

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue, Room 200
Rockville, Maryland 20850
<http://www.montgomerycountymd.gov/ozah/index.html>
Phone: (240) 777-6660; Fax (240) 777-6665

CASE NO. CU 16-11 – GARRETT GATEWAY PARTNERS, LLC,

ORDER TO SHOW CAUSE WHY CONDITIONAL USE CU 16-11 SHOULD NOT BE
REVOKED FOR FAILURE TO COMPLY WITH CONDITIONS OF THE GRANT AND
NOTICE OF PUBLIC HEARING ON THE ORDER TO SHOW CAUSE

Pursuant to Zoning Ordinance §59.3.3.1.D.2.b., Conditional Use CU 16-11 was granted by the Hearing Examiner on December 2, 2016, subject to 10 conditions. On May 22, 2019, the Hearing Examiner granted the Conditional Use Holder’s Request to extend the implementation period of the conditional use until December 2, 2019, to allow time for plan revisions as required by technical staff of the MNCPPC. On October 11, 2019, the Hearing Examiner administratively approved a minor amendment of the conditional use to conform to the minor plan changes as directed by the Planning Department. On October 31, 2019, the Hearing Examiner extended the implementation period for CU 16-11 until June 30, 2020, and further ordered “[t]hat all conditions imposed in the grant of the conditional use on December 2, 2016, as modified by the Hearing Examiner’s Order of October 11, 2019, shall remain in effect unless and until further modified by the Hearing Examiner.”¹

The Hearing Examiner’s December 2, 2016 Report and Decision granted the Applicant, Garrett Gateway Partners, LLC, a conditional use subject to 10 conditions to construct a “Design for Life” Townhouse Living Community consisting of 19 townhouse living units at 7009 Garrett Road, in Derwood Maryland, Part of Lot 5, Block B in the Cashell Estates Subdivision zoned RE-1. The Hearing Examiner granted a minor amendment to the previously granted conditional use modifying paragraphs 7 and 8 on October 11, 2019. The Hearing Examiner’s Decision as amended imposed following conditions:

- 1. The Applicant shall be bound by the testimony of its witnesses and the representations of its counsel identified in this Report and Decision.*
- 2. This conditional use is limited to a maximum of 19 townhouse living units.*
- 3. The Applicant must obtain approval of a Preliminary Plan of Subdivision per Chapter 50 of the Montgomery County Code. At the time of Preliminary Plan, the Applicant must address the comments provided by the M-NCPCC Department of Parks in its email dated August 26, 2016, and directed to the Applicant and Planning Staff (Exhibit 56).*

¹ Hearing Examiner’s Order Granting the Conditional Use Holder’s Request for a Second Extension Until June 30, 2020, to Obtain Building Permits to Implement the Conditional Use, October 31, 2019.

4. *No property owner of the conditional use project may seek a tax credit under Montgomery County Code Section 52-18U or 52-93(e), except for tax credits for additional accessibility features installed post occupancy, as described in Montgomery County Code, Section 59.3.3.1.D.2.b.*
5. *As prescribed in Zoning Ordinance §59.3.3.1.D.2.b.i., all buildings and structures must be designed and constructed to meet or exceed the “Level II Accessibility Standards” established by Section 52-18T and detailed in Section 52-18U.²*
6. *The post-construction site must have a slope of less than 5%, and no fence constructed on the lots with frontage on Redland Road and Garrett Road may exceed four feet in height.*
7. *The common open space area must include a pergola, six raised planted beds, and 3 log benches as shown on the Conditional Use Plans (Exhibits 66(b) – 66 (h)).*
8. *The amount of parking provided and other conditional use details must be consistent with that described in the Conditional Use Plans (Exhibits 66(b) – 66 (h)).*
9. *The Applicant must obtain a sign permit issued jointly by the Sign Review Board and the appropriate transportation jurisdiction for any proposed sign, and must file a copy of any such sign permit with OZAH. The final design of the proposed sign must be in compliance with the Zoning Ordinance restrictions for signs displayed in a residential zone, or the Applicant must first obtain a sign variance from the Sign Review Board.*
10. *The Applicant must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the conditional use premises and operate the conditional use as granted herein. The Applicant shall at all times ensure that the conditional use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.*

FACTS

On February 23, 2024, The Department of Permitting Services (DPS) issued a Notice of Violation to Universal Communities LLC, authorized representative of Garrett Gateway Partners, LLC identifying the following violation and corrective action:

² Shown as *footnote 12 in original decision*. Those sections do not appear to exist in the current codification of the Montgomery County Code, but the Council did enact Bill No. 5-13, as amended in Expedited Bill No. 24-14, both effective July 1, 2014, adding Sections 52-18T and 52-18U to the County Code. The accessibility standards are also set forth in County Code Section 52-107 and in COMCOR Sections 52.18.T.01 and 52.18U.01.

Violation Comments / Remarks:

- 1.) Failure to construct Cashell Estates per the testimony and exhibits included in the Hearing's Examiner's Report and Decision under CU 16-11 dated 12/2/2016 has resulted in the change in nature and character of the conditional use to the extent that substantial adverse effects in the neighborhood, including unsafe conditions exist.*
- 2.) Failure to pay the Conditional Use fees.*

Corrective Action / Remarks: *Immediately install the lighting per CU 16-11 and submit the construction schedule for the completion of the remaining hardscape, landscape, and amenities per CU 16-11. Note: Substantial subgrade/base course pavement failure requires sub-grade/base course pavement replacement and certification for approval.*

- 2.) Pay the Conditional Use fees for CU 16-11 to bring account current.*
(Exhibit 81).

