

**OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
MONTGOMERY COUNTY, MARYLAND
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SPECIAL EXCEPTION OF FLORENCE C. GARDNER

Case No. ZAS-711

ORDER OF REVOCATION

Background

Special Exception ZAS-711 was granted, with conditions, to Petitioner Florence C. Gardner by the Hearing Examiner for the Office of Zoning and Administrative Hearings (OZAH), on December 13, 1982, to permit the operation of a Private Educational Institution (dance classes) for up to five students, on her property located at 24244 Club View Drive, Gaithersburg, Maryland, in the R-150 Zone. Exhibit 10(a). Those conditions were amended and supplemented by an order from the Hearing Examiner dated June 8, 1983. Exhibit 17(a). For the reasons outlined below, this order will revoke the special exception, at the request of its holder and property owner, Florence C. Gardner, and in accord with the recommendation of the Department of Permitting Services (DPS).

According to the Department of Permitting Services, an inspection of the subject site, conducted on Friday, June 10, 2016, by Permitting & Code Enforcement Inspector Barbara Piczak Cox, revealed that the use has been abandoned. Exhibits 18, 18(a) and 19. Ms. Cox sent a letter, dated June 13, 2016, to Ms. Gardner seeking written confirmation of the abandonment of the special exception. Exhibit 18(a). On August 3, 2016, Ms. Gardner confirmed the abandonment, in writing. Exhibit 18(b).

On August 8, 2016, Ms. Cox sent OZAH a memorandum with her recommendation that the special exception be revoked as abandoned. Exhibit 18. Ms. Cox repeated her recommendation in a memorandum to OZAH dated June 1, 2017. Exhibit 19.

Opinion

Pursuant to Section 7.7.1.B.1. of the 2014 Zoning Ordinance, special exceptions approved before October 30, 2014 must be reviewed under the standards of the Zoning Ordinance in effect on October 29, 2014 (*i.e.*, under the old, 2004 Zoning Ordinance). Since the subject special exception clearly falls into that category, it will be reviewed under the old Ordinance.

Section 59-G-1.3(d) of the old Zoning Ordinance provides, in relevant part:

- (1) If, after making an inspection of a property governed by special exception, the Department finds that the special exception use as granted has been abandoned, it must forward written notice of its findings to the last recorded holder of the special exception and to the property owner, advising of the Department's finding and directing that they forward to the Department, within 60 days from the date of mailing of the notice, a written statement confirming the Department's finding that the special exception has been abandoned or challenging said finding and requesting that said special exception be continued.*
- (2) If the Department receives a written response from the special exception holder and the property owner acknowledges that the special exception has been abandoned, the Department must notify the Board of its findings, and the Board¹, upon receipt of such notice, must adopt and issue a written resolution finding the special exception to have been abandoned and ordering the special exception revoked.*

As detailed above, the special exception holder and property owner has declared the special exception to be abandoned and requested that it be revoked. The Department of Permitting Services has also met its obligations under Section 59-G-1.3(d)(2), and that section now requires that the Hearing Examiner issue a finding the special exception has been abandoned and order the special exception revoked. The Hearing Examiner so finds.

Order

Based on this record, the Hearing Examiner hereby finds that the special exception granted in the above-captioned case has been abandoned. Accordingly, pursuant to Sections 59-G-1.3(d) and 59-G-1.3(f) of the 2004 Zoning Ordinance, Special Exception No. ZAS-711 is hereby REVOKED.

Dated: June 16, 2017



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

cc: Ms. Florence C. Gardner
Barbara Piczak Cox, Department of Permitting Services
Planning Department
Board of Appeals

¹ Although this section refers to the "Board," meaning the Board of Appeals, the Hearing Examiner is authorized by Section 59-G-1.3(f) of the old Zoning Ordinance to conduct the same proceedings with regard to special exceptions, such as this one, that it has issued.