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Notes:

1. Pertinent parts of every ruling, opinion, order of lower courts, agency are in the record extract included in the Appendix. Objections were raised. Refer to the Questions, Facts, Arguments regarding points raised by the appellants for Timely Appeal – Notification, Conditional Use (CU) – Zoning, Constitutional Law. The Appendix includes substantial evidence of NON Compliance.
2. Citation and verbatim text of pertinent constitutional provisions, statutes, ordinances, rules, regulations are included in the Appendix regarding Timely Appeal – Notification, Conditional Use (CU) – Zoning, Constitutional Law.
3. Agencies have "no power of suspending Laws or execution of Laws". Laws require "government officials perform duties that they are legally obligated to perform". Courts are required to "maintain independence and integrity of the legal system", to ensure due process, protection of rights and equal justice under the law. See Maryland Const. Art. 6; 9; 33. Violations of law were submitted to County before OZAH report 7-1-2020 (~2 years before work at 19105 N. Frederick).

**Appendix App.1**

	*	IN THE
JOSEPH GOTHARD	*	SUPREME COURT
	*	OF MARYLAND
	*	
v.	*	Petition Docket No.
	*	42
	*	September Term,
		2023
FREDERICK ROAD	*	(No. 0169, Sept.
SENIOR 4% OWNER	*	Term, 2023
LLC, et al.	*	Appellate Court of
	*	Maryland)
	*	
	*	(No. C-15-CV-22-
	*	004440
	*	Circuit Court for
	*	Montgomery County)

**ORDER**

Upon consideration of the petition for a writ-of certiorari to the Appellate Court of Maryland and the respondents' answers to the petition, it is this 20th day of June 2023, by the Supreme Court of Maryland.



ORDERED that the petition for writ of certiorari is DENIED as there has been no showing that review by certiorari is desirable and in the public interest.



/s/ Matthew Fader

Chief Justice

Appendix App.2

E-Filed 4/6/2023

IN THE MATTER  
OF JOSEPH  
GOTHARD, ET AL.

\* IN THE  
\* APPELLATE COURT  
\* OF MARYLAND  
\* No. 0169 SEPTEMBER  
\* TERM, 2023  
\* MDEC: ACM-REG-0169-  
\* 2023  
\* Cir. Ct. No. C-15-CV-22-  
\* 004440

\* \* \* \* \*

**ORDER**

This appeal was initiated by the filling of a notice of appeal in the Circuit Court for the Montgomery County on March 30, 2023. The appeal was taken from the March 30 opinion and Order of the circuit court resolving a Petition for Judicial Review filed *In the Matter of Joseph Gothard, et al.*, Cir. Ct. No C-15-CV-22-004440. The notice of appeal purports to be on behalf of Joseph Gothard, Kristina Gothard, Jose Cabrera, Dan Lamoy, Thomas Witz, Feri Fallahian, and Saviz Fallahian. The notice of appeal is signed by Joseph Gothard, Jose Cabrera, Dan Lamoy, and Thomas Witz, all acting *pro se*.

Upon review of the record in the above-captioned appeal, it appears that Joseph Gothard and Kristina Gothard are the only petitioners in *In the Matter of*

*Joseph Gothard, et al.*, Cir. Ct. No. C-15-CV-22-004440. Although the Petition for Judicial Review listed Jose Cabrera, Dan Lamoy, Thomas Witz, Monique Witz, Feri Fallahian, and Saviz Fallahian as “joint petitioners,” the pleading was only signed by Joseph Gothard d Kristina Gothard, acting *pro se*, see Maryland Rule 1-311 (a) (Every pleading and paper of a party who is not represented by and attorney shall be signed by the party.”), and the remaining individuals did not sign and file and amended petition, see *Floyd v. Mayor & City Council of Baltimore*, 179 Md. App. 394 (2008), *aff’d*, 407 Md. 461 (2009).

Upon consideration of the foregoing, it is this 6th day of April 2023, by the Appellate Court of Maryland,

ORDERED, on the Court’s own initiative, that Joseph Gothard is the only proper appellant in the above-captioned case<sup>1</sup> and is further

ORDERED, that the remainder of the individuals named on the March 30 Notice of Appeal shall be designated as interested persons in the above-captioned case



/s/ \_\_\_\_\_ CHIEF JUSTICE  
SIGNATURE APPEARS ON  
ORIGINAL ORDER

Gregory Wells, Chief Judge

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<sup>1</sup> Kristina Gothard is not an appellant in the above-captioned case because she did not sign the March 30 Notice of Appeal and is not represented by an attorney who signed the notice of appeal on her behalf. See Floyd, 179 Md. App. at 427 (“The failure of the pro se individuals listed as appellants to sign the notice of appeal disqualifies them as appellants.”). However, because she was a petitioner in *In the Matter of Joseph Gothard, et al.* Cir. Ct. No. C-15-CV-22-004440, Mrs. Gothard may still file a proper notice of appeal within 30 days after the entry of the judgement or order from which the appeal is taken, pursuant to Maryland Rule 8-202.

**Appendix App.3A****IN THE CIRCUIT COURT FOR MONTGOMERY  
COUNTY, MARYLAND**

PETITION OF,	:	
Joseph Gothard, <i>et al.</i>	:	
	:	
FOR JUDICIAL	:	
REVIEW OF THE	:	
DECISION OF THE	:	Case No. C-15-CV-
Board of Appeals for	:	22-004440
Montgomery County,	:	
	:	
IN THE CASE OF	:	
Joseph Gothard, <i>et al.</i>	:	
Case No. A-6765	:	

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**OPINION AND ORDER**

This matter came before the Court on March 2, 2023 for a hearing on Respondent Frederick Road Senior 4% Owner, LLC's Motion for Summary Judgement, or, In Lieu Thereof, *Motion in Limine*, and Request for Oral Argument on Both Motions (filed January 5, 2023) and Motion to Strike (filed February 9, 2023). Prior to the hearing, all parties filed memoranda setting forth the questions presented for review, a statement of the facts material to those questions, and argument as to each of those

questions<sup>1</sup>. Given the narrow issues before the Court and the ample briefing on the issues prior to the hearing, the Court proceeded with oral argument as to the substantive issues on appeal without objection. Upon consideration of the parties' filings, the administrative record, oral argument, and the reasons stated herein it is this 29<sup>th</sup> day on March, 2023, by the Circuit Court for Montgomery County, Maryland, hereby **ORDERED** that the decision of the Board of Appeals for Montgomery County is **AFFIRMED**. Respondent Frederick Road Senior 4% Owner, LLC's Motion for Summary Judgment and Motion to Strike are **MOOT**

#### I. PROCEDURAL HISTORY

On February 12, 2023, Edmonson and Gallagher Property Services, LLC applied for a conditional use for an independent senior living facility to be built on property at 19105 N Frederick Road, Gaithersburg, Maryland 20880 (the "Property"). On May 11, 2020, Montgomery County's Office of Zoning and Administrative Hearings ("OZAH") held a public hearing on the application for conditional use. Shortly after the hearing, the Hearing Examiner was notified that one of the owners of an adjacent property,

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<sup>1</sup> While Petitioners fully briefed the information and arguments upon which they intended to rely in challenging the decision of the Board of Appeals of Montgomery County, they did not address *relevant* appellate issues. The Court clarified the issues on the record during the oral argument and gave Petitioners the opportunity to address those *issues*, to testify as to the timeliness of their appeal to the Board of Appeals, and to submit additional materials post hearing.

petitioner Joseph Gothard, had wanted to attend the public hearing but was unable to do so. A second public hearing was scheduled and held on May 21, 2020 to allow Mr. Gothard the opportunity to participate and share his concerns with the Hearing Examiner.

Mr. Gothard submitted two letters addressing his concerns prior to the hearing, testified at the hearing, and submitted additional correspondence after the conclusion of the hearing. On July 1, 2020, the Hearing Examiner issued her Report and Decision granting the conditional use (CU 20-02), subject to fourteen conditions. Notification of that decision was sent to the individuals who participated in the public hearing, including Mr. Gothard. See Hearing Examiner's Report and Decision, OZAH Case No. CU 20-02, at 49. On April 26, 2022, Montgomery County's Department of Permitting Services issued Sediment Control Permit No. 287113 for the Property, and on May 12, 2022, it issued Building Permit No. 955491.

Mr. Gothard and his wife Kristina Gothard filed an Appeal Charging Error in Administrative Action or Determination with the Board of Appeals for Montgomery County (the "Board") challenging the approval of conditional use (CU 20-02) and the issuance of the Sediment Control Permit No 287113 and Building Permit No. 955491 for the Property. Several other property owners in the area - including Jose Cabrera, Dan Lamoy, Tom and Monique Witz, and Fery and Saviz Fallahian - filed nearly identical appeals with the Board and labeled their filings as joint appeals. See. e. g. Administrative Record,

Exhibit 12(a), 13 (a), 17 (a). The Board addressed all of the appeals together under Case No A-6765. Edmonson & Gallagher Property Services LLC and Frederick Road Senior 4% Owner, LLC ("Frederick Road"), the successor in interest of the conditional use and the current owner of the Property, filed a motion to intervene, which was granted by the Board<sup>2</sup>. Prior to the merits hearing, Frederick Road and Montgomery County, Maryland (the "County") filed motion for summary disposition asserting that Petitioners' claims were time-barred and therefore the Board could not exercise jurisdiction over the appeal. Petitioners opposed both motions. See Administrative Records, Exhibit 8, 15. The Board held a motion hearing on October 12, 2022. Mr. and Mrs. Gothard and Dan Lamoy appeared *pro se* and participated in oral argument, as did Frederick Road and the County, both represented by counsel.

After reviewing all pre-hearing and post-hearing submissions and considering the testimony elicited during oral argument, the Board granted Frederick Road and the County's motions for summary disposition and dismissed the appeal for three reasons: (1) the Board could not hear the challenge of conditional use (CU 20- 02) on the merits, as Petitioners did not file their appeal within 10 days

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<sup>2</sup> Frederick Road took title to the Property by Deed dated May 26, 2022 and is the current holder of the conditional use approval and the sediment and building permits. See Administrative Record Exhibit 18(a) Order Confirming Transfer of the Conditional Use. As such, Edmonson & Gallagher Property Services, LLC is not a party of this action.



after OZAH issued the Hearing Examiner's Report and Decision; (2) the Board did not have the authority to hear the challenge of the issuance of Building Permit No. 955491 on the merits because Petitioners did not file appeal within 30 days after the permit was issued; (3) the Board did not have jurisdiction to hear the appeal of the issuance of Sediment Control Permit No. 287113 because the Montgomery County Code does not grant the Board authority over such appeals, regardless of the timeliness of a filing.

Mr. Gothard submitted a motion for reconsideration on November 13, 2022 arguing that the Board should not have dismissed the appeal as untimely without a hearing on the merits. The Board considered Mr. Gothard's motion at a hearing on November 16, 2022 and ultimately found that the Board was correct in dismissing the appeal. On December 7, 2022, the Board issued a Resolution to Deny Request for Reconsideration memorializing its decision that "there was no reason to reconsider that earlier Opinion" given that it was clear the Board lacked jurisdiction to hear the appeal. *See* Administrative Agency Record, Exhibit 24, at 2. Mr. and Mrs. Gothard timely filed their petition for judicial review in this Court on December 2, 2022, echoing the concerns raised before the Board and requesting a hearing on the merits<sup>3</sup>.

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<sup>3</sup> The Petition was filed by Mr. and Mrs. Gothard, pro se, but listed Jose Cabrera, Dan Lamoy, Tom and Monique Witz, and Feri and Saviz Fallahian as "joint petitioners". In their Motion in Opposition to Motion to Strike, Mr. and Mrs. Gothard included the notarized signatures of all joint petitioners, presumably with the intention of entering their appearance as

## II STANDARD OF REVIEW

Petitioners request that this Court review all evidence and consider this case on the merits. Their request is beyond the scope of the circuit court's judicial review. In reviewing the decision of an administrative agency, the circuit court's role is "limited to determining whether there was substantial evidence on the record as a whole to support the agency's findings of fact and whether the agency's conclusions of the law were correct." *Motor Vehicle Admin. v. Atterbeary*, 368 Md. 480, 490-91 (2002). The circuit court must not substitute its judgement for that of the administrative agency's. *United Parcel Serv., v. People's Cons. for Baltimore Cnty.*, 336 Md. 569, 576-77 (1994). Instead, it must "defer to the agency's fact-finding and drawing of inferences if they are supported by the record." *Marzzullo v. Kahl*, 366 Md. 158, 172 (2001) (*citing CBS v. Comptroller*, 319 Md. 687, 698 (1990)). The reviewing court must affirm the decision of the administrative agency if it finds that the agency's decision was in accordance with the law, or it may modify or reverse the decision if it finds that the agency's decision was not legally correct. See Md. Code Ann., Local Gov't § 10-305.

## III ANALYSIS

The issue at bar is whether the Board was legally correct in granting Frederick Road and the County's

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self-represented parties. Considering the limited nature of this appeal, a determination of whether each petitioner is properly entered his or her appearance is immaterial.

motions for summary disposition and dismissing the appeal on the following ground. (1) the Board could not hear the challenge of conditional use (CU 20-02) on the merits, as Portioners did not file their appeal within 10 days after OZAH issued the Hearing Examiner's report and decision. (2) the Board did not have the authority to hear the challenge of the issuance of Building Permit No. 955491 on the merits because Petitioners did not file their appeal within 30 days after the permit was issued; and (3) the Board did not have the jurisdiction to hear the appeal of the issuance of Sediment Control Permit No. 287113 because the Montgomery County Code does not grant the board authority over such appeals, regardless of the timelines of filing. For the reason set forth below, the Court answers this question in the affirmative.

**a. Conditional use (CU 20-02)**

The first issue on appeal is whether the Board was legally correct in finding that it had no authority to resolve the challenge to conditional use (CU 20-02) on the merits. Section 59.7.3.1.c. of the Montgomery County Zoning Ordinance provide that: [a]ny party of record or aggrieved party may, no later than 10 days after the transmittal of notification that the Hearing Examiner's report and decision are available for review, file a written request to present oral argument before the Board of Appeals. The filling of such request transfers jurisdiction over the matter from the Hearing Examiner to the Board of Appeal." It is undisputed that the Hearing Examiner's report was issued on July 1, 2020 and that the appeal was filed with the Board on July 18, 2020, more than two

years later. Petitioners have consistently argued that they were unable to timely file their appeal because they were never received proper notice of the potential development in the Property or the conditional use application and approval.

Section 50/59.00.01.04. A.2 of the Montgomery County Planning Board Regulation on Administrative Producers for Development Review requires that notices be sent to specified individuals and entities at different stages throughout the development application process. Pursuant to this regulation, abutting property owns, are among those entitle to notice. As confronting and abutting property owners, Mr. and Mrs. Gothard, Dan Lamoy, and Mr. and Mrs. Cabrera were entitled to notice. The other property owners who filed appeals with the Board (Tom and Monique Witz and Feri and Saviz Fallahian) were not entitle to notice because they are not abutting and confronting property owners. With respect to notice as it relates to the Hearing Examiner's Report and Decision, Section 59.7.3.1.F.1 b. of the Montgomery County Zoning Ordinance requires only the Hearing Examiner "notify the Board of Appeals, the applicant, and all parties who participated in the hearing that the report and decision are complete and available for review." Mr. Gothard was the only property who elected to attend the public hearing and was therefore the only petitioner entitled to notice that the Report and Decision was issued and available for review.

Prior to the October 12, 2022 motion hearing before the Board, Frederick Road submitted a Supplemental

Motion for Summary Disposition, which set forth all notice requirements and the steps taken to satisfy those requirements. In its submission, Frederick Road represented first that the Law Offices of Miller, Miller & Canby sent notice in August 2020 to those entitle to notice under the regulations, welcoming them to attend a community meeting to discuss the plans for the Property<sup>4</sup>. Administrative Record, Exhibits 19, at 2-3. This notice was simply a courtesy; it was not required under the regulations. Frederick Road contends that Petitioners were aware of potential development on the Property as early as August 2020. Second, following the conditional use application, OZAH sent notices of the public hearing to the property owners entitle to notice of the pending application using the mailing list provided by the counsel for Frederick Road. *Id.* At 4. In addition to mailing notices of the hearing, OZAH provided a notice sign, which was erected on the Property facing Frederick Road. Finally, as Mr. Gothard participated in the public hearing regarding the application for conditional use, he received notice that the Hearing Examiner's Report and Decisions was issued and made available for review on July 1, 2020. *See* Hearing Examiner's Report and Decision, OZAH Case No. CU 20-02, at 49. On the final two pages of the Report and Decision, the Hearing Examiner included a section on Notice of Rights to Appeal, which set forth the applicable time parameters, the procedures for filing an appeal with the Board, and gave

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<sup>4</sup> The community meeting was held on August 21, 2020, but none of the property owners attended the meeting.

instructions on whom to contact for additional information. *See id.* at 48-49. Based on the aforementioned representations, and after considering all the evidence presented at the motions hearing, the Board concluded that "all notice requirements were met prior to the granting of CU 20-02. "Opinion of the Board, at 7. The Court finds that there was substantial evidence in the record to support the agency's findings of fact and drawing of inferences with respect to notice.

After making this finding, the Board concluded that the appeal was not timely filed and that it could not hear the appeal on the merits of the case. It is well-established under Maryland law that an administrative agency does not have the authority to decide a case on the merits if the appeal was not timely filed. *See United Parcel Serv.*, 336 Md. At 580 ("[T]his Court has consistently held that, where the notice of appeal was not filled within the prescribed period after the final decision from which the appeal was taken, the appellate tribunal ha[s] no authority to decide the case on merits."). Accepting that all notice requirements were satisfied prior to the approval of conditional use (CU 20-02) and with respect to the Hearing Examiner's Report and Decision, and noting that the appeal was not filled within the prescribed period set forth under Section 59.7.3.1.F.1.c. of the Montgomery County Zoning Ordinance, this Court finds that the Board was legally correct in concluding that it did not have the authority to hear the appeal on the merits.

**b. Building Permit No. 955491**

The second issue before the Court is whether the Board was legally correct in finding that it did not have the authority to hear Petitioners' challenge of the issuance of Building Permit No. 955491 on the merits. The Court answers this question in the affirmative. Section 8-23 of the Montgomery County Code provides in relevant part: [a]ny person aggrieved by the issuance denial, renewal, amendment, suspension, or revocations of a permit, or the issuance or revocation of a stop order, under this Chapter may appeal to the county Board of Appeal **within 30 days after the permit is issued**, denied renewed, amended, suspended, or revoked or stop work order is issued or revoked. Montgomery County Code, Section 8-23 (emphasis added). This section affords the Board appellate jurisdiction over appeals timely filed under this section. It is undisputed that Building Permit No. 955491 was issued on May 12, 2022 and that Petitioners filed their appeal with the Board on July 18, 2022, more -- than 60 days after the building permit was issued. Based on the undisputed facts, The Board determined that the appeal was filed more than 30 days after the issuance of the building permit and therefore was untimely.

Petitioners argued that they could not have timely filed their appeal because they never received notice that the building permit was issued. The time for filing is, however, based on the date of *issuance*, not the date interested parties received actual or constructive notice of its issuance. Additionally, as far as notice goes, the Montgomery County Code requires nothing more than for the building permit to be

posted at the operation site for the benefit of individuals or entities conducting inspections. *See* Montgomery County Code, Section 8-25(g). Confronting and abutting property owners are not entitled to notice of the issuance of building permits. *See generally*, Montgomery County Code, Chapter 8. As such, this argument does not support Petitioners' position that the Board's decision was contrary to law.

**c. Sediment Control Permit No 287113**

The third and final issue on appeal is whether the Board was legally correct in findings that it did not have jurisdiction to hear the appeal of the issuance of Sediment Control Permit No. 287113. The Court finds that the Board was legally correct in dismissing the appeal on this ground. Section 2-112 (C) of the Montgomery County Code grants the Board appellate jurisdiction over select statutory sections and chapters. This section does not, however afford the Board appellate jurisdiction over Chapter 19 of the Montgomery Code, which governs the issuance of sediment control permits. In fact, Chapter 19, does not include any analogues provision affording interested parties the opportunities to appeal the issuance of a sediment control permit. *See generally* Montgomery County Code, Chapter 19, The Board correctly noted that "its jurisdiction is created and limited by statute" and therefore it does not have the authority to hear a challenge to the issuance of a sediment control permit. *See* Option of the Board, at 7. This Court agrees and finds that the Board's decision to dismiss the appeal as to the sediment



control permit for lack of jurisdiction was in accordance with the law.

/s/ The Honorable Rachel T. McGuckian

Circuit Court for Montgomery County,  
Maryland

**Appendix App.3B****IN THE CIRCUIT COURT FOR MONTGOMERY  
COUNTY, MARYLAND**

PETITION OF,	:	
Candice Clough, <i>et al.</i>	:	
	:	
FOR JUDICIAL	:	
REVIEW OF THE	:	Case No. C-15-CV-
DECISION OF THE	:	23-000012
Board of Appeals for	:	
Montgomery County,	:	
	:	
IN THE CASE OF	:	
Candice Clough, <i>et al.</i>	:	
Case No. A-6780	:	

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**OPINION AND ORDER**

This matter came before the Court on May 12, 2023 for a hearing on Respondent Frederick Road Senior 4% Owner, LLC's Motion to Dismiss (filed April 6, 2023). The Court denied the Motion to Dismiss on the record and, by agreement of the parties, proceeded with oral argument as to the substantive issues on appeal. Petitioner Candice Clough ("Ms. Clough") appeared *pro se*. Respondent Frederick Road Senior 4% Owner, LLC ("Frederick Road") was represented by counsel. Both parties participated in oral argument. Upon consideration of the parties' filings, the

administrative record, oral argument, and the supplemental materials presented by Petitioner at and following the hearing, and for the reasons stated herein, it is this 5<sup>th</sup> day of June, 2023, by the Circuit Court of Montgomery County, Maryland, hereby **ORDERED** that the decision of the Board of Appeals for Montgomery County is **AFFIRMED**.

### **I PROCEDURAL HISTORY**

On February 12, 2020, Edmonson & Gallagher Property Services, LLC applied for a conditional use for an independent senior living facility to be built on property at 19105 N Frederick Road, Gaithersburg, Maryland 20880 (the "Property"). On May 11, 2020, Montgomery County's Office of Zoning and Administrative Hearings ("OZAH") held a public hearing on the application for conditional use. Shortly after the hearing adjourned, OZAH was contacted by Joseph Gothard ("Mr. Gothard"), an adjacent property owner who was unable to join the public hearing despite his efforts to do so. To afford Mr. Gothard the opportunity to participate, a second hearing was scheduled for May 21, 2020. *See* Administrative Record, Exhibit 4(a), at 5. Mr. Gothard was the only complaining property owner who elected to participate in the public hearing. On July 1, 2020, the Hearing Examiner issued her Report and Decision granting conditional use CU 20-02 subject to several conditions, and notification of its issuance was sent to all individuals who participated in the hearing, including Mr. Gothard. *Id.* at 48-49. Following the approval of conditional use CU 20-02, Montgomery County's Department of Permitting

Services ("DPS") issued two permits for the Property: Sediment Control Permit No. 287113 was issued on April 26, 2022 and Building Permit No. 955491 was issued on May 12, 2022.

On October 10, 2022, Ms. Clough, the owner of property located at 11302 Harvest Mills Lane, Germantown, Maryland 20876, which is not an abutting or confronting property, and two other nearby property owners, Danilo Molieri and Chris Flores, filed a joint appeal charging error on the part of OZAH for issuing conditional use CU 20-02 and DPS for issuing Building Permit No. 955491 and Sediment Control Permit No. 287113.<sup>6</sup> Administrative Record, Exhibit 1. In support of the appeal to the Board of Appeals for Montgomery County (the "Board"), Ms. Clough submitted a statement asserting that the conditional use and permits were issued in error based on flawed and misleading information and without proper notice being given to property owners affected by the project. Administrative Record, Exhibit 3. In addition, Ms. Clough argued that the senior living facility would be an "eye sore," cause privacy concerns that did not exist before, decrease property values in the area, and create hazardous conditions for nearby property owners. *Id.* at 1-3. Accordingly, Ms. Clough requested that the conditional use and permits be withdrawn immediately, that the project be abandoned, and the owner of the Property be

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<sup>6</sup> Neither Danilo Molieri nor Chris Flores participated in the appeal before this Court.

forced to comply with current zoning requirements.  
*Id.* at 3.

On October 21, 2022, Frederick Road filed a Motion to Intervene and a Motion for Summary Disposition.<sup>7</sup> Administrative Record, Exhibit 6, 7. On November 8, 2022, Montgomery County (the "County") filed a Motion to Dismiss or for Summary Disposition. Administrative Record, Exhibit 9. Both parties relied on the Board's decision in a companion case, Case No. A6765, in support of their requests for summary disposition.<sup>8</sup> Case No. A-6765 was an appeal filed by Mr. Gothard and other nearby property owners requesting revocation of conditional use CU 2002, Building Permit No. 955491, and Sediment Control Permit No. 287113 on nearly identical grounds. After reviewing the parties' submissions in the companion case and eliciting testimony during oral argument, the Board concluded that it did not have jurisdiction to hear the matter on the merits and dismissed the appeal. Frederick Road and the County both argued that the Board was bound by its decision in the companion case, as the facts before it in Case No. A-6780 were identical to those before the Board in Case No. A-6765.<sup>9</sup>

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<sup>7</sup> Frederick Road is the successor in interest of conditional use CU 20-02 and the owner of the Property. See Administrative Record, Exhibit 6. Accordingly, Edmonson & Gallagher Property Services, LLC is not a party to this action.

<sup>8</sup> See attached Opinion and Order for a comprehensive review of Case No. A-6765 and the corresponding appeal, Case No. C-15-CV-22-004440

<sup>9</sup> Mr. Gothard and his wife Kristina Gothard filed a petition in this Court for judicial review of the Board's decision in the companion case. This member of the bench was specially assigned to the appeal, which was filed

At the pre-hearing conference on November 16, 2022, the Board granted Frederick Road's Motion to Intervene and proceeded to oral argument on Frederick Road and the County's motions for summary disposition. Ms. Clough and Danilo Molieri appeared *pro se* and participated in oral argument, as did Frederick Road and the County, both represented by counsel. At the close of oral argument, the Board granted the motions for summary disposition and dismissed Ms. Clough's appeal for the following reasons: (1) Section 2-112(c) of the Montgomery County Code does not grant the Board appellate jurisdiction over the issuance of sediment control permits; (2) the Hearing Examiner's decision was not appealed to the Board within 10 days after OZAH issued the written decision and report; and (3) the issuance of Building Permit No. 955491 was not appealed to the Board within 30 days of the permit being issued. Therefore, the Board concluded it did not have jurisdiction to hear the issues on appeal on the merits. The Board issued its written opinion on December 9, 2022, and Ms. Clough timely filed her petition for judicial review with this Court on January 3, 2023.

## II. STANDARD OF REVIEW

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under Case No. C-15-CV-22-004440. On March 2, 2023, this Court heard oral argument in support of the petition for judicial review, and on March 30, 2023, this Court entered an Opinion and Order affirming the decision of the Board, finding that the Board lacked jurisdiction to hear the appeal on the merits. See Opinion and Order attached hereto.

In reviewing the decision of an administrative agency, the circuit court's role is "limited to determining whether there was substantial evidence on the record as a whole to support the agency's findings of fact and whether the agency's conclusions of law were correct." *Motor Vehicle Admin. v. Atterbeary*, 368 Md. 480, 490-91 (2002). The circuit court must not substitute its judgment for that of the administrative agency's. *United Parcel Serv., Inc. v. People's Couns. for Baltimore Cnty.*, 336 Md. 569, 576-77 (1994). Instead, it must "defer to the agency's fact-finding and drawing of inferences if they are supported by the record." *Marzullo v. Kahl*, 366 Md. 158, 172 (2001) (citing *CBS v. Comptroller*, 319 Md. 687, 698 (1990)). The reviewing court must affirm the decision of the administrative agency if it finds that the agency's decision was in accordance with the law, or it may modify or reverse the decision if it finds that the agency's decision was not legally correct. See Md. Code Ann., Local Gov't § 10-305.

### III. ANALYSIS

The question before this Court on appeal is whether the Board was legally correct in granting Frederick Road and the County's motions for summary disposition and dismissing Ms. Clough's appeal for lack of jurisdiction without hearing the case on the merits. For the reasons that follow, this Court answers that question in the affirmative.

**a. Sediment Control Permit No.  
287113**

The first issue on appeal is whether the Board was legally correct in determining that it lacked jurisdiction to hear Ms. Clough's challenge to the issuance of Sediment Control Permit No. 287113. Section 2-112(c) of the Montgomery County Code confers upon the Board appellate jurisdiction over certain matters, including challenges to the issuance of building permits and approval of conditional use applications. It does not, however, grant unto the Board appellate jurisdiction over the issuance of sediment control permits, which are governed by Chapter 19 of the Montgomery County Code. *See generally* Montgomery County Code, Section 2-112(c). In its Opinion, the Board stated that "its jurisdiction is created and limited by statute" and therefore it did not have the authority to decide the matter before it. Opinion of the Board, at 5. As Section 2-112(c) does not grant the Board appellate jurisdiction over an appeal of this type, this Court agrees with the Board's statement of law and finds that it was legally correct in declining to hear Ms. Clough's challenge to the issuance of Sediment Control Permit No. 287113 on the merits.

**b. Conditional Use (CU 20-02)**

The second issue before this Court is whether the Board was legally correct in holding that it did not have jurisdiction to decide the challenge to conditional use CU 20-02 on the merits. Section 59.7.3.1.F.1.c. of the Montgomery County Zoning Ordinance states that: "[a]ny party of record or aggrieved party may, no later than 10 days after the transmittal of notification that the Hearing



Examiner's report and decision are available for review, file a written request to present oral argument before the Board of Appeals. The filing of such a request transfers jurisdiction over the matter from the Hearing Examiner to the Board of Appeals." The Hearing Examiner's Report and Decision was issued on July 1, 2020. Ms. Clough did not file her appeal until October 10, 2022—more than two years after the issuance of the decision. Ms. Clough argued that she did not receive notification when the Hearing Examiner's decision was issued, preventing her from filing an appeal; however, Ms. Clough did not participate in the public hearing on May 11 or May 21, 2022 and was therefore not entitled to notice of its issuance. See Montgomery County Zoning Ordinance, Section 59.7.3.1.F.1.b. ("The Hearing Examiner must notify the Board of Appeals, the applicant, and all parties who participated in the hearing that the report and decision are complete and available for review."). Because a timely request for oral argument was not filed with the Board, the Hearing Examiner's decision on the application for conditional use is final. See *id.*

**c. Building Permit No. 955491**

The final issue on appeal is whether the Board was legally correct in declining to hear Ms. Clough's challenge to the issuance of Building Permit No. 955491 for lack of jurisdiction. Section 8-23 of the Montgomery County Code provides that: "[a]ny person aggrieved by the issuance, denial, renewal, amendment, suspension, or revocation of a permit, or the issuance or revocation of a stop work order,

under this Chapter may appeal to the County Board of Appeals within 30 days after the permit is issued, denied, renewed, amended, suspended, or revoked or the stop work order is issued or revoked." Montgomery County Code, Section 8-23. Building Permit No. 955491 was issued on May 12, 2022 and Ms. Clough filed her appeal challenging the issuance of the permit on October 10, 2022. The fact that Ms. Clough filed her appeal nearly five months after the building permit was issued was not in dispute. Accordingly, the Board concluded that it did not have jurisdiction to hear the appeal, as Section 8-23 "provide[s] no flexibility to file [a] belated appeal." Opinion of the Board, at 5.

