

**OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
for**

**MONTGOMERY COUNTY
Stella B. Werner Council Office Building
100 Maryland Avenue, Room 200
Rockville, Maryland 20850**

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

Phone: (240) 777-6660; Fax (240) 777-6665

CASE NO. LMA H-143

Application of EYA Development, LLC

On January 10, 2022, Douglas Burdin filed a request under Rule 3.8 for OZAH to issue subpoenas for unnamed persons from the Montgomery County Department of Transportation (MCDOT) and the Maryland Department of Transportation, State Highway Administration (SHA), to compel testimony regarding the underlying matter. Exhibit 74(a).

On January 12, 2022, OZAH forwarded this request to all parties of record. Exhibit 75. No responses were received.

Having thoroughly considered the request, OZAH declines to issue subpoenas in this matter. The request does not articulate with sufficient clarity how direct testimony from representatives from MCDOT or SHA would be probative of the standards and necessary findings required under 59.7.2.1E for Local Map Amendments (LMA). Mr. Burdin states that “The witnesses’ testimony is relevant and critical to understanding the proposed project’s impact on traffic that would arise out of the requested zoning change.” Exhibit 74(a), p. 2. As traffic impacts are common elements of most LMA applications, they are addressed through agency comment and review. Further, an Applicant for an LMA must present sufficient evidence to sustain requisite findings. This record contains official comments from both MCDOT and SHA and responses to those comments from both the Applicant and parties to this case. Moreover, traffic issues are reviewed and evaluated by the Planning Department and the Planning Board, both of which issued reports which are included in the record. Moreover, the Applicant has identified several individuals in their Revised Justification Statement (Exhibit 53) they intend to call to testify as witnesses at the public hearing and those witnesses will be subject to cross-examination by any party.

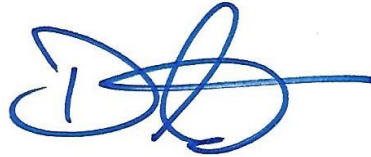
In light of this, compelling testimony by subpoena is unnecessary and duplicative of evidence that is or will be contained in the record, all of which is subject to evaluation at the public hearing. For these reasons the Hearing Examiner does not find good cause to issue subpoenas at this time.

ORDER

Therefore, it is hereby **ORDERED** that the request to issue subpoenas in this matter is **DENIED**.

So Ordered and Notices forwarded this 25th day of January, 2022.

Office of Zoning and Administrative Hearings



Derek J. Baumgardner
Hearing Examiner

Due to the COVID-19 pandemic, this hearing will be held remotely via Microsoft Teams. You do not need to sign up in advance to testify or view the hearing. You do not need a subscription to Microsoft Teams to join the hearing. Instructions to access the public hearing may be found on OZAH's website (above) under the link "Public Hearing Remote Access and Exhibits".

All exhibits filed in the case will be available to view via the same link on OZAH's website at least two days before the public hearing. Exhibits are removed the day after the public hearing so that staff can prepare for the next hearing. If you wish to download any of the exhibits, you should do so no later than 5:00 p.m. of the day of the public hearing.

OZAH is now operating remotely to the extent possible. You may review the application online at <https://montgomeryplanning.org/development> under the application number H143. If 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 Sara Behanna at 240-777-6661. Those wishing to review the file in person *must* wear masks when entering OZAH's office at 100 Maryland Avenue, Room 200, Rockville, Maryland 20850.

Persons or associations that are (1) represented by counsel, (2) intending to appear in organized opposition, or (3) intending to introduce expert evidence or testimony must file a pre-hearing statement containing the information required by Rules 3.4 and 3.5 of OZAH's Rules of Procedure for Zoning, Conditional Use and Board of Appeals Referral Cases (OZAH Rules). These Rules may be found on OZAH's website listed above (*See OZAH's Amended Land Use Rules of Procedure*). Filings must include an electronic copy of the statement and all attachments. The Applicant must submit its pre-hearing statement at least 30 days before the public hearing. Persons in opposition that are required to file a pre-hearing statement must do so no less than 20 days before the public hearing.

If you need services to participate in a public hearing, please contact this Office no later than seven (7) days in advance of the public hearing by calling 240-777-6660 (TTY 240-777-7914) or

emailing us at ozah@montgomerycountymd.gov. OZAH cannot guarantee that an interpreter can be made available if notified of the request less than seven (7) days in advance of the public hearing. This document is available in alternative format such as large print upon request, via the same phone numbers and email address.

Notices forwarded to:

Erin Girard, Attorney for Applicant

David Schaffer, Esq.

Parties of Record

Emily Tettlebaum, Planning

Charles Frederick, Esquire, Associate County Attorney

Department of Permitting Services Greg Nichols, Manager, SPES at DPS

Michael Coveyou, Director, Finance Department

Washington Suburban Sanitary Commission Montgomery County Public Schools

Abutting and Confronting Property Owners

(or a condominium's council of unit owners or renters, if applicable) Civic, Renters' and Homeowners' Associations within a half mile of the site and Any Municipality within a half mile of the site.