

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY

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PETITION OF :
DANIEL and KATHLEEN ALBERT : Case No. S-2880
: OZAH No. 15-05
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A hearing in the above-entitled matter was held on March 16, 2015, commencing at 9:35 a.m., at the Office of Zoning and Administrative Hearings, 100 Maryland Avenue, Rita Davidson Memorial Hearing Room, Rockville, Maryland 20850 before:

Lynn A. Robeson
Hearing Examiner

A P P E A R A N C E S

Daniel and Kathleen Albert

1 MS. ALBERT: Because she gave me a copy.
 2 MS. ROBESON: I'm sorry.
 3 MS. ALBERT: No, that's fine.
 4 MS. ROBESON: She's so efficient. So, let me just
 5 explain a little bit about the proceedings here. This is a
 6 - it's an informal, but, hearing, but it has some
 7 formalities. You're under oath -- well, I'm going to swear
 8 you in -- and you don't have any opposition, so I don't have
 9 to explain about cross-examination and things like that.
 10 It's a special exception, which is a little bit of a
 11 misnomer, because it's not an exception. There are certain
 12 criteria that you have to meet, and if I find that you've
 13 met those criteria and the Board agrees, then you get the --
 14 receive the approval.
 15 So, what I'm going to do now since there's just
 16 the two of you, could you please -- well, first, let me
 17 swear you both in.
 18 (Witnesses sworn.)
 19 MS. ROBESON: Have you had a chance to review the
 20 staff report, which is the Technical Staff Report, which is
 21 this document?
 22 MR. ALBERT: That's the 26 page report from Park
 23 and Planning, yes?
 24 MS. ROBESON: Yes. Because that contains the
 25 criteria for approval. So your testimony should be

3 1 P R O C E E D I N G S

2 MS. ROBESON: I'm calling the case of Daniel and
 3 Kathleen Albert, BOA Case No. S-2880, OZAH Case No. 15-05,
 4 an application for a special exception for an equestrian
 5 facility at 14400 Chrisman Hill Drive, Boyds, Maryland, on
 6 land in the R-200 zone, soon to be the RE-1 zone. The
 7 property is also described as Lot 22, Block A, Black Hill
 8 Estates. And, this is a hearing that's -- my name is Lynn
 9 Robeson, I'm the Hearing Examiner. What I'm going to do
 10 today is conduct a hearing on behalf of the Board of
 11 Appeals. All the evidence that you present -- the Board has
 12 to make its decision on the evidence presented here. So,
 13 anything you want to say should be said here, and then I
 14 write a recommendation to the Board, and if you disagree
 15 with the recommendation, you have 10 days to request oral
 16 argument to the Board of Appeals. Just another thing, do
 17 you have an Affidavit of Posting with you?
 18 MR. ALBERT: Posting the sign?
 19 MS. ROBESON: Sign.
 20 MR. ALBERT: One was completed this morning. We
 21 have a copy.
 22 MS. ROBESON: Okay. Can I get that, and I'll add
 23 that to the record. Or maybe Ellen put it in here.
 24 MS. ALBERT: She may have already put it in.
 25 MS. ROBESON: Oh, she did.

5 1 addressed to that criteria. All right. Now, did you get a
 2 chance to look at the Planning Board recommendation? I know
 3 it was just handed to you.
 4 MS. ALBERT: Well, that was the recommendations
 5 were -- from what I understand, we were limited to owning
 6 the horse, not renting them.
 7 MS. ROBESON: Yes.
 8 MS. ALBERT: Not to have public events.
 9 MR. ALBERT: Yeah, the conditions were --
 10 MS. ALBERT: Yeah, they were conditions.
 11 MR. ALBERT: That are acceptable.
 12 MS. ALBERT: It was approved with conditions,
 13 according to the Planning Board, and we were -- and I'm
 14 familiar with that.
 15 MS. ROBESON: Okay. Now, would you like to adopt
 16 the Technical Staff Report as your own, and findings, the
 17 facts and findings in the Technical Staff Report, as your
 18 own testimony in this case?
 19 MR. ALBERT: I think it's consistent.
 20 MS. ALBERT: Yeah, definitely. Yes, it was
 21 exactly consistent.
 22 MS. ROBESON: Okay. I hate to do this, but if you
 23 could talk one at a time. I didn't -- because this goes to
 24 the Board of Appeals on a transcript, so if you're both
 25 talking. So, it's my fault, because I asked you both a

