

**Office of Zoning and Administrative Hearings
Stella B. Werner Council Office Building
100 Maryland Avenue, Room 200
Rockville, Maryland 20850
(240) 777-6660**

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Conditional Use
Application No. CU-25-02
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Before: Khandikile Mvunga Sokoni, Hearing Examiner

Exhibit 65
OZAH Case No: CU 25-02

of irrelevance and business information privilege.

The Hearing Examiner scheduled a Teams conference for February 18, 2025, for the attorneys for the parties to discuss the subpoena request which conference was duly held. During the Conference Attorney Powell withdrew her subpoena request for Item 2 in her February 5, 2025, letter but presented arguments for why items 1 and 3 were relevant to the adjudication of the present conditional use application.

Ms. Powell explained that among other things, the documents listed in her subpoena request (as modified at conference) would indicate that a purchase price of just \$1 for the subject property suggests there were other conditions and encumbrances such as the Plan of Compliance that influenced the price.

Applicants' attorney, Robert R. Harris, Esq., presented oral arguments challenging relevance of the subpoena records. Mr. Harris addressed the argument that these documents would shed light on the representations that Weis Markets would not buy this development without a gas station, and explained that Applicants intend to present a witness to testify to this under oath.

Ms. Powell's motion papers (Exhibit 61) contained a deed (marked Exhibit H) which confirms that Third Try, LC is the owner the subject property.

Upon reviewing Ms. Powell's subpoena request, the objections presented by Mr. Harris, and the entire Record and upon hearing arguments presented in conference, the Hearing Examiner makes the following Ruling pursuant to the authority vested in the Hearing Examiner Under Rule 4.2 Office of Zoning and Administrative Hearings (OZAH) Rules:

Ms. Powell's subpoena request was timely made pursuant to Rule 3.8 of the OZAH Rules which requires that Subpoena requests must be submitted to the Hearing Examiner at least 14 days before the scheduled public hearing and with sufficient time for the person to be served. Each subpoena request must identify the name and address of the person to be subpoenaed and identify any documents to be produced. Requests must also include a statement explaining why the witness's testimony or documents requested are relevant to the case.

The requirements of a Conditional Use Application are outlined in the Montgomery County Zoning Ordinance. Section 59.7.3.1.B which governs Conditional Use Application requirements specifically provides that an applicant must own the subject property or be authorized by the owner to file the application. Section 59.7.3.1.B.2.b requires the applicant to submit for review proof of ownership or authorization.

At the time of the conference the record contains both proof of ownership showing Third Try, LC as owner of the subject property, and an affidavit wherein Third Try authorizes CTC Retail, LC to submit this Conditional Use Application. (Exhibit 7), signed by Kathryn Kubit. Because the Owner Authorization Affidavit did not specify the title of the person signing on behalf of the owner corporation the Applicant must provide a supplement listing Ms. Kubit's title, as well as authorization documentation for the co-applicant Weis Market's Inc.²

² At the time of the signing of this Order Mr. Harris has provided the required supplemental documentation in the form of a letter signed by Ms. Kubit listing her title, as Manager, and stating that Owner (Third Try, LC) authorizes both CTC Retail, LC and Weis Markets Inc. to file this Conditional Use Application. Exhibit 7.a.

The documents requested in the subpoena request (Exhibit 60) are neither required by the Zoning Ordinance nor relevant to the findings that the Hearing Examiner must make in connection with a Conditional Use Application. Therefore, the subpoena request is denied.

Issued: February 19, 2025.

Office of Zoning and Administrative Hearings



Khandikile Mvunga Sokoni
Hearing Examiner