

IN RE: PETITIONS FOR SPECIAL HEARING,	*	BEFORE THE
SPECIAL EXCEPTION & VARIANCE	*	OFFICE OF
(15815 Falls Road)	*	ADMINISTRATIVE HEARINGS
5 th Election District	*	FOR BALTIMORE COUNTY
3 rd Council District	*	
Roger L. Elliott	*	
<i>Legal Owner</i>	*	
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.

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:sln