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1 question. So, it's not your fault. Okay. And what I'd
2 like to do is, we can do, maybe it's easier just to call --
3 I need you to identify some of the documents that you
4 submitted and tell me if they're accurate. I think there
5 were some photos. If you could, either one of you, if you
6 could approach here and I'll show you the documents.
7 MR. ALBERT: Okay.
8 MS. ROBESON: Okay. Can you just describe, I'm
9 showing you Exhibit 9. Can you describe what this is?
10 MR. ALBERT: The top photos is a front shot of our
11 barn, and the bottom photo is, I guess, from the northeast
12 looking southeast on the side.
13 MS. ROBESON: Okay, and that's where you're going
14 to house the horses?
15 MR. ALBERT: Yes.
16 MS. ROBESON: And now I'm showing you Exhibit 8.
17 Can you tell me what this is? And, oh, sorry. Do these,
18 aside from weather conditions, do these still fairly and
19 accurately depict the property as it is today?
20 MR. ALBERT: Yes.
21 MS. ROBESON: Can you tell me what Exhibit 8 is?
22 MR. ALBERT: A copy of our lot, along with, I
23 guess, some neighbors on the edges. That's the house.
24 MS. ROBESON: Is it a Location Survey?
25 MR. ALBERT: I would think -- well, it's a Tax

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1 Survey, Location Survey.
2 MS. ROBESON: Oh, it's the, oh okay. Did you get
3 this from the public records?
4 MS. ALBERT: Let me see it, and then I'll tell you
5 where it came from. I'm sorry.
6 MS. ROBESON: No, if we can do this just -- if we
7 can --
8 MS. ALBERT: I got that from Park and Planning.
9 MS. ROBESON: You got this from Park and Planning,
10 okay. And, can you tell me what this is? This is Exhibit
11 5.
12 MS. ALBERT: And this was also from Park and
13 Planning. It was just a small copy and she was looking for
14 this, and she got this instead. She was going to throw it
15 away, and I said, no, I can use this, because it would give
16 me a good diagram so I could draw. I didn't realize how
17 actually, this was, came about before I realized how much
18 more we had to do. But, this was so that they could see the
19 fence, and they could see, you know, some vegetation, the
20 barn there, and this was going to be our, I believe that's
21 going to be the --
22 MS. ROBESON: Manure. Okay. This would be the
23 equivalent of a special exception site plan, and I'm just
24 telling you -- oh, and does this fairly and accurately
25 depict what you propose to do?

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1 MR. ALBERT: Well, there's no changes being made.
2 MS. ROBESON: Right. I'm saying this is --
3 MR. ALBERT: Current.
4 MS. ALBERT: That just shows what we have.
5 MS. ROBESON: What happens is, this is your
6 special exception site plan, and if you want to make changes
7 in the future, you have modify the site plan with the Board
8 of Appeals, just so you know, because there will be a
9 condition in your report or in the Board's opinion, that you
10 have to abide by your testimony and the site plan you
11 submitted. Okay?
12 MS. ALBERT: Okay.
13 MS. ROBESON: All right. And this, can you
14 describe what this is? If you can tell me. This looks like
15 --
16 MS. ALBERT: This was an original site plan from
17 when the house was purchased.
18 MS. ROBESON: Okay. This is your house location
19 survey. Okay, and this is Exhibit 4. And, to your
20 knowledge, is this still accurate?
21 MS. ALBERT: Yes, yes, it is.
22 MS. ROBESON: Thank you. You can be seated. Now,
23 one thing I have to ask is, do you agree -- well, first
24 we'll do this. Do you agree to abide by the conditions of
25 approval set out in the Staff Report, which is Exhibit 14,