The Notice of Violation (Exhibit 81) directed the Conditional Use Holder to come into compliance by March 23, 2024. Greg Nichols with DPS contacted OZAH on March 27, 2024, stating the violations remain unabated and formally requested on behalf of DPS that a Show Cause for this conditional use be issued.

The Zoning Ordinance details procedures for the enforcement of conditional uses by the Hearing Examiner. Zoning Ordinance §§59.7.3.1.L.4. and 5. provide:

- 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.*

Having received written notice from DPS that the conditional use holder is violating the terms or conditions of a conditional use, the Hearing Examiner hereby issues the instant Order to Show Cause and Notice of Show Cause hearing. Under Rule 8.1 of OZAH's Zoning Rules of Procedure, a Notice of a Show cause hearing "must be posted on OZAH's website at least 30 days before the show cause hearing to provide public notice."

ORDER TO SHOW CAUSE AND HEARING NOTICE

Based on the foregoing, it is, this 21st day of May 2024:

ORDERED AND NOTICED: That Garrett Gateway Partners, LLC, the CU 16-11 Conditional Use Holder, is hereby directed to appear before the Hearing Examiner on **Friday, July 12, 2024**, at 9:30 a.m., or as soon thereafter as this matter can be heard, in the Second Floor Davidson Memorial Hearing Room in the Stella B. Werner Council Office Building, 100 Maryland Avenue, Rockville, Maryland, to show cause why the conditional use should not be revoked; and, it is

FURTHER ORDERED AND NOTICED THAT:

- a) the Show Cause is being issued for the Conditional Use Holder's failure to construct the "Design for Life" Townhouse Community pursuant to the testimony and exhibits pursuant to Condition 1;
- b) the Show Cause is being issued for failure of the Conditional Holder to correct the issued Notice of Violation as outlined above;
- b) the hearing is limited to a consideration and a determination of the validity of the allegations; and
- c) failure of the CU 16-11 Conditional Use Holder to attend and participate in the hearing may result in revocation of the conditional use.

GENERAL NOTICE PROVISIONS:

Persons or associations that are (1) represented by counsel, (2) intending to appear in organized opposition, **or** (3) intending to introduce expert evidence or testimony must file a pre-hearing statement containing the information required by Rules 3.4 and 3.5 of OZAH's Rules of Procedure (Rules). Filings must include an electronic copy of the statement and all attachments. These Rules may be found on OZAH's website at <http://www.montgomerycountymd.gov/ozah/>. The Conditional Use Holder must submit its pre-hearing statement at least 30 days before the public hearing. Those supporting revocation who are required to file a pre-hearing statement under the terms of this paragraph, must do so no less than 20 days before the public hearing.

In compliance with Maryland requirements regarding the practice of law, groups or associations must have counsel unless their witnesses are members of the group or association who will offer testimony in narrative form (*i.e.*, there is no need for an attorney to conduct a direct examination).

In addition to all other requirements, any party submitting documentary evidence for the record must file electronic copies of their submissions. Amended electronic copies must also be submitted of any amended documents. Electronic copies must be submitted via email to ozah@montgomerycountymd.gov in Microsoft WORD or PDF format for text documents, and in PDF format for plans, photos and other non-text documents.

Nothing in this notice is intended to limit the rights of individual members of the public to testify during the hearing or to submit pertinent written materials at any time while the record

remains open for that purpose. You may submit a signed letter to OZAH, which will be considered by the Hearing Examiner as part of the record but doing so will not automatically make you a party of record. Conditional Use holders and members of the public who testify at an OZAH hearing, whether for or against the revocation, are automatically considered parties of record. A person or organization that does not wish to appear at the OZAH hearing but wishes to be a party of record may request that status in a signed letter to OZAH. See OZAH Rule 3.1.

If you need services to participate in a public hearing, please contact this Office no later than seven (7) days in advance of the public hearing by calling 240-777-6660 (TTY 240-777-7914) or emailing us at ozah@montgomerycountymd.gov. OZAH cannot guarantee that an interpreter can be made available if notified of the request less than seven (7) days in advance of the public hearing. This document is available in alternative format such as large print upon request, via the same phone numbers and email address.

To view the physical file, please contact OZAH via email at ozah@montgomerycountymd.gov or call 240-777-6660 to schedule an appointment prior to the date of the hearing.



Kathleen E. Byrne
Hearing Examiner

NOTICES OF SHOW CAUSE HEARING FOR REVOCATION OF CONDITIONAL USE
MAILED THIS 21ST DAY OF MAY 2024, TO:

Universal Communities LLC, *Resident Agent* for Garrett Gateway Partners, LLC
(*by certified mail, return receipt requested*)

Barbara Jay, Executive Director

Montgomery County Board of Appeals

Mark Beall, Planning

Patrick Butler, Planning

Ehsan Motazed, Division Chief, Zoning & Site Plan Enforcement, DPS

Greg Nichols, Manager, SPES, Zoning & Site Plan Enforcement, DPS

Victor Salazar, Program Manager II, Zoning & Site Plan Enforcement, DPS

Elana Robinson, Assistant County Attorney, Office of the County Attorney