

**From:** [Sokoni, Khandikile Mvunga](#)  
**To:** [Leslie Powell](#); [Harris, Robert R.](#); [amy@trustedestatepartners.com](mailto:amy@trustedestatepartners.com)  
**Cc:** ["Ms. Kate Kubit"](#); [Keith Bennett](#); [Johnson, Nana](#); [Byrne, Kathleen E.](#); [ARK.LIMITED@OUTLOOK.COM](mailto:ARK.LIMITED@OUTLOOK.COM); [Ishan Patel](#); [Jordan Brown](#)  
**Subject:** RE: CU 25-02 CTC Conditional Use Hearing - January 23, 2025  
**Date:** Wednesday, January 22, 2025 12:19:56 PM  
**Attachments:** [image001.png](#)

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Good Morning All,

I have received and reviewed all the emails up to this point. Here is how we shall proceed tomorrow:

**Motions:** Mr. Harris has waived his objections to Ms. Powell's entry of appearance and submissions. Therefore, the motions are rendered moot and will not be argued. All documents submitted by Ms. Powell will be entered into the record, and her entry of appearance on behalf of her clients is approved.

**Pre-Hearing Proceedings:** Given the concerns raised by Ms. Powell and Ms. Presley about notice, prior to the hearing I would like to hear from the parties about their position on notice. Any person who takes the position that they (or someone they represent) did not receive the required notice should be prepared to address the following questions:

1. Were you entitled to actual notice as a person whose property is confronting or abutting the property that is the subject of the CU 25-02 application?
2. If you are claiming a right to actual notice on any basis other than being a confronting or abutting neighbor, please be prepared to explain what that is.
3. What is your position on whether the applicant placed physical signs along the property that is the subject of the CU 25-02 application?

I will likely have to reserve my decision on these issues.

**Hearing:**

4. The hearing will proceed with the Applicant presenting its case in chief and answering questions (if any) from the opposing side.
5. The Hearing Examiner may order a continuation of the hearing on a subsequent date if needed.
6. Ms. Presley's scheduling concerns are noted. Ms. Presley has the option to participate remotely via Zoom.
7. The Record will likely be kept open to allow for post hearing submissions if needed, including the option for the Planning Staff to weigh in on issues recently raised in opposition of the application.

Sincerely,  
Khandikile

Khandikile Mvunga Sokoni



Hearing Examiner  
Office of Zoning & Administrative Hearings  
Phone: 240-777-6664  
100 Maryland Ave, Rockville MD 20850

---

**From:** Leslie Powell <lpowell@powell-llc.com>

**Sent:** Wednesday, January 22, 2025 10:06 AM

**To:** Harris, Robert R. <rrharris@larchearly.com>; Sokoni, Khandikile Mvunga <Khandikile.Sokoni@montgomerycountymd.gov>; amy@trustedestatepartners.com

**Cc:** 'Ms. Kate Kubit' <kkubit@elmstreetdev.com>; Keith Bennett <kbennett@glwpa.com>; Johnson, Nana <Nana.Johnson@montgomerycountymd.gov>; Byrne, Kathleen E. <Kathleen.Byrne@montgomerycountymd.gov>; ARK.LIMITED@OUTLOOK.COM; Ishan Patel <ishanpatel@arkvc.net>; Jordan Brown <jbrown@powell-llc.com>

**Subject:** RE: CU 25-02 CTC Conditional Use Hearing - January 23, 2025

**[EXTERNAL EMAIL]**

Dear Ms. Sokoni,

While I am appreciate Mr. Harris's withdrawal of his objection, I spent yesterday afternoon preparing a response to the objection and argument rather than preparing for the hearing. More importantly, Ms. Presley canceled the required care for her mother because the hearing on the application had been converted to a motions hearing. (Ms. Presley's mother resides with her and requires full time care.)

I also believe that you should be aware that my clients were **not** on the list presented to you for service by the developer and did **not** receive direct notice of the hearing. My clients only accidentally learned of it when driving by the posted property. Further, while on the list, for whatever reason Ms. Presley likewise never received any direct notice nor did Mr. and Mrs. Barry Fantle.

Whether people are clamoring or not is beside the point. What does matter is the ability to meaningfully participate in a hearing that will directly affect these people, their quality of life and livelihood.

Thank you for your consideration.