Ms. Clough argued that the notice requirements were not satisfied, therefore preventing her and others from timely filing an appeal. In its written Opinion, the Board held that "the Appellants were not entitled to mailing notice about the conditional use or the permits under the applicable law." *Id.* This Court agrees with the Board's findings of fact and conclusions of law on this point. Section 50/59.00.01.04.A.2 of the Montgomery County Planning Board Regulation on Administrative Procedures for Development Review requires specified notices to be sent to abutting and confronting property owners at various stages in the development application process. Ms. Clough admitted that she is not an abutting or confronting property owner. She was therefore not entitled to notice at any stage of the process. Ms. Clough argued before the Board and before this Court that other property owners entitled to notice did not

receive notice of the project either; however, Ms. Clough does not have standing to raise claims on behalf of other individuals or entities (such as the homeowners association) entitled to notice. With respect to the issuance of building permits, the Montgomery County Code does not require DPS or permit holders to notify surrounding property owners of the issuance of a building permit. See *generally* Montgomery County Code, Chapter 8. This point is further solidified in Section 8-23, discussed *supra*, which requires an aggrieved person to file an appeal within 30 days of the *issuance* of the building permit, not within 30 days after an aggrieved person receives actual or constructive notice of the issuance. For the reasons set forth above, this Court finds that the Board was legally correct in declining to hear Ms. Clough's appeal on the merits, as it lacked jurisdiction to do so.

/s/ The Honorable Rachel T. McGuckian

Circuit Court for Montgomery County,  
Maryland

**Appendix App.4A**

**BOARD OF APPEALS**

**for**

**MONTGOMERY COUNTY**

Stella B. Werner Council Office Building

100 Maryland Avenue

Rockville, Maryland 208850

240-777-6600

<http://www.montgomerucountymd.gov/boa/>

**Case No A-6765**

**APPEAL OF JOSEPH GOTHARD, ET AL.**

**OPINION OF THE BOARD**

(Hearing held October 12, 2022)

(Effective Date of Option: November 4, 2022)

Case No. A-6765 is an administrative appeal filed July 18, 2022, by Joseph and Kristina Gothard, Jose Cabrera, Dan Lamoy, Tom and Monique Witz, and Feri and Saviz Fallahian (the "Appellants"). The Appellants charged error on the part of "1) Montgomery County's Office of Zoning and Administrative Hearings (OZAH) in the issuance of a conditional use, Case No. CU 20-02, on July 1, 2020. 2) Montgomery County's Department of Permitting Services ("DPS") in the issuance of a building permit. No. 955491, on May 12, 2022, and 3) DPS in the issuance of a sediment control permit, No. 287113, on April 26, 2022. The Appellants alleged that the

conditional use and permits "should comply with all requirements for R90 zoning for 2 story homes, economic impact analysis and compatibility of the use with the surrounding area that provides that the two (2) 5 story buildings will not cause undue harm to the neighborhood". See Exhibit 1.

CU 20-02, building permit No. 955491, and sediment control permit No. 287113 were issued for the property at 19195 Frederick Road, Gaithersburg, Maryland 20880 (the "Property") See Exhibits 3; 5, ex. 1, 2. The Appellants own the properties at 19050 Wheatfield Drive (Appellants Gothard); 19100 Wheatfield Drive (Appellant Cabrera); 19102 Wheatfield Drive (Appellant Lamoy); 19101 Wheatfield Drive (Appellants Witz); and 19201 Wheatfield Drive (Appellants Fallahian). See Exhibit 2.

Pursuant to section 59-7.6.1.C of the Zoning Ordinance, the Board scheduled a public hearing for October 12, 2022. On August 30, 2022, the then-holder of CU 20-02, Edmondson & Gallagher Property services LLC ("E&G") and Frederick Road Senior 4% Owner, LLC, the owner of the Property, filed a Motion to Intervene, and the Board granted the request at their prehearing conference on September 7, 2022 ("Intervenor Owner")<sup>1</sup>.

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<sup>1</sup> Subsequent to the grant of the motion to intervene, OZAH transferred CU 20-02 to Frederick Road Senior 4% Owner and the conditional use holder and is the only Intervenor Owner. See Exhibit 19.

On September 21, 2020, the Board considered and denied the Appellants' motion to oppose the Intervenor Owner's request to intervene, filed on September 11, 2022. See Exhibit 10. Also on September 21, 2022, the board granted Danilo Molieri's request to intervene in this matter ("Intervenor Molieri") See Exhibit 11.

Pursuant to sections 2A-7 and 2A-8 of the County Code, and Board of Appeals' Rule of Procedure 3.2, the County filed a Motion for Summary Disposition of the administrative appeal on August 22, 2022. See Exhibit 5. The Intervenor Owner filed a Motion for Summary Disposition on August 30, 2022. See Exhibit 7. The Appellants filed a both Cross-Motion in Opposition to Motion for Summary Disposition by Montgomery County attorney and A Cross-Motion in Opposition to Motion for Summary Disposition from Intervenor (Intervenor Owner). See exhibits 8, 15. All of these parties also filed supplemental motions. The Board, pursuant to Board Rule 3.2.5, decided the Motions for Summary Disposition, and the oppositions thereto, after the close of oral arguments on October 12, 2022.<sup>2</sup> Appellants Joseph and Kristina Gothard and Don Lamoy appeared *pro se* Clifton L. Royalty, Chief, Division of Zoning, Land Use, & Economic Development, represented

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<sup>2</sup> At the pre-hearing conference on September 7, 2022 the Board elected to hold a motions hearing on the scheduled hearing date and to hold a hearing at a later date if the motions hearing did not dispose of the case. All hearings referenced were held virtually via Microsoft Teams due to the ongoing COVID-19 pandemic.

Montgomery County. The Intervenor Owner was represented by Jody S. Kline, Esquire

Decision of County and Intervenor Owners' the Board: Motions for Summary Disposition **granted;**

Administrative appeal **dismissed.**

### **RECITATION OF FACTS**

**The Board finds, based on undisputed evidence in the record, that:**

1. E&G filed an application for a conditional use for an Independent Living Facility for Seniors with up to 111 dwelling units on the Property under Section 59.3.3.2. C of the Zoning Ordinance on February 12, 2020. See Exhibit 3, which include the Hearing examiner's Report and Decision in OZAH Case No. 20-02, p. 3. Following a public hearing in which appellant Joseph Gothard participated, OZAH granted, subject to 14 conditions, CU 20-02 on July 1, 2020. See Exhibit 3, OZAH Case No. CU 20-02, p. 48. The OZAH decision included a Notice of Right to Appeal and copied Appellant Joseph Gothard. See Exhibit 3, OZAH Case No. CU20-02 p. 48-49. OZAH subsequently transferred CU 20-02 to the Intervenor Owner. See Exhibit 19.
2. On April 26, 2022, DPS issued sediment control permit No 287113 for the Property. See Exhibit 5, ex.2. .
3. On May 12, 2022, DPS issued building permit No. 955491 for the Property See Exhibit 5, ex 1.

### **MOTION FOR SUMMARY DISPOSITION AND OPPOSITIONS—SUMMARY OF ARGUMENTS**

1. Counsel for the County argued that the Board lacks jurisdiction to entertain this appeal. As a preliminary matter, he argued that and Appellant is someone who files a changing document, and that he objected to anyone who had not filed a changing document speaking during this motions hearing. Counsel further argued that there had been a lot of allegations in the Appellants' filing that are not based in fact and would be inadmissible in a court of law, including speculations about housing values and about conflict of interest. He objected to these false allegations and noted that, were this is a court case, he would move to strike these allegations.

Counsel for the County further argued that all of the items that have been appealed in this case are untimely. He argued that CU 20-02 was approved over two years ago and argued in this motion that the Gothard appellants were notified at the time the conditional use was approved of his appeal rights and failed to exercise them in a timely manner. See Exhibit 7. Counsel argued that both building permit No 955491 and sediment control permit No. 287113 were issued over 30 days prior to the filing of this appeal, noting that the appeal of the issuance of a building permit must be made within the 30 days after its issuance and that the Board has no jurisdiction over the issuance of a sediment control permit. He argued that there were public hearings and meetings held prior to the hearing on CU 20-02 which provided adequate time for people to get involved in the case. Counsel argued that the public was provided with requisite



notice about CU 20-02, and the Appellant Joseph Gothard was involved in the hearing before the Hearing Examiner for that case.

Counsel for the County further argued that the appeals in this case don't state a claim and don't cite to any law that has been violated. He argued that the appeals do not show that there was illegal error by the County, and that instead the appeals all relate to noise and construction on the Property. Counsel argued that the County understand that the construction is disruptive, but that the Board has no jurisdiction over noise or alleged drops in property value. He argued that senior living is allowed through a conditional use under the Zoning Ordinance in this zone, and noted that part of the complains concern allowing senior living in the neighborhood, which is a decision of the District Council. Counsel argued that the Appellants are attempting to relitigate the approval of CU 20-02, and reiterate the Board does not have the jurisdiction over the matter the Appellants have complained about.

2. Counsel for the Intervener Owner stated that the Intervenor Owner agrees with the County's arguments. He argued that in the intervenor Owner's supplemental motion to dismiss, the Intervenor Owner focused on noise, posting, and advertising of all the process that have been challenged in this administrative appeal. See Exhibit 19. Counsel noted that many Appellants said they never heard of the conditional use application before CU 20-02 was granted, and

Counsel noted that very few of these property owners have property that abuts or confronts the Property. He argued that the mailing list for the conditional use always listed abutting and confronting property owners, as well as civic associations that were required to be given notice under the Zoning Ordinance. Counsel argued that notice was provided to the Appellants Gothard and Lamoy Appellant, but that a lot of the other Appellants are not abutting and confronting property owners and therefore were not entitled to be notice

Counsel for the Intervenor Owner argued that the County made a decision that the notice outlined above was adequate notice. He argued that the conditional use applicant in this case held a community meeting to discuss the conditional use even though a meeting was not required. Counsel argued that the applicant posted notice of the community meeting in Route 355 because that was the only place to post the notice and also mailed notices to those required to receive notice of the application under applicable law, and no one showed up to this meeting. He argued that the applicant gave this mailing list to OZAH before the conditional use application, which went beyond what the law require. In his supplemental motion, counsel noted that the Appellants Gothard, Lamoy, and Cabrera were all included in the notices sent by OZAH regarding CU 20-02. See Exhibit 19.

Counsel for the Intervenor Owner further argued that the Appellants Gothard received notice

and participated in OZAH hearing on CU 20-02; He noted that OZAH even scheduled an additional hearing because the Appellant Joseph Gothard was not able to access the website for the hearings on the first day. Counsel argued that OZAH issued a 48-page report granting CU 20-02, and that the last page and half of the report provided information on how to appeal the issuance of CU 20-02. He argued that, while both the Hearing Examiner's report and a summary of the report contained information on how to appeal CU 20-02 to either the Board or the circuit court, both of which the Appellants Gothard received, no Appellants appealed the decision to the Board or to the circuit court.

Counsel for the Intervenor Owner argued that when permits are issued for a property, the permit holder does not have to inform anyone about what is going on at the property; when a permit is issued, it is kept and posted at the property so that people know about it. He argued that there was no notice, posting, or procedural defect that document with the issuance of the building or sediment control permits in this case, and that no one had complained about their issuance.

Counsel for the Intervenor Owner argued that he has a 66-page document submitted by the Appellants that is nothing more than emails sent by the Appellant Joseph Gothard dating back to June 2022 through the morning of this hearing. He argues that he knows the Board wants to give people a process to be heard. However, he argued

that there were late filings in this case and that there are no extenuating circumstances to extend filing dates.

In response to questions from the Board, Counsel for the Intervenor Owner explained that Park and Planning gives mailing addresses to the conditional use appellants. He argued that the Appellants needed to appeal CO 20-02 to the Board by July 10, 2020, and to appeal to the circuit court by August 1, 2020. Counsel argued that the Appellant Gothards were on the mailing list given to OZAH, which sent notice of the conditional use application and scheduling of the hearing on the application; he stated that the preliminary plan of subdivision was also noticed.

In response to further questions from the Board, Counsel for the Intervenor Owner stated that there is a construction trailer on the Property with a board outside where any permits are posted. He argued that the Department of Environmental Protection ("DEP") has received communications from Appellant Joseph Gothard, has made site visits to the Property, and conducted noise readings but did not find noise on the Property exceeds the acceptable level under the County's Noise Ordinance.,

3. The Appellant Joseph Gothard argued the activity on the property included zero participation from impacted homeowners and that relevant information was not provided to impacted homeowners. He argued that the Intervenor Owner has been knowingly breaking laws since 2020 and

that the CU 20-02 report under section three, erroneously found the grant of the conditional use would cause no undue harm. Appellant Joseph Gothard argued that property values have been impacted by the grant of CU 20-02, and that several real estate agents came by and gave original Comparative Market Analyses ("CMA"), but that now impacted homeowners cannot get a new CMA and their best option is to sell their property at less than 60% of market value to an investor.

Appellant Joseph Gothard argued that, under the noise laws, noise above 75 decibels ("dba") potentially causes permanent hearing loss. He argued that the construction on Property has caused him ringing of the ears and has caused stress to him and his wife, who works three nights per week and cannot sleep or rest due to the noise. Appellant Joseph Gothard argued that there is no compatibility between the building on the Property and the neighborhood. He argued that he does not recall receiving notification about the conditional use and that the Hearing Examiner's report contains false statements under findings of fact and conclusion of law. Appellant Joseph Gothard argued that most of his neighbors became aware of the senior living facility when the construction noise began on the Property.

Appellant Joseph Gothard argued that the County has a legal obligation to serve the public, to ensure Zoning Ordinance compliance based on accurate, complete information, and to ensure no

harm to adjacent properties. He argued that the intervenor Owner also needs to provide accurate information to the County. Appellant Joseph Gothard argued that all harm was preventable from the outset, from the granting of zoning to the Planning Board to permits.

Appellant Joseph Gothard argued that homeowners are entitled to be notified, noted that the Seneca Park North homeowner's association was not listed in any of the documents or any lists when they should have received notification. He questioned whether he received the CU 20-02 mailing on July 1, 2020, and argued that he cannot read a permit posted on the Property from any public area. Appellant Joseph Gothard argued that the construction noise on the Property is over 90 or 100 dba, not 60 to 70 dba as reported by DEP. He shared a chart with the Board showing decibels, and explained that he has taken hundreds of measurements showing noise in excess of 100 dba. Appellant Joseph Gothard argued that it is a miscarriage of justice for the Board to dismiss this appeal.

4. Appellant Kristina Gothard argued that she is unable to sleep due noise and vibrations from the equipment on the Property. She played a noise heard from inside her home.
5. Appellant Lamoy questioned who informs homeowners of these proceedings and argued that 500 letters should have gone out outlining the proposed conditional use on the Property. He argued that the project sits on top of the hill and

can be seen from miles away, and explained that the parking lot is one story higher than his home. Appellant Lamoy argued that this is a five-story building, not a four-story building as indicates on the building permit, and there is no mention of a fence on the Property. He argued that the senior living facility has caused his home value to depreciate, and he questioned when the Zoning laws changed to allow this facility in a residential neighborhood. Appellant Lamoy argued that he did not know about this facility until he saw surveyors in the yard. He argued that the County does not follow its own land use laws.

#### **CONCLUSIONS OF LAW**

1. Section 2-112 ( c ) of the Montgomery County Code provides the Board of Appeals with appellate jurisdiction over appeals taken under specified section and chapters of the Montgomery County Code, including section 8-23. That section does not provide the Board of Appeals with appellate jurisdiction over Chapter19, which governs sediment control permits.
2. Section 2A.-2 ( c ) of the Montgomery County Code provides that the provisions in Chapter 2A govern appeals and petitions changing error in the grant or denied if any permit or license or from any order of any department or agency of the County government, exclusive of variances and special exceptions, appealable to the County Board of Appeals, as set forth in section 2-112, article V. Chapter 2, as amended, or the Montgomery County Zoning Ordinance or any other law,

ordinance or regulation providing for the appeal to said board from an adverse governmental action.

3. Section 8-23 (a) of the County Code provides that [a]ny person aggrieved by the issuance, denial, renewal, amendment, suspension, or revocation of a permit, or the issuance or revocation of a stop work order, under this Chapter may appeal to the County Board of Appeal within 30 days after the permit is issued , denied, renewed, amended, suspended or revoked. or the stop work order is issued or revoked. A person may not appeal any other order of the Department, and may not appeal an amendment of a permit if the amendment does not make a material change to the original permit. A person must not contest the validity of the original permit in an appeal of the amendment or stop work order
4. Section 59.7.3.1.F.1.c of the Zoning Ordinance (2014) provides that [a]ny party of record may appeal the Hearing Examiner's decision by filing a written request to present oral argument before the Board of Appeals within 10 days after the Office of Zoning and Administrative Hearings issues the Hearing Examiner's report and decision. The filings of such a request transfer jurisdiction over the matter while on appeal from the Hearing Examiner to the Board of Appeals.
5. Under section 2A-8 of the County Code, the Board has the authority to rule upon motion to regulate the course of the hearing. Pursuant to that section, it is customary for the Board to dispose of outstanding preliminary motions at the outset at or prior to the hearing. Board Rule 3.2 specifically



confers on the Board the ability to grant motion to dismiss for summary disposition in cases where there is no genuine issue of material fact and dismissal should be rendered as a matter of law (Rule 3.2.2). Under the Board Rule 3.2.2., the Board may on its own motion, consider summary disposition or other appropriate relief.

6. Under Board Rule 3.2.4, the Board has the discretion to hear oral argument on a motion to dismiss, and under Board Rule 3.2.5, the Board must decide the motion after the close of oral argument or at a worksession.
7. The Board finds that there are no genuine issues of material fact to be resolved by the Board. The Board finds that the Hearing Examiner's decision in CU 20-02 must be appealed to the Board by filing a written request to present oral argument before the Board within 10 days after the OZAH issues the Hearing Examiner's report and decision which in this case was issued on July 1, 2020. The Board further finds that Section 8-23 (a) of the County Code requires that an appeal of the issuance of building permit number 955491 be submitted to the Board within 30 days after the permit was issued, in this case on May 12, 2012. The Board finds that it is undisputed that this appeal was filed on July 18, 2022, over two years after the Hearing Examiner's report and decision in CU 20-02 and over 60 days after the issuance of the building permit 955491. The Board notes that the Court of Appeal has held that when an appeal to an appellate tribunal such as the Board is untimely, The Board has no authority to decide the

case on its merits. *United Parcel Services v. People's Counsel*, 336 MD 569 (1992)). Further, the Board notes that Section 59. 7.3.1.F.c of the Zoning Ordinance (2014) and Section 8-23 (a) of the County Code provide no flexibility to file belated appeals, and find that all notice requirements were met prior to the granting of CU 20-02, as outlined in Exhibit 19.

Finally, the Board finds that it has no jurisdiction over the appeal of the issuance of sediment control permit, which are governed by Chapter 19 of the County Code. The Board finds that its jurisdiction is created and limited by statute. *Holy Cross Hospital, Inc v Health Svcs. Cost Review Comm'n*, 283 Md. 677, 683, 383 A.2d 181 (1978). Because the Board does not have the authority to decide matters for which it has not been granted jurisdiction by statute, The Board must also dismiss the appeal of sediment control permit number 287113 for lack of jurisdiction. See *United Parcel Service v. People's Counsel*, 336 Md. 569. 650 A.2d 226 (1992)

Therefore, the Board finds that it lacks jurisdiction to hear this case, and the appeal must be dismissed.

1. The County and Intervenor Owners' Motion for summary Disposition in Case A-6765 are granted, and the appeal in Case A-6765 id consequently **DISMISSED**.

On a motion by Chair John H. Pentecost, secondary by Vice Chair Richard Melnick, with member Caryn Hines and Member Roberto Pinero in agreement, the

Board voted 4 to 0 to grant the County and Intervenor Owner s' Motion for Summary Disposition and to dismiss the admirative appeal and adopt the following Resolution:

**BE IT RESOLVED** by the Board of Appeals for the Montgomery county, Maryland that the opinion stated above be adopted as the Resolution required by law as its decision on the above-entitled petition.

/s/ John H. Pentecost

Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
This 4<sup>th</sup> of November, 2022

/s/Barbara Jay

Executive Director

**NOTE:**

Any request for rehearing or reconsideration must be filed within ten (10) day after the date the Opinion is mailed and entered in the Opinion Book See Section 2A-1(f)of the County Code.

Any decision by the County Board pf Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board ad a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure (see Section 2-114 of the County Code).

**Appendix App.4B**

**BOARD OF APPEALS**

**for**

**MONTGOMERY COUNTY**

Stella B. Werner Council Office Building

100 Maryland Avenue

Rockville, Maryland 208850

240-777-6600

<http://www.montgomerucountymd.gov/boa/>

**Case No A-6780**

**APPEAL OF CANDICE CLOUGH, ET AL.**

**OPINION OF THE BOARD**

(Hearing held November 16, 2022)

(Effective Date of Option: December 9, 2022)

Case No. A-6780 is an administrative appeal filed October 10, 2022, by Candice Clough, Danilo Molieri, and Chris Flores (the "Appellants"). The Appellants charged error on the part of: 1) Montgomery County's Office of Zoning and Administrative Hearings ("OZAH") in the issuance of a conditional use, Case No. CU 20-02, on July 1, 2020; 2) Montgomery County's Department of Permitting Services (DPS) in the issuance of a building permit, No. 955491, on May 12, 2022; and 3) DPS in the issuance of a sediment control permit, No. 287113, on April 26, 2022. The Appellants "request withdrawal of approval for CU 20-22 conditional use and DPS

permits 955491, 287113. The board shall review all information provided with this appeal." See Exhibit 1.

CU 20-02, building permit No. 955491, and sediment control permit No. 287113 were issued for the property at 19105 Frederick Road, Gaithersburg, Maryland, 20880 (the "Property"). See Exhibit 4(a). The Appellants own the properties at: 11302 Harvest Mills Lane, Germantown, Maryland 20876 (Appellant Clough); 19104 Wheatfield Drive, Germantown, Maryland 20876 (Appellant Molieri); and 11147 Black Forest Way, Gaithersburg, Maryland 20879 (Appellants Flores).

Pursuant to section 59-7.6.1.0 of the Zoning Ordinance, the Board scheduled a public hearing for January 11, 2023. On October 18, 2022, the holder of CU 20-02 and the owner of the Property, Frederick Road Senior 4% Owner, LLC, filed a Motion to Intervene (the "Intervenor"). See Exhibit 6. On November 10, 2022, the Appellants filed a Cross-Motion in Opposition to Motion to intervene. See Exhibit 10. The Board granted the request to intervene at the pre-hearing conference on November 16, 2022. 18, 2020. See Exhibit?. The County filed a Motion to Dismiss or for Summary Disposition of the administrative appeal on November 8, 2022. See Exhibit 9. On November 10, 2022, the Appellants filed a Cross-Motion in Opposition to Motion for Summary Judgement. See Exhibit 11. The Board, pursuant to Board Rule 3.2.5, decided the Motions for Summary Disposition, and the oppositions thereto, after the close of oral arguments at the pre-hearing conference

sent out in conjunction with this Property. Counsel argued that he controlled one of those mailings, which was for a community meeting about the conditional use, and that he received no response from that mailing. He argued that Seneca Park North is listed on his mailing list and that he provided this information to the agencies that sent out the other mailings.

3. Appellant Clough argued that, while a lot of this appeal repeats what the Gothard appeal addressed, that appeal did not address whether she had received notice of the actions on the Property. She argued that Seneca Park North, a civic association, was required to receive notice and did not receive it. Appellant Clough argued that the sign on the Property faces the road and is not easily readable. She argued that, had she known about the actions to be undertaken on the Property, she would have appealed long ago. Appellant Clough argued that she only found out about the grant of the conditional use and permits on the Property in late August of 2022.

Appellant Clough argued that there was no evidence that OZAH made the requisite mailings applicable in this case. She argued that no one she spoke with knew about this project, and that Mr. Gothard had seen the sign on the Property, which was located in a place which requires a person to go around a curve in order to view it.

In response to questions from the Board, Appellant Clough argued that she had not spoken with all of her neighbors about whether they had received notice of the conditional use filed for the Property. She reiterated that Seneca Park North

did not receive any mailings, and that the lack of notification is the crux of this appeal and why the construction should stop on the Property. Appellant Clough argued that the community meeting was held during the COVID-19 pandemic, and that no one knew about the meeting.

4. Appellant Molieri argued that, while he is not an abutting property owner, he had issues with the placement of the sign on the Property. He argued that another issue he has is that there are limited parking spaces for the Property, and that the building on the Property is five stones, not four as it was supposed to be.

#### CONCLUSIONS OF LAW

1. Section 2-112(c) of the Montgomery County Code provides the Board of Appeals with appellate jurisdiction over appeals taken under specified sections and chapters of the Montgomery County Code, including section 8-23. That section does not provide the Board of Appeals with appellate jurisdiction over Chapter 19, which governs sediment control permits.
2. Section 2A-2(d) of the Montgomery County Code provides that the provisions in Chapter 2A govern appeals and petitions charging error in the grant or denial of any permit or license or from any order of any department or agency of the County government, exclusive of variances and special exceptions, appealable to the County Board of Appeals, as set forth in section 2-112, article V, chapter 2, as amended, or the Montgomery County Zoning Ordinance or any other law, ordinance or regulation

providing for an appeal to said board from an adverse governmental action.

3. Section 8-23(a) of the County Code provides that "[a]ny person aggrieved by the issuance, denial, renewal, amendment, suspension, or revocation of a permit, or the issuance or revocation of a stop work order, under this Chapter may appeal to the County Board of Appeals within 30 days after the permit is issued, denied, renewed, amended, suspended, or revoked or the stop work order is issued or revoked. A person may not appeal any other order of the Department, and may **not** appeal an amendment of a permit if the amendment does not make a material change to the original permit. A person must not contest the validity of the original permit in an appeal of an amendment or a stop work order."
4. Section 59.7.3.1.F.1.c of the Zoning Ordinance (2014) provides that [a]ny party of record may appeal the Hearing Examiner's decision by filing a written request to present oral argument before the Board of Appeals within 10 days after the Office of Zoning and Administrative Hearings issues the Hearing Examiner's report and decision. The filing of such a request transfers jurisdiction over the matter while on appeal from the Hearing Examiner to the Board of Appeals.
5. Under section 2A-8 of the County Code, the Board has the authority to rule upon motions and to regulate the course of the hearing. Pursuant to that section, it is customary for the Board to dispose of outstanding preliminary motions at the outset of or prior to the hearing. Board Rule 3.2 specifically **confers on the**



**Board the ability to grant** motions to dismiss for summary disposition in cases where there is no genuine issue of material fact and dismissal should be rendered as a matter of law (Rule 3.2.2). Under Board Rule 3.2.2, the Board may, on its own motion, consider summary disposition or other appropriate relief.

6. Under Board Rule 3.2.4, the Board has the discretion to hear oral argument on a motion to dismiss, and under Board Rule 3.2.5, the Board must decide the motion after the close of oral argument or at a worksession.
7. The Board finds that there are no genuine issues of material fact to be resolved by the Board. The Board finds that the Hearing Examiner's decision in CU 20-02 must be appealed to the Board by filing a written request to present oral argument before the Board within 10 days after OZAH issues the Hearing Examiner's report and decision, which in this case was issued on July 1, 2020. The Board further finds that Section 823(a) of the County Code requires that an appeal of the issuance of building permit number 955491 be submitted to the Board within 30 days after the permit was **issued**, in this case on May 12, 2012. The Board finds that it is undisputed that this appeal was filed on October 10, 2022, over two years after the Hearing Examiner's report and decision in CU 20-02 and almost five months after the issuance of building permit number 955491. The Board notes that the Court of Appeals has held that when an appeal to an appellate tribunal such as the Board is untimely, the Board has no authority to decide the case on its

merits. *United Parcel Services v. People's Counsel*, 336 Md. 569 (1992). Further, the Board notes that Section 59.7.3.1.F.1.c of the Zoning Ordinance (2014) and Section 823(a) of the County Code provide no flexibility to file belated appeal. The Board finds that all notice requirements were met prior to the granting of CU 20-02, as outlined in Exhibit 19 to Case A-6765, Appeal of Joseph Gothard et al., an appeal whose substance is identical to this appeal and **which** was also dismissed by the Board for lack of jurisdiction. The Board notes that the Appellants were not entitled to mailing notice about the conditional use or the permits under the applicable laws.

Finally, the Board finds that it has no jurisdiction over the appeal of the issuance of a sediment control permit, which are governed by Chapter 19 of the County Code. The Board finds that its jurisdiction is created and limited by statute. *Holy Cross Hospital, Inc. v. Health Svcs. Cost Review Comm'n*, 283 Md. 677, 683, 383 A.2d 181 (1978). Because the Board does not have the authority to decide matters for which it has not been granted jurisdiction by statute, the Board must also dismiss the appeal of sediment control permit number 287113 for lack of jurisdiction. See *United Parcel Service v. People's Counsel*, 336 Md. 569, 650 A.2d 226 (1992).

Therefore, the Board finds that it lacks jurisdiction to hear this case, and the appeal must be dismissed.

8. The County and Intervenor's Motions to Dismiss and/or for Summary Disposition in Case A-6780 are granted, and the appeal in Case A-6780 is consequently **DISMISSED**.

On a motion by Chair John H. Pentecost, seconded by Vice Chair Richard Melnick, with Member Caryn Hines in agreement, the Board voted 3 to 0 to grant the County and Intervenors Motions to Dismiss and/or for Summary Disposition and to dismiss the administrative appeal and adopt the following Resolution:

**BE IT RESOLVED** by the Board of Appeals for the Montgomery county, Maryland that the opinion stated above be adopted as the Resolution required by law as its decision on the above-entitled petition.

/s/ John H. Pentecost

Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
This 9<sup>th</sup> of December, 2022

/s/Barbara Jay Executive Director

**NOTE:**

Any request for rehearing or reconsideration must be filed within ten (10) day after the date the Opinion is mailed and entered in the Opinion Book See Section 2A-1(f) of the County Code.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure (see Section 2-114 of the County Code).

**CONSTITUTIONAL PROVISIONS, STATUTES,  
RULES**

**Appendix App.5**

**MARYLAND CONSTITUTION**

**Maryland Const. Art. 6:** ...all persons invested with the Legislative or Executive powers of Government are the Trustees of the Public, and, as such, accountable for their conduct.

**Maryland Const. Art. 9:** ...no power of suspending Laws or the execution of Laws, unless by, or derived from the Legislature, ought to be exercised, or allowed.

**Maryland Const. Art. 19:** ... every man, for any injury done to him in his person or property, ought to have remedy by the course of the Law of the Land, and ought to have justice and right, freely without sale, fully without any denial, and speedily without delay, according to the Law of the Land.

**Maryland Const. Art 23:** ... The right of trial by Jury of all issues of fact in civil proceedings in the several Courts of Law in this State, where the amount in controversy exceeds the sum of five thousand dollars, shall be inviolably preserved.

**Maryland Const. Art. 33:** ....the independency and uprightness of Judges are essential to the impartial administration of Justice, and a great security to the rights and liberties of the People.

**Maryland Const. Art. 45:** This enumeration of Rights shall not be construed to impair or deny others retained by the People.

**Appendix App. 6****UNITED STATES CONSTITUTION**

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Article IV: "The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states

Amdt14 equal protection, privileges or immunities clause—the common law guarantees; also see, Amdt5 taking, Amdt6 due process

**U.S. Const. amend. 1:** Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

**U.S. Const. amend. 5:** No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due

process of law; nor shall private property be taken for public use, without just compensation.

**U.S. Const. amend. 6:** In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

**U.S. Const. amend. 7:** In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

**U.S. Const. amend. 9:** The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

**U.S. Const. amend. 14:** All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws

**STATUTES****Appendix App. 7****28 U.S. Code § 1254 - Courts of appeals; certiorari; certified questions**

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) states that "cases in the courts of appeals may be reviewed by the Supreme Court by writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree".

**28 U.S. Code § 1651 - Writs**

(a ) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

**42 U.S. Code § 1983 - Civil action for deprivation of rights**

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

**RULES****Appendix App. 8****Rule 20. Procedure on a Petition for an Extraordinary Writ**

1. Issuance by the Court of an extraordinary writ authorized by 28 U. S. C. §1651(a) is not a matter of right, but of discretion sparingly exercised. To justify the granting of any such writ, the petition must show that the writ will be in aid of the Court's appellate jurisdiction, that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court.

