

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. CBA-2180-A [CBA-2180, S-254]

**PETITION OF JOHNSON FAMILY ENTERPRISES
LIMITED PARTNERSHIP
[NEW HOLDER: DK PROPERTY HOLDINGS LLC]**

RESOLUTION TO MODIFY SPECIAL EXCEPTION
(Resolution Adopted December 18, 2024)
(Effective Date of Resolution: January 9, 2025)

The Board of Appeals granted Case No. CBA-2180 effective May 2, 1967, to J. H. Burton & Sons of Hyattsville, Inc., to permit the construction and operation of a horticultural nursery and commercial greenhouses pursuant to Section 11-37.p-1 of the Zoning Ordinance (Chap. 111, Mont. Co. Code 1965, as amended). Effective July 6, 1973, in Case No. S-254, the special exception was modified to permit the continued operation of a horticultural nursery and commercial greenhouse, to relocate certain structures, and to erect additional structures and install additional parking facilities. Effective July 8, 1998, the special exception governed by Case Nos. CBA-2180 and S-254 was transferred to Johnson Family Enterprises Limited Partnership. Effective January 15, 1999, the special exception was modified to permit the Petitioner to erect a covering between the main retail store and the greenhouse that was behind it. Effective March 24, 2004, in Case No. CBA-2180-A, the Board granted a comprehensive modification of this special exception. Finally, effective March 7, 2007, the Board granted an administrative modification of the special exception to permit the installation of a stockade fence and two above-ground fuel tanks, and to increase the permitted number of trucks (pickup and stake body trucks).

The subject property contains 28.34 acres, located at 5011 Olney Laytonsville Road, Olney, Maryland, 20832, in the AR Zone.

The Board of Appeals has received a letter with attachments, dated December 10, 2024, from Stuart Barr, Esquire, on behalf of new property owner DK Property Holdings LLC, requesting a transfer of the special exception to his client. In addition, Mr. Barr submitted a Deed showing that DK Property Holdings LLC now owns the property. Mr.

Barr's letter indicates that his client will operate the special exception in accordance with its existing approvals and conditions. He submitted written consent to the transfer from the current special exception holder, as well as written consent from his client to receive the special exception.

In addition to requesting a transfer, Mr. Barr also requests in his letter that the Board accept an as-built Site Plan ("ALTA Survey") as the Site Plan of record. In support of this request, Mr. Barr notes the following:

... given the time period that has elapsed since the Board last reviewed the Property in 2006, DK Property Holdings LLC would like the Board of Appeals record to include the attached ALTA Survey, which reflects existing Property conditions. While there appears to be general consistency, there may be some minor discrepancies between the Board's prior approved Special Exception plans that the Board has on file and the attached ALTA Survey. For example, it does not appear that the ALTA Survey reflects a relocated existing greenhouse marked as circle #5 on the 2006 Special Exception plan. There may be other very minor discrepancies. The new Property owner would like the Board to have an updated plan reflecting existing Property conditions.

Mr. Barr's letter states that the requested transfer and the administrative modification to reflect existing conditions will not change the nature, character, or intensity of the existing special exception use or its operations. His letter states that "[a]ny proposed future changes to the Property or the Special Exception approvals proposed by DK Property Holdings LLC will be handled by separate application."

The Board of Appeals considered the transfer and modification request at its Worksession on December 18, 2024. Mr. Barr appeared at the Worksession in support of the request. He stated that there were some minor discrepancies between the 2006 Site Plan and the new ALTA Survey, which he stated was done when his client purchased the property. In response to a Board question asking if he could describe the differences between the 2006 Site Plan and the ALTA Survey, Mr. Barr said that a greenhouse that was shown on the 2006 Plan was not shown on the ALTA Survey. In addition, Mr. Barr stated that there were some discrepancies with respect to the striping of parking spaces, but that the property still had more than adequate parking. In addition, he stated that while the ALTA Survey does not show landscaping, the property has plenty of landscaping. Finally, Mr. Barr stated that the walkways between the retail and display areas might not be in the exact locations that are shown on the 2006 Site Plan. In response to a Board question asking if the discrepancies between the approved 2006 Site Plan and the as-built ALTA Survey have resulted in an intensification of the use, Mr. Barr stated that they have not changed the intensity of the use, and that they will not do so going forward.

