. The subject property is not in a historic district.

PREVIOUS DEVELOPMENT

LOT 2 OF THE MINOR SUBDIVISION OF THE ELLIOTT PROPERTY #10-018-M

PROPOSED DEVELOPMENT

To provide boarding and run a riding stable on the entire farm.



Vicinity Map - Scale: 1" = 2000'
ADC The Map People - Permitted Use # 20612205

PETITION REQUESTS

Special Exception
To permit the subject property and the improvements to be used for a riding stable.

Variances

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PLAN TO ACCOMPANY A PETITION
PROPERTY OF
ROGER L. ELLIOTT
#15815 FALLS ROAD
BALTIMORE COUNTY, MARYLAND
5th ELECTION DISTRICT 3rd COUNCILMANIC DISTRICT

REVISION
6/5/15 REVISED PROPERTY INFORMATION

Date: 3/2/2015
Scale: AS SHOWN

Petitioner
CBA Exhibit

Ref
2A

2A

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- The subject property is not in the Chesapeake Bay Critical Area.
- The subject property is not located within a 100 year flood plain.
- The proposed barn will be serviced by a private well

OFFICE OF PLANNING

Regional Planning District: Prettyboy District Code: 302 \$ 7736'45" W 19.00'

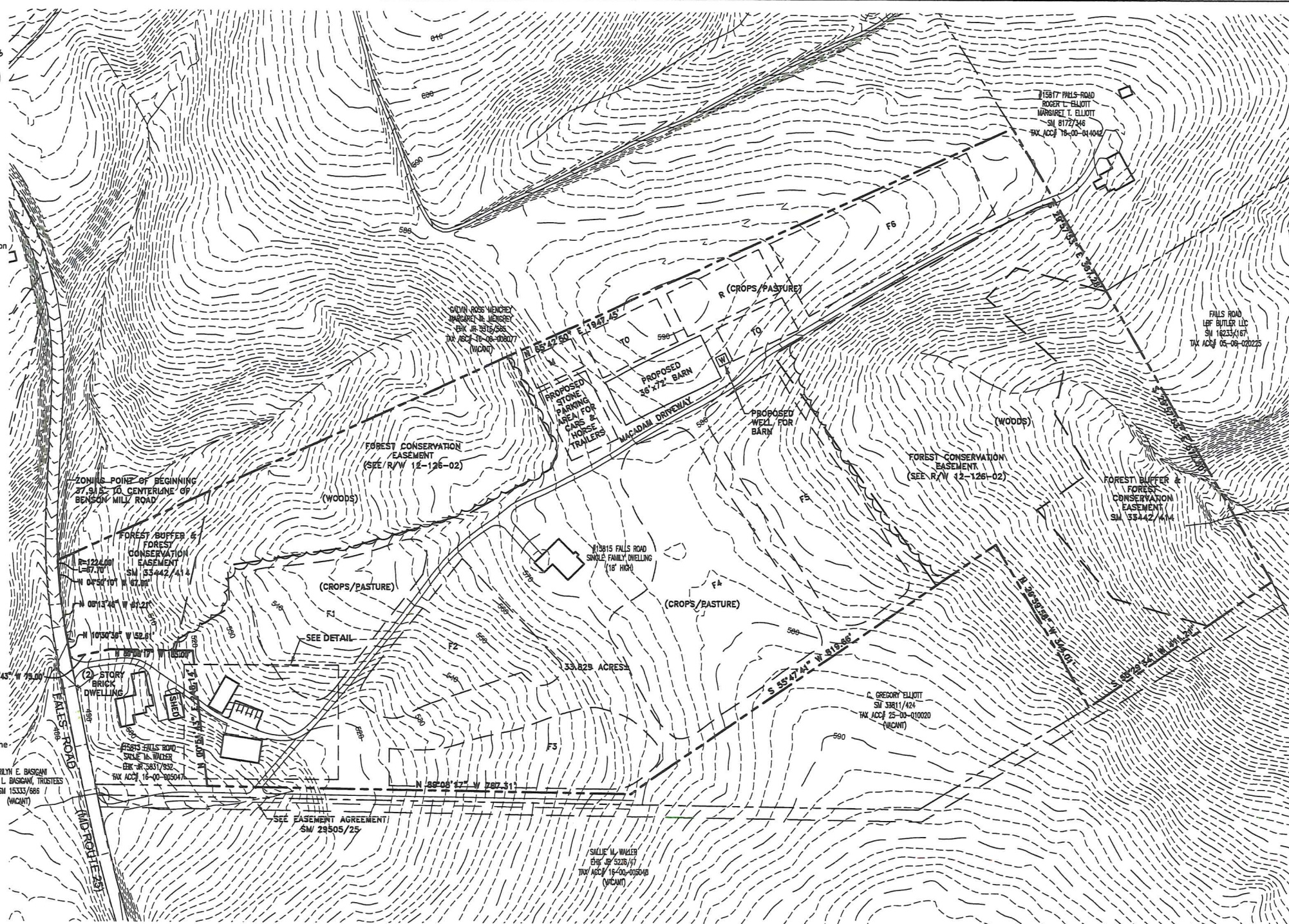
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PROPOSED DEVELOPMENT