2. A petition seeking a writ authorized by 28 U. S. C. §1651(a), §2241, or §2254(a) shall be prepared in all respects as required by Rules 33 and 34. The petition shall be captioned "In re [name of petitioner]" and shall follow, insofar as applicable, the form of a petition for a writ of certiorari prescribed by Rule 14. All contentions in support of the petition shall be included in the petition. The case will be placed on the docket when 40 copies of the petition are filed with the Clerk and the docket fee is paid,



**ORDINANCES, REGULATIONS**

**Appendix App. 9 Chapter 31B Noise Control  
(Ordinance)**

**Chapter 31B. Sec. 31B-1. Declaration of  
policy.**

(a) The County Council finds that excessive noise harms public health and welfare and impairs enjoyment of property. The intent of this Chapter is to control noise sources to protect public health and welfare and to allow the peaceful enjoyment of property. This Chapter must be liberally construed to carry out this intent.

(b) The Department of Environmental Protection administers this Chapter.

Chapter 31B. Sec. 31B-5. Noise level and noise disturbance violations.

(a) Maximum allowable noise levels.

(1) Except as otherwise provided in Sections 31B-6(a) and 31B-8, a person must not cause or permit noise levels that exceed the following levels:

<i>Maximum Allowable Noise Levels (dBA) for Receiving Noise Areas</i>		
	<i>Daytime</i>	<i>Nighttime</i>
Non-residential noise area	67	62
Residential noise area	65	55

(2) A person must not cause or permit the emission of a prominent discrete tone or impulsive noise that exceeds a level, at the location on a receiving property where noise from the source is greatest, that is 5 dBA

lower than the level set in paragraph (1) for the applicable noise area and time.

(3) Sound that crosses between residential and non-residential noise areas must not exceed the levels set in paragraph (1) for residential noise areas.

(b) Noise disturbance. A person must not cause or permit noise that creates a noise disturbance.

**Chapter 31B. Sec. 31B-6. Noise level and noise disturbance standards for construction.**

(a) Maximum allowable noise levels for construction.

(1) A person must not cause or permit noise levels from construction activity that exceed the following levels:

(A) From 7 a.m. to 5 p.m. weekdays:

(i) **75 dBA** if the Department has not approved a noise-suppression plan for the activity; or

(ii) *85 dBA if the Department has approved a noise-suppression plan for the activity.*

(B) **The level specified in Section 31B-5 at all other times (65 dBA/day, 55 dBA/night).**

(2) Construction noise levels must be measured at the location, at least 50 feet from the source, on a receiving property where noise from the source is greatest.

(3) The Department must by regulation establish requirements for noise-suppression plans and adopt procedures for evaluating and approving plans. The regulations must provide that, at least 10 days before approving a noise-suppression plan, the Director

must provide public notice reasonably calculated to reach at least a majority of households that might be affected by the construction activity noise levels above 75 dBA.

(b) Construction noise disturbance. The prohibition on noise disturbance in Section 31B- 5(b) applies to construction activities, notwithstanding subsection (a).

(c) Examples. The following examples illustrate common construction noise-producing acts that violate this section if they exceed the noise level standards set in subsection (a) or create a noise disturbance. The examples are illustrative only and do not limit or expand the construction noise level or noise disturbance standards of this section:

(1) Delivering materials or equipment, or loading or unloading during nighttime hours in a residential noise area.

(2) Operating construction equipment with audible back-up warning devices during nighttime hours. (1996 L.M.C., ch. 32, § 1.)

#### **Chapter 31B. Sec. 31B-11. Waivers.**

(a) Temporary waiver.

(1) The Director may waive any part of this Chapter for a temporary event if the noise the event will create or cause in excess of the limits established under this Chapter is offset by the benefits of the event to the public.

(2) When the Director receives an application under this subsection, the Director must provide public

notice of the application reasonably calculated to reach at least a majority of households that might be affected by noise levels anticipated for the event. The Director must not approve an application under this subsection less than 10 days after the public notice.

(c) Violation of waiver. The Director may suspend, modify, or revoke a waiver granted under this section if a person violates the terms or conditions of the waiver.

Chapter 31B. Sec. 31B-11. Waivers. (d) Regulations and fees. The County Executive must issue regulations implementing this section that:

- (1) set the procedures and fees to apply for a waiver under subsections (a) or (b);
- (2) require the applicant to use the best technology and strategy reasonably available to mitigate noise, as determined by the Director;
- (3) allow temporary waivers under subsection (a) of no more than 30 days, renewable at the discretion of the Director no more than twice; and
- (4) specify the requirements for the hearing advertisement and sign required under subsection (b)(3). (1996 L.M.C., ch. 32, § 1.)

**Chapter 31B. Sec. 31B-12. Enforcement and penalties.**

(a) The Department must enforce this Chapter. County Executive may delegate the authority to enforce parts of this Chapter to the Police Department or any other Executive agency.

(b) A violation of this Chapter is a Class A violation. Each day a violation continues is a separate offense. A violation of Section 31B-6 is a separate offense in addition to any other violation of this Chapter arising from the same act or occurrence.

(c) The Department may seek injunctive or other appropriate judicial relief to stop or prevent continuing violations of this Chapter.

(d) If the Director finds that a person has violated this Chapter, the Director may issue a notice of violation and corrective order ... The notice must contain the following information:

(5) the deadline for compliance.

(e) The compliance plan referred to in subsection (d)(4) must establish a schedule for achieving compliance with this Chapter, as specified in the corrective order. ....

(f) An enforcement officer may issue a civil citation for any violation of this Chapter if the enforcement officer:

(1) witnesses the violation; or

(2) receives complaints from at least 2 witnesses of a noise disturbance. Complaints by 2 witnesses are required to issue a citation under paragraph (2), but are not required to prove that a person violated this Chapter.

(h) A person aggrieved by any action or order of the Director under Sections 31B-9 and 31B-11 may seek reconsideration within 10 days after the date of the action or order. A request for reconsideration must be

in writing to the Director, and must specify the date and nature of the action or order, the injury sustained, the remedy requested, and the legal basis for the remedy. If the Director finds that there are material facts in dispute, the Director may refer the matter to a hearing officer under the procedures specified in Chapter 2A. ...

(i) (1) A person responsible for a violation of Section 31B-6 and the person responsible for the management or supervision of the construction site where the source of the violation is located are jointly and severally liable for the violation.

(2) For recurring violations of Section 31B-6 on the same construction site, in addition to any other penalty under this Chapter, the Director may issue a stop work order, ...:

(A) 3 consecutive working days for a second violation within 30 days after the first violation; (B) 5 consecutive working days for a third violation within 60 days after the first violation; and (C) 7 working days per offense for the fourth and subsequent violations within a 120-day period.

(3) This Chapter does not limit the Director's authority under Chapter 8 to revoke a permit or approval issued under that Chapter.

(j) Any person aggrieved by a violation of this Chapter may file a civil action in any court with jurisdiction against a person responsible for the alleged violation. The aggrieved person must notify the alleged violator and the Director of the alleged violation at least 60 days before filing the action. A person must not file an

action under this subsection if the County Attorney has filed a civil action against the same alleged violator regarding the same violation. (1996 L.M.C., ch. 32, § 1; 2001 L.M.C., ch. 2, § 1.)

**Appendix App. 10 Chapter 59 Montgomery  
County, Maryland Zoning Ordinance**

**Chapter 59, Section 59.7.5.2. Notice  
Specifications**

The following notice requirements are the minimum necessary to ensure appropriate notice for communities affected by an application. For notice required under Section 7.5.1, the following standards apply.

**A. Newspaper Notice**

1. When an application is accepted, the intake body must publish a notice of the public hearing in at least 2 newspapers of general circulation in the County a minimum of 30 days before the hearing date.
2. The notice must include the date and place of hearing, applicant, application number and name, location of property, property size, zone, density of development, and telephone number and website for the applicable intake agency. The notice for a Zoning Text Amendment must also include a brief summary of the proposed amendment.

**B. Pre-Submittal Meeting**

1. Before an application may be accepted, the applicant must hold a public meeting to present the proposed application and respond to questions and comments. The meeting must be held no more than 90 days before filing the application.
2. The applicant must post a sign advertising the pre-submittal meeting, equivalent to the requirement for



an application sign, a minimum of 15 days before the meeting.

3. The applicant must send notice advertising the pre-submittal meeting to the same recipients required under Section 7.5.2.E.1, Hearing Notice, a minimum of 15 days before the meeting.

4. The notices must include the date and place of meeting, applicant, application number and name, location of property, property size, zone, proposed use, and density of development.

5. The applicant must submit a list of attendees and a record of the pre-submittal meeting with the application.

### **C. Application Sign**

1. The applicant must post at least one sign along every frontage; if the frontage is more than 500 feet, a sign must be posted at least every 500 feet.

a. For a sketch plan, site plan, or major site plan amendment application, the sign must be posted before an application is accepted.

b. For a Local Map Amendment, conditional use, or variance application, the sign must be posted within 5 days after an application is accepted.

2. The sign must meet the following specifications:

a. For a sketch plan, site plan, or major site plan amendment application, the applicant must use the sign template provided by the Planning Department.

b. For a Local Map Amendment, conditional use, or variance application, the sign must:

- i. be made of a durable material;
- ii. be a minimum of 24 inches tall by 36 inches wide;
- iii. have a white or yellow background color; and
- iv. have black lettering and characters at least 2 inches in height.

3. The sign must include:

- a. application number and name;
- b. requested zone, if a Local Map Amendment;
- c. proposed use, density, or structure description, if not a Local Map Amendment; and
- d. telephone number and website for the applicable intake agency.

**D. Application Notice**

- 1. When an application is accepted, the applicant must send notice of the application to all abutting and confronting property owners; civic, homeowners, and renters associations that are registered with the Planning Board and located within 1/2 mile of the site; any municipality within 1/2 mile; and, if applicable, pre-submittal meeting attendees who request to be a party of record. A condominium's council of unit owners may be notified instead of the owner and residents of each individual condominium.
- 2. The notice must identify the applicant and include the application type, number, and project name; location of property; property size; zone (and requested zone, if applicable); proposed use and density of development; changes covered by the

proposed amendment, if applicable; and telephone number and website for the applicable intake agency.

#### **E. Hearing Notice**

1. Hearing notice must be sent to all abutting and confronting property owners; civic, homeowners, and renters associations that are registered with the Planning Board and located within 1/2 mile of the site; any municipality within 1/2 mile; and, if applicable, pre-submittal meeting attendees who request to be a party of record. A condominium's council of unit owners may be notified instead of the owner and residents of each individual condominium.

a. The District Council, Hearing Examiner, and Board of Appeals, as applicable, must send notice of the hearing a minimum of 30 days before the scheduled hearing date.

b. The Planning Board must send notice of the hearing a minimum of 10 days before the scheduled hearing date.

2. For a sign variance, the deciding body must also send notice of the hearing to any special taxing district in which the proposed sign would be located and the technical staff of the Planning Board if the sign would be located on a property with a site plan.

3. The notice must include the date and place of meeting, applicant, application number and name, location of property, property size, zone (and requested zone, if applicable), proposed use or density of development when applicable, and telephone number and website for the applicable intake agency.

4. A hearing may be postponed or continued if the time and place of the continued hearing is publicly announced at the time of the adjournment or notice is given to all parties of record a minimum of 10 days before the next scheduled hearing date.

#### **F. Resolution Notice**

1. The deciding body or its designee **must issue notice of the approved resolution or opinion to the applicant and any additional parties of record on the day a resolution or opinion is issued.**

2. The notice must provide the date the decision was made, a summary of the decision, a copy of the resolution or opinion or a website link to a copy, and the phone number, address, and website of the applicable deciding body.

#### **G. Building Permit Sign Notice**

After a building permit is approved, the applicant must post a sign as required under Chapter 8.

#### **H. Website Posting**

1. During review, the applicable intake agency or designee, **must post the application on its website within 15 days after acceptance.**

2. When the Planning Director provides a recommendation report for the Planning Board, the report **must be posted on the Planning Board's website, as indicated in Division 7.2 and Division 7.3.**

3. When the Hearing Examiner provides a recommendation report on an application decided by the Board of Appeals or the District Council, the Hearing Examiner **must post the recommendation**

report on its website a minimum of 10 days before the Board of Appeals or the District Council hearing.

4. After a decision is made, the applicable deciding body or designee, must post on its website the resolution reflecting its decision and if approved, plans certified by the deciding body or designee, modified from the submitted plans to satisfy the decision.

5. When DPS accepts a building permit application, DPS must post on its website the application information and track the status of review. After a decision is made, DPS must post on the internet its decision and, if approved, a summary of the approval, including at least the approved use and gross floor area.

#### **Chapter 59. Section 59.10 Contents of Applications**

b) The identity of each person who has a substantial interest in the property under the application, including any person with a share in the property amounting to 5% or more ....

c) A statement disclosing political contributions to the treasurer or political committee of any candidate for County Council and County Executive or slate that contributes to candidates for County Council or County Executive, made by any person that is a title owner or contract purchaser of land that is the subject of an application, a trustee who has an interest in land that is the subject of an application :....

**Chapter 59. Section 59.7.3.4.B Application Requirements**

3. The applicant must submit an initial application to the Planning Director for approval of completeness. The Planning Director must review the application for completeness within 10 days after receipt. An application is incomplete if any required element is missing or is facially defective, e.g., a drawing that is not to scale or lacks proper signatures. The assessment of completeness must not address the merits of the application.

4. The applicant must submit any required revisions to the Planning Director. The Planning Director must review the revised application for completeness within 10 days after receipt.

5. After the Planning Director verifies that the application is complete, the applicant must file the final application with the Planning Director, who will accept the application and establish a hearing date under Section 7.3.4.C.

6. Public notice is required under Division 7.5.

**Chapter 59. Section 59.7.3.1. Conditional Use**  
**(59.7.3.1.E.1 Necessary Findings)****A. Applicability and Description**

1. Use of any property for a conditional use under Article 59-3 requires approval of a conditional use application.

2. A conditional use application may include all or part of a property.

3. A conditional use application must satisfy the conditions and binding elements of, and be consistent with, any effective previous approvals on the subject property.

4. An area covered by a conditional use approval requires a site plan only if:

- a. the area is included in a sketch plan; or
- b. the use standards in Article 59-3 require it.

**B. Application Requirements**

1. Ownership:

a. An applicant must own the subject property or be authorized by the owner to file the application.

b. If any land or right-of-way is owned or controlled by the State, County, or any other entity or agency, written authorization from that entity or agency must be submitted with the application.

2. The applicant must submit the following for review:

a. application form and fees as approved by the District Council;

b. proof of ownership or authorization;

c. statement of how the proposed development satisfies the criteria to grant the application;

d. certified copy of official zoning vicinity map showing the area within at least 1,000 feet surrounding the subject property;

e. list of abutting and confronting property owners in the County tax records;

f. list of any civic, homeowners, and renters associations that are registered with the Planning Department and located within 1/2 mile of the site;

g. Traffic Statement or Study, accepted for review by the Planning Director;

h. map showing existing buildings, structures, circulation routes, significant natural features, historic resources, zoning, and legal descriptions on the proposed development site and within 500 feet of the perimeter boundary;

i. existing and proposed dry and wet utility plan if changes to these facilities are proposed;

j. written description of operational features of the proposed use;

k. if exterior changes are proposed, plans of the proposed development showing:

i. footprints, ground-floor layout, and heights of all buildings and structures;

ii. required open spaces and recreational amenities;

iii. layout of all sidewalks, trails, paths, roadways, parking, loading, and bicycle storage areas;

iv. rough grading;

v. landscaping and lighting;

vi. approved Natural Resources Inventory/Forest Stand Delineation, if required under Chapter 22A;

vii. Forest Conservation Plan application, if required under Chapter 22A, or an approved preliminary forest conservation plan; telecommunication tower



applications must include an approved Forest Conservation Plan or a letter from the Planning Department confirming that a Forest Conservation Plan is not required under Chapter 22A;

viii. Stormwater Management Concept or Water Quality Plan application, if required under Chapter 19 ; and

ix. supplementary documentation showing or describing how the application satisfies previous approvals and applicable requirements.

l. development program and inspection schedule detailing any construction phasing for the project; and

m. for a telecommunication tower application, photographic simulations of the tower and site seen from areas with a direct view of the tower, including a minimum of at least 3 directions.

3. The applicant must submit an initial application to the Planning Director for approval of completeness. The Planning Director must review the application for completeness within 10 days after receipt. An application is incomplete if any required element is missing or is facially defective, e.g., a drawing that is not to scale or lacks proper signatures. The assessment of completeness must not address the merits of the application.

4. The applicant must submit any required revisions to the Planning Director. The Planning Director must review the revised application for completeness within 10 days after receipt.

5. After the Planning Director verifies that the application is complete, the applicant must file the final application with the Hearing Examiner, who will accept the application and establish a hearing date under Section 7.3.1.C.

6. Public notice is required under Division 7.5.

### **C. Hearing Date**

1. The Hearing Examiner must schedule a public hearing to begin within 120 days after the date an application was accepted.

2. The Hearing Examiner may postpone the public hearing and must send notice to all parties of record of the new hearing date.

3. The Hearing Examiner may issue a subpoena to compel the attendance of witnesses at a public hearing and production of documents and administer an oath to any witness.

### **D. Review and Recommendation**

#### **1. Planning Director Review**

a. The Planning Director may provide a report and recommendation for review by the Planning Board at a public meeting or issue a report and recommendation directly to the Hearing Examiner. The Planning Director must provide a report and recommendation on a telecommunication tower application directly to the Hearing Examiner.

b. If the Planning Director provides a report and recommendation to the Planning Board, the Planning Director must publish the report and

recommendation a minimum of 10 days before the Planning Board public meeting.

c. If the Planning Director provides a report and recommendation to the Hearing Examiner, the Planning Director must publish the report and recommendation a minimum of 10 days before the Hearing Examiner's public hearing.

## **2. Planning Board Review**

a. The Planning Board may consider the Planning Director's report and recommendation as a consent item on its agenda or hold a public meeting to consider the recommendation.

b. The Planning Board must provide a recommendation on the application to the Hearing Examiner a minimum of 7 days before the Hearing Examiner's public hearing.

## **3. Amendment of an Application**

a. An applicant may amend the application before the hearing if the Hearing Examiner approves a motion to amend after giving 10 days' notice to all parties entitled to original notice of filing. If an amendment would materially alter an applicant's proposal or evidence, the Hearing Examiner may postpone the hearing to a date that permits all interested parties adequate time to review the amendment.

b. The applicant must forward a copy of any proposed amendment to the Planning Board. The Hearing Examiner must keep the record open for no more than 30 days to provide an opportunity for the Planning Board or its staff to comment. Within that time, the

Planning Board or its staff must comment on the amendment or state that no additional review and comment are necessary.

#### **4. Withdrawal of an 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.

#### **E. Necessary Findings**

1. To approve a conditional use application, the Hearing Examiner must find that the proposed development:

- a. satisfies any applicable previous approval on the subject site or, if not, that the previous approval must be amended;
- b. satisfies the requirements of the zone, use standards under Article 59-3, and to the extent the Hearing Examiner finds necessary to ensure compatibility, meets applicable general requirements under Article 59-6;
- c. substantially conforms with the recommendations of the applicable master plan;
- d. is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the plan;
- e. will not, when evaluated in conjunction with existing and approved conditional uses in any neighboring Residential Detached zone, increase the

number, intensity, or scope of conditional uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area; a conditional use application that substantially conforms with the recommendations of a master plan does not alter the nature of an area;

f. will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities. If an approved adequate public facilities test is currently valid and the impact of the conditional use is equal to or less than what was approved, a new adequate public facilities test is not required. If an adequate public facilities test is required and:

i. if a preliminary subdivision plan is not filed concurrently or required subsequently, the Hearing Examiner must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; or

ii. if a preliminary subdivision plan is filed concurrently or required subsequently, the Planning Board must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; and

g. will not cause undue harm to the neighborhood as a result of a non-inherent adverse effect alone or the combination of an inherent and a non-inherent adverse effect in any of the following categories:

i. the [property] use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood;

ii. traffic, noise, odors, dust, illumination, or a lack of parking; or

iii. the health, safety, or welfare of neighboring residents, visitors, or employees.

2. Any structure to be constructed, reconstructed, or altered under a conditional use in a Residential Detached zone must be compatible with the character of the residential neighborhood.

3. The fact that a proposed use satisfies all specific requirements to approve a conditional use does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require conditional use approval.

4. In evaluating the compatibility of an agricultural conditional use with surrounding Agricultural or Rural Residential zoned land, the Hearing Examiner must consider that the impact does not necessarily need to be controlled as stringently as if it were abutting a Residential zone.

5. The following conditional uses may only be approved when the Hearing Examiner finds from a preponderance of the evidence of record that a need exists for the proposed use to serve the population in the general neighborhood, considering the present availability of identical or similar uses to that neighborhood:

a. Filling Station;

- b. Light Vehicle Sales and Rental (Outdoor);
- c. Swimming Pool (Community); and
- d. the following Recreation and Entertainment Facility use: swimming pool, commercial.

6. The following conditional uses may only be approved when the Hearing Examiner finds from a preponderance of the evidence of record that a need exists for the proposed use due to an insufficient number of similar uses presently serving existing population concentrations in the County, and the uses at the location proposed will not result in a multiplicity or saturation of similar uses in the same general neighborhood:

- a. Funeral Home; Undertaker;
- b. Hotel, Motel;
- c. Shooting Range (Outdoor);
- d. Drive-Thru
- e. Landfill, Incinerator, or Transfer Station; and
- f. a Public Use Helipad, Heliport or a Public Use Helistop.

## **F. Decision**

### **1. Hearing Examiner**

- a. The Hearing Examiner must issue a report and decision no later than 30 days after the close of the record of the public hearing. The decision may approve, approve with conditions, or deny the application.

The Hearing Examiner may supplement the specific requirements of this Chapter with any other requirements necessary to protect nearby properties and the general neighborhood. The Hearing Examiner may by order extend the time to issue the report and decision.

b. The Hearing Examiner must issue a notice, on the day the report and decision is issued, to the Board of Appeals, the applicant, and all parties of record that the report and decision has been issued and is available for review. The Hearing Examiner's report and decision is effective on the date issued, but will be stayed if appealed under Subsection c.

c. Any party of record may appeal the Hearing Examiner's decision by filing a written request to present oral argument before the Board of Appeals within 10 days after the Office of Zoning and Administrative Hearings issues the Hearing Examiner's report and decision. The filing of such a request transfers jurisdiction over the matter while on appeal from the Hearing Examiner to the Board of Appeals.

i. A written request for an appeal and oral argument must be filed with the Board of Appeals and the Hearing Examiner, and must concisely identify the matters to be presented at the oral argument. A person requesting an appeal must send a copy of that request to the Hearing Examiner, the Board of Appeals, and all parties of record before the Hearing Examiner.

ii. Any party of record may, no later than 5 days after a request for an appeal and oral argument is filed, file



a written opposition or request to participate in oral argument. An opposition to a request for an appeal and oral argument must be sent to the Board of Appeals and all parties as listed by the Hearing Examiner, and must be concise and limited to matters raised by the party who requested oral argument.

iii. The Board of Appeals may, in its discretion, grant or deny an oral argument request. If the Board of Appeals grants a request for oral argument, the argument must be limited to matters contained in the record compiled by the Hearing Examiner.

iv. Regardless of whether the Board of Appeals has elected to hear oral argument, the Board of Appeals must, under Section 7.3.1.F.2, approve or deny the appealed conditional use application or remand it to the Hearing Examiner for clarification or the taking of additional evidence, if appropriate.

v. A request for an appeal of the Hearing Examiner's decision stays the decision of the Hearing Examiner.

## **2. Board of Appeals**

a. If the Board of Appeals is deciding the appeal of an application, it must make the necessary findings under Section 7.3.1.E and must:

i. vote in public session to approve, approve with conditions, or deny the application, or to remand the application to the Hearing Examiner for additional evidence or clarification. An affirmative vote of 4 members of the Board of Appeals is required to approve a conditional use when 5 members are present, otherwise an affirmative vote of 3 members is required. Any Board of Appeals member who votes

c. An application for an amendment to a special exception must be filed with the Board of Appeals, and it follows the procedures and criteria applicable to modifications of special exceptions as determined by the provisions of Section 59.7.7.1.B.

## **2. Minor Amendment**

a. An application for a minor amendment to a conditional use must be filed with the Hearing Examiner, and it may be approved administratively by the Hearing Examiner. An application for a minor amendment to a special exception must be filed with the Board of Appeals, and it may be approved administratively by the Board of Appeals. A minor amendment to a conditional use is one that does not change the nature, character, or intensity of the conditional use to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected, when considered in combination with the underlying conditional use.

b. When a minor amendment is granted, the Board of Appeals or Hearing Examiner must send a copy of the resolution or decision, as applicable, to the applicant, the Board of Appeals or Hearing Examiner, as appropriate, the Planning Board, DPS, the Department of Finance, all parties entitled to notice at the time of the original filing, and current abutting and confronting property owners. Except for an amendment for a Telecommunications Tower, the resolution or decision, as applicable, must state that any party may request a public hearing on the Board of Appeals' or Hearing Examiner's action within 15 days after the resolution or decision is issued. The

request for public hearing must be in writing, and must specify the reason for the request and the nature of the objection or relief desired. If a request for a hearing is received, the deciding body must suspend its administrative amendment and conduct a public hearing to consider whether the amendment substantially changes the nature, character, or intensity of the conditional use or its effect on the immediate neighborhood. If the Board of Appeals or Hearing Examiner determines that such impacts are likely, then the amendment application must be treated as a major amendment application. A decision of the Hearing Examiner may be appealed on the basis of the Hearing Examiner's record to the Board of Appeals. Any amendment to a Telecommunications Tower is also a minor amendment.

### **3. Exemption from Amendment Procedure**

An amendment to a special exception or a conditional use is not required for a permitted or limited use allowed in the subject property's zone if the enterprise satisfies any unique conditions of the special exception or conditional use approval and the use is located:

- a. in a mobile vehicle;
- b. in a manner that allows vehicles to access the site from abutting rights-of-way;
- c. in a manner that allows all uses on the site to satisfy the minimum parking requirements; and
- d. on an area not required for open space or green area.

## **L. Compliance and Enforcement**

1. DPS and the Board of Appeals must establish a regular inspection program for conditional uses. DPS must perform the inspections according to the established schedule, and must perform additional inspections if DPS, the Board of Appeals, or the Hearing Examiner receive a complaint alleging failure to satisfy the terms or conditions of a conditional use. If a complaint is filed, DPS must inspect the premises of the conditional use within 21 days after receiving the complaint, or more promptly if requested by the Board of Appeals or the Hearing Examiner, to determine the validity of the complaint.
2. If the inspection finds a violation of the terms or conditions of the conditional use, DPS must direct the conditional use holder to correct the violation. When the time to correct the violation expires, DPS must reinspect the premises. If the violation has not been corrected, DPS must file a report with the Board of Appeals or the Hearing Examiner describing the nature of the violation, the corrective action ordered by DPS, and the time allowed to correct the violation.
3. If DPS finds that no violation exists, it must report to the Hearing Examiner or Board of Appeals that the conditional use satisfies the terms and conditions of the conditional use approval.
4. If the Board of Appeals or the Hearing Examiner receives a written notice from DPS that the conditional use holder is violating the terms or conditions of a conditional use or the terms, conditions, or restrictions attached to the grant of any permit issued under the conditional use approval, the

Board of Appeals or the Hearing Examiner must order the conditional use holder and the property owner to appear before the Board of Appeals or the Hearing Examiner to show cause why the conditional use should not be revoked.

5. The notice of a show cause hearing must be issued to the conditional use holder and the property owner by certified mail, return receipt requested. Notification must also be sent to DPS, and to any party who submitted a written complaint concerning the conditional use, and must:

- a. include the nature of the alleged violations;
- b. state that the hearing is limited to a consideration and a determination of the validity of the allegations; and
- c. advise the conditional use holder and the property owner that failure to attend and participate in the hearing may result in revocation of the conditional use.

6. The Board of Appeals or the Hearing Examiner must conduct a show cause hearing limited to consideration of the issues identified in the notice of hearing. The Board of Appeals or the Hearing Examiner may reaffirm or revoke the conditional use or amend, add to, delete or modify the existing terms or conditions. The Board of Appeals or the Hearing Examiner must make a determination on the issues presented within 15 days after the close of record. The decision of the Board of Appeals or the Hearing Examiner must be by the adoption of a written resolution and copies of the resolution must be

transmitted to the conditional use holder, the property owner, DPS, the Planning Director, and other relevant parties.

7. If DPS finds that a conditional use has been abandoned, DPS must forward written notice of its findings to the last recorded holder of the conditional use and to the property owner. The conditional use holder and property owner, within 60 days after the date of sending notice, must submit a written statement confirming the abandonment or challenging it and requesting that the use be continued.

a. If the conditional use holder and the property owner acknowledge that the conditional use has been abandoned, DPS must notify the Board of Appeals or the Hearing Examiner, as appropriate. The Board of Appeals or Hearing Examiner must adopt and issue a written resolution finding the conditional use to have been abandoned and ordering it revoked.

b. If either the conditional use holder or the property owner challenges the abandonment and requests that the conditional use be continued, DPS must notify the Board of Appeals or the Hearing Examiner, as appropriate, and the Board of Appeals or Hearing Examiner must convene a public show cause hearing to determine whether or not the conditional use was abandoned and whether it should be revoked.

c. If neither the conditional use holder nor the property owner responds, DPS must notify the Board of Appeals or Hearing Examiner of its findings, and the Board of Appeals or Hearing Examiner, as appropriate must issue to the conditional use holder

and the property owner an order to appear before them to show cause why the conditional use should not be revoked.

d. If neither the conditional use holder nor the property owner appears before the Board of Appeals or Hearing Examiner, as appropriate, to show cause why the conditional use should not be revoked, the deciding body must revoke the conditional use approval.

8. The Planning Director must note the revocation of any conditional use in the official zoning maps.

#### **Chapter 59. Section 59.4.1.8.B Compatibility Requirements**

1. Applicability: Section 4.1.8.B applies to a property that:

a. abuts or confronts a property in an Agricultural, Rural Residential, Residential Detached, or Residential Townhouse zone that is vacant or improved with an agricultural or residential use; and

#### **2. Height Restrictions**

a. When the subject property abuts a property in an Agricultural, Rural Residential, Residential Detached, or Residential Townhouse zone that is vacant or improved with an agricultural or residential use, any structure may not protrude beyond a 45 degree angular plane projecting over the subject property, measured from a height equal to the height allowed for a detached house in the abutting zone at the setback line determined by Section 4.1.8.A.

