

From: [Harris, Robert R.](#)
To: [Sokoni, Khandikile Mvunga](#); [Leslie Powell](#); [amy@trustedestatepartners.com](#); [Johnson, Nana](#); [kbennett](#); [ARK.LIMITED](#); [Ishan Patel](#)
Cc: [Kate Kubit](#); [Aurora Munyan](#); [Jack O'Hara](#); [Ed Steere](#); ["Kevin A. Foster ASLA, AICP \(kfoster@glwpa.com\)"](#); [david.samba@kimley-horn.com](#)
Subject: RE: FW: Elm Street Development Clarksburg Town Center (CU 202502)
Date: Wednesday, February 5, 2025 1:58:46 PM
Attachments: [image001.png](#)
[image003.png](#)
[DOC.pdf](#)
[DOC000.pdf](#)
[DOC001.pdf](#)
[DOC.pdf](#)

[EXTERNAL EMAIL]

In anticipation of the upcoming hearing, I am attaching for inclusion in the record, resumes for 3 of our expert witnesses, as well as an overall plan for Clarksburg Town Center to help all of us explain things in our testimony.

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: Sokoni, Khandikile Mvunga <Khandikile.Sokoni@montgomerycountymd.gov>
Sent: Wednesday, February 5, 2025 12:02 PM
To: Leslie Powell <lpowell@powell-llc.com>; Harris, Robert R. <rrharris@lerchearly.com>; amy@trustedestatepartners.com; Johnson, Nana <Nana.Johnson@montgomerycountymd.gov>; kbennett <kbennett@glwpa.com>; ARK.LIMITED <ARK.LIMITED@OUTLOOK.COM>; Ishan Patel <ishanpatel@arkvc.net>
Cc: Kate Kubit <kkubit@elmstreetdev.com>; Aurora Munyan <amunyan@powell-llc.com>; Jack O'Hara <Jack.O'Hara@weismarkets.com>; Ed Steere <esteere@valbridge.com>; 'Kevin A. Foster ASLA, AICP (kfoster@glwpa.com)' <kfoster@glwpa.com>; david.samba@kimley-horn.com
Subject: RE: FW: Elm Street Development Clarksburg Town Center (CU 202502)

Dear Ms. Powell and Mr. Harris,

I am addressing the sequence of emails below in this single email.

Please note that Monday February 24, 2025, is no longer available as an option. We will convene on **February 20th at 9:30 AM**. We will start with the motion arguments on the 20th and then proceed with the substantive hearing after motion arguments. I plan to reserve ruling on the motions until the Final Report and Decision. Based on the fact that preliminaries on January 23 took close to two

hours, I expect motions may very well take longer than the 30-45 minutes Mr. Harris is hoping for. That said, let all parties plan to proceed all day if needed on the 20th, and I am asking the parties to please bring calendars for dates to possibly continue hearings in March and beyond if needed. Given Ms. Powell's mediations we will not be proceeding on the 27th or 28th.

As you explore future dates, please note that except when the Council is in recess, the hearing room is not available on Wednesdays because of Board of Appeals hearings. And at least through May, the hearing room is also not available due to Council committee meetings. I encourage you to review the OZAH hearing schedule as well to avoid selecting dates on which we already have in-person hearings.

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: Wednesday, February 5, 2025 11:19 AM

To: Harris, Robert R. <rrharris@lercheearly.com>; Sokoni, Khandikile Mvunga <Khandikile.Sokoni@montgomerycountymd.gov>; amy@trustedestatepartners.com; Johnson, Nana <Nana.Johnson@montgomerycountymd.gov>; kbennett <kbennett@glwpa.com>; ARK.LIMITED <ARK.LIMITED@OUTLOOK.COM>; Ishan Patel <ishanpatel@arkvc.net>

Cc: Kate Kubit <kkubit@elmstreetdev.com>; Aurora Munyan <amunyan@powell-llc.com>; Jack O'Hara <Jack.O'Hara@weismarkets.com>; Ed Steere <esteere@valbridge.com>; 'Kevin A. Foster ASLA, AICP' <kfoster@glwpa.com>; david.samba@kimley-horn.com

Subject: RE: FW: Elm Street Development Clarksburg Town Center (CU 202502)

[EXTERNAL EMAIL]

Dear Ms. Sokoni and Mr. Harris,

I agree that this is not jurisdictional. I was considering efficiency and cost as the basis for my suggestion. This is a matter that rests with Ms. Sokoni.

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@lerchearly.com>
Sent: Wednesday, February 5, 2025 10:27 AM
To: Leslie Powell <lpowell@powell-llc.com>; Sokoni, Khandikile Mvunga <Khandikile.Sokoni@montgomerycountymd.gov>; amy@trustedestatepartners.com; Johnson, Nana <Nana.Johnson@montgomerycountymd.gov>; kbennett <kbennett@glwpa.com>; [ARK.LIMITED](#) <ARK.LIMITED@OUTLOOK.COM>; Ishan Patel <ishanpatel@arkvc.net>
Cc: Kate Kubit <kkubit@elmstreetdev.com>; Aurora Munyan <amunyan@powell-llc.com>; Jack O'Hara <Jack.O'Hara@weismarkets.com>; Ed Steere <esteere@valbridge.com>; 'Kevin A. Foster ASLA, AICP' <kfoster@glwpa.com>; kfoster@glwpa.com>; david.samba@kimley-horn.com
Subject: RE: FW: Elm Street Development Clarksburg Town Center (CU 202502)

In an attempt to accommodate Ms. Powell's mediations, while keeping this matter moving, I suggest using 2/20 to both hear arguments on the Opposition objection re the Plan of Compliance (should take no more than 30-45 minutes) and to proceed with the case on its merits, resuming on 2/24 if necessary, a date which OZAH and the parties already confirmed is available. There is no reason OZAH cannot take the POC argument under advisement along with any other arguments the Opposition may raise. The POC argument is not a jurisdictional issue - clearly, OZAH has the authority to hear the case. Applicant has met every filing, posting and notice requirement and should be able to proceed in a timely manner.