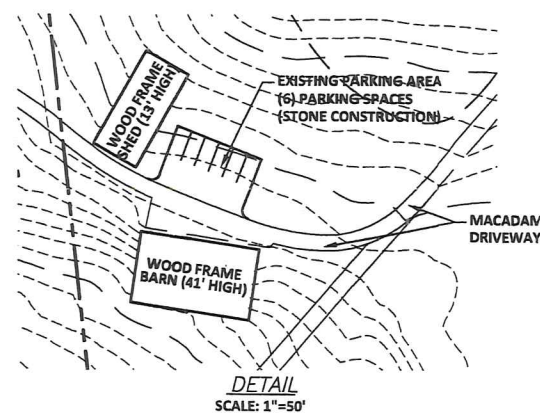
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EXAMPLE OF PROPOSED BARN



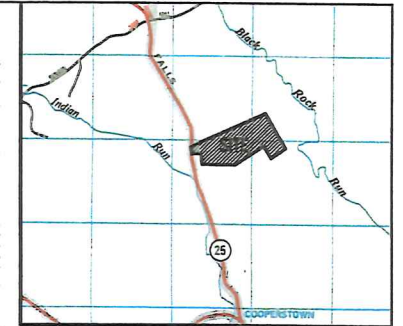
PLAN
SCALE: 1"=100'



DETAIL
SCALE: 1"=50'

PLAN LEGEND

- F1 - F6 FIELDS FOR PASTURING HORSES
TO SHORT TERM PASTURING FOR HORSES
R RIDING ARENA
M MANURE STORAGE



Vicinity Map - Scale: 1" = 2000'
ADC The Map People - Permitted Use # 20612205



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PLAN TO ACCOMPANY A PETITION
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#15815 FALLS ROAD
BALTIMORE COUNTY, MARYLAND
5th ELECTION DISTRICT 3rd COUNCILMANIC DISTRICT

Date: 5/27/17

Scale: AS SHOWN

REVISION
6/5/15 REVISED PROPERTY
INFORMATION

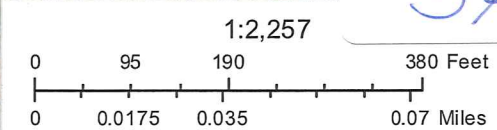
Petitioner
CBA Exhibit
2B

Baltimore County - My Neighborhood



Legend

- House Numbers
- Zoning
- Property
- County Boundary



March 8, 2018

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

Microsoft I

Petitioner
CBA Exhibit

3A

Pet 3A

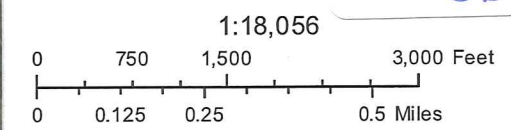
Baltimore County - My Neighborhood



Legend

-  Zoning
-  County Boundary

Petitioner
CBA Exhibit
3B



March 8, 2018

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS user community

Pet 3B

Baltimore County - My Neighborhood



Legend

- House Numbers
- Zoning
- Property
- County Boundary

RC 2

1:4,514

0 195 390 780 Feet

0 0.035 0.07 0.14 Miles

March 8, 2018

Petitioner
CBA Exhibit

3C

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

Pet 3C



Environmental Map

Ref 3D

Created By
Baltimore County
My Neighborhood



This data is only for general information purposes only. This data may be inaccurate or contain errors or omissions. Baltimore County, Maryland does not warrant the accuracy or reliability of the data and disclaims all warranties with regard to the data, including but not limited implied, of merchantability and fitness for ar County, Maryland disclaims all obligation and but not limited to, actual, special, indirect, a attorneys' and experts' fees, and court costs from or in connection with the use of or reli