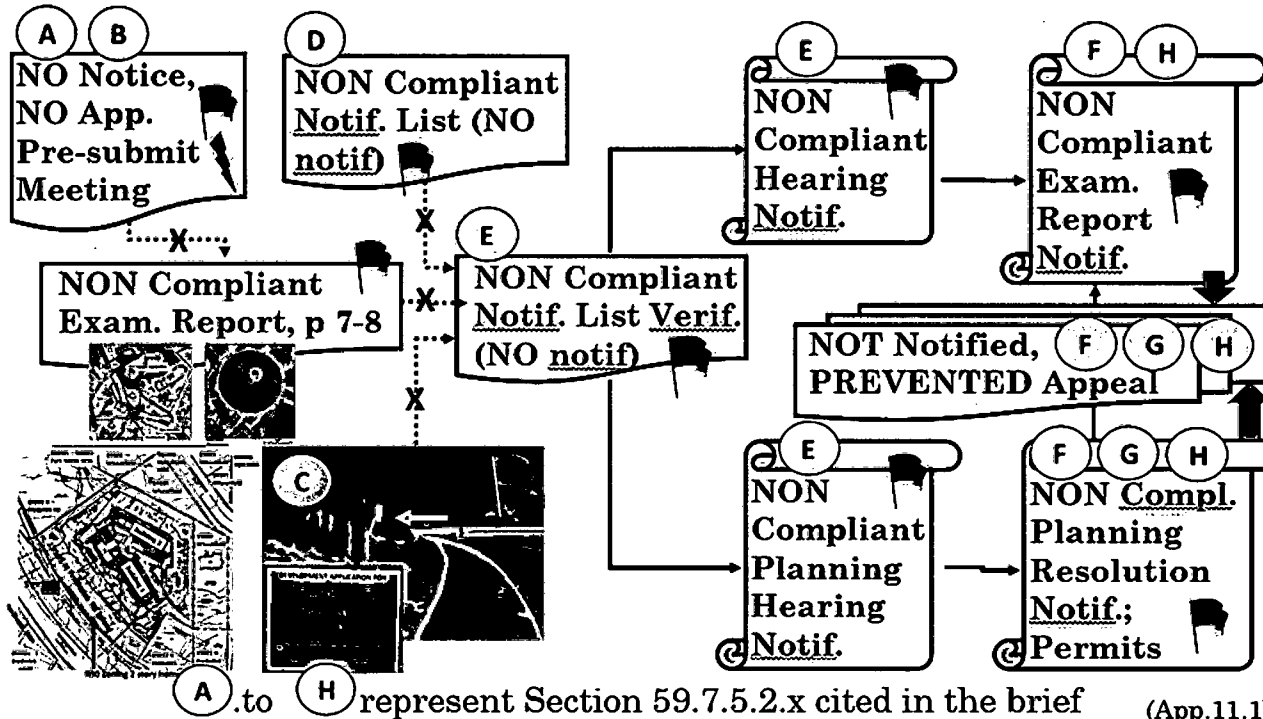
App.13.2 NON Compliant/59.7.3.1.E.1; 31B-6; 31B-12 Noise, Vibration; Influence, Ex-Parte.....	182
App.13.3 NON Compliant/NO Notif/Day of Decision- PREVENTED Timely Appeal, 59.7.5.2.F.1-2.....	185
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App.13.6 NON Compliant/59.7.3.1.E.1 NO HARM, 59.6.5.3.C.4-8 Screening; Property Rights .....	188



## Notes:

1. Pertinent parts of every ruling, opinion of each lower court are highlighted in the Record Extract. Objections were raised. Refer to the Questions, Facts, Arguments regarding points raised by the appellants on appeal for Timely Appeal – Notification, Conditional Use (CU) – Zoning, Constitutional Law. The Appendix includes evidence of NON Compliance.
2. Citation and verbatim text of pertinent constitutional provisions, statutes, ordinances, rules, regulations are included in the Appendix regarding Timely Appeal – Notification, Conditional Use (CU) – Zoning, Constitutional Law.
3. Agencies have "no power of suspending Laws or execution of Laws". Laws require "government officials perform duties that they are legally obligated to perform". Courts are required to "maintain independence and integrity of the legal system", to ensure due process, protection of rights and equal justice under the law. See Maryland Const. Art. 6; 9; 33. Violations of law were submitted to County before OZAH report 7-1-2020 (~2 years before work at 19105 N. Frederick).

**Appendix (App.11.1): Timely Appeal Prevented by Owner, County**



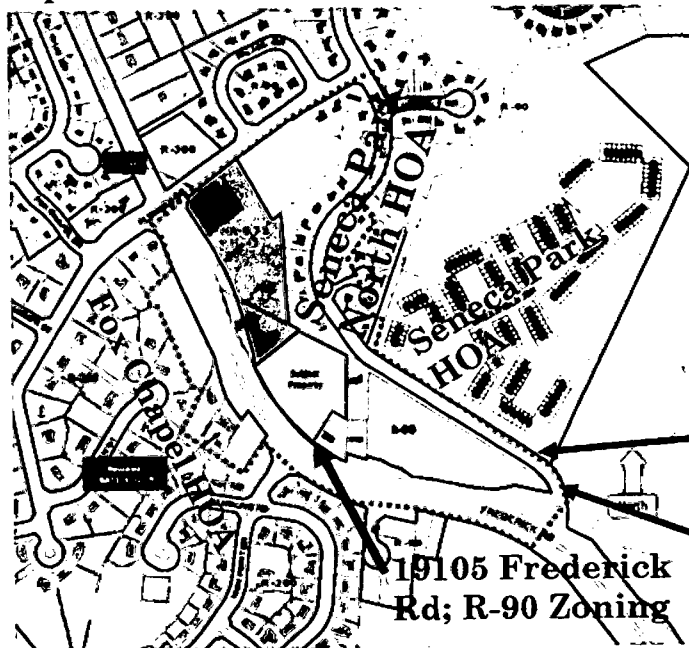
**Appendix (App.11.1.A): Timely Appeal Prevented/Section 59.7.5.2. Notice**

Conclusion Facts Law	A. Newspaper; >30 days before hearing; 2 papers	B. Pre-Submittal Meeting; < 90 days before application	C. Application Sign	D. Application Notice; when applic. accepted
	NO notice 30 days before application, 2 newspapers	NO pre-submittal meeting (11-12- 2019 to 2-12-2020)	NO application sign for pre- submittal	NO application notice/application was accepted
	NO Evidence	NO Evidence	Need Evidence	NO Evidence
	NON Compliant	NON Compliant	NON Compliant	NON Compliant
Conclusion Facts Law	E. Hearing Notice ...30 days before	F. Resolution Notice ...on the day a resolution	G. Building Permit Sign Notice	H. Website Posting ...<15 days after acceptance
	OZAH claims 3- 27-2020 Notice of Hearing	NO resolution notice on the day of decision [7-1-2020]	NO building sign notice	NO website posting <15 days after acceptance
	Need Evidence	NO Evidence	NO Evidence	NO Evidence
	NON Compliant	NON Compliant	NON Compliant	NON Compliant

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(App.11.1.A)  
Agencies have "no power of suspending Laws or execution of Laws". Laws require "government officials perform duties legally obligated to perform". Courts are required to "maintain independence and integrity of the legal system", to ensure due process, protection of rights and equal justice under the law. *See U.S. Const. amend.1, 5, 14; Maryland Const. Art. 6; 9; 19, 33.* Non compliance identified before OZAH report 7-1-2020 (~2 years before work/CU 20-02 /19105 Frederick).

**Appendix (App.11.3): NO Evidence of Compliance with Notice Specifications & OZAH Report; NOT Compliant/Section 59.7.5.2.F.1 – 2.**



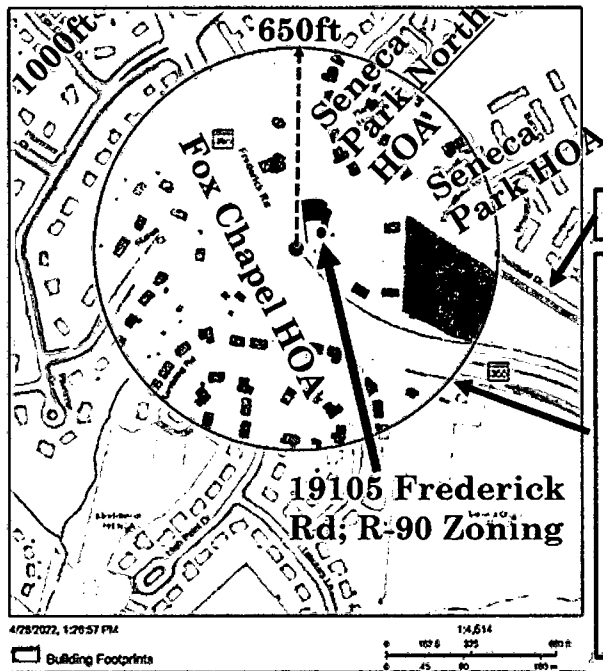
NOT compliant: Section 7.3.1.B.2.e-f Notification List & OZAH Report, II.B; NO notification of Seneca Park North HOA abutting & confronting 19105 Frederick Rd at North (282 two story homes/R-90). List at App.11.5 NON compliant. NO EVIDENCE of use of Notification list.

Impacted property owners NOT notified ..See Examiners Report II.B; List at App.11.5 NON compliant.

Wheatfield Drive-26 ft wide, dangerous traffic, parking

(App.11.3)

**Appendix (App.11.3.A): NOT Compliant with Section 59.7.5.2.F.1 – 2.**



**NOT compliant:** Section 7.3.1.B.2.e-f Notification & OZAH Report, II.B; NO notification of Seneca Park North HOA abutting & confronting (282 homes).

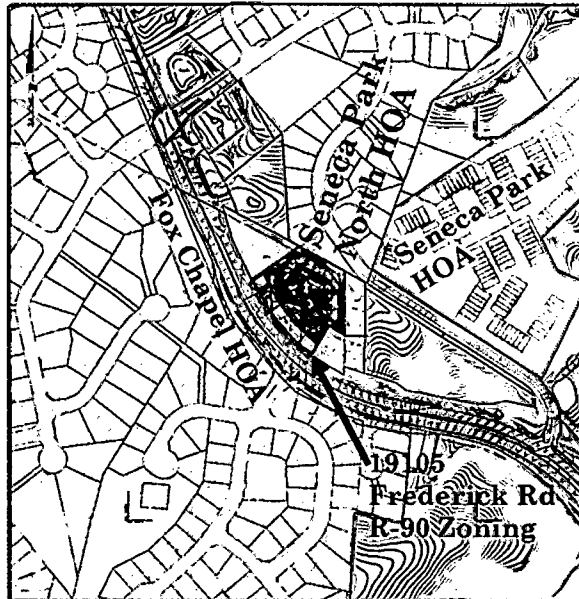
**Wheatfield Dr-26 ft wide, traffic-parking**

Impacted property owners NOT Notified ..See Examiners Report; 85 dBA waiver. NOT Notified Seneca Park North HOA, Wheatfield 19104, 19106, 19108, 19110, 19112, 19114, 19116, 19118, 19120, 19126, 19128; 19101, 19103, 19111, 19113, 19115; Harvest Mills 11304, 11305; Plummer 19315, 19317, 19319; Frederick 19021, 19027, 19201, 19110, 19114, 19118, Harvest Mills 11300, 11301, 11302, 11303, Staten Ct, Fox Chapel

(App.11.3.A)

**Appendix (App.11.4): NO Evidence of Notif. Seneca Park North HOA  
(abutting & confronting North-19105 Frederick Rd); NON Compliant**

**Seneca Park North HOA - continues**



**Seneca Park HOA - continues**

**Laws:** Notice (Sec 59.7.5.2.A to H)  
A. Newspaper; B. Pre-Submittal Meeting, C. Sign; D. Application Notice; E. Hearing Notice; F. Resolution Notice - on the day a resolution or opinion is issued; G. Building Permit Sign Notice; H. Web Posting

**Facts:** Notice Spec's (Section 59.7.5.2.A to H); A. NO Newspaper Notice; B. NO Application Pre-Submittal Meeting; C. Sign; D. NO Application Notice; E. NO Hearing Notice; F. NO Resolution Notice - on the day a resolution or opinion is issued; G. NO Building Permit Sign Notice; H. Website Posting

(App.11.4)

**Appendix (App.11.5): NON Compliant Notif. List / Section 7.3.1.B.2.e-f**

FREDERICK ROAD CONT				Northern Montgomery County Alliance		<div>NO evidence of Notification of Abutting, Confronting Home Owners &amp; HOA, Seneca Park North HOA NOT Notified/NOT on any record; Confronting property owners NOT Notified (e.g. Witz / 26 ft wide Wheatfield Drive)</div>	
Account	Name1	Name2	Address1	ADJOURNING / CONFRONTING			
09 00771604	TERI FALLARAY		200 LONG TRAIL	Seneca Park Homeowners Assn.			
09 02913254	CURTIS DANIEL LAMOT		18 EARTH STAY	Seneca Park Homeowners Assn.			
09 07911343	JOSE RODOLFO CABRERA	MIRYALA CABRERA	19100 WHEATFIELD	Seneca Park Homeowners Assn.			
09 07911343	JOSE PHILIP TRISTANA	VILLANUEVA	19100 WHEATFIELD	Seneca Park Homeowners Assn.			
09 00776958	GOTHARD		19050 WHEATFIELD	Seneca Park Homeowners Assn.			
09 03428738	CARL BECKER 2ND ET AL		13409 STRAWBERRY	Seneca Park Homeowners Assn.			
09 00769348	JANE BECKER TRUSTEE		13409 STRAWBERRY	Seneca Park Homeowners Assn.			
09 01477086	MOHAMMAD ARSALAN SIDDIKI	MOHAMMAD ADHAN SIDDIKI	11341 RAMBLIN	Sierra Club - Montgomery County Group			
09 01477075	PETER MARANJO		11345 RAMBLIN	Sierra Club - Montgomery County Group			
09 01477235	ALEX TRAN	LOAN LU	11401 RAMBLIN	Sierra Club - Montgomery County Group			
09 00774618	MOHAMMAD SIDDIKI		19318 FREDERICK	Sierra Club - Montgomery County Group			
09 00776641	MOHAMMAD SIDDIKI		19114 N FREDERICK	Sierra Club - Montgomery County Group			
09 00775761	CHALID MASOOD	SHAMA BANO	12529 STRATTON GARDEN DR	Sierra Club - Montgomery County Group			
				1/2 MILE HOA / CIVIC ASSN			
City of Gaithersburg	Jud Ashman, Mayor	31 South Summit Avenue	Gal	Northern Montgomery County Alliance	Julius Chaste, Chair	22300 Giddell Road	Boy
City of Gaithersburg	Tony Tomasello, City Manager	31 South Summit Avenue	Gal	Seneca Park Homeowners Assn.	Mike Porter, MTM Management	P.O. Box 505	Den

**NOT compliant: Section 7.3.1.B.2.e-f Notification List & OZAH Report, II.B; NO notific. of Seneca Park North HOA abutting & confronting 19105 Frederick Rd at North (282 two story homes/R-90 Zoning). NO EVIDENCE of Notification of home owners, HOA.** (App.11.5)

Agencies have "no power of suspending Laws or execution of Laws". Laws require "government officials perform duties legally obligated to perform". Courts are required to "maintain independence and integrity of the legal system", to ensure due process, protection of rights and equal justice under the law. See U.S. Const. amend.1, 5, 14; Maryland Const. Art. 6; 9; 19, 33. Non compliance identified before OZAH report 7-1-2020 (~2 years before work/CU 20-02 /19105 Frederick).

**Appendix (App.12.1.C): NON Compliant with Section 59.7.3.1.  
Conditional Use, NO HARM; Examiner's Report is NOT Compliant**

<div> <div>Conclusion</div> <div> <div>Law</div> <div>Facts</div> </div> </div>	E. Necessary Findings: E.2. Any structure to be constructed ...under CU ... <u>must be compatible with the residential neighborhood;</u>	E. Necessary Findings: E.3. The fact that ...use satisfies all specific req. ...does not create a presumption that the use is compatible, is <u>not sufficient</u> ...CU approval.	F. Decision: F.1. Hearing Examiner ... report <30 days; may approve ...with conditions, or deny ....The <u>Examiner may supplement the specific requirements of this Chapter</u> with any other req. necessary to protect nearby properties and neighborhood.
	NOT Compatible	NOT sufficient to approve	NO HARM, COMPATIBILITY required by law; CU conditions do NOT protect
	NO evidence of compatibility	NO evidence /sufficient conditions to approve	Evidence of significant HARM; NO protection
	NON-Compliant	NON-Compliant	NON-Compliant (App.12.1.C)

Agencies have "no power of suspending Laws or execution of Laws". Laws require "government officials perform duties legally obligated to perform". Courts are required to "maintain independence and integrity of the legal system", to ensure due process, protection of rights, and equal justice under the law. See *U.S. Const. amend.1, 5, 14; Maryland Const. Art. 6; 9; 19, 33*. Non compliance identified before OZAH report 7-1-2020 (~2 years before work/CU 20-02 /19105 Frederick).



**Appendix (App.12.1.D): NON Compliant with Section 59.7.3.1.  
Conditional Use, NO HARM; Examiner's Report is NOT Compliant**

<div>Conclusion</div> <div> <div>Law</div> <div>Facts</div> </div>	F. Decision F.2. Board of Appeals: a. If the Board is deciding the appeal, it <u>must make the necessary findings under Section 7.3.1.E</u> ; c. The Board may <u>supplement</u> the specific req. of this Chapter with other req. necessary to protect nearby properties & neighborhood.	H.2. Conforming Permits: DPS must <u>not issue a permit, or use- and- occupancy permit for any building, for CU</u> ; a. <u>until</u> the Examiner or Board approves a CU; and b. unless building satisfies the approved cond. use.
		Permits do NOT consider NO HARM, COMPATIBILITY required by law; (NO protection)
		Evidence of Significant HARM; NO protection for properties, neighborhood
		NON Compliant (App.12.1.D)

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Agencies have "no power of suspending Laws or execution of Laws". Laws require "government officials perform duties legally obligated to perform". Courts are required to "maintain independence and integrity of the legal system", to ensure due process, protection of rights, and equal justice under the law. *See U.S. Const. amend.1, 5, 14; Maryland Const. Art. 6; 9; 19, 33.* Non compliance identified before OZAH report 7-1-2020 (~2 years before work/CU 20-02 /19105 Frederick).

**Appendix (App.12.1.E): NON Compliant with Section 59.7.3.1.  
Conditional Use, NO HARM; Examiner's Report is NOT Compliant**

<div>Conclusion</div> <div> <div>Law</div> <div>Facts</div> </div>	<div> <div> <div>→</div> </div> </div>	L. Compliance and Enforcement, L.1. <u>DPS and the Board of Appeals must establish a regular inspection for CU. DPS must perform inspections; ...inspect the premises of CU &lt;21 days after receiving complaint, or more promptly ... to determine the validity;</u>	L. Compliance and Enforcement, L.2. <u>If the inspection finds a violation of CU, DPS must direct the CU holder to correct the violation. ..</u> DPS must file a report with the Board or the Examiner describing the violation, corrective action ordered by DPS, and time to correct.
		NO regular inspection program. DPS did NOT inspect the premises of CU after complaints.	NO inspection reports to the Board or Examiner describing violations, corrective actions, time to correct.
		NO evidence of inspection program; NO evidence of inspections	NO evidence of inspection reports to Board, Examiner
		NON Compliant	NON Compliant (App.12.1.E)

Agencies have "no power of suspending Laws or execution of Laws". Laws require "government officials perform duties legally obligated to perform". Courts are required to "maintain independence and integrity of the legal system", to ensure due process, protection of rights, and equal justice under the law. *See U.S. Const. amend.1, 5, 14; Maryland Const. Art. 6; 9; 19, 33.* Non compliance identified before OZAH report 7-1-2020 (~2 years before work/CU 20-02 /19105 Frederick).

# Appendix (App.12.2): NON Compliant <4 Stories/59.7.3.1.E.1 NO HARM, R-90 Compatibility

Planning Board Date	Planning Board Action	Approved Qty	Development Type
6/17/2021	ADOPTED	0	Resolution
6/17/2021	APPRVD W/ COND.	111	NF Apt/Condo-4 Stories or less

Development Review Search (mcatlas.org)



Sign: NON Compl.

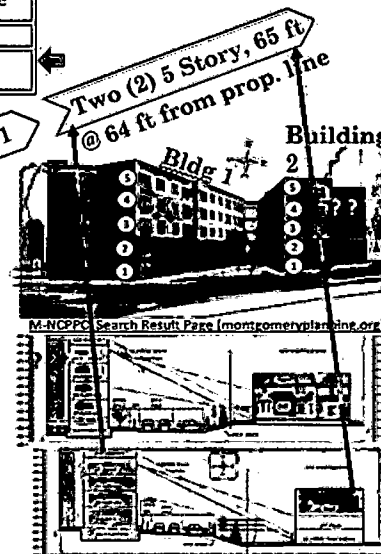
4 Story, 6/17/2021

2 Story, 30 ft R90 Zone

2 Story, 30 ft /R90 Zoning

C Height 35'0" (max)  
Measured to highest point of a flat roof 35'0"  
Measured to mean height between eaves and ridge of a gable, hip, mansard, or gambrel roof 30'0"

<https://www.montgomeryplanning.org/development/permits/documents/developmentsearch.pdf>



NON Compliant with Section 59.7.3.1.E.1 Conclusions of Law; E. Necessary Findings 1. To approve a CU application, the Examiner must find...g. will NOT cause undue harm to the neighborhood .. i. the (property) use, peaceful enjoyment, value or dev. potential of abutting & confronting properties or neighborhood; ii. traffic, noise, odors, dust, illumination, lack of parking; or iii. the health, safety, or welfare of neighboring residents, visitors, or employees.

(App.12.2)

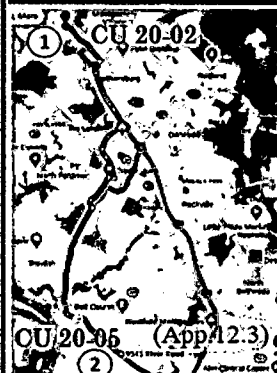
Agencies have "no power of suspending Laws or execution of Laws". Laws require "government officials perform duties/legally obligated". Courts are required to "maintain independence and integrity of the legal system", ensure due process, protection of rights, equal justice/one rule of law, like cases should be treated alike [CU 20-02 & CU 20-05]. See U.S. Const. amend.1, 5, 14; Maryland Const. Art. 6; 9; 19, 33. Non compliance identified before OZAH report 7-1-2020 (~2 years before work/CU20-02).

**Appendix (App.12.3): Construction NON Compliant/59.7.3.1.E.1 NO HARM, R-90 Compatibility**



Compare NON compliant CU 20-02, 19105 Frederick Rd, Gaithersburg, MD with CU-20-05 at 9545 River Rd, Potomac, MD/Chapter 59 Zoning with building, setback, screening compatible with residential community; the building is 2 story. Most parking is underground. Surface parking is 16 cars; parking setback is 2 times the min. Fencing is 8 ft high on 3 sides towards residential community. (Initially, the building was 3 story on River Rd, stepped down to 1 & 2 stories where closer to neighbors). See App.12.4.

CU 20-02 - and - CU 20-05 are both in Montgomery County, MD at 14.3 miles. Same OZAH Examiner involved in both.



Agencies have "no power of suspending Laws or execution of Laws". Laws require "government officials perform duties/legally obligated". Courts are required to "maintain independence and integrity of the legal system", ensure due process, protection of rights, equal justice/one rule of law, like cases should be treated alike [CU 20-02 & CU 20-05]. See U.S. Const. amend.1, 5, 14; Maryland Const. Art. 6; 9; 19, 33. Non compliance identified before OZAH report 7-1-2020 (~2 years before work/CU20-02).

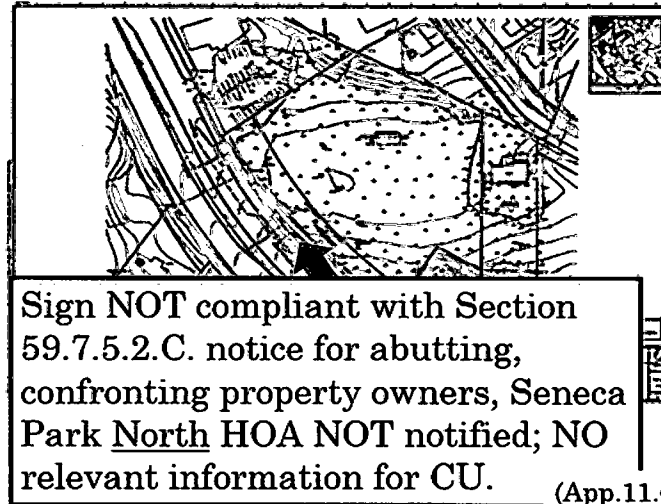
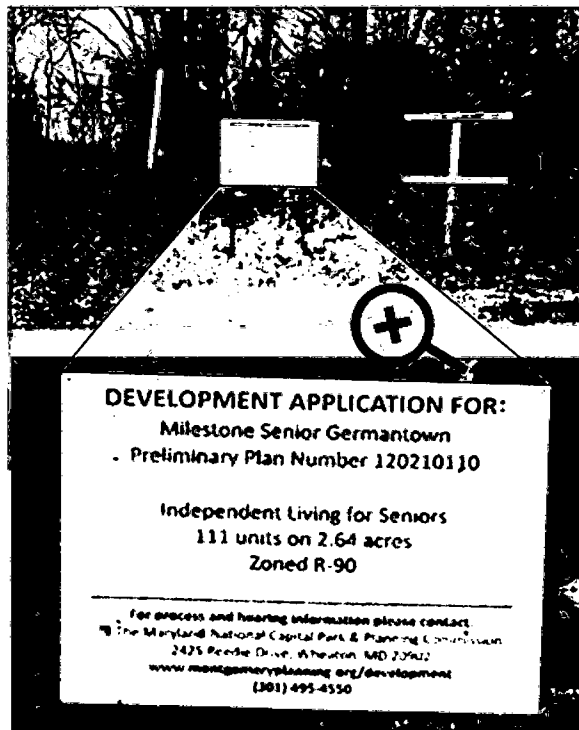
**Appendix (App.11.5): NON Compliant Notif. List / Section 7.3.1.B.2.e-f**

FREDERICK ROAD CONT				Northern Montgomery County Alliance		NO evidence of Notification of Abutting, Confronting Home Owners & HOA, Seneca Park North HOA NOT Notified/NOT on any record; Confronting property owners NOT Notified (e.g. Witz / 26 ft wide Wheatfield Drive)	
Account	Name1	Name2	Address1	ADJOINING / CONFRONTING			
09 00771604	TERI FALLAHIAN		200 LONG TRAIL				
09 02933854	CURTIS DANIEL LAMJOY		18 EARTH STAT				
09 02933843	JOSE RODOLFO CABRERA	MIRYALA CABRERA VILLANUEVA	19100 WHEATFIELD				
09 00776958	JOSEPH G. KRISTINA	GOTHARD	19050 WHEATFIELD				
09 03428238	CARL BECKER 2ND ET AL		13409 STRAWBERRY				
09 00769348	JANE BECKER TRUSTEE		13409 STRAWBERRY				
09 01472086	MOHAMMAD ARSALAN SIDDIQI	MOHAMMAD ADNYAN SIDDIQI	11341 RAMBLIN				
09 01472075	PETER NARANTO		11345 RAMBLIN				
09 01472315	ALEX TRAN	LOAN LU	11401 RAMBLIN				
09 00774618	MOHAMMAD SIDDIQI		19318 FRECHT				
09 00776641	MOHAMMAD SIDDIQI		19114 N FREDERICK				
09 00775761	ISMAIL MASOOD	SIAMA BAND	17529 STRATFORD GARDEN DR				
				1/2 MILE HOA / CIVIC ASSN			
				Northern Montgomery County Alliance		Julian Choue, Chair	
				Seneca Park Homeowners Assn.		Mike Potter, MTM Management	
						22300 Stadel Road	
						Boy	
						Jane Prygodski	
						Softest	
</							

**NOT compliant: Section 7.3.1.B.2.e-f Notification List & OZAH Report, II.B; NO notific. of Seneca Park North HOA abutting & confronting 19105 Frederick Rd at North (282 two story homes/R-90 Zoning). NO EVIDENCE of Notification of home owners, HOA.** (App.11.5)

Agencies have "no power of suspending Laws or execution of Laws". Laws require "government officials perform duties legally obligated to perform". Courts are required to "maintain independence and integrity of the legal system", to ensure due process, protection of rights and equal justice under the law. *See U.S. Const. amend. 1, 5, 14; Maryland Const. Art. 6; 9; 19, 33.* Non compliance identified before OZAH report 7-1-2020 (~2 years before work/CU 20-02 /19105 Frederick).

**Appendix (App.11.6): NON Compliant Sign, At Location NOT Visible**



**Appendix (App.11.7): Petitioners Requested Notification, Evidence of NO HARM, ... Testimony/Property Owners, Communities (5-18-2020)**

<p>CU 20-02, Edmonson &amp; Gallagher Property Services, LLC OFFICE OF ZONING AND ADMINISTRATION MONTGOMERY COUNTY 200 Maryland Avenue, Suite 200, A Hyattsville, Maryland 20910 Phone: (202) 777-6660</p>	<p>1. ...not to impact to property value: ...provide objective evidence from other property owners at similar properties ...this facility shall either be positive to the community or at least neutral (not negative)</p>
<p>RE: CASE NO. CU 20-02 Application for Conditional Use Permit (CUP) for 19105 N. Frederick Rd. (Site) per 59.3.2.2 c of the Zoning Ordinance.</p>	<p>8. ...the building height shall be reduced physically (i.e. 2 stories/compatible/R-90 homes) ...County shall consider testimony from adjacent properties and community, not only from a limited set ...E&amp;G ...shall not proceed with any on-site activities until they resolve the concerns</p>
<p>This is to request that Edmonson &amp; Gallagher Property Services, LLC (E&amp;G) address the concerns listed below, regarding the proposed facility, 19105 N. Frederick Rd., Hyattsville, MD.</p> <ol style="list-style-type: none"> <li>1. Potential impact to property: Implement privacy screening measures and other efforts to minimize the impact of the facility on the surrounding community.</li> <li>2. Fencing: Barriers at least 6 feet high to ensure that fencing, barriers, property and house (structures) are not visible from the street.</li> <li>3. Trees: As/when the property is developed, trees shall be planted and maintained to provide shade and privacy, and not damage any adjacent property.</li> <li>4. Waste disposal: Dumpster to be located in the rear of the property, screened by a wall or fence, and not visible from the street.</li> </ol>	<p>...updated plans shall provide objective evidence of how each concern was resolved ....</p>
<p>Edmonson &amp; Gallagher Property Services, LLC address and resolve the concerns above. They are and our community can live in harmony.</p>	<p><b>NOT Compliant with Section 59.7.5.2.A-B Notice; Application Pre-Submittal Meeting &amp; 59.7.3.1.E.1.g Necessary Findings: "Conditional Use not cause HARM"; ...must meet the conditional use standards</b></p>

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(App.11.7)  
Agencies have "no power of suspending Laws or execution of Laws". Laws require "government officials perform duties that they are legally obligated to perform". Courts are required to "maintain independence & integrity of the legal system", ensure due process, protection of rights, equal justice/law. See *Maryland Const. Art. 6; 9; 19, 33; U.S. Const. amend. 1, 5, 14*. Violations were submitted to County before OZAH report 7-1-2020 (~2 years before work at 19105 N. Frederick).

