



MONTGOMERY COUNTY BOARD OF APPEALS

MEMORANDUM

October 18, 2023

TO: Lynn Robeson Hannan, Director
Office of Zoning and Administrative Hearings

FROM: */s/*
Barbara Jay, Executive Director
Board of Appeals

SUBJECT: Case No. A-6834
Petition of Jose Manuel Polanco and Nelsy P. Polanco

The case file for the above-captioned variance petition is hereby transmitted to you, pursuant to a Board of Appeals' Resolution also dated October 13, 2023, for the issuance of a report and recommendation regarding a request for variances needed in connection with a new conditional use application filed by the same Petitioners (Case No. CU 24-06). Counsel for the Petitioners has requested that the conditional use application and variance application be consolidated and that a joint public hearing be advertised and held.

Exhibit 20
OZAH Case No: CU 24-09

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland Avenue
(240) 777-6600

<http://www.montgomerycountymd.gov/boa/>

Case No. A-6834

PETITION OF JOSE MANUEL POLANCO AND NELSY P. POLANCO

**RESOLUTION TO REFER VARIANCE APPLICATION
TO THE HEARING EXAMINER TO SCHEDULE AND HOLD A PUBLIC HEARING
IN CONNECTION WITH OZAH CASE NO. CU 24-06, AND FOR THE ISSUANCE OF A
REPORT AND RECOMMENDATION**

(Resolution Adopted September 20, 2023)
(Effective Date of Resolution: October 18, 2023)

Board of Appeals' Case No. A-6834 is an application for three variances needed in connection with the proposed development of a Landscape Contractor use (OZAH Case No. CU 24-06).

The subject property is Parcel P319, New Birmingham Manor Subdivision, located at 2230 Spencerville Road, Spencerville, Maryland, 20868, in the RE-1 Zone.

The Board of Appeals has received a letter, dated September 8, 2023, from Francoise Carrier, Esquire, on behalf of Petitioners Jose Manuel Polanco and Nelsy P. Polanco. Ms. Carrier indicates in her letter that her clients' variance application was filed contemporaneously with an application for a new Conditional Use. Ms. Carrier requests in her September 8, 2023, letter that the Board refer her clients' variance application to the Office of Zoning and Administrative Hearings for a consolidated hearing with this Conditional Use. In a letter dated September 14, 2023, Ms. Carrier requests a waiver of the filing fee associated with the variance application.

Ms. Carrier includes a letter dated September 6, 2023, from Patricia Wolford, Zoning Manager, DPS, with her variance application. Ms. Wolford's letter indicates that the Petitioners' proposed Landscape Contractor use requires the following variances:

1. A 40-foot variance to allow a ten-foot parking setback along a portion (approximately 50%) of the western property line.
2. A 40-foot variance to allow a ten-foot setback along a portion (approximately 75%) of the northern property line.
3. A 45.2-foot variance to allow use of a pre-existing shed located approximately 4.2 feet from the western property line.

The Board of Appeals considered Ms. Carrier's letters at a Worksession held on September 20, 2023. Ms. Carrier participated in the proceedings on behalf of her clients. The Board's Rules of Procedure govern the consolidation of cases and requests for waiver of the variance fee. Board Rule 1.6(b) reads as follows:

- b. If an applicant files a variance application involving property for which the applicant has also filed a conditional use application with the Hearing Examiner, the Board may, upon written request:
 1. refer the variance(s) to the Hearing Examiner in accordance with Section 7.6.2.B.2 to conduct a hearing and write a report and recommendation; and
 2. waive the variance fee.

Section 59.7.6.2.B.2 of the Zoning Ordinance provides that:

2. The Hearing Examiner schedules and conducts public hearings for all conditional use applications. The Hearing Examiner may schedule and conduct a hearing or write a report and recommendation for any other matter pending before the Board of Appeals upon request of the Board of Appeals and with approval of 3 of its members.

The Board finds, in accordance with the above-excerpted provisions, that it has the authority to refer this variance application to the Hearing Examiner to schedule and conduct a hearing, and to issue a report and recommendation to the Board, and votes to take such action. The Board further finds that it can grant the requested fee waiver, and votes to do that as well. Accordingly, on a motion by John H. Pentecost, Chair, seconded by Richard Melnick, Vice Chair, with Caryn Hines, Laura Seminario-Thornton, and Alan Sternstein in agreement:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that, pursuant to the authority granted in Section 59.7.6.2.B.2 of the Montgomery County Zoning Ordinance and Board of Appeals' Rule of Procedure 1.6(b), the Board refers variance Case No. A-6834 to the Hearing Examiner for Montgomery County to schedule and conduct a hearing in connection with that Office's consideration of conditional use Case No. CU 24-06, and for the issuance of a written report and recommendation to the Board of Appeals in Case No. A-6834; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that, pursuant to the authority in Board of Appeals' Rule of Procedure 1.6(b)(2), the Board hereby waives payment of the variance fee.

John H. Pentecost
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 18th day of October, 2023.



Barbara Jay
Executive Director

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. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.