

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
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LOCAL MAP AMENDMENT H-124

**ORDER GRANTING APPLICATION WITHDRAWAL AND PARTIAL
REFUND OF FILING FEE**

BACKGROUND

Local Map Amendment Application No. H-124 (Exhibit 1) was filed on August 28, 2017, by Robert R. Harris, Esquire, Attorney for Applicant, RSH Holdings, LLC. It sought to change the zoning of the subject site from the Commercial/Residential Zone, CR-3.0, C-1.5, R-2.75, H-90T, to the Commercial/Residential Floating Zone, CRF-3.0, C-1.5, R-2.75, H-180, to allow additional height for a proposed building. The property is identified as Lot 3, Block 6, Friendship Heights Plat No. 12344, which consists of 2.1371 acres located at 5550 Friendship Boulevard, in Friendship Heights, Maryland, just west of Wisconsin Avenue (MD 355) and north of Willard Avenue (MD 28). The tax account No. is 07-00493961.

The Applicant paid a total filing fee of \$9,200, pursuant to the applicable fee schedule. As required by the Zoning Ordinance, 25% of the fee (\$2,300) was paid directly to the Planning Department and 75% of the fee (\$6,900) was paid to the Office of Zoning and Administrative Hearings (OZAH). Exhibit 1(a). A hearing date of December 18, 2017 was set and agreed to by the Applicant. Exhibit 24.

Approximately 32 letters of opposition to the application were received, and they are collected in Exhibit 28. In addition, attorney Norman Knopf, Esquire, indicated his intent to enter his appearance in opposition to the application. Exhibit 29.

On October 23, 2017, Applicant's counsel, Robert R. Harris, Esquire, sent the Office of Zoning and Administrative Hearings (OZAH) a letter (Exhibit 36) seeking to withdraw the application and requesting a refund of the filing fee pursuant to Rules 13 and 14 of OZAH's Rules of Procedure.

Since the scheduled hearing was still almost two months away, no formal notice of hearing was issued in this case.

Withdrawal of a Rezoning Application

Withdrawal of a rezoning application is governed by 2014 Zoning Ordinance Section 59.7.2.1.D.4, which provides:

4. Withdrawal of Application

The Hearing Examiner may allow an applicant to withdraw an application for a Local Map Amendment at any time before the Hearing Examiner issues the report.¹

Because the Hearing Examiner has not yet issued his report, held a hearing or even issued formal notice, the request to withdraw the application in LMA H-124 will be granted.

Refund of Filing Fees and Sign Fees

As mentioned, the Applicant seeks a refund of its application filing fees based on its early withdrawal of the application.

Requests for refunds of fees are governed by Zoning Ordinance §59.7.6.5.B, which provides:

B. Waiving or Refunding of Local Map Amendment Fees

- 1. The District Council may waive or refund any Local Map Amendment required filing fee, in whole or in part, if:
 - a. the application has not been advertised for public hearing;*
 - b. the application has been advertised for public hearing but the applicant files a request to withdraw it within 90 days after a master plan, Sectional Map Amendment, or Zoning Text Amendment that materially affects the property is approved, or condemnation proceedings or public acquisition of the subject property has been initiated; or*
 - c. the applicant shows that undue hardship will result if the refund is not approved.**
- 2. The Hearing Examiner may refund a Local Map Amendment filing fee of less than \$25,000, if any condition of Section 7.6.5.B.1 is satisfied.*

Under Subsection B.2., the Hearing Examiner may refund the filing fee in the amount requested because it is less than \$25,000, and Subsection B.1.a. has been satisfied.

OZAH's Rule 14 allows the Hearing Examiner to refund all or a portion of filing fees of less than \$25,000, if an applicant demonstrates that any of the listed conditions have been met, or that the public hearing has not commenced. Thus, both the Zoning Ordinance and OZAH's Rules authorize the return of fees in this case.

As noted, the Hearing Examiner may approve a partial refund of the filing fee, which is appropriate in this case because OZAH incurred staff expenses in processing the application and numerous opposition letters. According to OZAH Administrative Specialist II, she spent at least 20 hours working on this case, at \$41.30 per hour (Exhibit 39). Thus, the cost to OZAH in processing this case, to date, has been about \$826 (20 X \$41.30). The Hearing Examiner has not included his own time in this analysis.

Subtracting \$826 in OZAH's expenses from the filing fee of \$6,900 paid to OZAH results in a net fee return of \$6,074.

¹ Similar language is contained in Rule 13.0 of OZAH's Rules of Procedure for Zoning cases.

Thus, Applicant will be refunded its OZAH application fee of \$6,900, minus \$826 for OZAH's expenses. The refunded portion of the application fee is thus \$6,074.

In addition, the Applicant is entitled to a refund of the entire fee of \$2,300 it paid to the Planning Department. OZAH sent three emails to the Planning Department (Exhibits 37 and 38) inquiring whether that Department had incurred any expenses to offset against the filing fee refund, but has not received any responses. The Hearing Examiner therefore concludes that the Planning Department does not have any expenses to offset against the filing fees to be returned in this case. The Applicant must obtain that refund directly from the Planning Department since that portion of the fees was collected by that agency, not by OZAH.

ACTION

Therefore, it is, this 9th day of November, 2017, ORDERED that:

1. Application No. H-124, seeking to reclassify 2.1371 acres of land located at 5550 Friendship Boulevard, in Friendship Heights, Maryland, and identified as Lot 3, Block 6, Friendship Heights Plat No. 12344 (tax account No. 07-00493961), from the CR-3.0, C-1.5, R-2.75, H-90T Zone to the CRF-3.0, C-1.5, R-2.75, H-180 Zone, is hereby withdrawn;
2. The Office of Zoning and Administrative Hearings shall refund Applicant, RSH Holdings, LLC, \$6,074 of the application filing fee that was paid directly to OZAH; and
3. The Montgomery County Planning Department shall refund Applicant, RSH Holdings, LLC, \$2,300 of the application filing fee that was paid directly to the Planning Department.



Martin L. Grossman
Hearing Examiner and Director
Office of Zoning and Administrative Hearings

Copy of Order forwarded this 9th day of November, 2017, to:

Robert R. Harris, Esquire, Attorney for Applicant
 Reza Shahabadi, Sole Manager, SRS 1550, LLC
 Norman Knopf, Esquire, Attorney in opposition
 Jeff Zyontz, Legislative Counsel to the Council
 All parties of record
 Abutting and confronting property owners (or a condominium's council of unit owners, if applicable)
 Any municipality within a half mile of the site
 Registered Civic, Homeowners and Renters Associations within a half mile of the site
 Gwen Wright, Mark Pfefferle & Kathy Reilly, Planning Department
 Washington Area Metropolitan Transit Authority
 Montgomery County Department of Permitting Services
 Montgomery County Public Schools