**Appendix (App.11.8): NO Evidence of Notification, Public Meeting –  
90 days before application / NOT Compliant**

BEFORE THE BOARD OF APPEALS OF MONTGOMERY COUNTY, MARYLAND	
IN THE MATTER OF THE APPEAL OF JOSEPH AND KATRINA GOTHARD	However, the records of Miller, Miller & Canby show that a notice of August 20, 2020 community meeting was sent to Mr. and Ms. Joseph Gothard. Those records also show that an invitation to attend a community meeting regarding plans to develop "an independent living facility for seniors" on property addressed as 19105 Frederick Road was also sent to Mr. Curtis Daniel Lemoyne, Mr. Jose Rodolfo Cabrera. A copy of the invitation letter is submitted herewith Attachment A and a copy of the mailing list is included as Attachment B with names of the Appellants highlighted.
SUPPLEMENTAL MOTION DISPOSITION SUBMITTER	
1. <u>AS TO CONDITIONAL USE NO. CU 20-22</u>	
a. On August 21, 2020, although not required, a community meeting was conducted at a hotel location. Notices describing the public meeting were sent to:	
Sec: Dear Neighbor,	
Rev: E&G Property Services plans to file a preliminary plan application to develop their 2.6 acre property on Frederick Road as an independent living facility for seniors in accordance with their Conditional Use approval for such a use. The site is located on the east side of Frederick Road, approximately .2 miles north of the intersection of Wheatfield Drive and Frederick Road and .15 miles south of the intersection of Plummer Drive and Frederick Road.	
Cont: In light of the current social distancing guidelines, the meeting will be held virtually on Thursday, August 20, 2020 at 7:00 p.m. If you wish to participate, the meeting will be convened using the Microsoft Teams platform.	
Asso: No citizen or neighbor attended the meeting.	
recon: was	

**NOT Compliant with Section 59.7.5.2.B Application Pre-Submittal Meeting "the applicant must hold a public meeting no more than 90 days before application" on 2-12-2020 (11-12-2019 to 2-12-2020); Supplemental Motion ..Attachment A false: 8-20-2020 is ~50 days after OZAH Examiners report 7-1-2020; Fact: residents NOT notified, PREVENTED to testify, become party of record, PREVENTED to timely appeal in 10 days / decision.**

(App.11.8)



# Appendix (App.11.9): NON Compliant Notification by Planning; (6-24-2020, ~358 days after 7-1-2020 OZAH Decision; PREVENTED Appeal)

MCPB No. 21-050  
Preliminary Plan No. 130210110  
Milestone Senior Germantown  
Date of Hearing: June 17, 2021

## RESOLUTION

WHEREAS, under Montgomery County Code, the County Planning Board is authorized to review preliminary

WHEREAS, on December 2, 2020, Frederick ("Applicant") filed an application for approval of a property that would create one lot on 2.04 acres of land east side of Frederick Road, north of the intersection of Road ("Subject Property"), in the Germantown East Employment Area Sector Plan ("Sector Plan") area; and

WHEREAS, Applicant's preliminary plan application Plan No. 130210110, Milestone Senior Germantown ("Application"); and

WHEREAS, following review and analysis of the staff ("Staff") and other governmental agencies, the Planning Board, dated June 4, 2021, setting forth its approval of the Application, subject to certain conditions;

WHEREAS, on June 17, 2021, the Planning Board Application at which it heard testimony and received on the Application; and

WHEREAS, at the hearing the Planning Board subject to certain conditions, by the vote certified below

NOW, THEREFORE, BE IT RESOLVED that Preliminary Plan No. 130210110 to create one lot on the

2125 Rocke Drive, 1st Floor, Wheaton, Maryland 20902  
www.montgomeryplanningboard.org

Approved on to  
Legal Reflector: *Dr. Emily Yates*  
M-MCPB Legal Department

ANN 2 4 761

MR. RICHARD BRUSH, MANAGER MCDPS-WATER RES. PLAN REVIEW 255 ROCKVILLE PIKE 3RD FLOOR ROCKVILLE, MD 20850 By email: <a href="mailto:richard.brush@mcpsmd.net">richard.brush@mcpsmd.net</a>	MR. GREG LEE MCDOT 181 MONROE ST 1ST FLOOR ROCKVILLE, MD 20850 By email: <a href="mailto:ggreg.lee@mdot.state.md.us">ggreg.lee@mdot.state.md.us</a>	MR. MARK ETHEEDGE, MANAGER MCDPS-ALIGNMENT/STORMWATER INSPECTION & ENFORCEMENT 255 ROCKVILLE PIKE, 3RD FLOOR ROCKVILLE, MD 20850 By email: <a href="mailto:mark.ethedge@mcpsmd.net">mark.ethedge@mcpsmd.net</a>
MR. GISA SCHWARTZ DMCA 100 MARLYND AVENUE 4TH FLOOR ROCKVILLE, MD 20850 By email: <a href="mailto:gisa.schwartz@dmca.org">gisa.schwartz@dmca.org</a>	MR. ATQ PANUSHI MCDPS-PORT-OF-WAIT PERMITTING 733 ROCKVILLE PIKE, 3RD FLOOR ROCKVILLE, MD 20850 By email: <a href="mailto:atq.panushi@mcpsmd.net">atq.panushi@mcpsmd.net</a>	MR. ERAN NOTATON MCDPS-SITE PLAN DEVELOPMENT 255 ROCKVILLE PIKE, 3RD FLOOR ROCKVILLE, MD 20850 By email: <a href="mailto:eran.notaton@mcpsmd.net">eran.notaton@mcpsmd.net</a>
MR. MARK BEATT MCDPS-ROWING 255 ROCKVILLE PIKE, 3RD FLOOR ROCKVILLE, MD 20850 By email: <a href="mailto:mark.beatt@mcpsmd.net">mark.beatt@mcpsmd.net</a>	MR. CHRISTOPHER CONTRERAS MCDPS-LAND DEVELOPMENT 255 ROCKVILLE PIKE, 3RD FLOOR ROCKVILLE, MD 20850 By email: <a href="mailto:christopher.contreras@mcpsmd.net">christopher.contreras@mcpsmd.net</a>	MR. GENE VON GERTEN MCDPS-WELL & SEPTIC 255 ROCKVILLE PIKE, 3RD FLOOR ROCKVILLE, MD 20850 By email: <a href="mailto:gene.vongerten@mcpsmd.net">gene.vongerten@mcpsmd.net</a>
MR. CHRISTOPHER ANDERSON MCDPS-MANAGER, DMCA 100 MARLYND AVENUE, 4TH FLOOR ROCKVILLE, MD 20850 By email: <a href="mailto:christopher.anderson@dmca.org">christopher.anderson@dmca.org</a>	MR. ALAN SOUTP MCDPS-WATER & WASTEWATER POLICY 255 ROCKVILLE PIKE, SUITE 120 ROCKVILLE, MD 20850 By email: <a href="mailto:alan.soutp@mcpsmd.net">alan.soutp@mcpsmd.net</a>	Jane Przygodzi Softex 2 Research Place Suite 100 Rockville, MD 20850
Joshua Dworzen 11413 Palatine Drive Potomac, MD 20854	Jason Dugan Frederick Road Senior 4% Owner 8245 Boone Blvd Suite 640 McLean, VA 22102	JOY KLINE MILLER, MILLER & CANBY 200-B MONROE STREET ROCKVILLE, MD 20850
Jane Przygodzi Softex 2 Research Place Suite 100 Rockville, MD 20850	Mahmut Agbe Softex 2 Research Place Suite 100 Rockville, MD 20850	Sikh McGill 2 Research Place, Suite 100 Rockville, MD 20850
Jim Edmondson 8245 Boone Blvd, Suite 640 McLean, VA 22102	Jason Dugan 8245 Boone Blvd, Suite 640 McLean, VA 22102	Brett Ruby 8245 Boone Blvd, Suite 640 McLean, VA 22102
Ben Miller 8245 Boone Blvd, Suite 640 McLean, VA 22102	Terrillio Pasad 1100 Vermont Ave, NW, 6th Floor Washington, DC 20005	Somer Cross 1401 Rockville Pike, 4th Floor Rockville, MD 20850

*Dan Lamoy listed without address,  
[1 person listed /500 (no address)]*

Dan Lamoy

## NO Resolution Notice

- on the day was  
issued, NON  
Compliant / Section  
59.7.5.2.F.1 - 2.  
Parties of record NOT  
notified. Seneca Park  
North HOA, abutting-  
confronting at North,  
NOT notified (282  
home owners/R-90).  
Requested evidence of  
Notification on the  
day resolution issued.

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(App.11.9)

### Appendix (App.11.10): Timely Appeals Prevented - Enabling HARM

**NON compliant** Notice (Section 59.7.5.2.A to H); A. **NO** Newspaper Notice; B. **NO** Application Pre-Submittal Meeting, D. **NO** Application Notice; E. **NO** Hearing Notice; F. **NO** Resolution Notice - on the day a resolution or opinion is issued; G. **NO** Building Permit Sign Notice ...

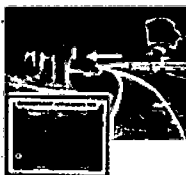
**TIMELY APPEALS** were **PREVENTED**: NO notification on the day decisions were issued that documents are available OZAH, Planning Board, DPS Permitting and websites; NO notification on the day decisions were issued that appeals must be submitted within 10 days of issue/notif. Appellants, impacted property owners requested **PROOF**/evidence of Notifications with date stamp.

#	NO Evidence of Notification / NON Compliant	5-21-2020 Hearing	7/1/2020 HE Decision	6-...-2021 PB Hearing	6-17-2021 PB 4 Story/Less	Permit 287113 SC 4-22-2022	Permit 955491 B 5-12-2022	BOA 11-4-2022	85 dBA Waiver 9/19/2022	85 dBA Waiver Request 1-1-2022
0.1	Notification on the Day Decision Was Made	No Evidence	No Evidence	No Evidence	No Evidence	No Evidence	No Evidence	No	No	No
0.2	Notif - on the Day Decision Made Doc Available/office, web	No Evidence	No Evidence	No Evidence	No Evidence	No Evidence	No Evidence	No	No	No
0.3	Notif-the Day Decision Was Made Appeals within 10 Days -	No Evidence	No Evidence	No Evidence	No Evidence	No Evidence	No Evidence	No	Appeal Not Permitted	

(App.11.10)

Agencies have "no power of suspending Laws or execution of Laws". Laws require "government officials perform duties legally obligated to perform". Courts are required to "maintain independence and integrity of the legal system", to ensure due process, protection of rights and equal justice under the law. *See U.S. Const. amend.1, 5, 14; Maryland Const. Art. 6; 9; 19, 33.* Non compliance identified before OZAH report 7-1-2020 (~2 years before work/CU 20-02 /19105 Frederick).

## Appendix (App.11.11): BOA Decisions & Circuit Court Deference Flawed



NON compliant with Notice Spec's re Pre-application meeting, Hearings, Resolutions (Section 59.7.5.2.A to H); Residents in the R-90 communities PREVENTED to testify re CU 20-02; see 5-18-2020 letter.

Joseph Gothard (0.0004%)  
property owners walked by  
sign; NOT Notified of  
Hearings, Decisions

NOT Notified on day of  
Decision; PREVENTED to  
appeal timely

BOA opinion is NOT based  
on evidence of Notification  
from Owner LLC, County

Circuit Court affirmed w/o  
scrutiny of evidence  
/deference to BOA

Kristina Gothard, Jose & Rina Cabrera,  
Dan Lamoy, Tom & Monique Witz NOT  
Notified of Hearings, Decisions

PREVENTED to testify, party of record

NOT Notified on day of Decision;  
PREVENTED to appeal timely

BOA opinion is NOT based on evidence of Notification

☒ BOA forced appellants to join Gothard  
et al. —dismissed their case without  
legal base / UNDUE influence & ex-  
parte communication; Circuit Court  
affirmed BOA, claiming deference to  
BOA / not compliant with rules

Signatures provided / Md. Rule 1-311 (c), to  
maintain appellant standing, not interested party

Candice Clough , Danilo &  
Anabella Molieri NOT Notified of  
Hearings, Decisions; PREVENTED  
to testify & be party of record

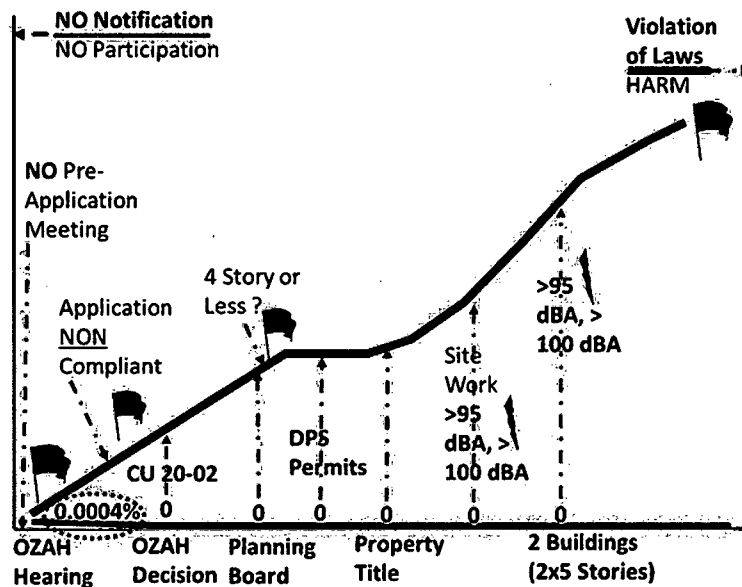
NOT Notified on day of Decision;  
PREVENTED to appeal timely

Many property owners  
impacted, as stated by  
C. Clough, D. Molieri,  
T&M Witz, H. Escabi  
at the Board of  
Appeals on 9-7-2022,  
9-21-2022, 10-12-2022.

(App.11.11)

Agencies have "no power of suspending Laws or execution of Laws". Laws require "government officials perform duties legally obligated to perform". Courts are required to "maintain independence and integrity of the legal system", to ensure due process, protection of rights and equal justice under the law. See *U.S. Const. amend. 1, 5, 14*; *Maryland Const. Art. 6; 9; 19, 33*. Non compliance identified before OZAH report 7-1-2020 (~2 years before work/CU 20-02 /19105 Frederick).

**Appendix (App.11.12): Owner, County, Attorneys Prevented Timely Appeal-NON Compliant 59.7.5.2; 59.7.3.1.E.1**



**NON** Compliant with Notice (Section 59.7.5.2.A-H); Section 59.7.3.1.E.1. Necessary Findings. See 5-18-2020 request for compliance. HARM increased with Violations of Laws / OZAH approval of NON-compliant conditional use CU 20-02, Planning Board approval of NON-compliant 4 story or less building, DPS approval of NON-compliant permits with NO protection of residents, BOA-DPS/DEP NO inspection - NO audit - NO enforcement / two 5 story buildings.

(App.11.12)

**Appendix (App.12.1): NON Compliant/Conditional Use Laws; Examiner Report Did NOT Include 59.7.3.1.E.1 NO HARM, R-90 Compatibility**

<p>OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS          Stella B. Werner Council Office Building          100 Maryland Avenue, Suite 200          Rockville, Maryland 20850          (240) 777-6660</p>		<p><b>III. FINDINGS OF FACT AND CONCLUSIONS OF LAW.....</b></p> <p><b>A. Necessary Findings (General Standards, Section 59.7.3.1.E)</b></p> <p>1. Substantial Conformance with the Master Plan.....</p> <p>2. Adequate Public Services and Facilities.....</p> <p>3. No Undue Harm from Non-Inherent Adverse Effects.....</p> <p>4. Compatibility with the Neighborhood.....</p>
<p><b>IN THE MATTER OF:</b>  <b>EDMONSON &amp; GALLAGHER PROPERTY</b>  <b>SERVICES, LLC</b>          Applicant</p> <p>James Edmonson          Jane Przygocki          Michael A. Wieneck, Jr.          Mahmut Agba          Daniel Park          Nicole White</p> <p>For the Application          Jody Kline, Esquire          Attorney for the Applicant</p> <p>Joseph Gothard          Opposing the Application</p> <p>Before: Lynn Robeson Hannan, Hearing Examiner</p> <p><b>Opposing the Application</b></p>	<p><b>Applicant</b>  <b>Reps. Only</b></p>	<p><b>III. ...Conclusions of Law; E. Necessary Findings</b></p> <p>1. To approve a conditional use application, the Examiner <u>must find</u>...g. will <u>not cause undue harm</u> to the neighborhood .. i. the (property) use, peaceful enjoyment, value or development potential of abutting and confronting properties or neighborhood; ii. traffic, noise, odors, dust, illumination, lack of parking; or iii. the health, safety, or welfare of neighboring residents, visitors, or employees. <b>NON Compliant / Section 59.7.3.1.E.1.</b></p>
<p>HEARING EXAMINER'S REPORT AND DECISION</p>		<p>(App.12.1)</p>

Agencies have "no power of suspending Laws or execution of Laws". Laws require "government officials perform duties legally obligated to perform". Courts are required to "maintain independence and integrity of the legal system", to ensure due process, protection of rights, and equal justice under the law. See *U.S. Const. amend.1, 5, 14; Maryland Const. Art. 6; 9, 19, 33*. Non compliance identified before OZAH report 7-1-2020 (~2 years before work/CU 20-02 /19105 Frederick).

**Appendix (App.12.1.A): NON Compliant with Section 59.7.3.1.  
Conditional Use, NO HARM; Examiner's Report is NOT Compliant**

<div> <div>Conclusion</div> <div> <div>Law</div> <div>Facts</div> </div> </div>	B. Application: map 1,000 ft; list of abutting & confronting property owners, HOA ... 1/2 mile; initial application for approval of completeness by Planning Director; final <u>applic.</u> to Hearing Examiner; Public notice required in Section 7.5	C. Hearing Date: public hearing <120 days after the date an application was accepted	D. Review and Recommendation: Planning Director - Board report to Hearing Examiner; publish report <10 days before public hearing.
	NON Compliant notice / Section 7.5; NON Compliant Notification List - NOT approved for completeness; NO 1,000 ft map	5-11-2020 (2/12/2020 <u>Applic.</u> ) OZAH Report, at 3	4-23-2020; OZAH Report, at 3
	No evidence of compliance		NO Evidence
	NON Compliant		NON Compliant

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(App.12.1.A)  
Agencies have "no power of suspending Laws or execution of Laws". Laws require "government officials perform duties that they are legally obligated to perform". Courts are required to ...ensure due process, protection of rights, equal justice. *See Maryland Const. Art. 6; 9; 33.* Non compliance was identified before OZAH report 7-1-2020 (~2 years before work/CU20-02

**Appendix (App.12.1.B): NON Compliant with Section 59.7.3.1.  
Conditional Use, NO HARM; Examiner's Report is NOT Compliant**

Conclusion	Law	E. Necessary Findings: E.1. <u>To approve CU application, the Hearing Examiner must find ...compatibility ... not affect the area adversely ...</u>	E. Necessary Findings: E.1.g. will <u>not cause harm</u> to the neighborhood i. the <u>[property] use, peaceful enjoyment, value or dev. potential of abutting &amp; confronting properties or neighborhood;</u> ii. <u>traffic, noise, odors, dust, illumination, lack of parking; or</u> iii. the <u>health, safety, or welfare of residents, visitors, or employees;</u>
		FALSE necessary findings	Significant HARM to the neighborhood, abutting & confronting properties - in all categories specified by law.
	Facts	No evidence of compliance	Evidence of significant HARM
		NON Compliant	NON Compliant (App.12.1.B)

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Agencies have "no power of suspending Laws or execution of Laws". Laws require "government officials perform duties legally obligated to perform". Courts are required to "maintain independence and integrity of the legal system", to ensure due process, protection of rights, and equal justice under the law. *See U.S. Const. amend.1, 5, 14; Maryland Const. Art. 6; 9; 19, 33.* Non compliance identified before OZAH report 7-1-2020 (~2 years before work/CU 20-02 /19105 Frederick).

**Appendix (App.12.1.C): NON Compliant with Section 59.7.3.1.  
Conditional Use, NO HARM; Examiner's Report is NOT Compliant**

<div> <div>Conclusion</div> <div> <div>Law</div> <div>Facts</div> </div> </div>	E. Necessary Findings: E.2. Any structure to be constructed ...under CU ... <u>must be compatible with the residential neighborhood</u> ;	E. Necessary Findings: E.3. The fact that ...use satisfies all specific req. ...does not create a presumption that the use is compatible, is <u>not sufficient</u> ...CU approval.	F. Decision: F.1. Hearing Examiner ... report <30 days; may approve ...with conditions, or deny ....The <u>Examiner may supplement the specific requirements of this Chapter</u> with any other req. necessary to protect nearby properties and neighborhood.
	NOT Compatible	NOT sufficient to approve	NO HARM, COMPATIBILITY required by law; CU conditions do NOT protect .....
	NO evidence of compatibility	NO evidence /sufficient conditions to approve	Evidence of significant HARM; NO protection
	NON Compliant	NON Compliant	NON Compliant (App.12.1.C)

Agencies have "no power of suspending Laws or execution of Laws". Laws require "government officials perform duties legally obligated to perform". Courts are required to "maintain independence and integrity of the legal system", to ensure due process, protection of rights, and equal justice under the law. *See U.S. Const. amend.1, 5, 14; Maryland Const. Art. 6; 9; 19, 33.* Non compliance identified before OZAH report 7-1-2020 (~2 years before work/CU 20-02 /19105 Frederick).



**Appendix (App.12.1.D): NON Compliant with Section 59.7.3.1.  
Conditional Use, NO HARM; Examiner's Report is NOT Compliant**

<div>Conclusion</div> <div> <div>Law</div> <div>Facts</div> </div>	F. Decision F.2. Board of Appeals: a. If the Board is deciding the appeal, it <u>must make the necessary findings</u> under Section 7.3.1.E; c. The Board may <u>supplement</u> the specific req. of this Chapter with other req. necessary to protect nearby properties & neighborhood.	H.2. Conforming Permits: DPS <u>must not issue a permit, or use- and- occupancy permit for any building, for CU; a. until the Examiner or Board approves a CU; and b. unless building satisfies the approved cond. use.</u>
		Permits do NOT consider NO HARM, COMPATIBILITY required by law; (NO protection)
		Evidence of Significant HARM; NO protection for properties, neighborhood
		NON Compliant (App.12.1.D)

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Agencies have "no power of suspending Laws or execution of Laws". Laws require "government officials perform duties legally obligated to perform". Courts are required to "maintain independence and integrity of the legal system", to ensure due process, protection of rights, and equal justice under the law. *See U.S. Const. amend. 1, 5, 14; Maryland Const. Art. 6; 9, 19, 33.* Non compliance identified before OZAH report 7-1-2020 (~2 years before work/CU 20-02 /19105 Frederick).

**Appendix (App.12.1.E): NON Compliant with Section 59.7.3.1.  
Conditional Use, NO HARM; Examiner's Report is NOT Compliant**

<div>Conclusion</div> <div> <div>Law</div> <div>Facts</div> </div>	<div> <div>→</div> </div>	L. Compliance and Enforcement, L.1. <u>DPS and the Board of Appeals must establish a regular inspection for CU. DPS must perform inspections; ...inspect the premises of CU &lt;21 days after receiving complaint, or more promptly ... to determine the validity;</u>	L. Compliance and Enforcement, L.2. <u>If the inspection finds a violation of CU, DPS must direct the CU holder to correct the violation. .. DPS must file a report with the Board or the Examiner describing the violation, corrective action ordered by DPS, and time to correct.</u>
		NO regular inspection program. DPS did NOT inspect the premises of CU after complaints.	NO inspection reports to the Board or Examiner describing violations, corrective actions, time to correct.
		NO evidence of inspection program; NO evidence of inspections	NO evidence of inspection reports to Board, Examiner
		NON Compliant	NON Compliant (App.12.1.E)

Agencies have "no power of suspending Laws or execution of Laws". Laws require "government officials perform duties legally obligated to perform". Courts are required to "maintain independence and integrity of the legal system", to ensure due process, protection of rights, and equal justice under the law. *See U.S. Const. amend.1, 5, 14; Maryland Const. Art. 6; 9; 19, 33.* Non compliance identified before OZAH report 7-1-2020 (~2 years before work/CU 20-02 /19105 Frederick).

**Appendix (App.12.2): NON Compliant <4 Stories/59.7.3.1.E.1 NO HARM, R-90 Compatibility**

Planning Board Date	Planning Board Action	Approved Qty	Development Type
6/17/2021	ADOPTED	0	Resolution
6/17/2021	APPRVD W/ COND.	111	MF Apt/Condo-4 Stories or less

Development Review Search (mcatlas.org)



Sign: NON Compl.

4 Story, 6/17/2021

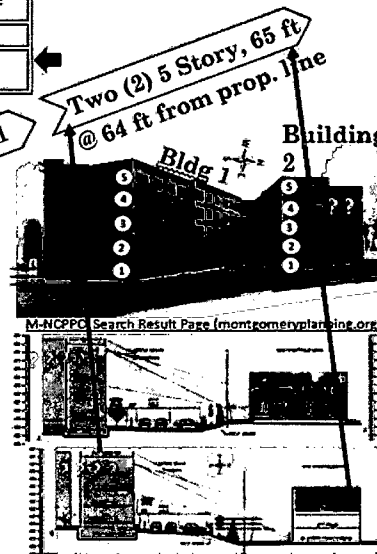
2 Story, 30 ft/R90 Zone

2 Story, 30 ft /R90 Zoning

C. Height	R90 Zoning	FactSheet.pdf (montgomeryplanning.org)
Principal Building (max)		
Measured to highest point of a flat roof	35'	35'
Measured to mean height between eaves and ridge of a gable, hip, mansard, or gambrel roof	30'	30'

<https://www.montgomeryplanning.org/development/development-menu/4/zoning-fact-sheet/>

Agencies have "no power of suspending Laws or execution of Laws". Laws require "government officials perform duties/legally obligated". Courts are required to "maintain independence and integrity of the legal system", ensure due process, protection of rights, equal justice/one rule of law, like cases should be treated alike [CU 20-02 & CU 20-05]. See *U.S. Const. amend. 1, 5, 14; Maryland Const. Art. 6; 9; 19, 33*. Non compliance identified before OZAH report 7-1-2020 (~2 years before work/CU20-02).

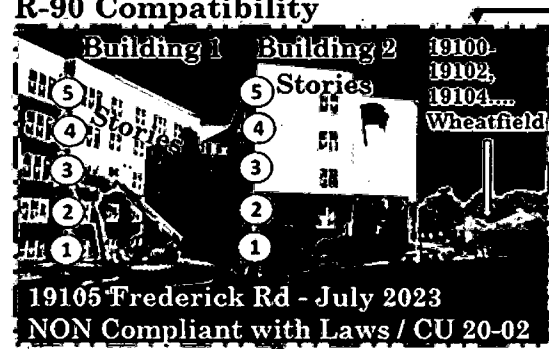

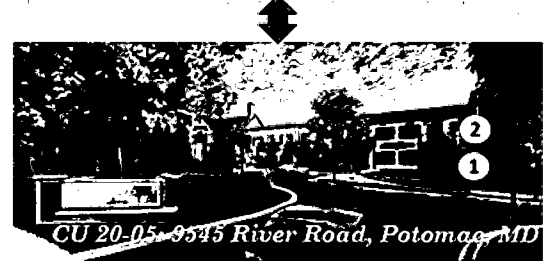


NON Compliant with Section 59.7.3.1.E.1 Conclusions of Law; E. Necessary Findings

1. To approve a CU application, the Examiner must find...g. will NOT cause undue harm to the neighborhood .. i. the (property) use, peaceful enjoyment, value or dev. potential of abutting & confronting properties or neighborhood; ii. traffic, noise, odors, dust, illumination, lack of parking; or iii. the health, safety, or welfare of neighboring residents, visitors, or employees.

(App.12.2)

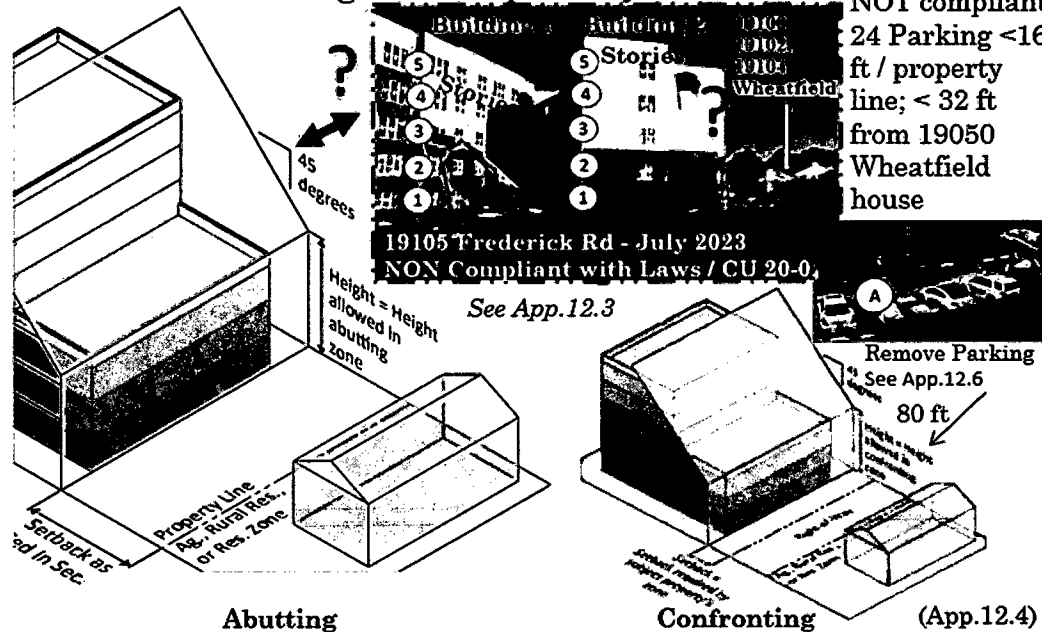
**Appendix (App.12.3): Construction NON Compliant/59.7.3.1.E.1 NO HARM, R-90 Compatibility**

 <p>Building 1    Building 2    19100-19102, 19104... Wheatfield</p> <p>5 Stories    5 Stories</p> <p>4 Stories    4 Stories</p> <p>3    3</p> <p>2    2</p> <p>1    1</p> <p>19105 Frederick Rd - July 2023 NON Compliant with Laws / CU 20-02</p>	<p>Compare <u>NON compliant</u> CU 20-02, 19105 Frederick Rd, Gaithersburg, MD with CU-20-05 at 9545 River Rd, Potomac, MD/Chapter 59 Zoning with building, setback, screening compatible with residential community; <u>the building is 2 story. Most parking is underground.</u> Surface parking is 16 cars; parking setback is 2 times the min. Fencing is 8 ft high on 3 sides towards residential community. (Initially, the building was 3 story on River Rd, stepped down to 1 &amp; 2 stories where closer to neighbors). See App.12.4.</p>	<p>CU 20-02 - and - CU 20-05 are both in Montgomery County, MD at 14.3 miles. Same OZAH Examiner involved in both.</p>  <p>CU 20-02</p> <p>CU 20-05 (App.12.3)</p>
 <p>CU 20-05, 9545 River Road, Potomac, MD</p>		

Agencies have "no power of suspending Laws or execution of Laws". Laws require "government officials perform duties/legally obligated". Courts are required to "maintain independence and integrity of the legal system", ensure due process, protection of rights, equal justice/one rule of law, like cases should be treated alike [CU 20-02 & CU 20-05]. See U.S. Const. amend.1, 5, 14; Maryland Const. Art. 6; 9; 19, 33. Non compliance identified before OZAH report 7-1-2020 (~2 years before work/CU20-02).