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1 the 26 page.
2 MS. ALBERT: Right, right. Yes.
3 MS. ROBESON: You agree to do that.
4 MS. ALBERT: Right.
5 MS. ROBESON: Now, as I said, we do have some
6 typical, standard conditions that we put on, which is, you
7 have to abide by all your testimony and evidence that you
8 presented today, and one thing that is required is a
9 modification to the other special exception. Now, we have
10 forwarded -- you may want to stop on your way out in Room
11 217, we did discuss it -- yes, we did discuss it, especially
12 the fees with them, and they were going to look into it. I
13 don't know if they've done it by now or not, but you may
14 want to stop in and get that.
15 One of the conditions of approval was that you
16 modify the --
17 MS. ALBERT: Accessory apartment.
18 MS. ROBESON: Yeah, thank you. And the reason
19 they do that, is so that they can keep tabs on how the two
20 operate together, because if you, you know, look at
21 isolation in one and not the other, sometimes we had in the
22 past conflicting conditions. Now, I don't think, you know,
23 my guess is -- the other thing is, if the Board deems it's a
24 minor modification, you don't have to go through a hearing.
25 MS. ALBERT: Right, right.

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1 MS. ROBESON: It just -- the Board will just
2 consider it and grant it. So, in any event, so I wanted to
3 make that clear.
4 MS. ALBERT: Sure.
5 MS. ROBESON: There are some standard conditions
6 that you abide by the site plan, and your testimony and
7 evidence, and that you'll modify the special exception.
8 And, we also have a standard condition that you get any
9 licenses and permits, you know. I don't know what you would
10 need for this. I'm not aware of any, but if you do need
11 one, the burden is on you to go and get one. All right. Do
12 you agree to abide by those conditions?
13 MS. ALBERT: Yes, yeah. Yes. It was just going
14 to be a -- we just wanted a permit so we could have a horse
15 for personal use.
16 MS. ROBESON: Yes.
17 MS. ALBERT: And nothing -- and we aren't going to
18 give lessons, and it's not going to be rented -- you know,
19 it was just for personal use only.
20 MS. ROBESON: Okay.
21 MS. ALBERT: So that's kind of like, oh it was so
22 simple, and now we were kind of surprised how it's not quite
23 so simple.
24 MS. ROBESON: No, no.
25 MS. ALBERT: But again, because, I mean, the

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1 reason Montgomery County is a nice county to live in is that
2 it's, it's well maintained. Let's put it that way.
3 MS. ROBESON: Well, I appreciate your saying this.
4 It can be -- sometimes the processes are a matter of, you
5 know, controversy. But, I appreciate your saying that. Do
6 you have anything else you'd like to say about your special
7 exception?
8 MS. ALBERT: No.
9 MS. ROBESON: Okay. What I have to do now is --
10 have you had a chance to look at our file? There's notices
11 in here. What I usually do is admit all the exhibits that
12 are in our file. If you want to take five minutes and look
13 it over, there's the Forest Conservation Plan request, your
14 petitioner statement, your adjoining and confronting
15 property owners, the hearing notice, the accessory apartment
16 opinion, the forest exemption, oh, I already did that. Your
17 application. Let's see what else is in here, maybe we don't
18 have to recess, since it's so small.
19 Your affidavit of posting. An e-mail regarding
20 the modification, the Planning Board decision,
21 recommendation I mean, a scheduling e-mail, some questions
22 we had for -- that I had for Elsabet Tefsaye, because I
23 wanted to make sure that it also complied with the RE-1
24 zone, since you will be RE-1 in less than a month or a month
25 or so. There's a series of e-mails that you were copied on

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1 on that.
2 MS. ALBERT: Right, right.
3 MS. ROBESON: And then, another notice, corrected
4 notice of hearing. So, do you have any objection to any of
5 those coming into the record?
6 MS. ALBERT: No.
7 MS. ROBESON: Okay. Well, with that, I am going
8 to -- I have 30 days after the close of the record to write
9 a recommendation in this case. I am definitely going -- we
10 leave the record open for 10 days to get the transcript in,
11 because sometimes I can't remember exactly what was -- we
12 summarize everything for the Board. So, the record will
13 close in 10 days from today, and then I have 30 days to
14 write my recommendation, and you have 10 days to request
15 oral argument before the Board of Appeals. Given the size
16 of this file, we have some that are boxes and boxes, and
17 boxes, I will try to do my best -- we are not totally in
18 control of our own hearing schedule sometimes but, I will
19 try to beat the 30 day clock. And, you will be notified --
20 the decision is posted on our website, and you will also be
21 notified -- you'll get a letter just summarizing my
22 recommendation and the -- with the conditions of approval,
23 with the instructions if you want to request oral argument
24 before the Board of Appeals. All right?
25 MR. ALBERT: Very good.

