

**OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
for**

MONTGOMERY COUNTY

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Rockville, Maryland 20850

<https://www.montgomerycountymd.gov/ozah/index.html>

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APPLICATION NO. CU 20-07, METRO GROUNDS MANAGEMENT, LLC

ORDER DENYING REQUEST FOR POSTPONEMENT

Filed on May 29, 2020, the Applicant, Metro Grounds Management, LLC, seeks a conditional use to operate as a landscape contractor under Section 59.3.5.5 of the Montgomery County Zoning Ordinance on property located at 3731 Damascus Road, Brookeville, Maryland 20633. The property is further identified as Parcel 300, Snowden subdivision (Tax Account No. 00008574).

Background

On October 26, 2020, the Office of Zoning and Administrative Hearings (OZAH) received a request to postpone the public hearing in this case (Request), currently scheduled for November 9, 2020, from three individuals, Ms. Jennifer Lund, Mr. Jeffrey O'Toole, and Mr. Jack Quinn (Requestors). Exhibit 41. The Requestors allege that defects in the notice of OZAH's public hearing and the Planning Board's meeting, "unfairly...deprived [them] of information and opportunity to prepare any opposition." *Id.*

The Requestors rely primarily on deficiencies in the application sign (mandated under Section 59.7.5.2 of the Zoning Ordinance) and the Notice of Public Hearing (Exhibit 35). Exhibit 41. The Requestors state that OZAH's website was incorrectly listed as "OZAH@montgomerycountymd.gov," that some of the signs were obscured by brush or located too far back from the road to be read at 40 miles per hour. They allege that they could not reach the website using the link provided but were referred to Montgomery County's website. There, they were able to find a copy of the application, a link to the exhibit list for this case, and a copy of the Notice of Hearing but could not find the application documents. *Id.* They allege that they were unable to access the application materials because these are not published on OZAH's website until two days before the public hearing, even though they are required to file a pre-hearing statement two weeks in advance of the public hearing. *Id.*

The Requestors also allege that notice of the Planning Board's public meeting was inadequate and did not permit enough time for them to prepare for that hearing, although some members of the community did testify. *Id.*

The Applicant opposed the request for postponement, arguing that the Requestors were aware of the application since June 2020, evidenced by an email containing a photograph of the

sign dated June 5, 2020. The Applicant disagrees that the website is difficult to find, because, according to the Applicant, the number one result under their search of OZAH@montgomerycountymd.gov brings up OZAH's website. Exhibit 43. The remaining information on the sign is correct. The Applicant further argues that, since OZAH granted a postponement of the original hearing date, the correct hearing date has been published under the link "Hearing Schedule" on OZAH's website. Finally, the Applicant notes that the written Notice of Public Hearing specifically directed individuals on how to view the application materials online, well in advance of the public hearing. The Applicant summarizes (Exhibit 43):

The Property has been posted continuously for five months in 4 prominent locations along Damascus Road and Howard Chapel Road since installation of the signs on May 30, 2020. The opposition has had multiple notices in various formats of how to access copies of the application materials either directly online or via telephone or email contact with staff at OZAH or MNCPPC. The time and date of the Hearing Date of November 9th has been published on the OZAH Hearing Schedule since August 2020. The time and date of the Hearing date of November 9th has been published in in the MNCPPC staff report since October 12, 2020. The Opposition acknowledged that they obtained information from the posted signs in June, received the OZAH Notice of Hearing in September, and the MNCPPC Notice in October. The opposition indicates that they began investigating and taking actions in June to investigate this application. Ms. Lund and Mr. O'Toole participated in the Planning Board hearing in October.

Opinion

From this factual background, the Hearing Examiner agrees with the Applicant that notice in this case has been reasonable and that the individuals requesting a postponement have had adequate time to prepare for the public hearing.

The Zoning Ordinance requires two forms of notice to the public: an application sign posted on every road frontage of the property and a written notice of the public hearing mailed to adjoining and abutting property owners, and community, homeowners, renters and condominium associations within ½ mile of the property, and to any municipality within ½ mile of the site. *Zoning Ordinance*, §59.7.5.2. The application signs must be posted within five (5) days after OZAH accepts the application; the written notice of public hearing must be sent at least 30 days before the public hearing. *Id.*

The Request includes an emailed photograph of one of the application signs. The email is dated June 5, 2020, and states "Please determine if we need to object to this." Exhibit 41. The same photograph reveals that, regardless of the website address, the sign correctly lists OZAH's phone number as well as the case name and number. Thus, any issues identifying the date of the hearing or information on the application could easily have been addressed with a telephone call to OZAH's staff. The sign served its intended purpose—it informed the public that this application

had been filed with OZAH and afforded the public the opportunity to obtain additional information on the application. Finally, the Request indicates that those interested did find OZAH's website.¹

There is no support for the Requestor's claim that the application materials can only be accessed two days before OZAH's public hearing. The Applicant correctly points out that OZAH's Notice of Public Hearing included a link with instructions on how to access these materials online. Exhibit 35. The Notice of Public Hearing also states, "[i]f you wish to review the full file (all submission in the case) before it is published on the website or have other questions, please contact Nana Johnson at (240) 777-6663 or nana.johnson@montgomerycountymd.gov." *Id.*

The Notice of Public Hearing contains the correct date—the error was that it named the incorrect the day of the week. OZAH, however, publishes a separate "Hearing Schedule" on its website that correctly listed the day of the week. The Notice of Public Hearing contains OZAH's website address and phone number. Again, any confusion about the date could easily have been cleared up with a telephone call earlier in the process rather than waiting until *after* the Planning Board's public meeting and shortly before OZAH's public hearing.

The Hearing Examiner does not address deficiencies in the Planning Board's notice, as the Request does not state whether the Board's notice complies with its Rules of Procedure, which are separate from OZAH's. She agrees with the Applicant that the "neighborhood" as defined by Staff of the Planning Department in the Staff Report is not identical to who is entitled to mailed notice of a hearing under the Zoning Ordinance.

The facts of this case demonstrate that individuals requesting the postponement were aware of the application on June 5, 2020, over four months ago. Questions regarding the application could have been resolved simply by calling the phone number on the application sign. Application materials have been published on the Planning Department's website since the application was filed, and the Notice of Public Hearing provided a link to these materials. The correct day of the public hearing, along with the correct date, were published on OZAH's website.

The discrepancies in the notice do not create the insurmountable problems posited by Requestors and the Hearing Examiner finds that they have failed to demonstrate that they have been prejudiced by any errors in the notice of this case. For these reasons, the Hearing Examiner finds that notice was adequate and reasonable and denies the Request.

Order

Upon review of the Request for Postponement (Exhibit 41) and the Applicant's Opposition thereto (Exhibit 43), the Request for Postponement be, and hereby is, denied.

¹ The Hearing Examiner also performed an internet search for OZAH@montgomerycountymd.gov and found that the first result took her to OZAH's website.

So Ordered this 29th day of October 2020.



Lynn Robeson Hannan
Hearing Examiner

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Mr. Jeffrey O'Toole
Mr. Jack Quinn
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