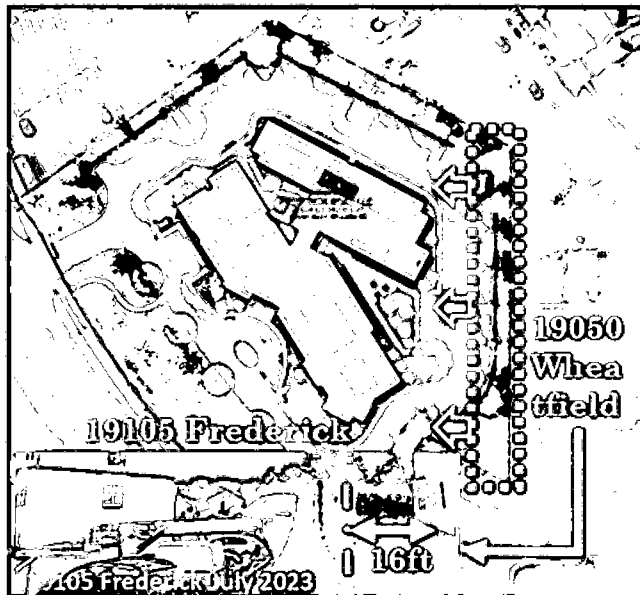
**Appendix (App.12.4): NON Compliant / 59.4.1.8.A Building Heights, Setback, 59.6.5.3.C.4-8 Screening**

59.4.1.8.A  
Building  
Heights:  
any  
structure  
may not  
protrude  
beyond a 45  
degree  
angular  
plane  
projecting  
over  
abutting  
property



Agencies have "no power of suspending Laws or execution of Laws". Laws require "government officials perform duties that they are legally obligated to perform". Courts are required to "...ensure due process, protection of rights, equal justice. See *Maryland Const. Art. 6; 9; 33*. Non compliance was identified before OZAH report 7-1-2020 (~2 years before work/CU20-02);

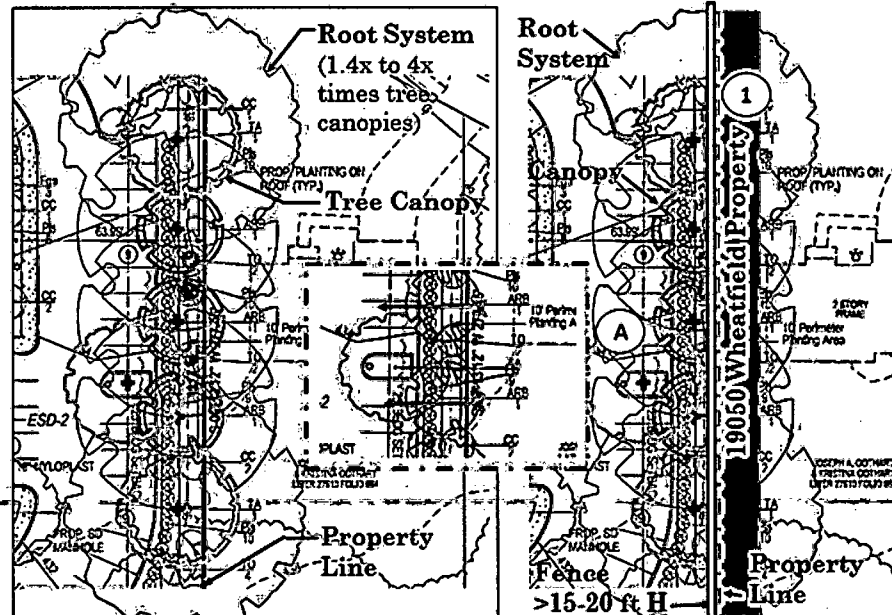
**Appendix (App.12.5): NON Compliant / MD Art. 19, US Const. 5, 14  
Property Rights; 59.7.3.1.E.1 NO HARM, 59.6.5.3.C.4-8 Screening; Parking**



19105 Frederick Rd shall remove & prevent encroachment on abutting properties (notice/2020). The root system of Bowhall Red Maple & American Linden is 1.5x to 4x the width of canopy of 25-50 feet, causing damage to home, utility pipes. All trees shall be 100% on on 19105 property/tree life (canopy, roots, at > 65ft from property line - NOT to encroach- ever). 19050 Wheatfield home shall have 16 ft property clear; NO 19105 tree canopy-roots; NO trees rubbing the home, enabling animals to climb the home; NO 19105 tree roots under property/life). (App.12.5)

Agencies have "no power of suspending Laws or execution of Laws". Laws require "government officials perform duties/law, legally". Courts are required to ensure due process, protection of rights, equal justice. See *U.S. Const. amend.1, 5, 14; Maryland Const. Art. 6; 9; 19, 33*. Non compliance was identified before OZAH report 7-1-2020 (~2 years before work/CU20-02).

**App.12.5.A: NON Compliant / MD Art. 19, US Const. 5, 14 Property Rights;  
59.7.3.1.E.1 NO HARM; 59.6.5.3.C.4-8 Screening**



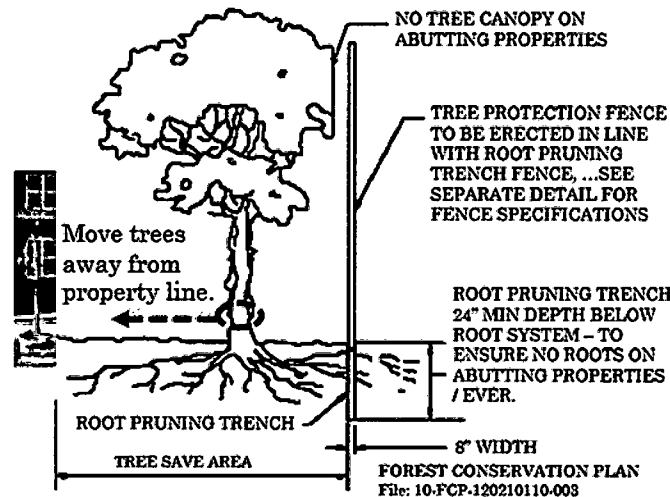
Tree canopies, root systems shall be 100% on 19105 Frederick property (A) & fence; never to encroach on 19050 property (1).

(American Linden, Bowman Red Maple 25-50 feet tree canopies encroach on abutting properties enabling animals to damage homes, tree roots that grow 1.4x to 4x times the tree canopies damaging homes, utility pipes. .... American Arborvitae 10' Ht. Schipka Cherry Laurel 35' Ht, 5' OC (Arborvitae Crown Height 15 to 40 feet; Crown Width 10 to 20 feet; Schipka Cherry Laurel 10-15 ft H; 7-10 ft W)

(App.12.5.A)

Agencies have "no power of suspending Laws or execution of Laws". Laws require "government officials perform duties/law". Courts are required to ensure due process, protection of rights, equal justice. See U.S. Const. amend.1; 5; 14; Maryland Const. Art. 6; 9; 19, 33. Non compliance identified before OZAH report 7-1-2020 (~2 years before work/CU 20-02 /19105 Frederick).

**App.12.5.B: NON Compliant / Maryland Art. 19, US Const. 5, 14 Property Rights; 59.7.3.1.E.1 NO HARM, 59.6.5.3.C.4-8 Screening**



The root system of Bowhall Red Maple & American Linden is 1.5x to 4x the width of canopy of 25-50 feet, causing damage to home, utility pipes.



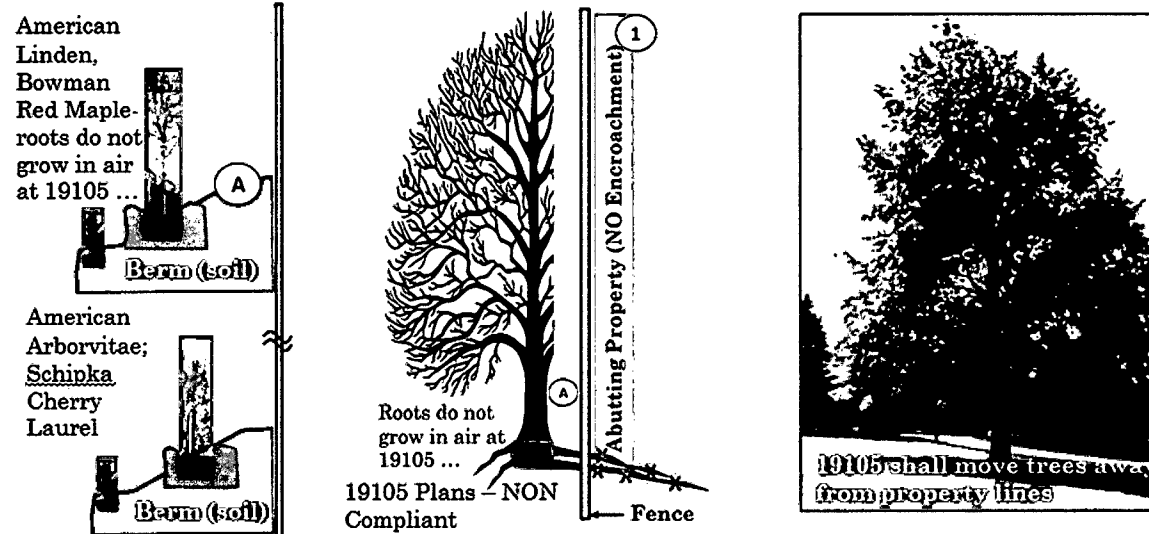
19105 shall remove & prevent encroachment on 19050 Wheatfield (notice/2020). Tree roots (2) & canopies shall NOT grow past property line (1)/ever. Move trees away from property line. NON compliant screening (3).

(App.12.5.B)

Agencies have "no power of suspending Laws or execution of Laws". Laws require "government officials perform duties/law". Courts are required to ensure due process, protection of rights, equal justice. See *U.S. Const. amend. 1, 5, 14*; *Maryland Const. Art. 6; 9; 19, 33*. Non compliance identified before OZAH report 7-1-2020 (~2 years before work/CU 20-02 /19105 Frederick).



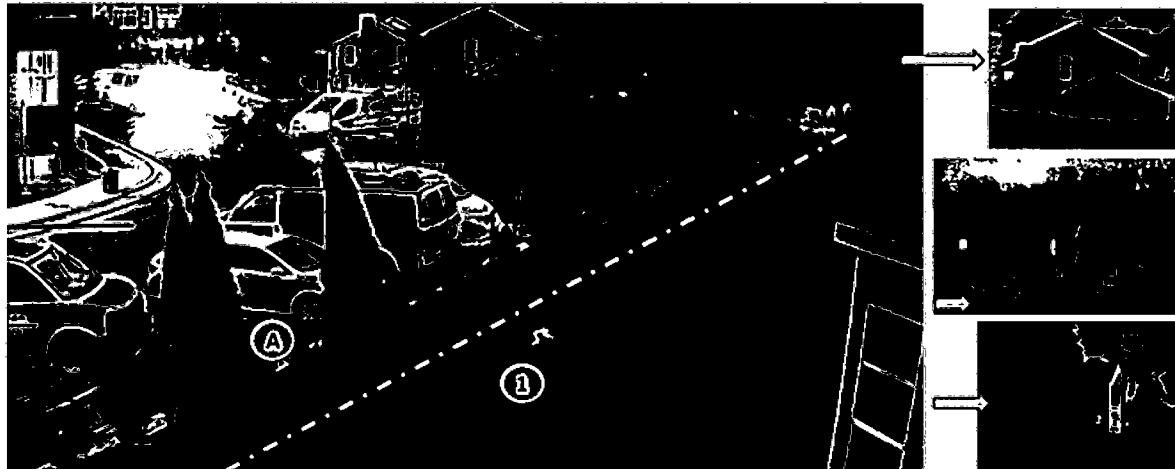
**App.12.5.C: NON Compliant / MD Art. 19, US Const. 5, 14 Property Rights;  
59.7.3.1.E.1 NO HARM; 59.6.5.3.C.4-8 Screening; 59.6.2.4.B Parking**



American Linden, Bowhall Red Maple 25-50 feet tree canopies, root system (A) shall never encroach on abutting properties (1), never enable animals to damage homes; tree roots that grow 1.4x to 4x times tree canopies shall never damage homes, utility pipes. (App.12.5.C)

Agencies have "no power of suspending Laws or execution of Laws". Laws require "government officials perform duties/law". Courts are required to ensure due process, protection of rights, equal justice. See U.S. Const. amend.1, 5, 14; Maryland Const. Art. 6; 9; 19, 33. Non compliance identified before OZAH report 7-1-2020 (~2 years before work/CU 20-02 /19105 Frederick).

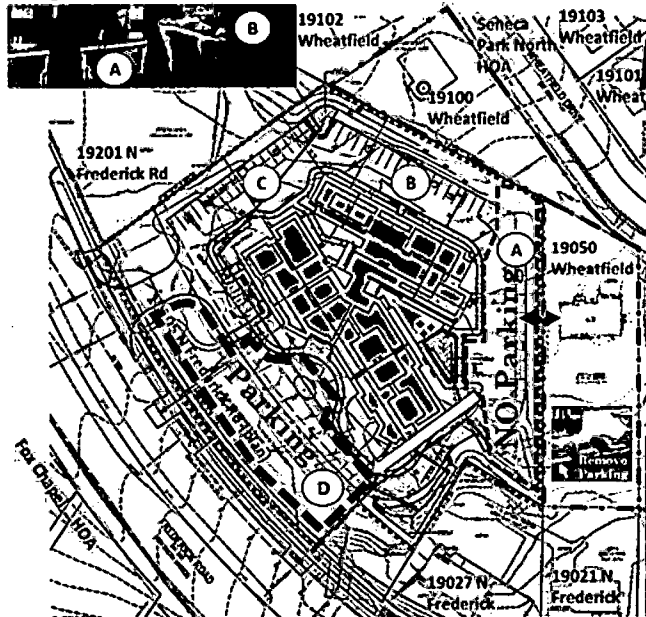
**App.12.5.D: NON Compliant / MD Art. 19, US Const. 5, 14 Property Rights;  
59.7.3.1.E.1 NO HARM; 59.6.5.3.C.4-8 Screening; 59.6.2.4.B Parking**



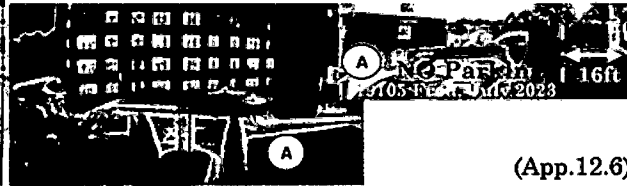
Move NON Compliant parking causing disturbance, pollution from area (A) to area (1) shown on App.12.6. NON Compliant screening enables disturbance. Prevent violation of property rights, as tree canopies and root systems encroach on abutting properties (1), damaging homes, utility pipes. 19105 Frederick shall remove parking (A) near abutting properties, provide > min 15-20 ft H fence around the property, reduce glare from blinding site lights and windows (all window drapes, blinds shall be closed). (App.12.5.D)

Agencies have "no power of suspending Laws or execution of Laws". Laws require "government officials perform duties/law". Courts are required to ensure due process, protection of rights, equal justice. See *U.S. Const. amend.1, 5, 14*; *Maryland Const. Art. 6; 9; 19, 33*. Non compliance identified before OZAH report 7-1-2020 (~2 years before work/CU 20-02 /19105 Frederick).

**Appendix (App.12.6): NON Compliant / MD Art. 19, US Const. 5, 14 Property Rights; 59.7.3.1.E.1 NO HARM, 59.6.5.3.C.4-8 Screening; Parking; Bioretent.**



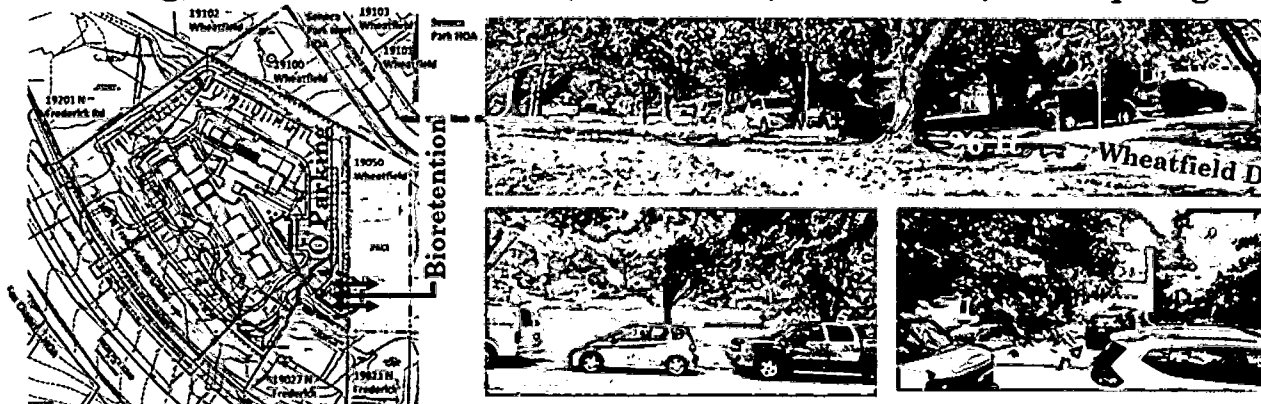
Notice/2020: 19105 shall remove & prevent encroachment on 19050 Wheatfield. **(16 ft clear/home. NO tree canopy-roots/ever)**. NO parking near home (A) - move parking to (D); NO pollution, disturbance, pests, rodents, insect infestation. Eliminate glare from lights in area (A) (B)/all areas, causing hazardous traffic & parking conditions. Use blinds for all windows; ensure blinds are closed at all times.



(App.12.6)

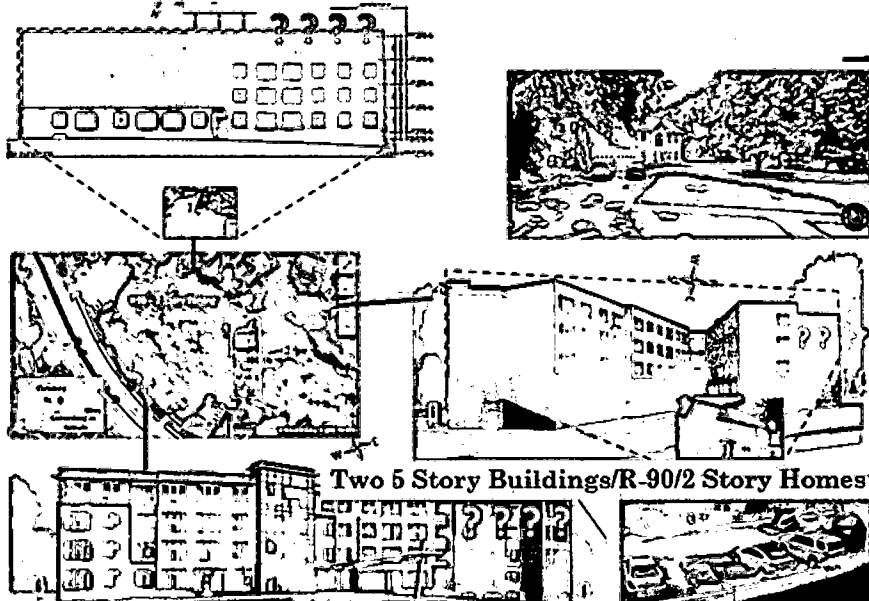
Agencies have "no power of suspending Laws or execution of Laws". Laws require "government officials perform duties/law". Courts are required to ensure due process, protection of rights, equal justice. See U.S. Const. amend.1, 5, 14; Maryland Const. Art. 6; 9; 19, 33. Non compliance identified before OZAH report 7-1-2020 (~2 years before work/CU 20-02 /19105 Frederick).

**Appendix (App.12.7): NON Compliant /59.6.2.4.B Parking; 59.6.5.3.C.4-8 Screening; 59.7.3.1.E.1 NO HARM, MD Art. 19, US Const. 5, 14 Prop. Rights**



**NON Compliant Parking:** 19105 Frederick shall provide parking for residents, employees, visitors (56 parking/111 units; 24 parking at <32 ft from 19050 Wheatfield house, causing pollution, disturbance). Most independent senior residents will drive (See OZAH Examiners report, C.2.b; Edmonson testimony). If residents, visitors park on 26 feet wide Wheatfield Drive, it will result in dangerous resident ingress – egress/Seneca Park North HOA (282 homes). Requested fencing around 19105 Frederick Rd site to reduce disturbance, pollution, trespassing, HARM. (App.12.7)

**Appendix (App.12.8): NON Compliant / Parking, 59.6.5.3.C.4-8 Screening;  
59.7.3.1.E.1 NO HARM, MD Art. 19, US Const. 5, 14 Property Rights**



Two 5 Story Buildings/R-90/2 Story Homes

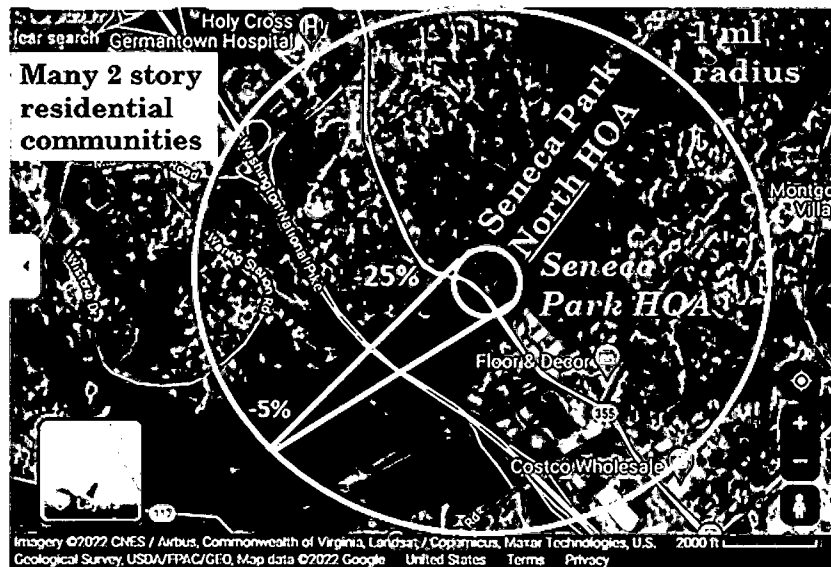
**Trees 20-70 years/NON compliant screening, parking**

Agencies have "no power of suspending Laws or execution of Laws". Laws require "government officials perform duties/law". Courts are required to ensure due process, protection of rights, equal justice. See *U.S. Const. amend.1, 5, 14; Maryland Const. Art. 6; 9; 19, 33*. Non compliance identified before OZAH report 7-1-2020 (~2 years before work/CU 20-02 /19105 Frederick).

**Construction of two 5 story buildings at 19105**

**Frederick Rd.** required est. removal of 700 trees, roots, 5000 trucks (2500 trucks of soil, 500 stone & concrete, 50 asphalt, 100 lumber, 700 material; moving 400 trucks of soil, stone, removing 350 trucks trash); producing concrete & patching, using powerful machines; power tools to cut metal, bricks, concrete, wood; 2.5 million nails. Davis & Miller Construction contracts & invoices can verify estimates. Many residents confirm noise >>75dBA Mo-Fr before 7 to after 5 PM, Saturday's. Thousands violations of laws. (App.12.8)

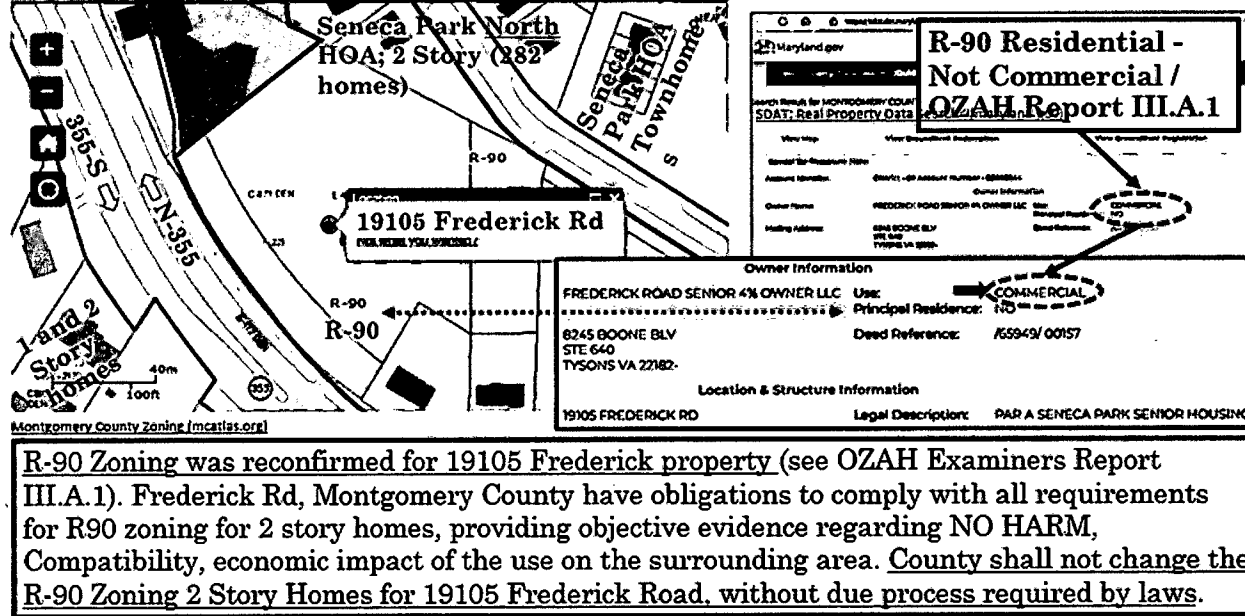
**Appendix (App.12.8.A): HARM from NON Compliant 19105  
Frederick / 59.7.3.1.E.1; NON Compat./R-90 Zoning**



Millions of USD, estimated HARM of NON Compliant two (2) 5 story housing units in R-90 zoning, built <64ft from 2 story homes (real estate agents; 19050 Wheatfield price reduction 25% if sold in <15 days, >30% after 90 days; 50% real estate investors; comparative market analysis [CMA] is based on 1 mile radius, also comparing with homes in similar communities/multiple listing service [MLS]). Seneca Park North HOA-abutting, confronting (282 homes), Seneca Park HOA (165 homes), Fox Chapel HOA

(App.12.8.A)  
Agencies have "no power of suspending Laws or execution of Laws". Laws require "government officials perform duties/law". Courts are required to ensure due process, protection of rights, equal justice. See *U.S. Const. amend.1, 5, 14; Maryland Const. Art. 6; 9; 19, 33*. Non compliance identified before OZAH report 7-1-2020 (~2 years before work/CU 20-02 /19105 Frederick).

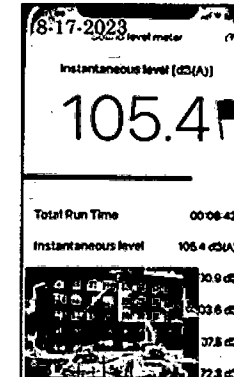
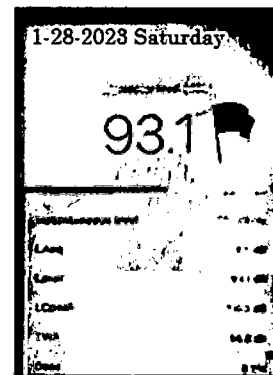
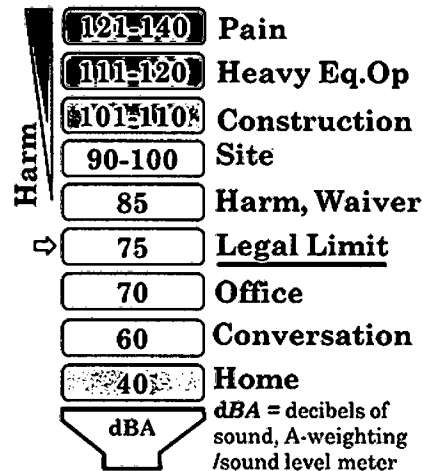
**Appendix (App.12.8.B): NON Compliant/R-90 Zoning; NO HARM, Compat**



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(App.12.8.B)  
 Agencies have "no power of suspending Laws or execution of Laws". Laws require "government officials perform duties/law". Courts are required to ensure due process, protection of rights, equal justice. *See U.S. Const. amend. 1, 5, 14; Maryland Const. Art. 6; 9; 19, 33.* Non compliance identified before OZAH report 7-1-2020 (~2 years before work/CU 20-02 /19105 Frederick).

**Appendix (App.12.9): NON Compliant/Sec. 59.7.3.1.E.1 NO HARM;  
Section 31B-5 & 31B-6 & Sec. 31B-12 Excessive Noise, Vibration**



Noise induced hearing loss is permanent & irreversible/NIOSH.

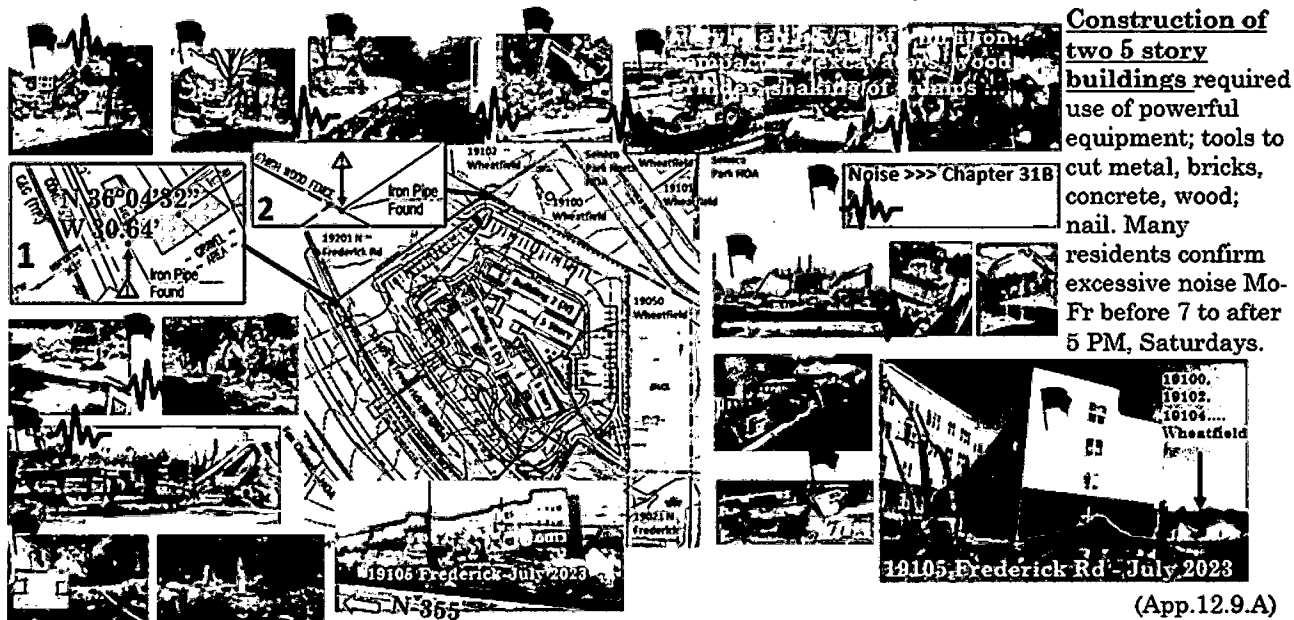
Noise Sources	dBA
Bulldozer, Grader	120
Loader	115
Compactor (vibration !)	110
Woodgrinder (vibration)	105
Excavator (medium.vib)	105

**19105 Frederick construction violated Sec. 31B-5 & 31B-6 Noise Law thousands of times. Noise levels measured are consistent with data from construction industry, Centers for Disease Control (CDC), National Institute for Occupational Safety & Health (NIOSH), Occupational Safety & Health Administration (OSHA).**

Agencies have "no power of suspending Laws or execution of Laws". Laws require "government officials perform duties/law". Courts are required to ensure due process, protection of rights, equal justice. See U.S. Const. amend.1, 5, 14; Maryland Const. Art. 6; 9; 19, 33. Non compliance identified before OZAH report 7-1-2020 (~2 years before work/CU 20-02 /19105 Frederick).



**Appendix (App.12.9.A): NON Compliant/Sec. 59.7.3.1.E.1 NO HARM;  
Section 31B-5 & 31B-6 & Sec. 31B-12 Excessive Noise, Vibration**



Construction of two 5 story buildings required use of powerful equipment; tools to cut metal, bricks, concrete, wood; nail. Many residents confirm excessive noise Mo-Fr before 7 to after 5 PM, Saturdays.

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(App.12.9.A)

Agencies have "no power of suspending Laws or execution of Laws". Laws require "government officials perform duties/law". Courts are required to ensure due process, protection of rights, equal justice. See U.S. Const. amend.1, 5, 14; Maryland Const. Art. 6; 9; 19, 33. Non compliance identified before OZAH report 7-1-2020 (~2 years before work/CU 20-02 /19105 Frederick).

**Appendix (App.12.9.B): NON Compliant/Sec. 59.7.3.1.E.1 NO HARM;  
Section 31B-5 & 31B-6 & Sec. 31B-12 Excessive Noise, Vibration**

<div> <div>Conclusion</div> <div> <div>Law</div> <div>Facts</div> <div> <div>Substantial Evidence</div> <div>NON Compliant</div> </div> </div> </div>	Sec. 31B-1.(a) ... excessive noise harms public health & welfare and impairs enjoyment of property.	Sec. 31B-5. Noise disturbance / daytime; (a) Max. allowable: 65 dBA [7 a.m-9 p.m./weekdays & 9 a.m-9 p.m w-ends & holidays; see Sec. 31B-6(a)]	Sec. 31B-5. Noise disturbance / nighttime; (a) Max: 55 dBA [before & after 7 a.m-9 p.m/weekdays & 9 a.m-9 p.m/w-ends & holidays; see Sec. 31B-6(a)]	Sec. 31B-6. (a) Max construction; 1.(A) 7 a.m-5 p.m/weekdays: (i) 75 dBA [w/o Noise Suppression Plan (NSP)]; 50 ft /noise from the source is greatest.
	Thousands of violations	Thousands of violations	Hundreds of violations	Thousands of violations
	Substantial Evidence	Substantial Evidence	Substantial Evidence	Substantial Evidence
	NON Compliant	NON Compliant	NON Compliant	NON Compliant

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(App.12.9.B)

Agencies have "no power of suspending Laws or execution of Laws". Laws require "government officials perform duties legally obligated to perform". Courts are required to "maintain independence and integrity of the legal system", to ensure due process, protection of rights and equal justice under the law. *See U.S. Const. amend.1, 5, 14; Maryland Const. Art. 6; 9; 19, 33.* Non compliance identified before OZAH report 7-1-2020 (~2 years before work/CU 20-02 /19105 Frederick).

