

**OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
for
MONTGOMERY COUNTY**

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CASE NO. CU 15-06

APPLICATION OF MARYLAND CATERING CO., INC.

**ORDER GRANTING MOTION FOR SUMMARY DISMISSAL
AND DISMISSING CASE WITH PREJUDICE**

Background

Filed on March 24, 2015, the above-captioned application sought approval of a conditional use for a Country Inn under Section 59-3.5.3.A of the *2014 Montgomery County Zoning Ordinance*. The subject property is located at 10801 MacArthur Boulevard, Potomac, Maryland 20854, in the R-200 Zone (Tax Account Number 10-00848003).

The extensive procedural history of the case is summarized in several orders, incorporated here by reference: Exhibits 87, 121, 173, 200. After granting multiple postponement requests, the Hearing Examiner convened a public hearing on February 24, 2017. At the public hearing, the parties agreed to a continued hearing date of September 25, 2017. This agreement was memorialized in a Scheduling Order on February 27, 2017. Exhibit 173.

On June 27, 2017, however, the District Council introduced Zoning Text Amendment 17-04 (ZTA). Exhibit 210. The ZTA as introduced would prohibit Country Inns in the R-200 Zone unless the property had one property line abutting property in the R, RC RNC, or AR Zone. Exhibit 210.

On the same date, the West Montgomery County Citizens Association, the Woodrock Homeowners Association, the River Falls Homeowners Association, the Civic Association of River Falls, and the Brickyard Coalition (collectively, "Associations") filed a Motion for Continuance of the Hearing requesting an indefinite postponement to give the District Council time to consider the ZTA. Exhibit 210. The Associations presented evidence (in the form of a zoning map) that the subject property did not meet the locational criteria in the ZTA. Exhibit 210(c). Mr. and Mrs. Francis O'Day III filed a response supporting the Association's Motion for Continuance. Exhibit 214(b). The Applicant filed a response opposing the motion. Exhibit 214(a).

On July 10, 2017, the Hearing Examiner issued an order postponing the case indefinitely, but gave the parties leave to request that the hearing be rescheduled if the District Council failed to act on the ZTA within six months. Exhibit 221.

The District Council adopted the ZTA on October 31, 2017, with the locational criteria for Country Inns unchanged from introduction. The ZTA became effective on November 20, 2017. Exhibit 224. The Associations filed their Motion for Summary Dismissal on December 7, 2017. Mr. and Mrs. O'Day also filed a Motion for Summary Dismissal, incorporating the Association's Motion by reference. Exhibit 227. The Applicant filed no response to the motion. Exhibit 228.

The substantive law governing a zoning case is the law that applies at the time of the final decision in the case, unless the legislation explicitly exempts pending applications. *Powell v. Calvert County*, 368 Md. 400, 409 (2002). The zoning map filed submitted by the Applicant with the initial application (Exhibit 5) agrees with the map submitted with the Association's Motion for Continuance. Both maps reflect that the property does not meet the locational requirements for Country Inns established by ZTA 17-04. Nor did ZTA 17-04 include language exempting pending applications from its provisions. Therefore, a Country Inn is no longer permitted on the subject property. For this reason, the application must be dismissed.

Order

Therefore, upon consideration of the Associations' and the O'Day's Motions for Summary Dismissal, it is hereby,

Ordered, that the Motions for Summary Dismissal be, and hereby are, granted, and it is further

Ordered that the above-captioned case be, and hereby is, dismissed with prejudice.

Issued this 22nd day of December, 2017.



Lynn A. Robeson
Hearing Examiner

Copies to:

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