

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

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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.

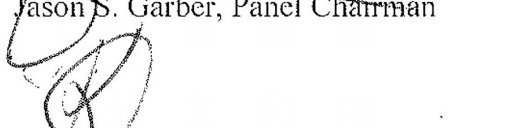
ALL SUBJECT TO THE FOLLOWING RESTRICTIONS:

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
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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

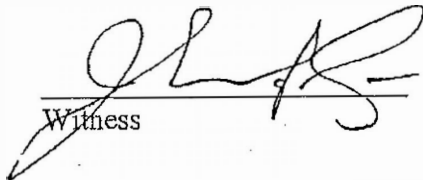
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6. These conditions may only be modified by agreement between the record owners of 15813 and 15815/15817 Falls Rd or subsequent Order of the Office of Administrative Hearings or the Board of Appeals (on appeal);
7. The parties understand that any riding 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



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