

From: [Sokoni, Khandikile Mvunga](#)
To: [Leslie Powell](#); [Harris, Robert R.](#); amy@trustedestatepartners.com
Cc: ["Ms. Kate Kubit"](#); [Keith Bennett](#); [Johnson, Nana](#); [Beall, Mark](#); [Butler, Patrick](#); [Jack O'Hara](#); ["Kevin A. Foster ASLA, AICP \(kfoster@glwpa.com\)"](#); david.samba@kimley-horn.com; [Ed Steere](#); [Jennifer Schnetzler](#); [Aurora Munyan](#)
Subject: CU 25-02 OZAH Hearing February 20 2025
Date: Wednesday, January 29, 2025 4:45:35 PM
Attachments: [image001.png](#)

Good Afternoon,

The only date that is confirmed for now is February 20, 2025.

Please be advised as follows:

1. Preliminary Issues: The parties must submit written briefs addressing the preliminary issue raised by Ms. Powell at the January 23rd hearing, that this Conditional Use Application violates a previously negotiated and legally binding settlement.
2. A brief from Ms. Powell must be served on all parties no later than February 7th, 2025. This is also the date that the expert report from Ms. Powell's clients is due.
3. A responding brief from Mr. Harris must be served on all parties no later than February 18, 2025.
4. Parties will argue the merits of this preliminary issue on February 20, 2025.
5. Parties are reminded to review the exhibit list and the exhibits posted on the OZAH website to confirm that all records you have submitted into the record are in the record.

Upon further reflection we will not be able to proceed with the substance of the hearing on the underlying application until this preliminary issue is reviewed. Therefore, I am asking all parties to bring their calendars to the February 20th hearing so that we can select a date in March for a hearing on the merits of the application if needed. Please note that for scheduling purposes it would be helpful for you to review the OZAH hearings schedule to avoid selecting dates on which OZAH already has an in-person hearing, and please be aware that the hearing room is not available on Mondays and Wednesdays.

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: Friday, January 24, 2025 5:05 PM
To: Sokoni, Khandikile Mvunga <Khandikile.Sokoni@montgomerycountymd.gov>; Harris, Robert R. <rrharris@lercheearly.com>; amy@trustedestatepartners.com

Cc: 'Ms. Kate Kubit' <kkubit@elmstreetdev.com>; Keith Bennett <kbennett@glwpa.com>; Johnson, Nana <Nana.Johnson@montgomerycountymd.gov>; Beall, Mark <mark.beall@montgomeryplanning.org>; Butler, Patrick <patrick.butler@montgomeryplanning.org>; Jack O'Hara <Jack.O'Hara@weismarkets.com>; 'Kevin A. Foster ASLA, AICP (kfoster@glwpa.com)' <kfoster@glwpa.com>; david.samba@kimley-horn.com; Ed Steere <esteere@valbridge.com>; Jennifer Schnetzler <jschnetzler@powell-llc.com>; Aurora Munyan <amunyan@powell-llc.com>

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

[EXTERNAL EMAIL]

Dear All,

I spoke too soon. I just received confirmation that the 24th is a go. Thank you very much.

Best regards,
Leslie

Leslie A. Powell
Powell, LLC
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: Leslie Powell

Sent: Friday, January 24, 2025 5:03 PM

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

Cc: 'Ms. Kate Kubit' <kkubit@elmstreetdev.com>; Keith Bennett <kbennett@glwpa.com>; Johnson, Nana <Nana.Johnson@montgomerycountymd.gov>; Beall, Mark <mark.beall@montgomeryplanning.org>; Butler, Patrick <patrick.butler@montgomeryplanning.org>; Jack O'Hara <Jack.O'Hara@weismarkets.com>; 'Kevin A. Foster ASLA, AICP (kfoster@glwpa.com)' <kfoster@glwpa.com>; david.samba@kimley-horn.com;

Ed Steere <esteere@valbridge.com>; Jennifer Schnetzler <jschnetzler@powell-llc.com>; Aurora Munyan <amunyan@powell-llc.com>

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

Dear All,

I am sorry but I am still trying to hunt down my client representatives. I will have my office respond to the group if the 24th works. As of now, it is on my calendar.

Thank you for your patience.

