

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

**Stella B. Werner Council Office Building  
100 Maryland Avenue, Room 200  
Rockville, Maryland 20850  
<http://www.montgomerycountymd.gov/ozah/index.html>  
Phone: (240) 777-6660; Fax (240) 777-6665**

**CASE NO. CU 16-07, HANNAH WEISER CONDITIONAL USE**

**ORDER TO SHOW CAUSE WHY CONDITIONAL USE CU 16-07 SHOULD NOT BE  
REVOKED FOR FAILURE TO COMPLY WITH A CONDITION OF THE GRANT  
AND NOTICE OF PUBLIC HEARING ON THE ORDER TO SHOW CAUSE**

Conditional Use CU 16-07 was granted by the Hearing Examiner on July 8, 2016, to permit the Applicant, Hannah Weiser, to operate a Child Day Care Center for up to 15 children in her home at 9205 Fernwood Road in Bethesda, Maryland. The Subject Site is Lot 1, Block 8 of the Green Tree Manor Subdivision, and it is zoned R-90. The Hearing Examiner's Decision imposed 22 conditions on the Conditional Use, including Condition 21, which allowed a waiver of Zoning Ordinance §§59.6.2.9.B.1.a., b., and c., but required that the parking lot landscaping "be in accordance with the revised landscape and lighting plan (Exhibit 48(b))."

Although the Board of Appeals issued a resolution effective September 21, 2016, modifying Condition No. 4, shortening outdoor play time by one hour, it did not modify any other condition imposed on the Conditional Use, and a subsequent request by Ms. Weiser to further modify Condition No. 4 was later withdrawn (Exhibits 69 and 80).

On June 18, 2019, based on a complaint from the abutting neighbors, Joe and Karen Webster, (Exhibit 82) and a field inspection, the Department of Permitting Services (DPS) issued a Notice of Violation (Exhibit 83) directing the conditional use holder to come into compliance with Condition 21 by June 25, 2019.

On July 9, 2019, Jennyffer Vargas, Permitting Services Inspector with the Department of Permitting Service, sent a Report of the Violation to the Hearing Examiner (Exhibit 84), stating the following:

On April 4th, 2019, DPS received a complaint regarding Conditional Use 16-07. The complainants, Joe and Karren Webster, state that the Conditional Use (CU) holder, "*Hannah Weiser cut down and removed; or caused to be cut down and removed entire 41' Emerald Green Arborvitae screening on her south property line. ... These 10' tall arborvitae stretching from the property corner at Fernwood Road extending 41 feet east were in fact a "Condition of Use."*" On April 8th, DPS performed a field inspection of CU 16-07 which confirmed that the 10' arborvitae that existed at the time the CU was approved, had been replaced with nine (9) shorter bushes (Schip Cherry Laurel evergreen). DPS believes that this is a violation of the conditions of the CU and pursuant to Zoning Ordinance Section §59.7.3.1.L. Compliance and Inspection, the Department of Permitting Services files this Report of Violation to

the Hearing Examiner at the Office of Administrative Hearings, grantor, of the above referenced Conditional Use.

Upon inquiry from the Hearing Examiner, DPS expanded upon its rationale for the Report of Violation (Exhibit 86):

When this CU was originally reviewed by MNCPPC Staff, a fully mature row of arborvitae stood just inside the property of the CU holder and their neighbors. It was essentially a tall, solid hedge row, completely screening the property. MNCPPC Staff noted this as “alternative compliance” regarding the screening requirements for the CU application. So, the CU applicant wasn’t required to provide fencing or additional, vegetative screening that would satisfy their requirements. So, when the CU holder completely removed the entire mature row of arborvitae, there was absolutely no screening. We communicated this to the CU holder and they quickly took it upon themselves to plant various shrubbery along that property line. What has been planted provides substantially less screening than what was there at the time of initial MNCPPC Staff review. Therefore, it is our determination that the CU holder needs to modify the CU to accurately reflect screening that would satisfy MNCPPC Staff requirements. Because what the CU holder installed isn’t close to what was there, we didn’t feel it our place to make this determination.

The Zoning Ordinance details procedures for the enforcement of conditional uses by the Hearing Examiner. Zoning Ordinance §§59.7.3.1.L.4.and 5. provide:

4. *If the Board of Appeals or the Hearing Examiner receives a written notice from DPS that the conditional use holder is violating the terms or conditions of a conditional use or the terms, conditions, or restrictions attached to the grant of any permit issued under the conditional use approval, the Board of Appeals or the Hearing Examiner must order the conditional use holder and the property owner to appear before the Board of Appeals or the Hearing Examiner to show cause why the conditional use should not be revoked.*
5. *The notice of a show cause hearing must be issued to the conditional use holder and the property owner by certified mail, return receipt requested. Notification must also be sent to DPS, and to any party who submitted a written complaint concerning the conditional use, and must:*
  - a. *include the nature of the alleged violations;*
  - b. *state that the hearing is limited to a consideration and a determination of the validity of the allegations; and*
  - c. *advise the conditional use holder and the property owner that failure to attend and participate in the hearing may result in revocation of the conditional use.*

Having received written notice from DPS *that the conditional use holder is violating the terms or conditions of a conditional use*, the Hearing Examiner hereby issues the instant Order to Show Cause and Notice of Show Cause hearing. Under Rule 8.1 of OZAH’s Zoning Rules of Procedure, a Notice of a Show cause hearing “must be posted on OZAH’s website at least 30 days before the show cause hearing to provide public notice.”