Petitioner
CBA Exhibit

3D

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ENVIRONMENTAL IMPACT

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OFFICE OF PLANNING

Regional Planning District: Prettyboy District Code: 302

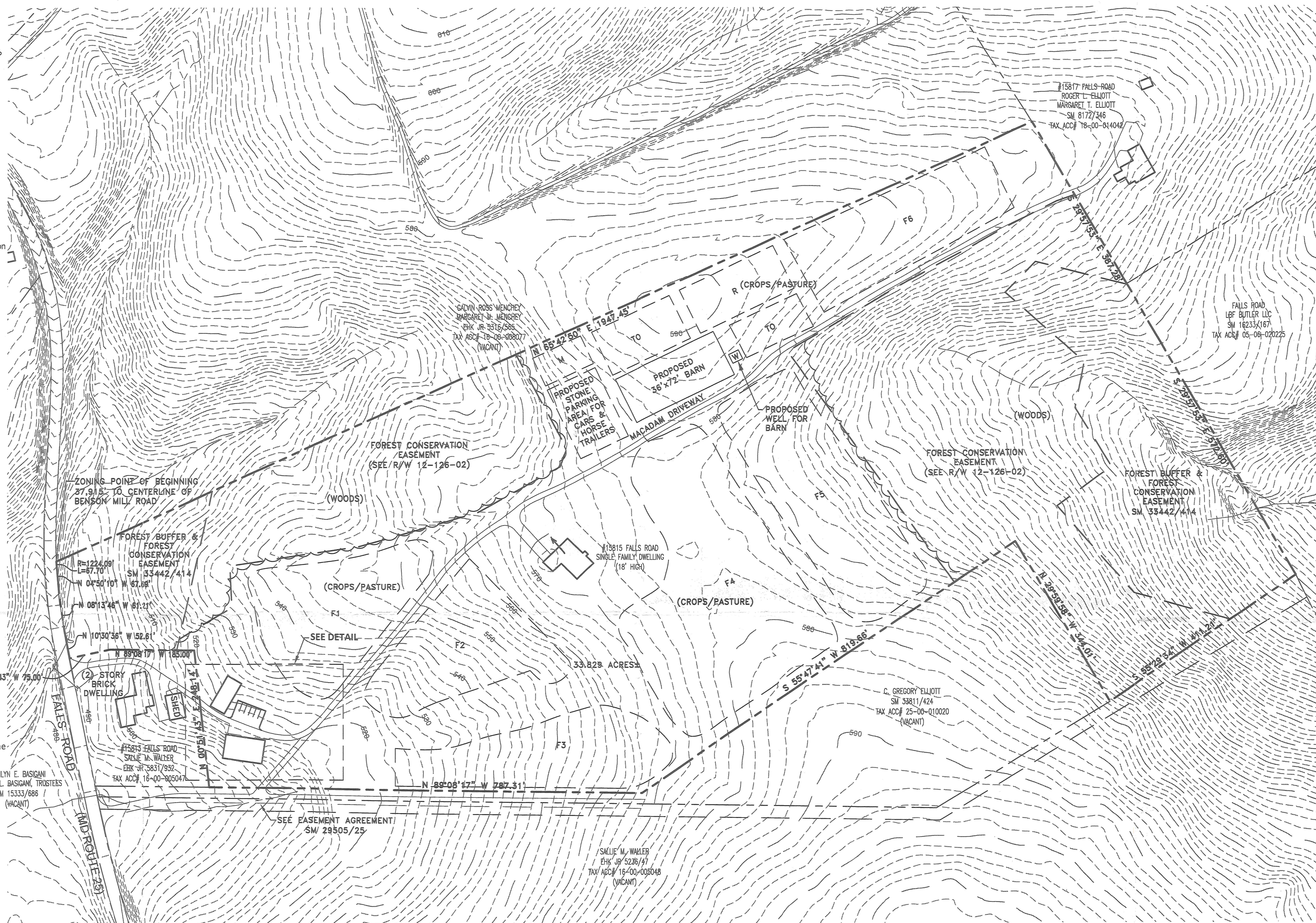
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PROPOSED DEVELOPMENT