**Appendix (App.12.9.C): NON Compliant/Sec. 59.7.3.1.E.1 NO HARM;  
Section 31B-5 & 31B-6 & Sec. 31B-12 Excessive Noise, Vibration**

<div> <div>Conclusion</div> <div>Facts</div> <div>Law</div> </div>	Sec. 31B-6. (a) Max construction; 1.(A) 7 a.m.-5 p.m. weekdays: (ii) 85 dBA w approved NSP/activity; 50 ft/noise from the source is greatest; separate offense in <u>add'n</u> to other violation	Sec. 31B-12. Enforcement & penalties; (a) DPS, DEP must enforce...; (b) Class A violation; each day a separate offense	Sec. 31B-12. (i) (1) A person responsible for a violation & management or supervision /construction site ... jointly & severally liable/violation
	Thousands of violations	DPS, DEP did NOT enforce	Davis, Miller, ...
	Substantial Evidence	Substantial Evidence	Substantial Evidence
	NON Compliant	NON Compliant	NON Compliant

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(App.12.9.C)

Agencies have "no power of suspending Laws or execution of Laws". Laws require "government officials perform duties legally obligated to perform". Courts are required to "maintain independence and integrity of the legal system", to ensure due process, protection of rights and equal justice under the law. *See U.S. Const. amend. 1, 5, 14; Maryland Const. Art. 6; 9; 19, 33.* Non compliance identified before OZAH report 7-1-2020 (~2 years before work/CU 20-02 /19105 Frederick).

**Appendix (App.12.9.D): NON Compliant/Sec. 59.7.3.1.E.1 NO HARM;  
Section 31B-5 & 31B-6 & Sec. 31B-12 Excessive Noise, Vibration**

<div> <div>Conclusion</div> <div> <div>Law</div> <div>Facts</div> </div> </div>	Sec. 31B-12. (i) (2) For recurring violations of Section 31B-6 on the same construction site, in addition to any other penalty under this Chapter, the Director may issue a stop work order, ...	Sec. 31B-12. (i) (3) This Chapter does not limit the Director's authority under Chapter 8 to revoke a permit or approval ....	Sec. 31B-12. (j) Any person aggrieved ...may file a civil action in any court with jurisdiction/person responsible for the alleged violation
	DPS, DEP did NOT enforce	DPS, DEP did NOT enforce	See SCM-0042; ACM-0169; CV-44400
	Substantial Evidence	Substantial Evidence	Evidence in record
	NON Compliant	NON Compliant	19105 Frederick NON Compliant

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(App.12.9.D)

Agencies have "no power of suspending Laws or execution of Laws". Laws require "government officials perform duties legally obligated to perform". Courts are required to "maintain independence and integrity of the legal system", to ensure due process, protection of rights and equal justice under the law. *See U.S. Const. amend.1, 5, 14; Maryland Const. Art. 6; 9; 19, 33.* Non compliance identified before OZAH report 7-1-2020 (~2 years before work/CU 20-02 /19105 Frederick).

# Appendix (App.13.1): NON Compliant/U.S. Const. amend.1, 5, 14 Freedom of Speech, Due Process, Equal Protection; MD Const. Art. 9, 19: Ex-parte

June 27, 2002

Mr. Victor Salazar  
 Mr. Qing Niebo  
 Montgomery County Department of  
 Planning Services  
 2025 Route 202  
 Wheaton, Maryland 20902

Barbara Jay, Esq.  
 Montgomery County Board of Appeals  
 Suite B, Warner Council Office Building  
 100 Maryland Avenue  
 Rockville, Maryland 20850

Lynn Roberts Stevens, Esq.  
 Cary Johnson  
 Neta Johnson  
 Office of Testing and  
 Administrative Services  
 Suite B, Warner Council Office Building  
 100 Maryland Avenue  
 Rockville, Maryland 20850

Re: Millstone Senior Living Facility/Stone Park Senior Housing,  
 Conditional Use No. CU 20-02,  
 Preliminary Plan of Subdivision No. 1-20010010,  
 Correspondence Received from Joseph Gothard

Encls and Comments:

This letter is being sent on behalf of Frederick Road Senior 4th Class LLC, the  
 current owner of property located at 19100 Frederick Road, which is the subject of  
 Conditional Use No. CU 20-02 and Preliminary Plan of Subdivision No. 1-20010010. The  
 attached site plan, including you, or your agency, have been the address on  
 correspondence sent by Mr. Joseph Gothard and Lorraine Gothard of 19100 Frederick  
 Drive, Catonsville 21040 regarding concerns, objections and complaints about the  
 approvals granted to the owner about above and about the Owner's activities on the site  
 connected to implementation of these approvals.

**Owner Attorney to County ...**  
 you are receiving  
 correspondence from  
 Gothard expressing concerns,  
 complaints about approval of  
 CU & Owner activities...

June 27, 2002

Mr. Victor Salazar  
 Mr. Qing Niebo  
 Montgomery County Department of  
 Planning Services  
 2025 Route 202  
 Wheaton, Maryland 20902

Barbara Jay, Esq.  
 Montgomery County Board of Appeals  
 Suite B, Warner Council Office Building  
 100 Maryland Avenue  
 Rockville, Maryland 20850

Lynn Roberts Stevens, Esq.  
 Cary Johnson  
 Neta Johnson  
 Office of Testing and  
 Administrative Services  
 Suite B, Warner Council Office Building  
 100 Maryland Avenue  
 Rockville, Maryland 20850

Re: Millstone Senior Living Facility/Stone Park Senior Housing,  
 Conditional Use No. CU 20-02,  
 Preliminary Plan of Subdivision No. 1-20010010,  
 Correspondence Received from Joseph Gothard

Encls and Comments:

This letter is being sent on behalf of Frederick Road Senior 4th Class LLC, the  
 current owner of property located at 19100 Frederick Road, which is the subject of  
 Conditional Use No. CU 20-02 and Preliminary Plan of Subdivision No. 1-20010010. The  
 attached site plan, including you, or your agency, have been the address on  
 correspondence sent by Mr. Joseph Gothard and Lorraine Gothard of 19100 Frederick  
 Drive, Catonsville 21040 regarding concerns, objections and complaints about the  
 approvals granted to the owner about above and about the Owner's activities on the site  
 connected to implementation of these approvals.

**In the future, should you or your agency  
 receive any correspondence from Gothard  
 ...refer the Gothard's to the Owner ...**  
**(outcome=Laws suspended)** (App.13.1)

Agencies have "no power of suspending Laws or execution of Laws". Laws require "government officials perform duties/legally obligated". Courts are required to "maintain independence and integrity of the legal system", ensure due process, protection of rights, equal justice/one rule of law, like cases should be treated alike [CU 20-02 & CU 20-05]. See U.S. Const. amend.1, 5, 14; Maryland Const. Art. 6; 9; 19, 33. Non compliance identified before OZAH report 7-1-2020 (~2 years before work/CU20-02).

June 27, 2002

Mr. Victor Salazar  
 Mr. Qing Niebo  
 Montgomery County Department of  
 Planning Services  
 2025 Route 202  
 Wheaton, Maryland 20902

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Re: Millstone Senior Living Facility/Stone Park Senior Housing,  
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Encls and Comments:

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 Drive, Catonsville 21040 regarding concerns, objections and complaints about the  
 approvals granted to the owner about above and about the Owner's activities on the site  
 connected to implementation of these approvals.

**Appendix (App.13.1.A): NON Compliant/U.S. Const. amend.1, 5, 14 Freedom of Speech, Due Process, Equal Protection; MD Const. Art. 9, 19: Ex-parte**

<div> <div>Conclusion</div> <div> <div>Law</div> <div>Facts</div> </div> </div>	Maryland Const. Art. 6: ...all persons invested with Legislative or Executive powers of Government are Trustees of the Public, and, ... accountable for their conduct.	Maryland Const. Art. 9: ...no power of suspending Laws or the execution of Laws, unless by, or derived from the Legislature, ought to be exercised, or allowed.	Maryland Const. Art. 19: ... for any injury done to him .. or property, ought to have remedy by ...Law ...have justice and right, ....fully without any denial, .... delay, according to the Law
	NO Legislative or Executive accountability	Agencies, BOA, Court suspended laws, execution	HARM, property rights violations - NO justice/laws, delays
	Substantial evidence of NO response or corrective actions	See evidence re Sec. 59 Notice, CU; Sec. 31B, MD & US Consitution	Substantial Evidence
	NON Compliant	NON Compliant	NON Compliant

(App.13.1.A)

Agencies have "no power of suspending Laws or execution of Laws". Laws require "government officials perform duties that they are legally obligated to perform". Courts are required to ...ensure due process, protection of rights, equal justice. See *Maryland Const. Art. 6; 9; 33*. Non-compliance identified before work at 19105 N. Frederick / CU 20-02.

**Appendix (App.13.1.B): NON Compliant/U.S. Const. amend.1, 5, 14 Freedom of Speech, Due Process, Equal Protection; MD Const. Art. 9, 19: Ex-parte**

<div> <div>Conclusion</div> <div> <div>Law</div> <div>Facts</div> </div> </div>	Maryland Const. Art 23: ... The right of trial by Jury .. in civil proceedings in ....Courts, where the amount in controversy exceeds ..five thousand dollars, shall be ...preserved.	Maryland Const. Art. 33: ....the independency and uprightness of Judges are essential to the impartial administration of Justice, and a great security to the rights and liberties of the People.	Maryland Const. Art. 45: This enumeration of Rights shall not be construed to impair or deny others retained by the People.
	Requested trial by jury	NO independent, impartial administration of justice; NO security of rights	
		Substantial Evidence (incl ex parte com)	
	NON Compliant	NON Compliant	NON Compliant

178

(App.13.1.B)  
Agencies have "no power of suspending Laws or execution of Laws". Laws require "government officials perform duties/legally obligated". Courts are required to "maintain independence and integrity of the legal system", ensure due process, protection of rights, equal justice/one rule of law, like cases should be treated alike [CU 20-02 & CU 20-05]. See U.S. Const. amend.1, 5, 14; Maryland Const. Art. 6; 9; 19, 33. Non compliance identified before OZAH report 7-1-2020 (~2 years before work/CU20-02).

**Appendix (App.13.1.C): NON Compliant/U.S. Const. amend.1, 5, 14 Freedom of Speech, Due Process, Equal Protection; MD Const. Art. 9, 19: Ex-parte**

<div> <div>Conclusion</div> <div> <div>Facts</div> <div>Law</div> </div> </div>	U.S. Const. amend. 1: ...freedom of speech, or ...right ... to petition the Government for a redress of grievances	U.S. Const. amend. 5: No person shall be ..deprived of life, liberty, or property, without due process of law; nor shall private property be taken...without just compensation	U.S. Const. amend. 6: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury .....
	Government, Attorneys violated law	Encroachment, trespassing - violation of property rights; due process	See Maryland <u>Constit.</u> Art. 9, 19
	Substantial evidence	Substantial evidence	Substantial evidence of delays/continued violations of laws, increased HARM
	NON Compliant	NON Compliant	NON Compliant

(App.13.1.C)



**Appendix (App.13.1.D): NON Compliant/U.S. Const. amend.1, 5, 14 Freedom of Speech, Due Process, Equal Protection; MD Const. Art. 9, 19: Ex-parte**

<div> <div>Conclusion</div> <div> <div>Law</div> <div>Facts</div> </div> </div>	U.S. Const. amend. 7: In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved....	U.S. Const. amend. 9: The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.	U.S. Const. amend. 14: ...No State ...shall abridge the privileges or immunities of citizens ...; nor ... deprive any person of life, liberty, or property, without due process of law; nor deny ...equal protection of the laws.
	Requested trial by jury		Encroachment, trespassing - violation of property rights; due process, equal protection
			Substantial evidence
	NON Compliant	NON Compliant	NON Compliant

(App.13.1.D)

## Appendix (App.13.1.E): NON Compliant/U.S. Const. amend. 5, 14; Due Process, Equal Protection; Ex-parte Communication

Transcript of Hearing - Appeal of Godard - A-6765 October 12, 2022	31	Transcript of Hearing - Appeal of Godard - A-6765 October 12, 2022	32
<p>1 phrase. I mean, basically, it's all relative 2 to --</p> <p>3 MR. LAMOY: Well, then the -- well, we 4 all can kind of -- we all can read a building 5 permit and we all can count stories of how tall a 6 building is. Would you say that's pretty plain 7 and simple too.</p> <p>20 I did not know about this project until 21 I saw surveyors in my back yard. Shortly after 22 that, I was approached by the project manager for 23 Davis Construction. I misplaced his card, I 24 believe his first name was Tyler. And one of the 25 things he expressed to me that it was necessary to</p>		<p>1 give a \$200,000 political contribution to get this 2 project off the ground. I'm very naive to these 3 fundamentals of permits and getting projects off 4 the ground. Can you please explain?</p> <p>5 CHAIR PENTECOST: That is total hearsay. 6 I can't even begin --</p> <p>7 MR. LAMOY: Oh, no. Well I'd like --</p> <p>8 CHAIR PENTECOST: I can't even begin to 9 address it.</p> <p>10 MR. LAMOY: Well, I certainly didn't 11 make it up. I'm just repeating what he said.</p>	

Transcript for 10-12-2022 (parts not addressed/BOA, opinion): Lamoy: ...it was necessary to make \$200,000 political contribution to get this project off the ground. Chair Pentecost: That is total hearsay. I can't even begin to address it. Lamoy: Well, I certainly didn't make it up. I'm just repeating what he said (ref. PM, Davis Construction). Edmondson: ...this is Jim Edmondson. I can respond, that is absolutely, categorically untrue. Owner did NOT disclose >5% share & contributions with application; NON Compliant / Section 59.10.b-c. (App.13.1.E)

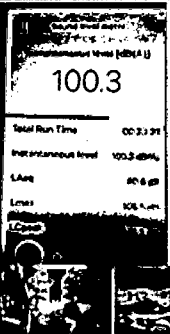
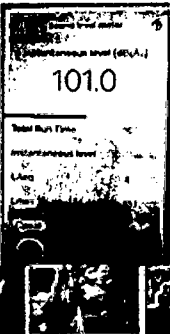
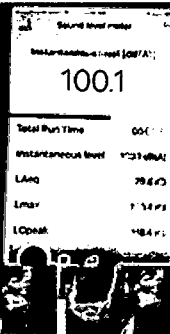
**Appendix (App.13.2): NON Compliant/Sec. 59.7.3.1.E.1 NO HARM; 31B-6; 31B-12 Excessive Noise, Vibration; Undue Influence, Ex-Parte Comm.**

**July 2022**

**MC311, PD, County Council**

**Noise levels exceeded Sec. 31B-6 limits of 75 dBA ...requested DEP Compliance to enforce, requested ...cease & desist .../stop work. ...reported to MC311, PD, County Council ...**

**Construction noise levels >95 dBA, >100 dBA were recorded on 8-18-2022 and 8-17-2022, NOT 60-70 dBA – there were no DEP reps in video – near the eq. creating HARM. The eq. produces >78 dBA traveling as witnessed by the Board 9-7-2022, significantly higher in relevant operating modes. The Board witnessed vibration/10-12-2022**

8-18-2022

Agencies have "no power of suspending Laws or execution of Laws". Laws require "government officials perform duties/legally obligated". Courts are required to "maintain independence and integrity of the legal system", ensure due process, protection of rights, equal justice/one rule of law, like cases should be treated alike [CU 20-02 & CU 20-05]. See *U.S. Const. amend. 1, 5, 14*; *Maryland Const. Art. 6, 9, 19, 33*. Non compliance identified before OZAH report 7-1-2020 (~2 years before work/CU20-02).

**Appendix (App.13.2.A): NON Compliant/Sec. 59.7.3.1.E.1 NO HARM; 31B-6; 31B-12 Excessive Noise, Vibration; U.S. Const. amend. 5, 14**

From: Judy Chin, JChin@mmocny.com  
 Sent: Tuesday, December 6, 2022 5:47 PM  
 To: Mr. Barbara Clark, BClark@montgomerycountymd.gov; Alina, Alina M. Alina Alina@montgomerycountymd.gov  
 Cc: Joseph Costello, JCostello@montgomerycountymd.gov; Kevin, Kevin Alford, KAlford@montgomerycountymd.gov  
 Subject: Appeal No. A-0750, Appeal of Joseph and Kristina Costello

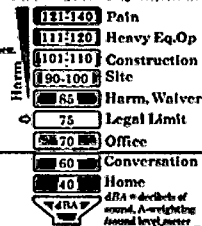
Mr. Jay, Despite your office's efforts to communicate to the Appellants in the above referenced case that the Board of Appeals does not handle appeals of alleged violations of the County Noise Ordinance, experience tells me that the Appellants will insist on an argument that construction activity on our client's adjacent property violates the County's Noise Ordinance which is another reason that Conditional Use 30-02 should be reviewed and Permit Nos. 955491 and 957113 should be withdrawn.

Though we should never get tomorrow to a discussion on the subject of noise, I would like the Board to be familiar with the determinations of the Department of Environmental Protection which as of August 19 had concluded, after conducting an site testing, that the DEP found "... no violation of the construction noise standards during my site, Steve Martin of MCODEP, measurements of the sound level.

While my client hopes that the Board does not delve into the subject of noise, if they do, I will not be present and will not be able to submit evidence from MCODEP to rebut the Appellants' allegations. Therefore, if the Board does express any interest in knowing more about sound being generated by construction at the proposed affordable seniors independent living facility, could you please provide a copy of the attached email report dated August 19, 2022 issued by Mr. Steve Martin of MCODEP.

Thank you for your attention to this request.

Judy & Kim  
 Attorney  
 MMONC  
 2204 Wilson Street • Bethesda, MD 20814  
 T: 301.722.5712 • F: 301.424.9073



**Construction noise levels >95 dBA, >100 dBA were recorded on 8-18-2022 and 8-17-2022, consistent with OSHA, NIOSH, CDC & industry data NOT 60-70 dBA – there were no DEP reps in video –near the eq. creating HARM. The eq. produces >78 dBA when traveling as witnessed by the Board on 9-7-2022, significantly higher in relevant operating modes. DEP reports are FALSE / undue influence of Owner, Attorney.**

**Owner Attorney to the Board of Appeals: ...we should never ... discuss construction noise ...the Board to be familiar with DEP 8-18-2022 testing ...found no violation of construction noise standards / S. Martin ...reference 8-19-2022 DEP report (based on FALSE data, information...).**

(App.13.2.A)

Agencies have "no power of suspending Laws or execution of Laws". Laws require "government officials perform duties/legally obligated". Courts are required to "maintain independence and integrity of the legal system", ensure due process, protection of rights, equal justice/one rule of law, like cases should be treated alike [CU 20-02 & CU 20-05]. See U.S. Const. amend.1, 5, 14; Maryland Const. Art. 6; 9; 19, 33. Non compliance identified before OZAH report 7-1-2020 (~2 years before work/CU20-02).

## Appendix (App.13.2.B): NON Compliant/Sec. 31B-6; 31B-12 Noise Control Laws, Property Rights, Due Process, Ex parte Comm.

ES Edwards, Stan <Stan.Edwards@montgomerycountymd.gov> Joseph E. Gotthardt <jgotthardt@montgomerycountymd.gov> 8/1/2022 4:03 PM  
 ED: Please continue DEP Compliance certifying 19305 Frederick construction site compliant with Chapter 31B (Noise Law, 75 cBA), case ...  
 North, Brian; Robert; Responding: Public Information/Compliance/Planning/Env. Safety, Victor; jgotthardt@montgomerycountymd.gov; Fullerton, Herman; Lyle; Johnson, Victor; rjohnson@montgomerycountymd.gov  
 C: Johnson, Victor; Lyle; Johnson, Victor; jgotthardt@montgomerycountymd.gov; jgotthardt@montgomerycountymd.gov  
 1 Follow up. Start by Monday, August 22, 2022. Due by Monday, August 22, 2022.  
 You replied to this message on 7/20/2022 10:21 PM.  
 This message is part of a threaded conversation. Click here to find all related messages or to open the original threaded message.  
 Click here to download pictures. To help protect your privacy, Outlook prevented automatic download of some pictures in this message.

19305 Frederick Rd Sound Data 8-13-20.pdf  
 8/1/22

Mr. Gotthardt,

Here are links to the County's [noise law](#) and [regulations](#) implementing the law. In addition, I have attached data from noise measurements compiled by Mr. Martin on August 16<sup>th</sup>. To date, no activities have been conducted under a noise waiver or noise suppression plan. Should requests be made for either of these, you will be notified and the relevant documents will be posted at <https://www.montgomerycountymd.gov/DEP/contact/noise-documents.html>. DEP will not be providing the other certifications you requested.

As stated previously, feel free to contact me at 240-377-7748 to discuss these issues.

Stan Edwards  
 Energy, Climate, & Compliance Division  
 Department of Environmental Protection  
 Montgomery County, MD  
 Office: 240-377-7748

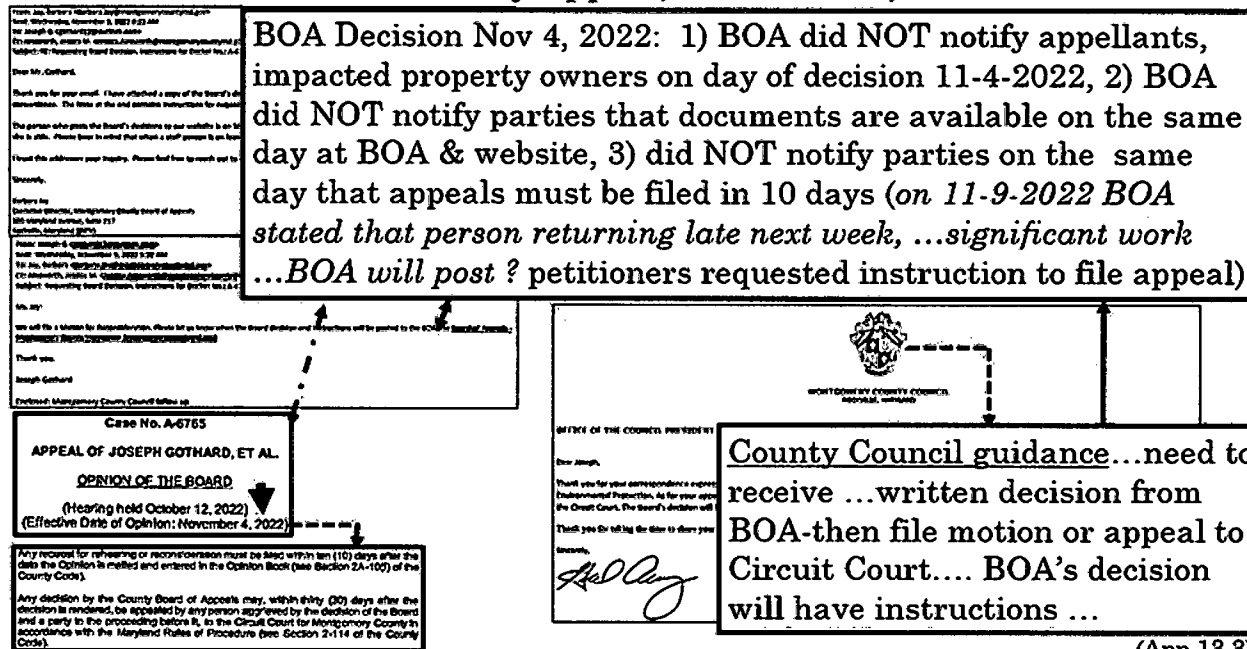
DEPARTMENT OF  
 ENVIRONMENTAL PROTECTION  
 10000 Rockville Pike  
 Rockville, MD 20850  
 240-377-7748

**DEP will NOT Certify Compliance with Noise Laws, Chapter 31B. DPS did NOT report violations to BOA, OZAH, Planning & did NOT withdraw permits /complaints & MC311 reports with evidence of NON compliance, HARM, Health Hazards. Board of Appeals (BOA), DPS Permits, DEP did NOT conduct inspections required/laws, or stop work to correct/laws.**

(App.13.2.B)

Agencies have "no power of suspending Laws or execution of Laws". Laws require "government officials perform duties/legally obligated". Courts are required to "maintain independence and integrity of the legal system", ensure due process, protection of rights, equal justice/one rule of law, like cases should be treated alike [CU 20-02 & CU 20-05]. See *U.S. Const. amend.1, 5, 14; Maryland Const. Art. 6; 9; 19, 33*. Non compliance identified before OZAH report 7-1-2020 (~2 years before work/CU20-02).

**Appendix (App.13.3): NON Compliant/NO Notification, On the Day of Decision-PREVENTED Timely Appeal, Due Process; Section 59.7.5.2.F.1-2**



**Appendix (App.13.4): NON Compliant/U.S. Const. amend. 5, 14;  
Maryland Const. Art. 33; Md. Rule 1-311; Equal Protection, Due Process**

From: Anne Gregorski <Anne.Gregorski@mdcourts.gov>  
Sent: Friday, March 31, 2023 9:26 AM  
To: Gothard12@outlook.com  
Cc: Leah Simmons <leah.simmons@mdcourts.gov>  
Subject: C-15-CV-22-004440 IN THE MATTER OF JOSEPH GOTTHARD

Dear Mr. Gothard:

Attached please find the Index and Case Summary Report I am the case to the Appellate Court of Maryland.

Please note that Jose Cabrera, Dan Lamoy, Tom R. Monique White, Ferri P. Savit, Fallahian are not parties in this case and therefore are not parties to the appeal. Please also note that Kristina Gothard has not signed the appeal and therefore is also not a party to the appeal.

If you have any questions, please do not hesitate to ask.

Best regards,  
Anne Gregorski  
Appeals Clerk  
Circuit Court for  
Montgomery County


**Undue influence by Owner, County on Board, Courts ...(sua sponte? –or– undue influence to Circuit Court 3-31-2023 –to– Appellate Court 4-6-2023)**

IN THE  
APPELLATE COURT  
OF MARYLAND  
No. 0169 SEPTEMBER TERM, 2023  
MDEC: ACM-REG-0169-2023  
Cir. Ct. No. C-15-CV-22-004440

Upon consideration of the foregoing, it is, this 6th day of April 2023, by the Appellate Court of Maryland,

**ORDERED**, on the Court's own initiative, that Joseph Gothard is the only proper appellant in the above-captioned case; and it is further

**ORDERED** that the remainder of the individuals named on the March 30 Notice of Appeal shall be designated as interested persons in the above-captioned case.

  
 CHIEF JUDGE'S SIGNATURE  
 APPEARS ON ORIGINAL ORDER  
 Gregory Wells, Chief Judge

Signatures were provided to the Circuit Court & Appellate Court in compliance with Md. Rule 1-311(c) to maintain standing for all appellants, not diminished to interested party. Motion submitted with Att.1-3.

(App.13.4)

**Appendix (App.13.5): NON Compliant / U.S. Const. amend. 5, 14 Due Process, Equal Protection; Ex-parte Communication**



1000 HUNTERS STREET, ROCKVILLE, MARYLAND 20850 P. 301.251.2122 F. 301.251.2123 WWW.MILLERMILLERCANBY.COM

JODY S. KUNE  
JSK@mmcllc.com

September 22, 2022

Montgomery County Board of Appeals  
Sheila B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850

Re: Appeal Case No. A-6765, Transmission of Order Confirming  
Transfer of Conditional Use to Frederick Road 4% Owner, LLC

As recently as yesterday morning, I spoke to you on behalf of our clients, Edmondson & Gallagher Property Services, LLC, holder of Special Exception Case No. CU 20-02, and Frederick Road 4% Owner, LLC, title owner of the property that is the subject of Conditional Use No. CU 20-02.

Frederick Road 4% Owner, LLC is a single-purpose entity created by Edmondson & Gallagher Property Services, LLC to manage the financing and development of the affordable senior residential facility which is the subject of Case No. CU 20-02. The principals of Edmondson & Gallagher Property Services, LLC are also principals of Frederick Road 4% Owner, LLC. In accordance with Rule 27.0 of the Rules of Procedures of the Office of Zoning Administrative Appeals, OZAH has confirmed the transfer of the Conditional Use from Edmondson & Gallagher Property Services, LLC to Frederick Road 4% Owner, LLC as evidenced by the attached Order issued by the Office of Zoning Administrative Hearings. Future involvement in Case No. A-6765 will be handled exclusively by Frederick Road 4% Owner, LLC which is now both the owner of the subject property and the holder of Conditional Use No. CU 20-02. We thought that the Board should be made aware of this transfer for your records.

Owner Attorney, to the Board of Appeals:

As recently as yesterday, I spoke to you on behalf of our clients, Edmondson & Gallagher Property Services, LLC, holder of Special Exception Case No. CU 20-02, and Frederick Road 4% Owner LLC, title owner of the property, that is subject of Conditional Use No. CU 20-02.

A copy of this information is being shared with Mr. & Mrs. Joseph Oshard and their co-appealists in Case No. A-6765.

Sincerely Yours,

MILLER, MILLER & CANBY

JODY KUNE

JSK:K

(App.13.5)

Agencies have "no power of suspending Laws or execution of Laws". Laws require "government officials perform duties/legals obligated". Courts are required to "maintain independence and integrity of the legal system", ensure due process, protection of rights, equal justice/one rule of law, like cases should be treated alike [CU 20-02 & CU 20-05]. See U.S. Const. amend. 1, 5, 14 Maryland Const. Art. 6; 9; 19, 33. Non compliance identified before OZAH report 7-1-2020 (~2 years before work/CU20-02).