**ORDER TO SHOW CAUSE AND HEARING NOTICE**

Based on the foregoing, it is, this 26<sup>th</sup> day of July, 2019:

**ORDERED AND NOTICED:** That Hannah Weiser, the CU 16-07 conditional use holder and property owner, is hereby directed to appear before the Hearing Examiner on **Friday, September 6, 2019**, at 9:30 a.m., or as soon thereafter as this matter can be heard, in the Second Floor Davidson Memorial Hearing Room in the Stella B. Werner Council Office Building, 100 Maryland Avenue, Rockville, Maryland, to show cause why the conditional use should not be revoked; and, it is

**FURTHER ORDERED AND NOTICED:**

- a) the Show cause is being issued because the conditional use holder has violated Condition 21 of the conditional use grant, and has failed to correct this violation, as outlined above;
- b) the hearing is limited to a consideration and a determination of the validity of the allegations; and
- c) failure of the CU 16-07 conditional use holder and property owner to attend and participate in the hearing may result in revocation of the conditional use.

**GENERAL NOTICE PROVISIONS:**

Persons or associations that are (1) represented by counsel, (2) intending to appear in organized opposition, **or** (3) intending to introduce expert evidence or testimony must file a pre-hearing statement containing the information required by Rules 3.4 and 3.5 of OZAH's Rules of Procedure (Rules). Filings must include an electronic copy of the statement and all attachments. These Rules may be found on OZAH's website at <http://www.montgomerycountymd.gov/ozah/>. The Conditional Use Holder must submit her pre-hearing statement at least 30 days before the public hearing. Those supporting revocation who are required to file a pre-hearing statement under the terms of this paragraph, must do so no less than 20 days before the public hearing.

In compliance with Maryland requirements regarding the practice of law, groups or associations must have counsel unless their witnesses are members of the group or association who will offer testimony in narrative form (*i.e.*, there is no need for an attorney to conduct a direct examination).

In addition to all other requirements, any party submitting documentary evidence for the record must file electronic copies of their submissions. Amended electronic copies must also be submitted of any amended documents. Electronic copies must be submitted on external storage media, including Compact Discs or DVDs, in Microsoft WORD format for text documents, and in PDF format for plans, photos and other non-text documents.

Nothing in this notice is intended to limit the rights of individual members of the public to testify during the hearing or to submit pertinent written materials at any time while the record remains open for that purpose. You may submit a signed letter to OZAH, which will be considered by the Hearing Examiner as part of the record but doing so will not automatically make you a party of record. Conditional Use holders and members of the public who testify

at an OZAH hearing, whether for or against the revocation, are automatically considered parties of record. A person or organization that does not wish to appear at the OZAH hearing but wishes to be a party of record may request that status in a signed letter to OZAH. See OZAH Rule 3.1.

If you need services to participate in a public hearing, please contact this Office no later than seven (7) days in advance of the public hearing by calling 240-777-6660 (TTY 240-777-7914) or emailing us at [ozah@montgomerycountymd.gov](mailto:ozah@montgomerycountymd.gov). OZAH cannot guarantee that an interpreter can be made available if notified of the request less than seven (7) days in advance of the public hearing. This document is available in alternative format such as large print upon request, via the same phone numbers and email address.

The entire file may be reviewed in the Office of Zoning and Administrative Hearings, Monday through Friday, between the hours of 9:00 a.m. and 4:00 p.m., prior to the date of the hearing.



Martin L. Grossman  
Hearing Examiner

NOTICES OF SHOW CAUSE HEARING FOR REVOCATION OF CONDITIONAL USE  
MAILED THIS 26<sup>TH</sup> DAY OF JULY, 2019, TO:

Hannah Weiser (*by certified mail, return receipt requested*)  
Joe and Karen Webster, Complainants  
Barbara Jay, Executive Director  
Montgomery County Board of Appeals  
Kathleen Reilly, Planning Department  
Ehsan Motazed, Division Chief, Zoning & Site Plan Enforcement, DPS  
Greg Nichols, Manager, SPES, Zoning & Site Plan Enforcement, DPS  
Victor Salazar, Program Manager II, Zoning & Site Plan Enforcement, DPS  
Jennyffer Vargas, Permitting & Code Enforcement Inspector, DPS