Sincerely,

Leslie A. Powell  
Powell, LLC  
[LPowell@Powell-LLC.com](mailto:LPowell@Powell-LLC.com)

19 North Court Street, Suite 201  
Frederick, Maryland 21701  
Phone: (301) 668-7575  
Fax: (301) 668-7755

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**From:** Harris, Robert R. <[rrharris@lerchearly.com](mailto:rrharris@lerchearly.com)>  
**Sent:** Wednesday, January 22, 2025 9:02 AM  
**To:** Sokoni, Khandikile Mvunga <[Khandikile.Sokoni@montgomerycountymd.gov](mailto:Khandikile.Sokoni@montgomerycountymd.gov)>; Leslie Powell <[lpowell@powell-llc.com](mailto:lpowell@powell-llc.com)>; [amy@trustedestatepartners.com](mailto:amy@trustedestatepartners.com)  
**Cc:** 'Ms. Kate Kubit' <[kkubit@elmstreetdev.com](mailto:kkubit@elmstreetdev.com)>; Keith Bennett <[kbennett@glwpa.com](mailto:kbennett@glwpa.com)>; Johnson, Nana <[Nana.Johnson@montgomerycountymd.gov](mailto:Nana.Johnson@montgomerycountymd.gov)>; Byrne, Kathleen E. <[Kathleen.Byrne@montgomerycountymd.gov](mailto:Kathleen.Byrne@montgomerycountymd.gov)>  
**Subject:** RE: CU 25-02 CTC Conditional Use Hearing - January 23, 2025

Good morning all. I apologize for the delayed response to the various emails and document submissions yesterday afternoon but I was tied up with other matters. I now have reviewed the documents Ms. Presley submitted and seen Ms. Powell's reply to OZAH re her role and that of her clients. Even though her submission was not timely, our team has reviewed her materials and will be ready to proceed with the full hearing tomorrow if that is acceptable to OZAH. The Clarksburg community has been clamoring for the retail center and grocery for a long time and Applicant is anxious to complete the final leg of the lengthy land use approval process. We remain hopeful that we can complete the full hearing tomorrow. If we do not finish, we then could set a second date FOR COMPLETION.

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**Robert R. Harris, Attorney**  
Lerch, Early & Brewer, Chtd. rising to every challenge for over 70 years  
7600 Wisconsin Ave | Suite 700 | Bethesda, MD 20814  
T 301-841-3826 | F 301-347-1779 | Cell 301-580-1319  
[rrharris@lerchearly.com](mailto:rrharris@lerchearly.com) | [Bio](#)

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**From:** Sokoni, Khandikile Mvunga <[Khandikile.Sokoni@montgomerycountymd.gov](mailto:Khandikile.Sokoni@montgomerycountymd.gov)>  
**Sent:** Tuesday, January 21, 2025 2:32 PM

**To:** Harris, Robert R. <[rrharris@lercheearly.com](mailto:rrharris@lercheearly.com)>; Leslie Powell <[lpowell@powell-llc.com](mailto:lpowell@powell-llc.com)>;  
[amy@trustedestatepartners.com](mailto:amy@trustedestatepartners.com)

**Cc:** 'Ms. Kate Kubit' <[kkubit@elmstreetdev.com](mailto:kkubit@elmstreetdev.com)>; Keith Bennett <[kbennett@glwpa.com](mailto:kbennett@glwpa.com)>; Johnson, Nana  
<[Nana.Johnson@montgomerycountymd.gov](mailto:Nana.Johnson@montgomerycountymd.gov)>; Byrne, Kathleen E.  
<[Kathleen.Byrne@montgomerycountymd.gov](mailto:Kathleen.Byrne@montgomerycountymd.gov)>

**Subject:** RE: CU 25-02 CTC Conditional Use Hearing - January 23, 2025

Good Afternoon All,

Under these circumstances, the substantive public hearing on the underlying Conditional Use application (CU 25-02) cannot proceed on Thursday until we resolve the question of Ms. Powell's submission that Mr. Harris is objecting to under Rule 3.5 (see attached). I am treating Mr. Harris's email objection as a motion opposing Ms. Powell's entry of appearance and submission of evidence not previously in the record.

Please note the following:

1. Thursday January 23, 2025 at 9:30 AM: In person oral argument on motions: Ms. Powell must respond to the objections raised by Mr. Harris in his January 21, 2025 email (attached).
2. Ms. Powell must serve on Mr. Harris all documents that have been delivered to the Office of Zoning and Administrative Hearings (OZAH). These can be served electronically if Counsel is agreeable.
3. While the hearing time on Thursday is reserved for oral argument on this motion (and any cross motions), both sides will be allowed sufficient time (not less than 14 days) following oral argument to make written submissions and an additional 7 days for any responses to each other's submissions.

Counsel must come ready to discuss potential dates for a rescheduled public hearing on the underlying Conditional Use application.

