

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
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CU 23-13, Associcao Cultural De Lingua Portuguesa, Inc.
4407 Muncaster Mill Road

**NOTICE OF WITHDRAWAL OF CONDITIONAL USE APPLICATION AND
ORDER GRANTING PARTIAL REFUND OF FILING FEE**

BACKGROUND

On March 8, 2023, Sean Hughes, Esq. filed an application for a conditional use on behalf of the Applicant, Associcao Cultural de Lingua Portuguesa, Inc. to allow to operate private club at 4407 Muncaster Mill Road in Rockville, Maryland (Exhibit 1). The property is identified as Lot 1, Block A, of the Sycamore Acres Subdivision. The Office of Zoning and Administrative Hearings (OZAH) received payment of 75% of the application fee (\$6,150.00) by check dated February 16, 2023, in accordance with Zoning Ordinance §59.7.6.5.A.3. OZAH scheduled a public hearing for Friday, July 14, 2023.

On June 26, 2023, Michele Rosenfeld, an attorney representing Geriatric Care Facilities, LLC, (“Arbor Place”) an abutting property owner at 4413 Muncaster Mill Road, Rockville, Maryland, filed a Motion to Postpone the hearing, requested an “in-person” hearing, and formally opposed the application on several grounds. Exhibit 33.

Later that same day, June 26, 2023, William Chen, Esq. indicated he would be taking over representation of Arbor Place and indicated witnesses required to testify in opposition to the Application would not be available on July 14, 2023. Exhibit 34.

On June 30, 2023, the Hearing Examiner granted the Opposition’s postponement request and sent several new proposed hearing dates to counsel for both parties for consideration. After several emails between the Hearing Examiner and counsel for the parties on July 3, 2023, counsel for Arbor Place indicated that by Friday, July 7, 2023 he would be able to confirm witness availability for the proposed new dates.

On July 5, 2023, David Brown, Esq. emailed a letter to the Hearing Examiner that he had taken over representation for Arbor Place. In light of this third change of counsel for the opposition, the Hearing Examiner scheduled a virtual prehearing conference with counsel on Monday, July 10, 2023.

On July 10, 2023, the Hearing Examiner and counsel for both parties met to discuss a scheduling order. On that same date, Mr. Brown submitted a Motion for Summary Disposition. After a brief discussion, the Hearing Examiner set the following schedule:

1. July 10, 2023 – Opposition’s Motion for Summary Disposition
2. July 14, 2023 – Applicant’s Response to Opposition’s Motion
3. July 21, 2023 – Hearing Examiner’s Decision on the Motion for Summary Disposition

4. August 10, 2023 (10:00 am) – Second Virtual Preliminary to Scheduling Conference
5. TBD – Hearing Examiner Site Visit
6. September 15, 18, and 19, 2023 – In Person Public Hearing
See Exhibits 37 and 40.

On July 11, 2023, the Planning Department forwarded to OZAH the final Staff Report and Planning Board cover letter for the proposed conditional.

On July 14, 2023, the Applicant's attorney requested an extension of time to respond to the Opposition's Motion for Summary Disposition in order to allow for time to discuss options regarding how to proceed with his client.

On July 14, 2023, the Hearing Examiner granted the extension request by the Applicant allowing the Applicant to respond to the Opposition's Motion for Summary Disposition by July 28, 2023.

On July 27, 2023, the Applicant's attorney submitted to the Hearing Examiner a request to withdraw the conditional use application and requested a partial refund pursuant to OZAH's rules.

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 23-13 is therefore withdrawn, per this Notice.

Refund of Filing Fee

As mentioned, the Applicant seeks a refund of the application fee. Requests for refunds of conditional use application fees are governed by OZAH Zoning Rule 23.0. 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.

Per Rule 23.0(a), the Applicant is not eligible for a 90% refund of the filing fee because the 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. The Hearing Examiner granted the opposition's request for a postponement of the original July 14, 2023 hearing date. Because the Hearing Examiner has not yet issued her report, held a hearing or issued a formal hearing notice, the Hearing Examiner approves a 50% refund of the OZAH portion of application fee in CU 23-13. Since Planning completed the required Staff Report and the Planning Board held a public hearing on the application no refund of Planning's portion of the Application fee will be refunded. OZAH received 75% (\$6,150) of the application fee and 50% of that amount (\$3,075) will be refunded by OZAH to the Applicant.

ACTION

Therefore, it is, this 2nd day of August, 2023, ORDERED that:

1. Notice be hereby given, per Zoning Ordinance Section 59.7.3.1.D.4., that Application CU-23-13, *Associcao Cultural de Lingua Portuguesa, Inc*, for a conditional use to allow a social club at the property known as at 4407 Muncaster Mill Road, in Silver Spring, Maryland, has been withdrawn; and
2. The Office of Zoning and Administrative Hearings shall refund Applicant, *Associcao Cultural de Lingua Portuguesa, Inc*, \$3,075, which is 50% of the application filing fee that was paid directly to OZAH.



Kathleen E. Byrne
Hearing Examiner and Director
Office of Zoning and Administrative Hearings

Copy of Notice and Order forwarded this 2nd day of August, 2023, to:

Sean Hughes, Esq., Attorney for the Applicant
David Brown, Esq., Attorney for the 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
Mark Beall, Planning Department
Barbara Jay, Executive Director
Montgomery County Board of Appeals
Victor Salazar, Department of Permitting Services
Greg Nichols, Manager, SPES at DPS
Michael Coveyou, Director, Finance Department
Elana Robinson, Esquire, Associate County Attorney