Best regards,
Leslie

Leslie A. Powell
Powell, LLC
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>

Sent: Thursday, January 23, 2025 4:05 PM

To: Harris, Robert R. <rrharris@lerchearly.com>; Leslie Powell <lpowell@powell-llc.com>;
amy@trustedestatepartners.com

Cc: 'Ms. Kate Kubit' <kkubit@elmstreetdev.com>; Keith Bennett <kbennett@glwpa.com>; Johnson, Nana <Nana.Johnson@montgomerycountymd.gov>; Beall, Mark <mark.beall@montgomeryplanning.org>; Butler, Patrick <patrick.butler@montgomeryplanning.org>; Jack O'Hara <Jack.O'Hara@weismarkets.com>; 'Kevin A. Foster ASLA, AICP' <kfoster@glwpa.com> <kfoster@glwpa.com>; david.samba@kimley-horn.com; Ed Steere <esteere@valbridge.com>

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

For now, let us plan for a hearing on February 20 because that is the date that was communicated during today's hearing. We will plan for a full day hearing. If at the end of the day a second hearing date is needed it will be discussed and decided upon on February 20th. Convening on February 20th will not require us to mail out new notices because the date was announced in a public hearing.

I have another hearing on February 25th and would not be available. If, however, Counselors wish to discuss reserving February 24th for a Part 2 hearing (if needed) then please discuss that among yourselves and let me know if there is agreement to reserve the 24th. Kindly confer with Ms. Presley as well.

Regards,



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>

Sent: Thursday, January 23, 2025 3:39 PM

To: Leslie Powell <lpowell@powell-llc.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>; Beall, Mark <mark.beall@montgomeryplanning.org>;

Butler, Patrick <patrick.butler@montgomeryplanning.org>; Jack O'Hara <Jack.O'Hara@weismarkets.com>;

'Kevin A. Foster ASLA, AICP' (<kfoster@glwpa.com>) <kfoster@glwpa.com>; david.samba@kimley-horn.com;

Ed Steere <esteere@valbridge.com>

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

[EXTERNAL EMAIL]

Can I propose another alternative that would allow for a more continuous, efficient process (and provide the opposition even more time to prepare)? What about moving the hearing to 2/24 and 25?

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 | [Bio](#)

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

Sent: Thursday, January 23, 2025 2:25 PM

To: Harris, Robert R. <rrharris@lercheearly.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>; Beall, Mark <mark.beall@montgomeryplanning.org>;

Butler, Patrick <patrick.butler@montgomeryplanning.org>; Jack O'Hara <Jack.O'Hara@weismarkets.com>;

'Kevin A. Foster ASLA, AICP' <kfoster@glwpa.com> <kfoster@glwpa.com>; david.samba@kimleyhorn.com;

Ed Steere <esteere@valbridge.com>

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

Mr. Harris,

Thank you for the courtesy but they have the right to attend the proceedings. Presumably, we can get an alternate date close to the 21st.

Best regards,

Leslie A. Powell

Powell, LLC

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@lercheearly.com>

Sent: Thursday, January 23, 2025 2:19 PM

To: Leslie Powell <lpowell@powell-llc.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>; Beall, Mark <mark.beall@montgomeryplanning.org>;

Butler, Patrick <patrick.butler@montgomeryplanning.org>; Jack O'Hara <Jack.O'Hara@weismarkets.com>;

'Kevin A. Foster ASLA, AICP' <kfoster@glwpa.com> <kfoster@glwpa.com>; david.samba@kimleyhorn.com;

Ed Steere <esteere@valbridge.com>

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

Applicant would be willing to allow each of them to testify on the afternoon of 2/20

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 | [Bio](#)

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

Sent: Thursday, January 23, 2025 2:15 PM

To: Harris, Robert R. <rrharris@lerchearly.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>; Salazar, Victor

<Victor.Salazar@montgomerycountymd.gov>; Beall, Mark <mark.beall@montgomeryplanning.org>;

Coveyou, Michael <Michael.Coveyou@montgomerycountymd.gov>; Jay, Barbara

<Barbara.Jay@montgomerycountymd.gov>; Butler, Patrick <patrick.butler@montgomeryplanning.org>;

Jack O'Hara <Jack.O'Hara@weismarkets.com>; 'Kevin A. Foster ASLA, AICP' (kfoster@glwpa.com)'

<kfoster@glwpa.com>; david.samba@kimleyhorn.com; Ed Steere <esteere@valbridge.com>

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

Thank you, Ms. Sokoni,

Messrs. Patel are both scheduled to be elsewhere on the 21st. I'm sorry. If you could provide some other dates I am happy to circulate them so we can get something on the calendar close to that timeframe.

