

IN RE: <b>PETITION FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>(1316 A Mt. Carmel Road)</b>		
7 <sup>th</sup> Election District	*	OFFICE OF
3 <sup>rd</sup> Council District		
Barry L. & Taunia M. Durst	*	ADMINISTRATIVE HEARINGS
<i>Legal Owners</i>		
	*	FOR BALTIMORE COUNTY
<b>Petitioners</b>		
	*	<b>Case No. 2019-0069-SPH</b>

\* \* \* \* \*

**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 Barry L. & Taunia M. Durst, legal owners (“Petitioners”). The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to approve a non-density parcel of 4.80 acres to be transferred to the 1201 Brandy Springs Road property, already a non-density parcel; and to confirm that the kennel uses approved in Case Nos. 1984-0054-X & 2005-0273-SPH will not have an expanded use area. A site plan was marked and admitted as Petitioners’ Exhibit 1.

Barry & Taunia Durst and professional engineer Rick Richardson appeared in support of the petition. There were no protestants or interested citizens in attendance. The Petition was advertised and posted as required by the BCZR. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (“DOP”) and the Bureau of Development Plans Review (“DPR”). Neither agency opposed the request.

Some history will help to set the context for the present case. Prior to 2005, Barbara and Glenn Durst owned a 44.7 acre parcel in the Parkton area of Baltimore County, on which was situated their principal dwelling (*i.e.*, 1316B Mt. Carmel Road). In 2005 they obtained approval for a transfer from the 44.7 acre parcel of a 3.24 acre “non-density lot” which was improved with

a building used as a commercial kennel. At the same time the commercial kennel was approved as a nonconforming use. *See* Case No. 2005-0273-SPH. In or about 2006 Barbara and Glenn Durst subdivided their approximately 41 acre parcel to create a 30 acre building lot for their son and his wife, Petitioners herein. Petitioners constructed a dwelling on this lot in 2007, known as 1316A Mt. Carmel Road.

The commercial kennel is known as Hereford Bed and Biscuit, and customers gain access to the business by way of a driveway which crosses the 30 acre lot on which Petitioners constructed their principal residence. The driveway accessing the commercial kennel is shown on the site plan as an “access easement...for the benefit of the commercial kennel,” although its exact boundaries are not defined. *See* Pets. Ex. 1. To eliminate the potential for confusion concerning the scope and/or location of this “easement,” Petitioners propose to transfer a 4.80 acre parcel of land from their 30 acre lot, which would be added to the existing 3.24 acre non-density lot approved in 2005. The net result would be that the lot known as 1316A Mt. Carmel Road would be 25.2 acres +/- in size and the non-density lot would be increased in size to approximately 8 acres.

Even though the non-density lot on which it is situated would increase in size, Petitioners do not seek to enlarge the size or scope of the nonconforming commercial kennel operation, which would be prohibited by BCZR §104 in any event. A condition will be added to the order below to clarify that all kennel operations must be conducted within the 3.24 acre lot approved in the 2005 zoning case, and now identified as 1201 Brandy Springs Road. The non-density transfer is proposed only to provide the commercial kennel with a deeded means of access to the business without needing to rely on an “access easement” which crosses another property. This will enable the kennel business and 1316A Mt. Carmel Road to be separately conveyed without the potential for a title dispute concerning the scope of the ill-defined “access easement.”

THEREFORE, IT IS ORDERED this 29<sup>th</sup> day of **October, 2018** by this Administrative Law Judge, that the Petition for Special Hearing to: (1) approve a non-density parcel of 4.80 acres to be transferred from the lot and property known as 1316A Mt. Carmel Road to the 1201 Brandy Springs Road property, already a non-density lot; and (2) to confirm that the commercial kennel uses approved in Case Nos. 1984-0054-X & 2005-0273-SPH will not have an expanded use area, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners must obtain approval from the DRC for a lot line adjustment to alter and enlarge the existing 3.24 acre non-density lot shown on the site plan.
2. All commercial kennel operations must be conducted within the confines of the 3.24 acre non-density lot shown on the site plan submitted herein as Petitioners' Ex. No.1 and described on that plan as "Non-Conforming Use (Kennel) Limits."
3. The existing trailer referenced in the DOP's ZAC comment may be used for storage, but may not be used to keep or board animals as part of the nonconforming commercial kennel operation. The trailer shall not be equipped or arranged for human habitation, and may not contain kitchen or bathroom facilities.

Any appeal of this decision must be filed 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:sln