I am aware that even as I send this email there has been a flurry of emails back and forth. I believe there has been some clarification offered about Ms. Presley's role (i.e., that she will be appearing in her personal capacity). However, because Ms. Powell's letter dated January 17, 2025 was only received today I believe oral argument and motions on all submissions that have been made less than 30 days from the date of hearing are in order and will be addressed this Thursday.

Sincerely,  
Khandikile



Khandikile Mvunga Sokoni  
Hearing Examiner  
Office of Zoning & Administrative Hearings  
Phone: 240-777-6664  
100 Maryland Ave, Rockville MD 20850

---

**From:** Harris, Robert R. <[rrharris@lerchearly.com](mailto:rrharris@lerchearly.com)>

**Sent:** Tuesday, January 21, 2025 1:50 PM

**To:** Sokoni, Khandikile Mvunga <[Khandikile.Sokoni@montgomerycountymd.gov](mailto:Khandikile.Sokoni@montgomerycountymd.gov)>; Leslie Powell <[lpowell@powell-llc.com](mailto:lpowell@powell-llc.com)>; [amy@trustedestatepartners.com](mailto:amy@trustedestatepartners.com)

**Cc:** 'Ms. Kate Kubit' <[kkubit@elmstreetdev.com](mailto:kkubit@elmstreetdev.com)>; Keith Bennett <[kbennett@glwpa.com](mailto:kbennett@glwpa.com)>; Johnson, Nana <[Nana.Johnson@montgomerycountymd.gov](mailto:Nana.Johnson@montgomerycountymd.gov)>; Salazar, Victor <[Victor.Salazar@montgomerycountymd.gov](mailto:Victor.Salazar@montgomerycountymd.gov)>; Beall, Mark <[mark.beall@montgomeryplanning.org](mailto:mark.beall@montgomeryplanning.org)>; Coveyou, Michael <[Michael.Coveyou@montgomerycountymd.gov](mailto:Michael.Coveyou@montgomerycountymd.gov)>; Jay, Barbara <[Barbara.Jay@montgomerycountymd.gov](mailto:Barbara.Jay@montgomerycountymd.gov)>; Butler, Patrick <[patrick.butler@montgomeryplanning.org](mailto:patrick.butler@montgomeryplanning.org)>

**Subject:** RE: CTC Conditional User Hearing - January 23, 2025

**[EXTERNAL EMAIL]**

I have not received anything other than the letter and attachments yesterday

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**Robert R. Harris, Attorney**

Lerch, Early & Brewer, Chtd. rising to every challenge for over 70 years

7600 Wisconsin Ave | Suite 700 | Bethesda, MD 20814

T [301-841-3826](tel:301-841-3826) | F [301-347-1779](tel:301-347-1779) | Cell [301-580-1319](tel:301-580-1319)

[rrharris@lerchearly.com](mailto:rrharris@lerchearly.com) | [Bio](#)

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**From:** Sokoni, Khandikile Mvunga <[Khandikile.Sokoni@montgomerycountymd.gov](mailto:Khandikile.Sokoni@montgomerycountymd.gov)>

**Sent:** Tuesday, January 21, 2025 1:23 PM

**To:** Leslie Powell <[lpowell@powell-llc.com](mailto:lpowell@powell-llc.com)>; [amy@trustedestatepartners.com](mailto:amy@trustedestatepartners.com)

**Cc:** Harris, Robert R. <[rrharris@lerchearly.com](mailto:rrharris@lerchearly.com)>; 'Ms. Kate Kubit' <[kkubit@elmstreetdev.com](mailto:kkubit@elmstreetdev.com)>; Keith Bennett <[kbennett@glwpa.com](mailto:kbennett@glwpa.com)>; Johnson, Nana <[Nana.Johnson@montgomerycountymd.gov](mailto:Nana.Johnson@montgomerycountymd.gov)>; Salazar, Victor <[Victor.Salazar@montgomerycountymd.gov](mailto:Victor.Salazar@montgomerycountymd.gov)>; Beall, Mark <[mark.beall@montgomeryplanning.org](mailto:mark.beall@montgomeryplanning.org)>; Coveyou, Michael <[Michael.Coveyou@montgomerycountymd.gov](mailto:Michael.Coveyou@montgomerycountymd.gov)>; Jay, Barbara <[Barbara.Jay@montgomerycountymd.gov](mailto:Barbara.Jay@montgomerycountymd.gov)>; Butler, Patrick <[patrick.butler@montgomeryplanning.org](mailto:patrick.butler@montgomeryplanning.org)>

**Subject:** RE: CTC Conditional User Hearing - January 23, 2025

Ms. Powell thank you for confirming that Ms. Presley is not representing you. I will ask you the similar questions: What level of involvement are you seeking for yourself? Are you personally seeking to be a party of a record? Are you planning to testify at the hearing on Thursday?