Home owners were NOT notified; HOA for Seneca Park North not notified: 282 home owners (2 story homes, detached)

19105 Frederick

19050 Wheatfield

16ft

19105 Frederick

19050 Wheatfield

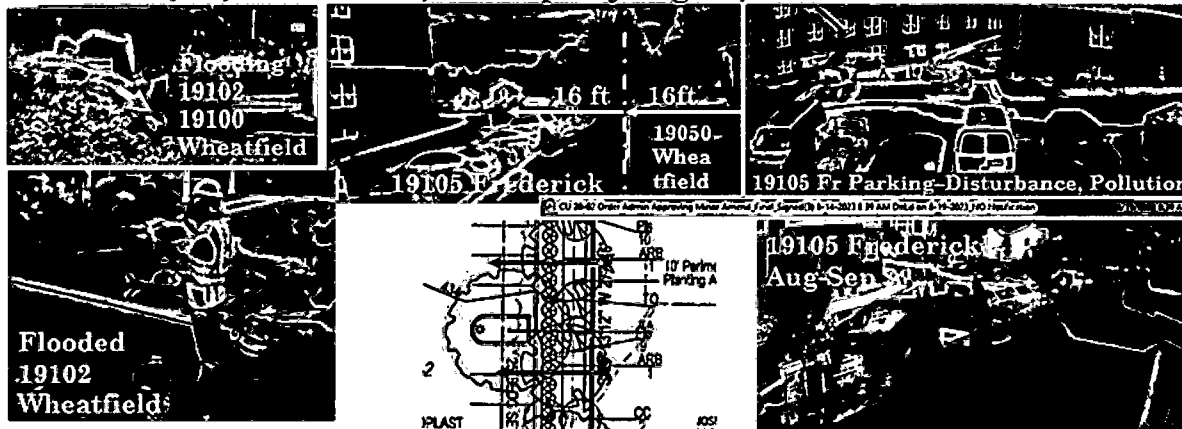
16ft

19105 Frederick-Aug 2023

**-(App.13.6)**

188

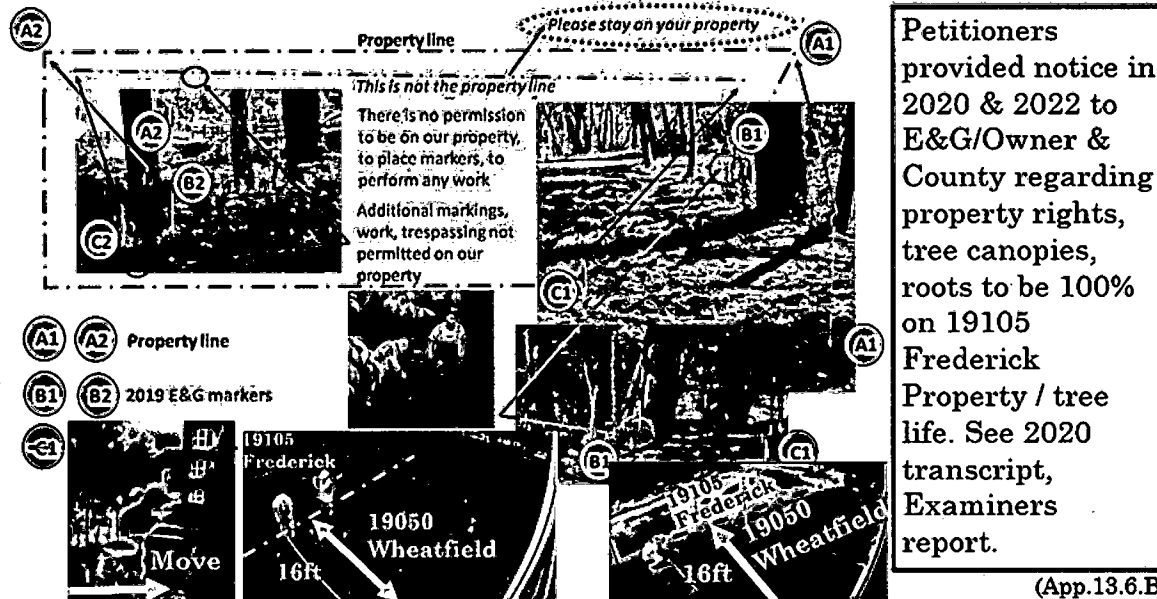
**Appendix (App.13.6.A): NON Compliant/Sec. 59.7.3.1.E.1 NO HARM;  
MD Art. 9, 19, US Const. 5, 14 Property Rights; Undue Influence**



NO Notification for CU 20-02 ORDER APPROVING ..AMENDMENT, issued 8-14-2023, found at CU 20-02 ORDER APPROVING ..AMENDMENT. Petitioners concerns 1) encroachment on property rights, 2) NO notification 5 days after day of decision [8-19-2023], 3) reduced timely appeal, 4) work was completed, before approval-bypassing Board, 5) HARM; 6) ORDER all NON compliant conditions to remain—in violation of laws. See notice re tree canopies, roots in 2020, violating laws (App.13.6.A)

Agencies have "no power of suspending Laws or execution of Laws". Laws require "government officials perform duties/legally obligated". Courts are required to "maintain independence and integrity of the legal system", ensure due process, protection of rights, equal justice/one rule of law, like cases should be treated alike [CU 20-02 & CU 20-05]. See U.S. Const. amend.1, 5, 14; Maryland Const. Art. 6; 9; 19, 33. Non compliance identified before OZAH report 7-1-2020 (~2 years before work/CU20-02).

**Appendix (App.13.6.B): NON Compliant/Sec. 59.7.3.1.E.1 NO HARM;  
MD Art. 9, 19, US Const. 5, 14 Property Rights / Encroachment**



Agencies have "no power of suspending Laws or execution of Laws". Laws require "government officials perform duties/legal obligated". Courts are required to "maintain independence and integrity of the legal system", ensure due process, protection of rights, equal justice/one rule of law, like cases should be treated alike [CU 20-02 & CU 20-05]. See *U.S. Const. amend.1, 5, 14; Maryland Const. Art. 6; 9; 19, 33*. Non compliance identified before OZAH report 7-1-2020 (~2 years before work/CU20-02).

## Appendix App.14

### CORRELATION OF FACTS-EVIDENCE OF NON COMPLIANCE

#### Evidence of NON Compliance with Constitutional Laws

The US Constitution, Maryland Constitution are clear. There is substantial evidence of NON compliance with Maryland Const. Art. 6; 9; 19; 23; 33; 45. There is substantial evidence of NON compliance with U.S. Const. amend. 1; 5; 6; 7; 9; 14. Conclusion based on laws: NON Compliant.

Agencies have "no power of suspending Laws or the execution of Laws". Laws require "government officials to perform duties that they are legally obligated to perform". Courts are required to "maintain independence and integrity of the legal system", to ensure due process, protection of rights and equal justice under the law. *See Maryland Const. Art. 6; Art. 9; Art. 33.* Violations of laws and due process were submitted to County before OZAH report and decision 7-1-2020 (~2 years before any work at 19105 N. Frederick Rd).

There is substantial evidence of 1) NO accountability at Montgomery County Government; 2) NON compliance with laws stating that agencies have "no power of suspending Laws or the execution of Laws"; and "government officials to perform duties that they are legally obligated to perform". *See Maryland Const. Art. 6; Art. 9; See App.13.1.A.* There is evidence that Courts did NOT comply with laws that require

"independency and uprightness of Judges are essential to the impartial administration of Justice, and a great security to the rights and liberties of the People". See *Maryland Const. Art. 33*; See *App.13.1.B*.

There is substantial evidence of NON compliance with "freedom of speech, or ...right ... to petition the Government for a redress of grievances". See *U.S. Const. amend. 1*; *App.13.1*; *App.13.1.C*; *App.13.1.E*; *Section 59.7.5.2.A-H*; *Section 59.7.3.1.B* to *59.7.3.1.E.1.g*; *59.7.3.1.E.2*; *59.7.3.1.F.1*; *Section 31B-5 & 31B-6 & Sec. 31B-12*.

There is substantial evidence of NON compliance with laws requiring "No person shall be ..deprived of life, liberty, or property, without due process of law; nor shall private property be taken..without just compensation" and "No State ...shall abridge the privileges or immunities of citizens .... nor ... deprive any person of life, liberty, or property, without due process of law; nor deny ...equal protection of the laws". Refer to evidence of encroachment, trespassing - violation of property rights; due process, equal protection. See *U.S. Const. amend. 5*; *U.S. Const. amend. 14*; *Maryland Const. Art. 19*; *App.13.1*; *App.13.2.A*; *App.13.2.B*; *App.13.4*; *App.13.5*; *App.13.6-6.A-6.B*. Petitioners requested speedy trial considering that Owners, County, Attorneys continued violations of constitutional, conditional use, noise control, notification laws and Board, Court due process that allowed construction of NON compliant two (2) 5 story buildings caused increased HARM, health hazards and therefore deserving protection.

*See U.S. Const. amend. 6; See App.11.12; App.12.1 - 12.9.D; App.11.1-11.12; App.13.1 to App.13.6.B.*

Agencies had jurisdiction to stop work: Planning & OZAH from step 1; DPS Permitting, DEP Compliance, BOA when violations of laws were reported. Agencies are required to apply laws as written, have "no power of suspending Laws or the execution of Laws". County Council, Executive had the authority to order review & start from step 1. All agency Directors, County Attorney, County Council, Executive, Inspector General were notified in 2020-2022. *See Maryland Const. Art. 9; 19; 33.; U.S. Const. amend. 5; amend. 14; See all Appendixes in record.*

Reasonable people would conclude that County, Owner, attorneys discriminated against abutting property owners considering ethnicity, accent, lack of knowledge of US laws protecting their families and property, including Gothard, Cabrera, Fallahian. *See U.S. Const. amend. 14; Maryland Const. Art. 33.* Owner & County Attorneys continuously applied undue influence intentionally on BOA, Courts to diminish, cancel every aggrieved property owner. BOA & Circuit Court were NOT correct in dismissing the appeals from Cabrera, Lamoy, Witz, Fallahian violating due process rights, without considering their separate appeals or their standing. County, Attorneys have no right to diminish petitioners, residents Kristina Gothard, Candice Clough, Hiram Escabi & others who raised concerns to BOA.

Reasonable people would conclude that undue influence appears to have no limits in Montgomery County, MD – as retaliations continue, through

Washington Suburban Sanitary (WSSC) controlled by the County against home owners petitioning this case, including charging 12x times more than water used (see 19 years of evidence; water saver appliances, no leaks/dye tested). This does not appear to be coincidence, considering that Fallahian's were significantly impacted after they challenged property rights, based on property markers identified by Iron Pipes (see N 36°04'32" W 30.64'). *See App.12.9.A. See Maryland Const. Art. 9, 19, 33, 6; 23; U.S. Const. amend. 1, 5, 14, 6; Chapter 59 Zoning Ordinance R-90 & Chapter 31B Noise Ordinance – Sections listed for question 7. See App.13.1 to App.13.6.*

#### **Evidence of NON Compliance with Notification Laws**

The Notification Laws are clear. There is NO evidence of compliance with Section 59.7.5.2.A-H Notice Specifications. Conclusion based on laws: NON Compliant.

The law is clear requiring resolution notice on the day of decision. The law is clear that the start date for timely appeal is the resolution notice day = issue date; the law is clear that the start date is the same for applicant, all agencies and parties. *See Section 59.7.5.2.F; 59.7.3.1.B; 59.7.3.1.F.1.* Agencies have "no power of suspending Laws or the execution of Laws". *See Maryland Const. Art. 9, App.45.*

Violation of laws started on day 1, continue to current day, through 40 months and future. Systematic, multiple violations of Notice Specification laws PREVENTED residential community participation

necessary to identify parties of record, intended by law to be enabled by A) Notice 30 days before application, 2 newspapers; B) pre-submittal meeting (11-12-2019 to 2-12-2020). See *App.12.1.A; App.11.1.A; Section 7.5.2.A-B. Notice Specifications*. The Applicant/Owner Attorney provided Notification List in evidence is NON compliant, it does NOT include confronting property owners across 26 ft wide Wheatfield Drive (including petitioner Witz) and Seneca Park North HOA abutting and confronting 19105 Frederick at North. See *App.11.5*. There is NO evidence that home owners and HOA within 0.5 mile were notified of hearings based on this NON compliant notification list. Petitioner Joseph Gothard noted that 0.0004% property owners walked by sign and requested the County to consider testimony from adjacent properties and community, not only from a limited set (on 5-18-2020, before any approval). See *App.11.11; App.11.6; App.11.7*. County intentionally ignored the request for community testimony, resulting in Office of Zoning and Administrative Hearings (OZAH) Examiner decision with 1 person representing all communities and Opposing the Application. See *App.5; OZAH Examiners Report and Decision cover page and Section E. Community Response*. The OZAH Examiners report shows many home owners impacted, however OZAH/County did NOT follow due process, require the Applicant to notice in compliance with laws – instead it granted CU 20-02 with numerous false statements by Owner, representatives. See *App.11.3; App.11.3.A; App.11.4*.

Systematic violations of laws continued with NO notification on the day resolutions / issue of OZAH



Examiners report (7-1-2020); Planning Board resolution (6-17-2021). *See App.11.2; App.11.2.A.C; App.13.3.* BOA erroneously accepted the note "NOTIFICATION OF DECISION TO BE SENT TO" as substantial evidence the Owner Attorneys claims of notification on the day of resolution and community meeting. There is NO evidence of notification on the day of resolution. *See App.11.2; App.11.2.A.* The 8-20-2020 meeting was ~50 days after OZAH Examiners report 7-1-2020 PREVENTING aggrieved home owners' timely appeal. *See App.11.8; App.11.9; App.11.1; App.11.10; App.11.12.*

Petitioners requested evidence of notification on the day of decision was issued –there is NO evidence. Trespassing since 2022 are violations of property rights laws, NOT a notification, NOT a notification of decision, NOT a notice that appeals must be submitted within 10 days from 7-1-2020. OZAH PREVENTED timely appeal by NOT notifying on the day the report was issued. Records show that neither Petitioner Gothard or others have recollection or records of receiving the report, "absolutely no way that I received a notification mailing with 48 pages of 7-1-2020 Examiners report". Appellee Frederick Rd Counsel stated "No, you probably didn't but probably got an email from the OZAH sending you the 48 page report and a summary giving you your appeal rights": *See App.11.2.A; App.11.1.A; Section 59.7.5.2.A-H.*

The applicant and County did NOT have the Pre-Submittal Meeting < 90 days before application for conditional use (11-12-2019 to 2-12-2020). *See App.12.1.A; App.11.1.A; Section 7.5.2.B. Notice*

*Specifications.* There was NO notice 30 days before application, 2 newspapers. *See App.11.1.A; Section 7.5.2.B.* There is NO evidence of application sign for pre-submittal. *See App.11.1.A; Section 7.5.2.C.* There is NO evidence of application notice/application was accepted. *See App.11.1.A; Section 7.5.2.D.* Need evidence for the OZAH claims 3-27-2020 Notice of Hearing. *See App.11.1.A; Section 7.5.2.E.* There was NO resolution notice on the day of decision [7-1-2020]. *See App.11.1.A; Section 7.5.2.F.* There was NO building sign notice. *See App.11.1.A; Section 7.5.2.G.* There was NO website posting <15 days after acceptance. *See App.11.1.A; Section 7.5.2.G.*

#### **Evidence of NON Compliance with Conditional Use & Zoning Laws**

The Conditional Use Laws are clear. There is NO evidence of compliance with Zoning Ordinance Section 59.7.3.1.A-L for Conditional Use – there is substantial evidence of NON compliance. There is substantial evidence of NON compliance with Section 31B-5; 31B-6 & Sec. 31B-12 Noise Control Ordinance. Conclusion based on laws: NON Compliant.

There is substantial evidence of NON compliance with Chapter 59 Zoning Ordinance. The entire conditional use CU 20-02 application, design, construction and approvals are NOT compliant; the two (2) 5 story buildings, setback, parking, screening are NOT compatible, NON compliant, causing HARM. Petitioners requested the building height to be physically reduced to be compatible with the R-90 residential zoning and comply with all NO HARM requirements specified. County, Owner intentionally

violated all laws with two (2) 5 story buildings, pushing the building footprint especially East – West causing encroachment on abutting properties, in violation of fundamental property rights protected by the Constitution of United States and Maryland. 19105 Frederick located 24 parking spaces at <32 ft from 19050 Wheatfield home, causing pollution, disturbance and compounding the problem with NON compliant screening, planting trees near the property line that will encroach on adjacent properties in 3 years, roots damaging utility pipes and home; tree canopies rubbing the home in 20 years, enabling rodents to access the roof. See App.11.7/5-18-2020 letter; Section 59.7.3.1.E.1 – E.1.g; 59.4.1.8.A; 59.6.5.3.C.4-8; 59.6.2.4.B; App.12.1.1.B; App.12.2; App.12.4; App.12.5-5.A; App.12.6; App.12.7; App.12.8-8.B; App.12.9-9.A. This Conditional Use CU 20-02 is 100% NON compliant compared to CU 20-05. See App.12.3.

**Compare this NON compliant CU 20-02, 19105 Frederick Rd, Gaithersburg, MD. with CU-20-05 on 9545 River Road, Potomac, MD, located 14.3 driving distance, both located in Montgomery County, MD. See App.12.3. This Court shall settle, affirm the fundamental rights guaranteed by the Constitution, & establish legal solutions to preserve the fundamental principle of the rule of law, that “like cases should be treated alike”, in all United States – including conditional use CU 20-02 and CU 20-05. This 100% NON compliant CU 20-02 resolution was issued on 7-1-2020 (4.5 months from application; petitioner opposing the application/community response; no pre-submittal**

notification); CU 20-05 resolution was on 2-25-2021 (9 months from application). The examiner for CU 20-02 was co-examiner for CU 20-05. *See Reasons for granting the Petition for Extraordinary Writ, item 1, p14 for additional information.*

There is NO evidence of Application map 1,000 ft; compliant list of abutting & confronting property owners, HOA 0.5 mile; approval of completeness by Planning Director of the initial application; final application and public notice required in Section 7.5. (59.7.5.2. A-H). *See App.12.1.A; Section 59.7.3.1.B.* There is NO evidence of public notification and access to the Planning Director/Board recommendation & report to Hearing Examiner, required to be published <10 days before public hearing. *See App.12.1.A; Section 59.7.3.1.D.* There is NO evidence of compliance with Necessary Findings, "To approve CU application, the Hearing Examiner must find compatibility ... not affect the area adversely"; Section 59.7.3.1.E.1.g. "Conditional Use ...will not cause harm to the neighborhood i. the [property] use, peaceful enjoyment, value or dev. potential of abutting & confronting properties or neighborhood; ii. traffic, noise, odors, dust, illumination, lack of parking; or iii. the health, safety, or welfare of residents, visitors, or employees". There are numerous FALSE statements in the report, considering evidence of NON compliance, increased HARM, health hazard. *See Section 59.7.3.1.B to 59.7.3.1.E.1.g; 59.7.5.2. A-H; App.12.1 to App.12.9.D; App.13.2 to App.13.2.B; App.13.6 to App.13.6.B.*

There is evidence of NON compliance with Necessary Findings Section 59.7.3.1.E.2. "Any structure to be constructed ...under CU ...must be compatible with the residential neighborhood"; "E.3. "compatible ....sufficient for CU approval". There is evidence of NON compliance with Necessary Findings Section 59.7.3.1.F.1. "The Examiner may supplement the specific requirements of this Chapter with any other req. necessary to protect nearby properties and neighborhood". The Examiner did NOT include Section 59.7.3.1.E.1.g. NO HARM requirements in the conditions for CU 20-02 – instead listed 14 items that do NOT provide protection of residents surrounding 19105 Frederick. See Section 59.7.3.1.E.2; 59.7.3.1.F.1; App.12.2; App.12.3; App.12.4; App.12.5-5A; App.12.6; App.12.7; App.12.8 – 8.B; App.12.9-9.D; App.13.2; App.13.6 – 6.B.

There is substantial evidence of NON compliance with Chapter 31B Noise Control Ordinance Section 31B-5 & 31B-6 & Sec. 31B-12, with thousands of violations, excessive noise, vibration. There is evidence of NON compliance with Sec. 31B-5. Noise disturbance / daytime; (a) Max. allowable: 65 dBA [7 a.m-9 p.m./weekdays & 9 a.m-9 p.m. weekends & holidays; Noise disturbance / nighttime; (a) Max: 55 dBA [before & after 7 a.m-9 p.m/weekdays & 9 a.m-9 p.m/weekends & holidays; Sec. 31B-6. (a) Max construction; 1.(A) 7 a.m-5 p.m/weekdays: (i) 75 dBA [w/o Noise Suppression Plan (NSP)]; 50 ft /noise from the source is greatest; Sec. 31B-6. (a) Max construction; 1.(A) 7 a.m-5 p.m. weekdays: (ii) 85 dBA w approved NSP/activity; 50 ft/noise from the source is greatest; separate offense in addition to other

violations; Sec. 31B-12. Enforcement & penalties; (a) DPS, DEP must enforce...; (b) Class A violation; each day a separate offense; Sec. 31B-12. (i) (1) A person responsible for a violation & management or supervision /construction site ... jointly & severally liable/violation; Sec. 31B-12. (i) (2) For recurring violations of Section 31B-6 on the same construction site, in addition to any other penalty under this Chapter, the Director may issue a stop work order; Sec. 31B-12. (i) (3) This Chapter does not limit the Director's authority under Chapter 8 to revoke a permit or approval; Sec. 31B-12. (j) Any person aggrieved ...may file a civil action in any court with jurisdiction/person responsible for the alleged violation. *See Section 31B-5 & 31B-6 & Sec. 31B-12; See App.12.9-9.A; App.13.2; MC311 incident reports 1501318673, 1500766755, 1500762748; reports to Police Department, BOA, DPS Permits, DEP Compliance, County Council, Executive, Inspector General, Consumer Protection.*

OZAH Examiners report identified some (not all) property owners within 1,000 feet of the 19105 Frederick Rd. property subject of conditional use CU 20-02. *See Section 59.7.3.1.B; See Bradley E. Heard v. County Council of Prince George's, et al., No. 1877, Sept. Term 2021; See Appendix App.11.3-11.8.* All petitioners are property owners close to the CU 20-02 construction: Candice Clough home is at 313 feet from 19105 Frederick Rd site; Danilo & Anabelle Molieri home is at 98 feet.

19105 Frederick Road - NON compliant due process from day 1 to current date 1) NO notification

for application pre-submittal; 2) NON compliant notification list; 3) NO pre-submittal community meeting to identify parties of record, allow testimony, timely notification & appeal; 4) NO verification / NON compliant verification of application before acceptance – A) *notification list*; B) *parties of record from pre-submittal community meeting*; C) *disclosure of owners & contributions*; D) *compliance with NO HARM, Compatibility laws for conditional use*; 5) NON compliant hearings; 6) NON compliant plans – enabling A) *violation of property rights*; B) *NON compliant building heights & protrusion beyond 45 degree angular plane projecting over abutting properties*; C) *NON compliant setback*; D) *NON compliant parking*; E) *NON compliant screening*; F) *lights glaring, increasing hazards*; 7) NON compliant resolution/decision & report – approving HARM, NON compatible plans in violation of Zoning Ordinance, conditional use laws assuming “power of suspending Laws or the execution of Laws”; 8) HARM, Health Hazards during construction and future; 9) enabling violation of property rights; 10) NO notification on the day of resolution/issue PREVENTING timely appeal; 11) trespassing, encroachment; 12) HARM, Health Hazards from thousands of violations of Noise Ordinance (construction noise, vibration); 13) thousands of violations of Noise Control law reported to MC311, Police Department, Inspector General, Consumer Protection, County Council, Executive; 14) 19105 Owner Attorney directed Government agencies to ignore home owners complaints under the undue influence of contributions made in exchange for tax

credits for development & operation; 15) Government agencies do NOT enforce laws assuming "power of suspending Laws or the execution of Laws"; 16) Board of Appeals [BOA] forced joint appeal then dismissed without considering evidence in original separate appeals; 17) BOA ignored evidence of NO notification & NO notification on the day of resolution, violating due process rights, without considering separate appeals – ignoring hundreds of statements regarding NO notification – Owners, County prevented timely appeal; 18) Circuit Court ignored evidence that Owner, County prevented timely appeal; 19) Circuit Court did NOT validate the evidence on record, did NOT apply strict scrutiny of "substantial evidence" – before - "deference to agency fact finding & inferences, case precedence, opinions, orders"; 19) Appellate Court of Maryland ignored notarized petitioners signatures submitted to Courts; 20) Owner, County expanded undue influence to Courts diminishing petitioners to interested persons; 21) Supreme Court of Maryland denied writ of certiorari, ignored evidence of major issues in public interest submitted with the petition. The undue influence of 19105 Owners, Attorney cancelled petitioner efforts, stating "*we have permits, we do what we want*" –assured by the County that CU 20-02 & permits will NOT be withdrawn. 19105 Owners, Attorney aided by County cancelled & diminished each person in BOA, Courts, violating every law; U.S. Constitution, Maryland Constitution, Section 59 Zoning, Section 31B Noise Control Ordinance. See App.11.2; App.11.7; App.13.1 - 13.6.B. See App.14.



**Appendix App.15****SIGNIFICANT DATES, RELEVANT TO THE  
CASE**

1. 5-21-2020 Office of Zoning and Administrative Hearings (OZAH) Hearing Examiner (Examiner) conducted 1 hearing with 1 home owner who saw a sign without relevant information in the woods along the 6 lane MD 355 road (0.0004% participation from over 500 home owners surrounding the 19105 Frederick Road, Gaithersburg, MD 20880 site). On 5-18-2020 petitioners requested through the Examiner that Owner & County ensure that the development causes NO HARM 1) results in NO negative impact to property values & provide objective evidence, 2) setback buildings, parking, trees, 3) reduce building height, 4) noise control, 5) get testimony from property owners & community - not a limited set, 6) not proceed with on-site work until concerns are resolved / laws. *See App.11.7.*
2. 7-1-2020 OZAH Examiner issued a decision for Conditional Use CU 20-02 case, for which there is NO evidence of notification on the day of decision, NO Notification - PREVENTING timely appeal in 10 days. The law is clear requiring resolution notice on the day of decision, ensuring that the start date for timely appeal is the resolution notice day = issue date; the law is clear that the start date for appeal is the same for applicant, all agencies and parties – preconditioned on notification on the day of resolution by Government agencies. *See App.11.2.*

3. 6-17-2021 Planning Board of Montgomery County approved 4 stories or less. *See App.12.2.*
4. 5-2-2022, 6-3-2022 Petitioners request Owner LLC NOT to encroach or trespass on abutting properties (notice sent to Owner, County, Attorneys). *See App.13.6.B.*
5. 6-21-2022 two Petitioners participated in a virtual meeting, requesting again that there is NO work on site until concerns listed in the 5-18-2020 letter are resolved. Petitioners notified the Owner, County, Attorneys of appeals, considering that Owner, Attorney had no intent to comply with laws.
6. 6-24-2022 Owner LLC acquired the title for the 19105 Frederick site.
7. 7-18-2022 Petitioners filed appeal with the Board of Appeals (BOA), case A-6765 requesting withdrawal of approvals and permits for CU 20-02), review on merits, address remedies. Multiple petitioners filed separate appeals. Petitioners submitted measurements & photos as evidence of violations of Chapter 31B Noise Law to MC311, Owner, County Council, Executive, agencies, Police, Inspector General. *See BOA records.*
8. 9-7-2022, 9-21-2022, 10-12-2022 Petitioners participated in virtual meetings with BOA, provided construction noise measurements, actual & video evidence of noise & vibration to the Board. *See App.13.2; App.12.9.A.*
9. 11-4-2022 BOA dismissed the appeal (case A-6765; notification was sent by email only after

petitioner's request on 11-9-2022; not delivered by mail. *See App.13.3.*

- 10.12-2-2022 Petition was submitted to the Circuit Court (case C-15-CV-22-004440); [1-3-2023 for case C-15-CV-23-000012]
- 11.3-29-2023 Circuit Court opinion and order affirmed the decision of the Board; [6-7-2023 for case C-15-CV-23-000012].
- 12.3-30-2023 Petitioners filed Notice of Appeal to Appellate Court of Maryland.
- 13.4-6-2023 Petitioners submitted to the Appellate Court of Maryland the Civil Appeal Information Report (case ACM-REG-0169-2023) with: Circuit Court Docket Entries, Opinion & Order of Circuit Court, Notice of Appeal, Copy of Transcript for inclusion in Records.
- 14.6-20-2023 (delivered 6-23-2023) Supreme Court of Maryland denied writ of certiorari (case SCM-PET-0042-2023)
- 15.7-25-2023 Petitioners submitted Brief to the Appellate Court of Maryland for Case ACM-REG-0169-2023; (Brief for ACM-REG-0803-2023 submitted as required by Scheduling Order).
- 16.9-11-2023 Petitioners submitted Reply Brief to the Appellate Court of Maryland for Case ACM-REG-0169-2023.

**Appendix App.16**

**QUESTIONS PRESENTED TO COURTS**

**5. Timely Appeal, Notification** (this Appendix App.14 retains numbering for *Brief to Appellate Court of Maryland*, ACM-REG-0169-2023)

5.1. Was the Board of Appeals (BOA) decision correct to dismiss the appeal due to lack of jurisdiction, as not timely without evidence of compliance with Chapter 59, Section 59.7 requirements for Notification on the Day of Decision of Office of Zoning and Administrative Hearings (OZAH) Hearing Examiner's report and decision?

5.2. Was BOA correct to ignore Section 59.7.3.1.F.1.c requiring the Examiner's report and decision to be transmitted and available for review, on the day of issue, to allow any party of record or aggrieved party file a request for oral argument before BOA?

5.3. Was BOA correct to ignore that the Examiner was aware of NON compliant notification on 5-18-2020 but issued the decision on 7-1-2020 without testimony from the community surrounding 19105 Frederick Rd site ? (See E.27, E.28 - residents identified on page 7-8).

5.4. Was BOA correct in ignoring the fact that Owner & County PREVENTED property owners to testify-become parties of record, submit timely appeal by a combination of NON-Compliant Notification Lists & Sign, NO Notification on Day of Decisions ?

5.5. Was BOA correct in considering case precedence that are NOT valid for this case considering that in those cases petitioners were NOT prevented to testify, NOT prevented to appeal timely?

5.6. Were BOA & Circuit Court correct in dismissing the appeals from Jose & Rina Cabrera, Dan Lamoy, Tom & Monique Witz, Feri & Saviz Fallahian (Cabrera, Lamoy, Witz, Fallahian) without a valid legal basis?

5.7. Was the Circuit Court opinion and order correct to affirm the dismissal by BOA, based on "deference to agency fact finding & inferences, case precedence, opinions, orders" – aware that BOA findings were NOT supported by evidence, the Hearing Examiner's report and decision included substantial errors?

5.8 Was the Board of Appeals (BOA) decision correct to dismiss the appeal due to lack of jurisdiction, as not timely without evidence of compliance with Notice Specifications Section 59.7.5.2.A. to 59.7.5.2.H ?

5.9 Was the Circuit Court opinion and order correct to affirm the dismissal by BOA, based on "deference to agency fact finding & inferences, case precedence, opinions, orders" – without strict scrutiny of "substantial evidence" for compliance with Notice Specifications Section 59.7.5.2.A. to 59.7.5.2.H, and the OZAH Examiner's report for errors ?

## **6. Conditional Use (CU), Zoning**

6.1. Did the Planning Board (Planning) comply with Section 59.10.c OR err in certifying accuracy and completeness of the application for CU 20-02?

6.2. Did the Planning err in NOT verifying completeness, with Notification List compliant with Chapter 59. Section 59.7.3.1.B.2 for Notification List; Section 59.7.3.1.F.1 for Notification requirements on the day of a decision; Section 59.10.c for disclosure of contributions in exchange of tax credits; Section 59.4.1.8.A building height & setback, encroachment on abutting properties in violation of property rights; Section 59.6.5.3.C.4- 59.6.5.3.C.8. screening; 59.6.2.9?

6.3. Did the Planning err in ignoring Section 59.7.3.1.E.1.g --Necessary Findings laws for Conditional Use regarding NO HARM, COMPATIBILITY?

6.4. Did the Examiner's report and decision comply with laws for conditional use, Section 59.7.3.1.E.1.g NO HARM, COMPATIBILITY?

6.5. Did DPS Permits comply with laws by issuing permits for conditional use not compliant with Section 59.7.3.1.E.1.g NO HARM, COMPATIBILITY?

6.6. Did DPS Permits & DEP Compliance comply with laws by NOT enforcing Section 59.7.3.1.E.1.g NO HARM, COMPATIBILITY, including vibration & noise in violation of Chapter 31B Noise Law hundreds of times / day?

6.7. Did BOA & County Council (Council) authorities comply with laws for conditional use, Section 59.7.3.1.E.1.g NO HARM, COMPATIBILITY

& compliance with Section 59.7.3.2 when violations & errors were discovered during construction?.

6.8. Were County agencies correct in approving & publishing reports that show encroachment by Owner LLC on abutting properties in violation of property rights laws?

**7. Constitutional Law** (U.S. Const. amend. 1, 5, 6, 7, 9, 14; Maryland Const. Art. 6, 9, 19, 23, 33,, 45)

7.1. Did County agencies, Council, BOA comply with U.S. Const. amend. 14 requiring equal protection under the law?

7.2. Were BOA & Circuit Court correct in dismissing the appeals from Cabrera, Lamoy, Witz, Fallahian denying equal protection? (without consideration of their standing, separate appeals).

7.3. Were County agencies correct by approving & publishing reports that show encroachment by Owner LLC on abutting properties in violation of Maryland Const. Art. 19; U.S. Const. amend. 5, amend. 14?

7.4. Did County agencies, Council, BOA comply with Maryland Const. Art. 19; U.S. Const. amend. 5 requiring due process?

7.5. Did County agencies, Council, BOA comply with Maryland Const. Art. 19, Art. 23; U.S. Const. amend. 6 requiring speedy trial?

7.6. Did BOA's and Court's comply with Maryland Const. Art. 19, Art. 23; U.S. Const. amend. 6, enabling the Owner to complete two (5) story buildings, causing extended increased HARM?