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1 MS. ROBESON: Okay. Thank you very much for
2 coming in and taking the time. And with that, I'm going to
3 adjourn the hearing. And you will be hearing from us. All
4 right. Okay, thank you.
5 MR. ALBERT: Thank you.
6 MS. ROBESON: Oh just, I'm sorry, one last thing.
7 Can we go back on the record? Usually, we require the
8 modification before you can technically operate the special
9 exception, because all of the approvals have to be in place.
10 So, I just wanted to let you know that as far as the timing
11 of your modification request.
12 MR. ALBERT: Okay.
13 MS. ROBESON: And that's usually a condition of
14 approval. I don't have control over telling the Board
15 whether I think it's a minor or major modification, but,
16 well, I may put something in my report on that, even though
17 I don't technically have the authority but, I have to think
18 about that because I'm not sure I have the ability to do
19 that, so. In any event, that would be the way the condition
20 of approval is worded, that you need to get the modification
21 before you can operate the equestrian facility.
22 MR. ALBERT: Okay.
23 MS. ROBESON: Okay. Are you okay -- well, yeah,
24 right, what can you do? Okay. All right. So with that,
25 now I'm really going off the record and you will be hearing

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1 from us, all right. Thank you.

2 MR. ALBERT Thank you very much.

3 (Whereupon, at 9:54 a.m., the hearing was
4 concluded.)

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C E R T I F I C A T E

2 DEPOSITION SERVICES, INC., hereby certifies that
3 the attached pages represent an accurate transcript of the
4 electronic sound recording of the proceedings before the
5 Office of Zoning and Administrative Hearings for Montgomery
6 County in the matter of:

7 Petition of Daniel and Kathleen Albert

8 Special Exception No. S-2880

9 OZAH No. 15-2-03

10

11 By:

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14

15 Keena Lukacinsky, Transcriber

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<p style="text-align: center;">A</p>	<p>approvals (1) 0:9 approved (1) 0:12 argument (3) 0:16,15,23 aside (1) 0:18 attached (1) 0:3 authority (1) 0:17 aware (1) 0:10 away (1) 0:15</p>	<p>0:22,2,6,7,8,9,10,13, 14,15,17,19,21,22,4,7, 8,21,24 case (5) 0:2,3,3,18,9 certain (1) 0:11 certifies (1) 0:2 chance (3) 0:2,19,10 changes (2) 0:1,6 Chrisman (1) 0:5 clear (1) 0:3 clock (1) 0:19 close (2) 0:8,13 coming (2) 0:2,5 completed (1) 0:20 complied (1) 0:23 concluded (1) 0:4 condition (4) 0:9,8,13,19 conditions (11) 0:9,10,12,6,15,18,22, 24,5,12,22 conduct (1) 0:10 conflicting (1) 0:22 confronting (1) 0:14 Conservation (1) 0:13 consider (1) 0:2 consistent (2) 0:19,21 contains (1) 0:24 control (2) 0:14,18 controversy (1) 0:5 copied (1) 0:25 copy (4) 0:1,21,13,22 corrected (1) 0:3 County (3) 0:1,1,6 criteria (4) 0:1,12,13,25 cross-examination (1)</p>	<p>0:9 Current (1) 0:3</p>	<p>e-mails (1) 0:25 equestrian (2) 0:4,21 equivalent (1) 0:23 especially (1) 0:11 Estates (1) 0:8 even (1) 0:16 event (2) 0:2,19 events (1) 0:8 evidence (4) 0:11,12,7,7 exactly (2) 0:21,11 Examiner (1) 0:9 exception (10) 0:4,10,11,6,9,23,7,7, 9,8 exemption (1) 0:16 Exhibit (6) 0:9,10,16,19,21,25 exhibits (1) 0:11 explain (2) 0:5,9</p>
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