I am presuming it is you that stopped by my office this morning and handed me a little box of documents that I have not yet opened? Please confirm if that is the case and what is in them? Has this submission been shared with the applicant or submitted in any other format prior to the physical delivery to us this morning? Is it accompanied by a signed statement?

It would be helpful to know what was delivered to us this morning.

Thank you,  
Khandikile



Khandikile Mvunga Sokoni  
Hearing Examiner  
Office of Zoning & Administrative Hearings  
Phone: 240-777-6664  
100 Maryland Ave, Rockville MD 20850

---

**From:** Leslie Powell <[lpowell@powell-llc.com](mailto:lpowell@powell-llc.com)>

**Sent:** Tuesday, January 21, 2025 1:02 PM

**To:** Sokoni, Khandikile Mvunga <[Khandikile.Sokoni@montgomerycountymd.gov](mailto:Khandikile.Sokoni@montgomerycountymd.gov)>;  
[amy@trustedestatepartners.com](mailto:amy@trustedestatepartners.com)

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**Subject:** RE: CTC Conditional User Hearing - January 23, 2025

**[EXTERNAL EMAIL]**

Dear Ms. Sokoni,

Hopefully, I can shed a little clarity on this. Ms. Presley is appearing in her individual capacity. I do not intend to call her as a witness. It is possible that I may ask her a few questions but that is all.

Sincerely,

Leslie A. Powell

Leslie A. Powell  
Powell, LLC  
[LPowell@Powell-LLC.com](mailto:LPowell@Powell-LLC.com)  
19 North Court Street, Suite 201  
Frederick, Maryland 21701  
Phone: (301) 668-7575  
Fax: (301) 668-7755

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**From:** Sokoni, Khandikile Mvunga <[Khandikile.Sokoni@montgomerycountymd.gov](mailto:Khandikile.Sokoni@montgomerycountymd.gov)>

**Sent:** Tuesday, January 21, 2025 12:40 PM

**To:** [amy@trustedestatepartners.com](mailto:amy@trustedestatepartners.com); Leslie Powell <[lpowell@powell-llc.com](mailto:lpowell@powell-llc.com)>

**Cc:** [rrharris@lercheearly.com](mailto:rrharris@lercheearly.com); 'Ms. Kate Kubit' <[kkubit@elmstreetdev.com](mailto:kkubit@elmstreetdev.com)>; Keith Bennett <[kbennett@glwpa.com](mailto:kbennett@glwpa.com)>; Johnson, Nana <[Nana.Johnson@montgomerycountymd.gov](mailto:Nana.Johnson@montgomerycountymd.gov)>; Salazar, Victor <[Victor.Salazar@montgomerycountymd.gov](mailto:Victor.Salazar@montgomerycountymd.gov)>; Beall, Mark <[mark.beall@montgomeryplanning.org](mailto:mark.beall@montgomeryplanning.org)>; Coveyou, Michael <[Michael.Coveyou@montgomerycountymd.gov](mailto:Michael.Coveyou@montgomerycountymd.gov)>; Jay, Barbara <[Barbara.Jay@montgomerycountymd.gov](mailto:Barbara.Jay@montgomerycountymd.gov)>; Butler, Patrick <[patrick.butler@montgomeryplanning.org](mailto:patrick.butler@montgomeryplanning.org)>

**Subject:** FW: CTC Conditional User Hearing - January 23, 2025

Good Afternoon Ms. Presley,

I have not opened or reviewed your attached submission. As a preliminary matter I need to know from you:

1. In what capacity are you sending this? You say in your email below that you believe that you  
**"... will be called by Leslie Powell to speak/answer questions..."**
2. Are you seeking to be a party of record in your personal capacity or as a legal representative of a party of record?

I am copying the Applicant's Attorney, Robert Harris, Esq. and all recipients of the notice of hearing in this matter. The public hearing in this case is scheduled for Thursday, January 23, 2025.

I wish to remind everyone that any entry of appearance as attorney for a party or record, or written submission for inclusion in the record must be signed.

I also wish to draw your attention to Office of Zoning and Administrative Hearing (OZAH) Rules of Procedure

([https://codelibrary.amlegal.com/codes/montgomerycounty/latest/montgomeryco\\_md\\_zone2014/0-0-0-63734](https://codelibrary.amlegal.com/codes/montgomerycounty/latest/montgomeryco_md_zone2014/0-0-0-63734)) , and particularly Rules 3.1, 3.2 and 3.5.