Because Case No. CBA-2180-A [CBA-2180, S-254] was approved prior to October 30, 2014, under Section 59.7.7.1.B of the current Zoning Ordinance, this modification request must be reviewed under the standards and procedures in effect on October 29,

2014, unless the applicant elects otherwise. Section 59-G-1.3(c)(1) of the 2004 Zoning Ordinance provides, with respect to administrative modifications, that:

If the proposed modification is such that the terms or conditions could be modified without substantially changing the nature, character or intensity of the use and without substantially changing the effect on traffic or on the immediate neighborhood, the Board, without convening a public hearing to consider the proposed change, may modify the term or condition.

In addition, Rule 12.2 of the Board of Appeals Rules of Procedure [Resolution Numbers 12-865 (adopted October 27, 1992), 14-742 (adopted January 30, 2001), and 15-554 (adopted March 23, 2004)] provides that the transfer of a special exception is a modification under Section 59-G-1.3 of the 2004 Zoning Ordinance (2004).

With respect to the requested transfer, the Board finds, based on the representations in Mr. Barr's letter and the Deed submitted at the Worksession, that the special exception property is now owned by DK Property Holdings LLC, which has agreed to operate the special exception in accordance with its existing terms and conditions. In addition, the Board finds that the transfer of the special exception from one holder to another, to be operated in accordance with the terms and conditions under which it was originally granted by the Board of Appeals, will not change the nature, character or intensity of the special exception use, and will not substantially change its impact on the immediate neighborhood or on traffic.

With respect to the request that the Board adopt the as-built Site Plan (ALTA Survey) as the Site Plan of record, the Board notes that Mr. Barr has indicated that the as-built Site Plan is generally consistent with the previously approved (2006) Site Plan, but that there may be minor inconsistencies between the Plans. For example, Mr. Barr notes that "a relocated existing greenhouse marked as circle #5 on the 2006 Special Exception plan" is not shown on the as-built Site Plan. As recounted above, Mr. Barr detailed other minor discrepancies for the Board at the Worksession, and stated that these discrepancies have not increased the intensity of the use. In addition, the Board notes that Mr. Barr has represented in his letter that the new special exception holder will return to the Board to seek a modification for any future changes to the special exception property or operations. Based on the representations in Mr. Barr's letter and the statements made at the Worksession, the Board finds that the grant of the requested modification, to approve and adopt an as-built Site Plan that is generally consistent with the previously approved Site Plan as the Site Plan of record, will not substantially change the nature, character or intensity of this use, and will not change its impact on the immediate neighborhood or on traffic, and thus can be granted. The Board notes that the new holder has not requested any changes to its operations or staffing, and that any changes approved by adopting the as-built Site Plan would be physical in nature as opposed to operational.

In light of the foregoing, on a motion by Caryn L. Hines, Chair, seconded by Alan Sternstein, with Amit Sharma and Donald Silverstein in agreement, and with Richard Melnick, Vice Chair, necessarily absent:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the record in Case No. CBA-2180-A [CBA-2180, S-254] is re-opened to receive Mr. Barr's letter of December 10, 2024, with attachments;

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the request to transfer this special exception to DK Property Holdings LLC is granted;

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the request to adopt the as-built Site Plan (ALTA Survey) that Mr. Barr submitted with his letter as the Site Plan of record for this special exception is granted; and

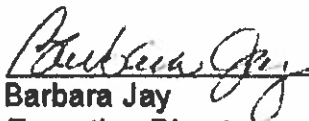
BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland, that all terms and conditions of the original special exception, together with any modifications granted by the Board of Appeals, remain in effect.



Caryn L. Hines

Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 9th day of January, 2025.



Barbara Jay
Executive Director

NOTE:

Any party may, within fifteen (15) days of the date of the Board's Resolution, request a public hearing on the particular action taken by the Board. Such request shall be in writing, and shall specify the reasons for the request and the nature of the objections

and/or relief desired. In the event that such request is received, the Board shall suspend its decision and conduct a public hearing to consider the action taken.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.