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

Sent: Wednesday, February 5, 2025 9:49 AM

To: Sokoni, Khandikile Mvunga <Khandikile.Sokoni@montgomerycountymd.gov>;
amy@trustedestatepartners.com; Harris, Robert R. <rrharris@lerchearly.com>; Johnson, Nana
<Nana.Johnson@montgomerycountymd.gov>; kbennett <kbennett@glwpa.com>; ARK.LIMITED@OUTLOOK.COM>; Ishan Patel <ishanpatel@arkvc.net>

Cc: Kate Kubit <kkubit@elmstreetdev.com>; Aurora Munyan <amunyan@powell-llc.com>

Subject: RE: FW: Elm Street Development Clarksburg Town Center (CU 202502)

Good morning, Ms. Sokoni,

I needed to check my schedule on February 27th and 28th upon my return to the office. I have mediations in two contentious cases set for each of those days. Each is being mediated by a Judge so my ability to reschedule those is non-existent.

My other observation is that we would all benefit from a ruling on the motion to dismiss before proceeding to the rest of the case. While Mr. Harris testifies that the compliance program is of no circumstance and that residents are clamoring for a grocery store (which is not his province to do), we believe that it remains a binding document and specifically applies to all successors and assigns. Certainly, this is your province to determine but I just wanted to add my thoughts to this process.

Thank you for your consideration.

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: Wednesday, February 5, 2025 7:55 AM
To: amy@trustedestatepartners.com; Rrharris <rrharris@lercheearly.com>; Johnson, Nana <Nana.Johnson@montgomerycountymd.gov>; kbennett <kbennett@glwpa.com>; ARK.LIMITED@OUTLOOK.COM; Ishan Patel <ishanpatel@arkvc.net>
Cc: Leslie Powell <lpowell@powell-llc.com>; Kate Kubit <kkubit@elmstreetdev.com>
Subject: RE: FW: Elm Street Development Clarksburg Town Center (CU 202502)

Good Morning All,

I held off on responding to allow some time for everyone to weigh in on the proposal to start on February 20th with the motion arguments on the Plan of Compliance, and then to adjourn to February 27 and 28 (if needed) for the substantive hearing in the interest of time. That is what we will plan to do. I will reserve my ruling on the February 20th arguments for the Final Hearing Examiner's Report and Decision.

Any non-attorney participants that are not able to attend any of the hearings in person will have the opportunity to participate via Zoom as all hearings will be via Hybrid format.

Respectfully,
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: Friday, January 31, 2025 3:34 PM
To: Sokoni, Khandikile Mvunga <Khandikile.Sokoni@montgomerycountymd.gov>; Rrharris <rrharris@lercheearly.com>; Johnson, Nana <Nana.Johnson@montgomerycountymd.gov>; kbennett <kbennett@glwpa.com>; ARK.LIMITED@OUTLOOK.COM; Ishan Patel <ishanpatel@arkvc.net>
Cc: Leslie Powell <lpowell@powell-llc.com>; Kate Kubit <kkubit@elmstreetdev.com>
Subject: Re: FW: Elm Street Development Clarksburg Town Center (CU 202502)

[EXTERNAL EMAIL]

Dear Ms. Sokoni,

I must object to Mr. Harris' "testimony" via email as to how the County has treated the

Compliance Program flexibly over the years. While there may have been amendments that the applicant was able to slide through, I am prepared to provide testimony supporting the fact that the Compliance Program is still a legally binding and operative document.

Regarding the 27th and 28th of February, though it will prove difficult to arrange for additional care services for my Mother for those days, I am willing to commit to the dates should they become necessary.

Thank you for your time and attention to this case.

Kind regards,
Amy

Amy Presley, REALTOR®
301-526-7435
www.TrustedEstatePartners.com



----- On Fri, 31 Jan 2025 12:12:21 -0500 **Harris, Robert R.** <rrharris@lercheearly.com> wrote

I first want to thank OZAH and the parties of record for the collective efforts to move this case forward. At the same time, I am concerned about future delays and I am advocating for the earliest possible hearing dates. For reasons outside of Applicant's control, the matter has already been deferred and Applicant wants to guard against any unnecessary delays in the future. With this in mind, Applicant suggests that the arguments on the motion regarding the "Plan of Compliance" take place on February 20, followed by the hearing on the merits on February 27 and 28. Based on Applicant's experience with the Plan of Compliance and the flexible way in which the County has treated it for many years, Applicant is confident the Zoning Hearing Examiner will quickly find it to be of no consequence. Delaying this until March is a problem because Applicant's planner, Kevin Foster, will be out of the country for most of March and generally unavailable. Given the option of participating remotely, any

minor conflicts should not prevent this timing. By copies of this email, Applicant is seeking concurrence from opposition on these dates.

Robert R. Harris, Attorney

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

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