

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS

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CU 19-01, DUSHANE EQUESTRIAN FACILITY

**NOTICE OF WITHDRAWAL OF CONDITIONAL USE APPLICATION AND
ORDER GRANTING PARTIAL REFUNDS OF FILING AND SIGN FEES**

BACKGROUND

On August 31, 2018, Wendy Dushane filed an application for a conditional use to allow her to operate an equestrian facility for two horses on her two-acre property at 1918 Merrifields Drive, in Silver Spring, Maryland (Exhibit 3). The property is identified as Lot 10, Block J, of the Gayfields Subdivision. The total fee for the application was \$820, of which 75% (\$615) was paid to the Office of Zoning and Administrative Hearings (OZAH), and 25% (\$205) to the Planning Department, in accordance with Zoning Ordinance §59.7.6.5.A.3.

On October 19, 2018, a neighbor of the Applicant, Mr. Daniel Berry of 1910 Merrifields Drive, Silver Spring, filed an opposition to the application and a motion to be admitted as a Party of Record. Exhibits 24 and 26.

On October 25, 2018, the Hearing Examiner entered an Order granting Mr. Berry's Motion to be admitted as a Party of Record. Exhibit 32.

On October 26, 2018, in the course of its review of the conditional use application, the Planning Department's Technical Staff advised the Applicant that it would not recommend approval of the conditional use application for environmental and Master Plan compliance reasons and suggested that she should withdraw the application. Exhibit 36.

On October 29, 2018, the Hearing Examiner informed Ms. DuShane that Technical Staff's suggestion that she withdraw her conditional use application was just that – a suggestion, and that she is not required to withdraw her application even if both the Technical Staff report and the Planning Board's letter ultimately recommend denial for environmental (or other) reasons. She is still entitled to a public hearing before OZAH and a decision by a Hearing Examiner. Exhibit 39.

Nevertheless, Ms. DuShane elected, on October 31, 2018, to withdraw her application and seek a full or partial refund of her application and sign fees. Exhibit 40.

A hearing before the Office of Zoning and Administrative Hearings (OZAH) had been tentatively scheduled for December 21, 2018, but since the scheduled hearing is still almost two months away, no formal hearing notice has yet been issued.

Ms. DuShane returned her Notice Sign this morning, and it is in reusable condition.

Withdrawal of a Conditional Use Application

Withdrawal of a conditional use application is governed by 2014 Zoning Ordinance Section 59.7.3.1.D.4 , which provides:

4. Withdrawal of Application

The Hearing Examiner or the Hearing Examiner's designee must send a notice to all parties entitled to notice of the hearing when an applicant withdraws an application for a conditional use.

Application CU 19-01 is therefore withdrawn, per this Notice.

Refund of Filing and Sign Fees

As mentioned, the Applicant seeks a refund of her application fee and her sign fee based on her early withdrawal of the application.

Requests for refunds of conditional use application fees are governed by OZAH Zoning Rule 23.0, and refunds of sign fees are governed by OZAH's Zoning Rule 2.2(b) and OZAH's Fee Schedule. Rule 23.0 provides:

23.0 Refunds of Filing Fees. Upon written request, the Hearing Examiner may refund all or a portion of filing fees paid to OZAH for a conditional use application under the following schedule:

- a) 90% of the filing fee if the application is withdrawn within 48 hours after it is accepted for filing;
- b) 50% of the filing fee if the application is withdrawn at least 30 days before the scheduled public hearing; or
- c) All or a portion of the filing fee if an action of the County Executive, County Council or an administrative board or agency resolves or moots the issues pending in the case, whether or not a public hearing has been held.

Rule 2.2(b) provides:

- 2.2 (b)** The Hearing Examiner may give the applicant a partial refund of the sign fee if signs are returned in reusable condition within 21 days after a final decision in the case. If the signs are not returned within 21 days, the refund is forfeited.

OZAH's fee schedule calls for a refund of 50% of the sign fee when it is returned.

Per Rule 23.0(a), the Applicant is not eligible for a 90% refund of her filing fee because her withdrawal is not within 48 hours of filing; however, the Hearing Examiner may approve a 50% partial refund of the filing fee since the Applicant's withdrawal is more than 30 days before the scheduled hearing date. Because the Hearing Examiner has not yet issued his report, held a hearing or issued a formal hearing notice, the Hearing Examiner approves a 50% refund of Ms. Dushane's application fee in CU 19-01. Since OZAH received 75% (\$615) of the \$820 fee, 50% of that amount (\$307.50) will be refunded by OZAH to the Applicant. The Planning Department should also refund 50% of its fee portion (\$102.50) to the Applicant. 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.

A 50% refund of the sign fee will also be made since the Applicant has returned the notice sign promptly and in reusable condition.

ACTION

Therefore, it is, this 9th day of November, 2018, ORDERED that:

1. Notice be hereby given, per Zoning Ordinance Section 59.7.3.1.D.4., that Application CU-19-01, *Wendy DuShane*, for a conditional use to allow her to operate an equestrian facility for two horses on her two-acre property at 1918 Merrifields Drive, in Silver Spring, Maryland, has been withdrawn;
2. The Office of Zoning and Administrative Hearings shall refund Applicant, Wendy DuShane, \$307.50, which is 50% of the application filing fee that was paid directly to OZAH;
3. The Montgomery County Planning Department shall refund Applicant, Wendy Dushane, \$102.50, which is 50% of the application filing fee that was paid directly to the Planning Department; and
4. The Office of Zoning and Administrative Hearings shall refund Applicant, Wendy DuShane, \$100, which is 50% of her sign fee.



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

Copy of Notice and Order forwarded this 9th day of November, 2018, to:

Wendy DuShane, Applicant
Daniel Berry, Party of Record in Opposition
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, Lori Shirley and Steve Findley, Planning Department
Barbara Jay, Executive Director
Montgomery County Board of Appeals
Ehsan Motazedi, Department of Permitting Services
Greg Nichols, Manager, SPES at DPS
Alexandre A. Espinosa, Director, Finance Department
Charles Frederick, Esquire, Associate County Attorney