

**IN RE: PETITION FOR SPECIAL  
EXCEPTION  
(10307 Davis Avenue)  
The Polakoff Family, LLC,  
    *Legal Owners*  
Wayne Schaefer, *Lessee*  
Petitioners**

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BEFORE THE  
OFFICE OF  
ADMINISTRATIVE HEARINGS  
FOR  
BALTIMORE COUNTY  
**Case No. 2012-0322-X**

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**MOTION FOR RECONSIDERATION  
ORDER AND OPINION**

Now pending is Petitioners’ Motion for Reconsideration of the August 24, 2012 Order (the “Order”) entered in the above matter. I will deny the Motion, as explained in greater detail below.

Petitioners contend that the Order has caused confusion “as to the rights of the Petitioners and the Varvaros to the Easement Area.” *See* Motion, p. 2. That was certainly not my intent. The Order was drafted in such a way as to define the area of property subject to the special exception. This is standard practice in special exception cases. *See, e.g., Lucas v. People’s Counsel*, 147 Md. App. 209, 219 (2002). The Order clearly defined the relevant special exception area as including those lands owned by Petitioners, but not including the shared use driveway not owned by Petitioners.

Under Maryland law, an “easement area remains the property of the owners of the servient estate,” here the Varvaros. *Greenwalt v. McCardell*, 178 Md. 132, 136 (1940). It is also an unremarkable proposition that in zoning cases, the owners of the property at issue must each join in the petition, lest a variance or special exception be granted with respect to property not owned by the petitioner. *Fiol v. Howard Co.*, 67 Md. App. 595, 603 (1986).

So that is why the Order was drafted to exclude from the special exception area the land owned by the Varvaros, who were not petitioners in the case. I agree with Petitioners' counsel that the Office of Administrative Hearings has no authority to construe or interpret a deed, and the Order did not do so. In fact, the deed in question was not an exhibit in the case, and was submitted as an exhibit to the Motion for Reconsideration. Petitioners suggest that the Order be amended, to include certain conditions regarding the permissible number of vehicle trips and parking with respect to the Easement Area. Again, the Easement Area is not included within the special exception area, and to do as Petitioners' suggest would involve interpreting the deed language and determining, for example, whether the easement would be overburdened if used by Petitioners' clients and invitees. Only the circuit court has jurisdiction to do so. Gwynn v. Oursler, 122 Md. App. 493, 500 (1998) (court considers scope of express easement for "ingress and egress").

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 27<sup>th</sup> day of September, 2012, that the Motion for Reconsideration, be and is hereby DENIED.

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

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Signed \_\_\_\_\_  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County

JEB/dlw