

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building  
100 Maryland Avenue, Room 217  
Rockville, Maryland 20850  
[www.montgomerycountymd.gov/boa/](http://www.montgomerycountymd.gov/boa/)  
(240) 777-6600**

**Case No. A-6644**

**APPEAL OF LINDA POWERS**

**RESOLUTION TO DISMISS APPEAL  
AND REFUND A PORTION OF FILING FEE**

**(Resolution Adopted December 18, 2019)**

**(Effective Date of Resolution: December 19, 2019)**

Case No. A-6644 is an administrative appeal in which the Appellant charges administrative error on the part of the Department of Permitting Services in its October 3, 2019 approval of Sediment Control Permit 284596.

On December 12, 2019, the Board of Appeals received a letter withdrawing this appeal and dated November 8, 2019, from David W. Brown, Esquire, who serves as counsel for the Appellant.<sup>1</sup> While the letter requests a refund of the full filing fee, in accordance with Rule 2.3 of the Board of Appeals Rules of Procedure, the maximum refund that can be granted is 90% unless the action underlying the appeal is resolved or mooted by an action of the County Executive, County Council, or an administrative board or agency. Mr. Brown's letter does not indicate that this is the case.

The Board of Appeals considered the withdrawal and refund request at its Worksession on December 18, 2019. Rule 2.3(a) of the Board of Appeals Rules of Procedure [Resolution No. 17-1223, adopted October 7, 2014], gives the Board the discretion to refund ninety percent (90%) of the filing fee in an administrative appeal on written request "if an application is withdrawn within 48 hours after it is filed or before public notice is issued." Because the Appellant requested withdrawal of this appeal prior to the issuance of public notice, the Board finds that a ninety percent (90%) refund request can be granted. In addition, the Board opens the record to accept the correspondence from Mr. Brown.

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<sup>1</sup> Mr. Brown's letter setting forth the Petitioner's request for withdrawal was emailed to the Board on November 14, 2019, but was diverted by the County's email server to a junk folder. Thus the Board was unaware of the request when it issued notice of this hearing on December 9, 2019. Had the Board been aware of the withdrawal request, it would not have issued the December 9, 2019, notice. Given that the erroneous diversion of the email containing Petitioner's withdrawal request was in no way due to an action of the Petitioner, the Board will treat this withdrawal request as though notice had not been issued.

On a motion by John H. Pentecost, Chair, seconded by Katherine Freeman, with Bruce Goldensohn, Vice Chair, Jon W. Cook, and Mary Gonzales in agreement:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the record in Case No. A-6644 is re-opened to receive the November 8, 2019, correspondence from Mr. Brown; and

**BE IT FURTHER RESOLVED** by the Board of Appeals for Montgomery County, Maryland that Case No. A-6644 is dismissed as withdrawn; and

**BE IT FURTHER RESOLVED** by the Board of Appeals for Montgomery County, Maryland that \$198.00 shall be refunded to the Appellant.

  
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John H. Pentecost  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 19th day of December, 2019.

  
\_\_\_\_\_  
Bárbara Jay  
Executive Director

**NOTE:**

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

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. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.