

The hearing was conducted in accordance with Section 2.209 of the Board's Rules of Procedure. The Howard County Code, the Howard County Charter, the Howard County Zoning Regulations, the Department of Planning and Zoning's Technical Staff Report with attached agencies comments dated October 21, 2024, the General Plan for Howard County, the General Plan of Highways, and the Conditional Use Petition and Plan and materials submitted with it were incorporated into the record by reference.

As a preliminary matter, the Board raised the issue of Petitioner's compliance with the "Notice to the Public" requirements set forth in Section 2.203 of the Board's Rules of Procedure.

FINDINGS OF FACT

1. Board's Rules of Procedure set forth the Notice to the Public requirements in Section 2.203.

2. Rule 2.203(a) Advertising provides that [T]he Petitioner, at his or her own expense, shall advertise the date, time and place of the initial hearing in at least two newspapers of general circulation in Howard County. For variances in residential districts, the advertisement shall be published at least fifteen days before the hearing. For all other petitions, the advertisement shall be published at least thirty days prior to the hearing. The Department of Planning and Zoning shall approve the proposed advertising before it is published.

3. Rule 2.203(b) Posting of Property provides [E]xcept in administrative appeals described in Section 2.203(d), if a petition involves land use, the property involved shall be posted with the time, date and place of the initial hearing. For variances in residential districts, the property shall be posted for at least fifteen days immediately before the hearing. For all other petitions, the property shall be posted for at least thirty days immediately before the hearing. The Department of Planning and Zoning shall determine the number of posters required and their location and the

Petitioner shall bear the expense of posting. The Department of Planning and Zoning shall supply the posters. The Petitioner shall properly erect and maintain the posters.

4. Rule 2.203(c) Filing Affidavit of Posting and Certificates of Advertising provides [T]he Petitioner shall file certificates and an affidavit of posting with the clerk of the Board or the secretary of the Board prior to the hearing.

5. Rule 2.203(g) Responsibility for Assuring Compliance with Advertising and Posting Requirements. The Petitioner is responsible for assuring compliance with the advertising and posting requirements of this subtitle. If any question arises regarding compliance with the advertising and posting requirements, the burden is on the Petitioner to prove compliance. If the Board determines that the Petitioner has made a good faith effort to comply with the advertising and posting requirements, the Board may give the Petitioner a reasonable opportunity to correct the non-compliance or, if the Board determines that the Petitioner has substantially complied with the public notice requirement, proceed with the hearing. If the Board determines that the Petitioner has not made a good faith effort to comply with the advertising and posting requirements, the Board may dismiss the petition.

6. Petitioner filed a Certificate of Advertising dated February 13, 2025, for one ad in the Howard County Times. Thirty days prior to March 13, 2025, the initial hearing date, is February 11, 2025. This failed to meet the thirty-day requirement set forth in Board Rule 2.203(a) by two days.

7. Petitioner filed a copy of an ad dated February 9, 2025, in the Baltimore Sun, however, the Petitioner did not file a Certificate of Advertising for this advertisement.

8. Petitioner submitted an Affidavit of Posting of the Property dated February 20, 2025, with the Board on March 10, 2025. Affiant, Kelly Frost, certified “that to the best of my information, knowledge and belief the property which is the subject of the above-captioned petition has been posted in accordance with the following requirements of the Department of Planning and Zoning:

1. The poster(s) shall be erected and shall remain on the subject property for 30 days prior to the hearing.
2. The poster(s) shall be erected using 2 wooden stakes, one on each side of the poster.
3. The posters shall be erected perpendicular to the road which serves as the mailing address of the subject property.”

Kelly Frost further certified “that the poster(s) has been posted at least 30 days immediately prior to the hearing scheduled for the Board of Appeals on March 13, 2025, giving notification of the place, date and time of the hearing.”

9. Kelly Frost notarized her own Affidavit on February 20, 2025.

10. Board member Foehrkolb stated that she did not see the subject property posted perpendicular to the road as required upon her site visit. Board members Phillips, Harris and Ryan also stated that they did not see the subject property posted perpendicular to the road upon their initial site visits. Board member Ryan noted that the Affidavit filed by Petitioner is invalid because it contains false information.

11. Bernard Granzow, the owner of Blythewood Landscape Management, LLC, was sworn in as a witness. Mr. Granzow testified that he posted the property by attaching the poster to the fence and not perpendicular to the road. Due to the potential invalid nature of the Affidavit of Posting submitted by the Petitioner, Chairperson Ryan read the Affidavit aloud to Mr. Granzow and asked him to affirm compliance with the posting requirements as outlined in the Affidavit, which he did. While still under oath, Mr. Granzow later recanted his earlier statement and admitted to providing false testimony. He confirmed that he had, in fact, not complied with the public posting requirements. Mr. Granzow further testified that the Affiant and Notary, Kelly Frost, is his administrative assistant.

12. Andrew Robinson, Esquire appeared on behalf of the Petitioner and argued that the Petitioner had made a good faith effort to comply with both the advertising and posting requirements.

13. Gene Gallaher testified that he did not see the sign required to provide the notice of the hearing to the public. Mr. Gallaher also stated that the poster was not erected perpendicular to the road as required.

14. After hearing testimony and oral arguments, Board member Foehrkolb Motioned to Dismiss the Petition for failure to comply with the requisite notice to the public requirements. Board Chairperson Ryan restated Board member Foehrkolb's Motion for clarity to include reference to Board Rule of Procedure Section 2.203.

CONCLUSIONS OF LAW

Upon consideration of the Motion to Dismiss the Appeal Petition and Opposition thereto, this Board concludes that the Petitioner has not made a good faith effort to comply with the

advertising and posting requirements. The Petitioner's failure to provide public notice as required by the Board of Appeals Rules of Procedure Sec. 2.203 (a) (b) and (c) creates a jurisdictional defect in the Board of Appeal's authority to conduct a hearing on the instant Petition of Appeal of the Hearing Examiner Decision.

ORDER

Based upon the foregoing, it is this 15th day of May, 2025, by the Howard County Board of Appeals, hereby

ORDERED, that the Motion to Dismiss the Petition of Appeal of Blythewood Landscape Management, LLC is **GRANTED** and the Petition of Appeal of Blythewood Landscape Management, LLC is hereby **DISMISSED**.

ATTEST:

HOWARD COUNTY BOARD OF APPEALS

Kel Berg
Kel Berg, Secretary

Gene Ryan
Gene Ryan (May 15, 2025 09:55 CDT)
Gene Ryan, Chairperson

APPROVED AS TO FORM:
HOWARD COUNTY OFFICE OF LAW

Felita Phillips
Felita Phillips (May 15, 2025 10:47 EDT)
Felita Phillips, Vice Chairperson

Gary W. Kuc
County Solicitor

_____ Dissent _____
Jean Xu

Barry M. Sanders
Barry M. Sanders
Senior Assistant County Solicitor

Lynn Foehrkolb
Lynn Foehrkolb (May 15, 2025 10:21 EDT)
Lynn Foehrkolb

_____ Dissent _____
Robbyn Harris