

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland Avenue
(240) 777-6600
Hours: M-F 8:30 am – 4:00 pm

CASE NO. CBA-3028

PETITION OF LEO J. HANRAHAN

RESOLUTION TO REVOKE SPECIAL EXCEPTION

(Resolution Adopted November 14, 2001)

(Effective Date of Resolution: January 23, 2002)

EVIDENCE BEFORE THE BOARD

1. Case No. CBA-3028 a special exception granted by the Board of Appeals July 13, 1971 to J. D. Claggett and B. D. Riley to permit the operation of a horticultural nursery and commercial greenhouse.
2. The subject property is located at 14325 New Hampshire Avenue, Silver Spring, Maryland.
3. On April 28, 1992 the Board of Appeals transferred the special exception to Leo J. Hanrahan and Eva M. Hanrahan.
4. On November 16, 1999 Frank De Lange, Zoning Investigator, Department of Permitting Services, issued a Notice of Violation for non-compliance of the use with a number of the terms and conditions of the special exception opinion. [Exhibit No. 34]
5. On May 4, 2000, Mr. De Lange notified the Board of Appeals that the use still failed to comply with condition number 4 of the special condition pertaining to the required screening of the parking area. Mr. De Lange requested that the Board convene a Show Cause hearing to resolve the violation. [Exhibit Nos. 13 and 34].
6. On the basis of Mr. De Lange's memorandum of May 4, 2000, on January 23, 2001, the Board of Appeals convened a Show Cause hearing for the special exception holder to address the issues in Mr. De Lange's memorandum and to show cause why the special exception should not be revoked. Mr. John L. Hanrahan appeared at the hearing and stated that he wished to file an application for a major modification to address the issues in Mr. De Lange's

Notice of Violation and subsequent memorandum to the Board of Appeals [Transcript, January 23, 2001, p. 10]. On the basis of Mr. Hanrahan's statement, the Board concluded the show cause hearing and on March 5, 2001 accepted his application for a modification as Case No. CBA-3028-A.

7. On May 30, 2001, in response to a request from the Board of Appeals for an additional inspection of the subject property and based on a memorandum dated April 18, 2001 from Candy Bunnag, Environmental Planning Division, Maryland National Capital Park and Planning Commission, the Board of Appeals received a memorandum from Frank De Lange, Investigator, Department of Permitting Services. Mr. De Lange's May 25, 2001 memorandum sets out a number of additional issues regarding compliance of the use with the terms and conditions of the special exception opinion. Ms. Bunnag's and Mr. De Lange's memoranda also raise the issue of compliance of the special exception with the requirements of the Paint Branch Special Protection Area.

8. On September 12, 2001, the Board received a letter from Susan W. Carter, Esquire, on behalf of Mr. Hanrahan, stating that he wished to withdraw his application for a modification, Case No. CBA-3028-A.

9. The Board considered Ms. Carter's letter at its worksession on September 19, 2001. On a motion by Angelo M. Caputo, seconded by Louise L. Mayer, with Donna L. Barron, Allison I. Fultz and Donald H. Spence, Jr., Chairman in agreement the Board dismissed the special exception modification, Case No. CBA-3028-A, as withdrawn.

10. Based upon the fact that Case No. CBA-3028-A was withdrawn, and upon the May 4, 2000 and May 25, 2001 memoranda from Frank De Lange, and pursuant to the provisions of Section 59-G-1.3(e) of the Montgomery County Zoning Ordinance, on November 14, 2001, the Board of Appeals reconvened the Show Cause Hearing in Case No. CBA-3028.

11. John L. Hanrahan appeared at the public hearing and stated that he had not installed the screening of the parking area required by Condition Number 4 of the July 13, 1971 special exception opinion. Mr. Hanrahan also stated that although he desired to modify the special exception, he was unable to do so because he is unable to meet the requirements of the Paint Branch Special Protection Area.

FINDINGS OF THE BOARD

1. The Board finds that the special exception continues to be out of compliance with the terms and conditions of the special exception Opinion of July 13, 1971, specifically, installation of the screening required by Condition Number 4.

2. The Board believes that the time between November 16, 1999 and November 14, 2001 afforded Mr. Hanrahan ample time to address the ongoing violations.
3. Section 59-G-1.3(e)(6) of the Zoning Ordinance provides that at the conclusion of a show cause hearing, "The Board, by the affirmative vote of at least 4 members, may reaffirm or revoke the special exception, or amend, add to, delete or modify the existing terms or conditions of the special exception."
4. The Board finds, based upon Mr. Hanrahan's failure to correct the ongoing special exception violations and upon Mr. Hanrahan's withdrawal of Case No. CBA-3028-A, that the special exception must be revoked. Therefore,

BE IT RESOLVED BY THE BOARD OF APPEALS for Montgomery County, Maryland that Case No. CBA-3028, Petition of Leo J. and Eva M. Hanrahan is **revoked**.

On a motion by Louise L. Mayer, seconded by Angelo M. Caputo, with Donna L. Barron, Allison I. Fultz and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the foregoing Resolution.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 23rd day of January, 2002.

Katherine Freeman
Executive Secretary to the Board

NOTE:

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 (See

Section 59-A-4.63 of the County Code). 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.