Best regards,

Leslie

Leslie A. Powell

Powell, LLC

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@lercheearly.com>

Sent: Thursday, January 23, 2025 12:56 PM

To: Sokoni, Khandikile Mvunga <Khandikile.Sokoni@montgomerycountymd.gov>; Leslie Powell <lpowell@powell-llc.com>; amy@trustedestatepartners.com

Cc: 'Ms. Kate Kubit' <kkubit@elmstreetdev.com>; Keith Bennett <kbennett@glwpa.com>; Johnson, Nana <Nana.Johnson@montgomerycountymd.gov>; Salazar, Victor <Victor.Salazar@montgomerycountymd.gov>; Beall, Mark <mark.beall@montgomeryplanning.org>; Coveyou, Michael <Michael.Coveyou@montgomerycountymd.gov>; Jay, Barbara <Barbara.Jay@montgomerycountymd.gov>; Butler, Patrick <patrick.butler@montgomeryplanning.org>; Jack O'Hara <Jack.O'Hara@weismarkets.com>; 'Kevin A. Foster ASLA, AICP' (<kfoster@glwpa.com>)' <kfoster@glwpa.com>; david.samba@kimleyhorn.com; Ed Steere <esteere@valbridge.com>

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

Good afternoon Ms. Sokoni and thank you again for your patience and guidance this morning. I have one small additional request. In the interest of completing the review of this project as quickly as possible, could you reserve both 2/20 and 21 for consideration of the opposition's planned motion and the hearing itself? As we found today, sometimes things do not progress as quickly as expected and we want to honor our commitment to the community to push this project forward.

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@lercheearly.com | [Bio](#)

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From: Sokoni, Khandikile Mvunga <Khandikile.Sokoni@montgomerycountymd.gov>

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

To: Leslie Powell <lpowell@powell-llc.com>; amy@trustedestatepartners.com

Cc: Harris, Robert R. <rrharris@lercheearly.com>; 'Ms. Kate Kubit' <kkubit@elmstreetdev.com>; Keith Bennett <kbennett@glwpa.com>; Johnson, Nana <Nana.Johnson@montgomerycountymd.gov>; Salazar,

Victor <Victor.Salazar@montgomerycountymd.gov>; Beall, Mark <mark.beall@montgomeryplanning.org>; Coveyou, Michael <Michael.Coveyou@montgomerycountymd.gov>; Jay, Barbara <Barbara.Jay@montgomerycountymd.gov>; Butler, Patrick <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>
Sent: Tuesday, January 21, 2025 1:02 PM
To: Sokoni, Khandikile Mvunga <Khandikile.Sokoni@montgomerycountymd.gov>; amy@trustedestatepartners.com
Cc: rrharris@lercheearly.com; 'Ms. Kate Kubit' <kkubit@elmstreetdev.com>; Keith Bennett <kbennett@glwpa.com>; Johnson, Nana <Nana.Johnson@montgomerycountymd.gov>; Salazar, Victor <Victor.Salazar@montgomerycountymd.gov>; Beall, Mark <mark.beall@montgomeryplanning.org>; Coveyou, Michael <Michael.Coveyou@montgomerycountymd.gov>; Jay, Barbara <Barbara.Jay@montgomerycountymd.gov>; Butler, Patrick <patrick.butler@montgomeryplanning.org>
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
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>
Sent: Tuesday, January 21, 2025 12:40 PM
To: amy@trustedestatepartners.com; Leslie Powell <lpowell@powell-llc.com>
Cc: rrharris@lercheearly.com; 'Ms. Kate Kubit' <kkubit@elmstreetdev.com>; Keith Bennett <kbennett@glwpa.com>; Johnson, Nana <Nana.Johnson@montgomerycountymd.gov>; Salazar, Victor <Victor.Salazar@montgomerycountymd.gov>; Beall, Mark <mark.beall@montgomeryplanning.org>; Coveyou, Michael <Michael.Coveyou@montgomerycountymd.gov>; Jay, Barbara <Barbara.Jay@montgomerycountymd.gov>; Butler, Patrick <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) , 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>
Sent: Monday, January 20, 2025 6:20 PM
To: Sokoni, Khandikile Mvunga <Khandikile.Sokoni@montgomerycountymd.gov>
Cc: Leslie Powell <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
www.TrustedEstatePartners.com



|

For more helpful Cybersecurity Resources, visit:
<https://www.montgomerycountymd.gov/cybersecurity>



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<https://www.montgomerycountymd.gov/cybersecurity>