



MONTGOMERY COUNTY BOARD OF APPEALS

MEMORANDUM

February 15, 2024

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

FROM: Barbara Jay, Executive Director
Board of Appeals

SUBJECT: Case No. A-6853
Petition of American Lawn and Landscape, Inc., through Jeffrey K.
Juneau

The case file for the above-captioned variance petition is hereby transmitted to you, pursuant to a Board of Appeals' Resolution also dated February 15, 2024, 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 Petitioner (OZAH Case No. CU 24-10). The Petitioner has requested that the conditional use application and variance application be consolidated and that a joint public hearing be advertised and held.

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
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Rockville, Maryland Avenue
(240) 777-6600
<http://www.montgomerycountymd.gov/boa/>

Case No. A-6853

**PETITION OF AMERICAN LAWN AND LANDSCAPE, INC.,
THROUGH JEFFREY K. JUNEAU**

**RESOLUTION TO REFER VARIANCE APPLICATION
TO THE HEARING EXAMINER TO SCHEDULE AND HOLD A PUBLIC HEARING
IN CONNECTION WITH OZAH CASE NO. CU 24-10, AND FOR THE ISSUANCE OF A
REPORT AND RECOMMENDATION**

(Resolution Adopted February 14, 2024)
(Effective Date of Resolution: February 15, 2024)

Board of Appeals' Case No. A-6853 is an application for multiple variances needed in connection with a proposed Landscape Contractor use (OZAH Case No. CU 24-10).

The subject property is Block A, Lot 2, Etchison Acres subdivision, located at 6412 Damascus Road, Gaithersburg, Maryland, 20882, in the AR Zone.

The Board of Appeals has received a letter, dated February 6, 2024, from Christopher M. Ruhlen, Esquire, on behalf of American Lawn and Landscape, Inc. through Jeffrey K. Juneau (the "Petitioner"). Mr. Ruhlen indicates in his letter that the Petitioner and his wife own the subject property, and that the property is subject to a pending Conditional Use application for a Landscape Contractor use (Case No. CU 24-10). Mr. Ruhlen's letter states that the Petitioner is seeking variance relief from the fifty (50) foot setback requirement that is applicable to the Landscape Contractor use so that an existing outbuilding and a portion of an existing gravel parking area can be used in connection with the pending Conditional Use. Section 59.3.5.5.B of the Montgomery County Zoning Ordinance requires that "building and parking setbacks, including loading areas and other site operations" associated with a Landscape Contractor use be located "a minimum of 50' from any lot line." Specifically, Mr. Ruhlen's letter indicates that variances from the fifty (50) foot setback are needed for an existing outbuilding located in the southwestern portion of the Property, and for a portion of the existing gravel parking area that is located to the rear of the residence, as follows:

From the western (right side) lot line:

1. A 47.3 foot variance from the side lot line for an existing outbuilding that is located within 2.7 feet of that lot line at its closest point. The required setback is fifty (50) feet, in accordance with Section 59.3.5.5.B of the Zoning Ordinance.
2. A fifty (50) foot variance from the side lot line for an existing gravel parking area that is located within zero (0) feet of that lot line at its closest point. The required setback is fifty (50) feet, in accordance with Section 59.3.5.5.B of the Zoning Ordinance.

From the southern (rear) lot line:

3. A 16.3 foot variance from the rear lot line for an existing outbuilding that is located within 33.7 feet of that lot line at its closest point. The required setback is fifty (50) feet, in accordance with Section 59.3.5.5.B of the Zoning Ordinance.
4. A 15.6 foot variance from the rear lot line for an existing gravel parking area that is located within 34.4 feet of that lot line at its closest point. The required setback is fifty (50) feet, in accordance with Section 59.3.5.5.B of the Zoning Ordinance.

On behalf of his client and pursuant to Rule 1.6(b) of the Board of Appeals' Rules of Procedure, Mr. Ruhlen requests that the variance application be consolidated with pending Conditional Use Case No. CU 24-10, and that the variance fee be waived.

The Board of Appeals considered Mr. Ruhlen's letter at a remote Worksession held on February 14, 2024, using Microsoft Teams. Mr. Ruhlen participated in the proceedings on behalf of his client, Jeffrey Juneau. Mr. Juneau and engineer Jim Witmer were also present at this remote meeting.

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.

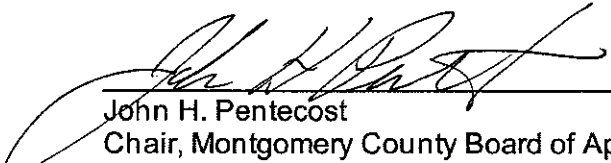
Section 59.7.6.2.B.2 of the Zoning Ordinance provides that:

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, Alan Sternstein, and Amit Sharma 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-6853 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 24-10, and for the issuance of a written report and recommendation to the Board of Appeals in Case No. A-6853; 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 15th day of February, 2024.



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.