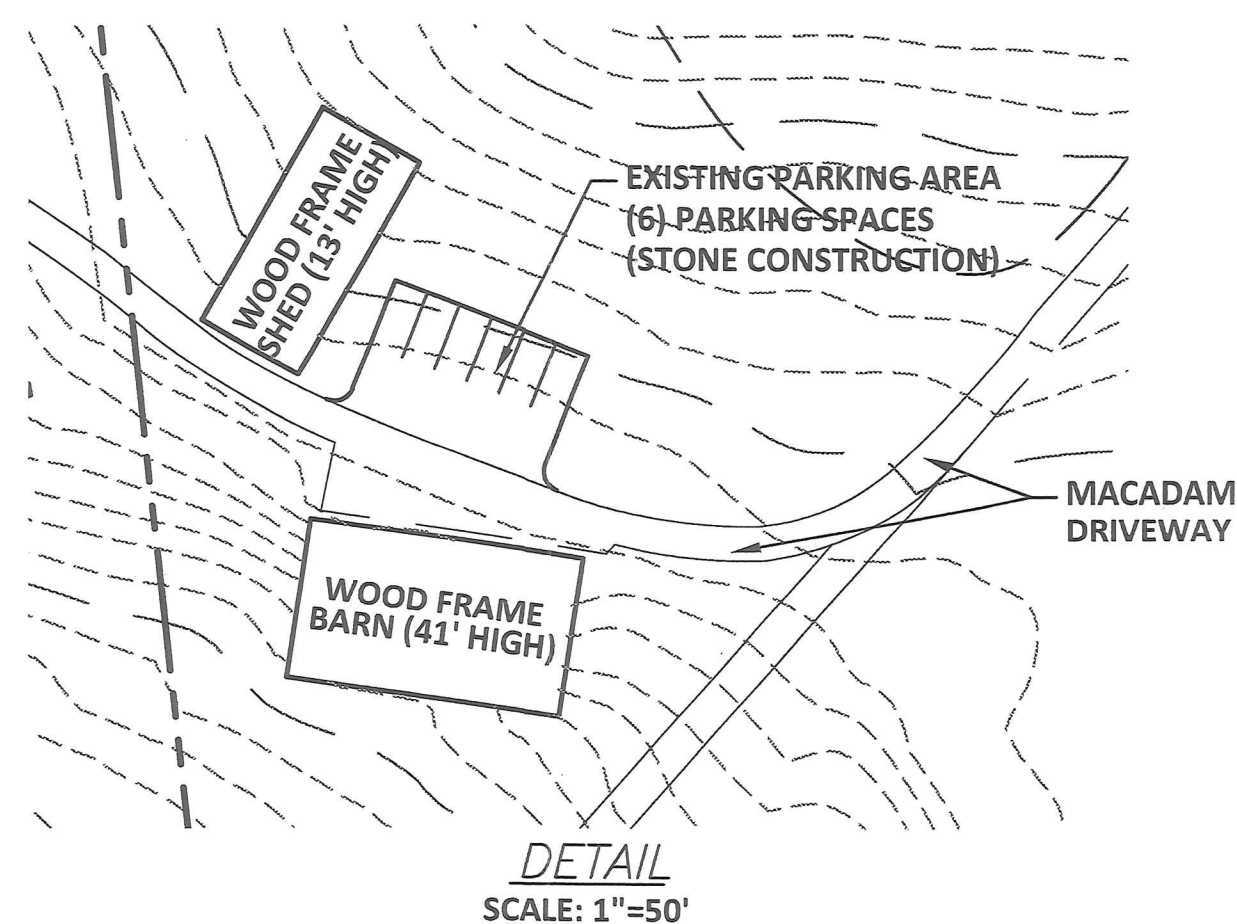
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EXAMPLE OF PROPOSED BARN



PLAN
SCALE: 1"=100'



DETAIL
SCALE: 1"=50'

PLAN LEGEND

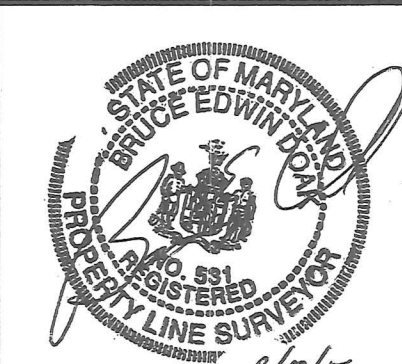
- F1 - F6
TO
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SHORT TERM PASTURING FOR HORSES
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MANURE STORAGE

REVISION	
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BALTIMORE COUNTY, MARYLAND
5th ELECTION DISTRICT 3rd COUNCILMANIC DISTRICT



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CASE # 2017-0332-SP4A