

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

**Stella B. Werner Council Office Building
100 Maryland Avenue, Room 200
Rockville, Maryland 20850**

<https://www.montgomerycountymd.gov/ozah/index.html>

Phone: (240) 777-6660; Fax (240) 777-6665

LOCAL MAP AMENDMENT APPLICATION NO. H-145

Application of Nova Habitat, LLC

**ORDER GRANTING REQUESTS TO WITHDRAW APPLICATION AND
FOR PARTIAL REFUND OF FILING FEES**

A. Background

On December 30, 2021, the Applicant, Nova Randolph, LLC, filed a Local Map Amendment (LMA) application requesting rezoning from the R-200 Zone to the CRTF-1.0, C-0.25, R-1.0, H-80 Zone for property located at 2131 East Randolph Road, Silver Spring, Maryland 20904. The property is situated at the southwest quadrant of the intersection of East Randolph Road and Columbia Pike (Tax Account 05-02785783).

The Hearing Examiner conducted a public hearing in the case on May 22, 2022. The hearing was continued to June 6 and 7, 2022. Before the scheduled hearings, the Applicant filed a request to postpone the hearing indefinitely in part to conduct “further outreach to the community.” Exhibit 47. The Hearing Examiner granted the request and postponed the hearing indefinitely. Exhibit 48.

On February 17, 2023, the Applicant submitted a letter requesting to withdraw the Local Map Amendment application and a partial refund of filing fees. According to the Applicant:

At the time the application was filed, Montgomery County had discussed updating the master plan for that area but had not initiated the process. When Applicant learned that the County would in fact be proceeding with the master plan amendment, it delayed work on the Local Map Amendment and began working with Park and Planning Commission Staff and the community through the master plan process. While that work was proceeding, the Office of Zoning and Administrative Hearings scheduled a public hearing on the LMA for May 2, 2022 [sic], and called the case for a hearing but, after opening comments, the hearing was deferred until June 6. Prior to June 6, Applicant determined that it would be more efficient for all parties involved not to proceed at that time. Accordingly, the Office of Zoning and Administrative Hearings entered an Order of Postponement postponing the hearing indefinitely finding extraordinary circumstances. Since

then, Applicant has not sought a hearing date and no further work has occurred on behalf of Applicant, the community or the Office of Zoning and Administrative Hearings.

B. Governing Law

Section 59.7.2.1.D.4 of the Zoning Ordinance permits the Hearing Examiner to “allow an applicant to withdraw an application for a Local Map Amendment at any time before the Hearing Examiner issues the report.”

Section 59.7.6.5 of the Zoning Ordinance permits refunds of filing fees in certain cases:

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.

C. Decision and Order

Because the Applicant has chosen to pursue development through the Master Plan process rather than an LMA application, it does not make sense to force the applicant expend the time and expense involved in pursuing the LMA application. As pointed out by the Applicant, it has chosen the most efficient means available at various times to pursue development of the property.

The Hearing Examiner grants a refund of 60% of the filing fee paid to OZAH or \$6,367.50.¹ The Applicant’s request falls within the time frame allowing a refund under Section 59.7.6.5.1.b, as the Fairland Master Plan materially affects the property and has not been approved. Further, OZAH conducted only one public hearing on May 22, 2022. The Applicant requested an indefinite postponement two days after the first public hearing (*i.e.*, May 24, 2022), which was granted, and OZAH performed no further substantive review of the application.

The Hearing Examiner does not grant a refund of the portion of the filing fees paid to the Planning Department because the Planning Department and Planning Board completed their entire review

¹ OZAH Land Use Rules of Procedure require that 25% of the filing fee be paid directly to the Planning Department and 75% of the fee be paid directly to OZAH. The Applicant paid \$10,612.50 in fees to OZAH when the LMA application was submitted.

of the application.

So Ordered this 23rd day of February, 2023.

Office of Zoning and Administrative Hearings



Lynn Robeson Hannan
Hearing Examiner

Copies to:

Robert Harris, Attorney for Applicant
David Brown, Attorney for the Opposition
Patrick Butler, Montgomery County Park & Planning
Cliff Royalty, Esquire, Associate County Attorney
Department of Permitting Services Greg Nichols, Manager, SPES at DPS
Parties of record