### **3.1 Parties of Record.**

a) Under these Rules, "parties of record" include applicants for a zoning action or a conditional use, individuals and organizations testifying at an OZAH public hearing and those who have

requested and been approved by the Hearing Examiner to be parties of record. Anyone may testify at the OZAH public hearing and will be automatically considered a party of record. Testifying before the Planning Board or other agency will not make a person a party of record to an OZAH proceeding.

b) Persons who do not wish to testify may request to be classified as a party of record by filing a written request, signed by the individual or an authorized agent, and demonstrating that other parties of record will not adequately represent the interests of the person or organization seeking to become a party of record.

c) All parties of record must provide contact information, including an address, telephone number and email address.

d) Being designated or not designated as a party of record as defined in these Rules does not determine a person's right to appeal to the courts or to request oral argument before the Council or the Board of Appeals. The person's right to appeal or request oral argument is governed by the Zoning Ordinance and by state law.

### **3.2 Participants.**

Participants are those persons who submit written comments on an application for consideration in the record, but who are not parties of record.

a) Participants are not required to mail copies of their written submission(s) to other participants or to parties of record; nor will other participants or parties of record be required to send copies of motions, orders, or other submissions directly to participants who are not parties of record. However, all submissions will be available for public viewing in the case file maintained by OZAH.

b) OZAH will send individual notice of hearings to participants only if they are adjoining or confronting property owners, civic and homeowners associations or municipalities within 1/2 mile of the subject site; OZAH will send participants a notice of the Hearing Examiner's report and recommendation to the Council or decisions in conditional use cases, only if they are parties of record. Copies of such reports and recommendations and decisions will be available for viewing on OZAH's website and at OZAH's office.

c) All submissions made by participants must be in writing and signed by the individual or an authorized representative.

d) Signed, written comments timely submitted to OZAH by participants will be considered in evaluating the case, but not necessarily given the same weight as statements that are made under oath and subjected to cross-examination at the hearing.

### **3.4 Applicant's Pre-hearing Submission.**

The applicant must file a pre-hearing statement at OZAH, in duplicate, within 30 days of the hearing date. The applicant must also provide copies to all parties of record and the Planning Department. An electronic copy must also be provided to OZAH at the same time. The statement must include the following information:

a) a statement of the grounds for approving the application;

b) copies of all reports intended to be introduced at the hearing;

c) the names of all experts expected to testify at the hearing, their resumes, and a summary of expert testimony which will be proffered at the hearing;

d) identity of all other witnesses who will testify; and

e) estimated time required for presentation.

### **3.5 Opposition's Pre-hearing Submission.**

Persons or associations represented by counsel or intending to appear in organized opposition to an



application or intending to introduce expert evidence or testimony must also file a pre-hearing statement containing the same information and copies required in Rule 3.4, at least twenty days before the date of hearing. Nothing in this section 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.

Sincerely,  
Khandikile



Khandikile Mvunga Sokoni  
Hearing Examiner  
Office of Zoning & Administrative Hearings  
Phone: 240-777-6664  
100 Maryland Ave, Rockville MD 20850

---

**From:** Amy Presley <[amy@trustedestatepartners.com](mailto:amy@trustedestatepartners.com)>  
**Sent:** Monday, January 20, 2025 6:20 PM  
**To:** Sokoni, Khandikile Mvunga <[Khandikile.Sokoni@montgomerycountymd.gov](mailto:Khandikile.Sokoni@montgomerycountymd.gov)>  
**Cc:** Leslie Powell <[lpowell@powell-llc.com](mailto:lpowell@powell-llc.com)>  
**Subject:** CTC Conditional User Hearing - January 23, 2025

**[EXTERNAL EMAIL]**

Dear Ms. Sokoni,

I have attached my testimony for the Conditional Use hearing on Thursday (without the Appendix, as the file is too large to send via email). I believe that I will be called by Leslie Powell to speak/answer questions. Unfortunately, although I was a Commissioner on M-NCPPC for some time, I am not familiar with the OZAH procedures for hearing. So, I would like to let you know that I would like to speak on the item coming before you (wholly apart from any questions which may be directed to me by Ms. Powell).

I will drop off a complete package, including my testimony and the Appendix Documents, to your office tomorrow morning.

Thank you in advance for your time and consideration.

Kind regards,  
Amy Presley

[Amy Presley](#)  
[301-526-7435](tel:301-526-7435)  
[www.TrustedEstatePartners.com](http://www.TrustedEstatePartners.com)



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