

**OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS**

**Stella B. Werner Council Office Building**

**Rockville, Maryland 20850**

**(240) 777-6660**

**<https://www.montgomerycountymd.gov/ozah>**

**IN THE MATTER OF:  
REFLECTION PARK, INC.**

Applicant

\*  
\*  
\*  
\*  
\*

OZAH Case No. CU 21-06

\*\*\*\*\*

Before: Lynn Robeson Hannan, Hearing Examiner

**ORDER APPROVING A MINOR AMENDMENT**

**I. BACKGROUND**

On October 21, 2021, the Hearing Examiner approved a conditional use and associated variances filed by the Applicant, Reflection Park, Inc. (Applicant or Reflection), to operate a cemetery under §59.3.5.4.A. of the Zoning Ordinance. The subject property is located at 16621 New Hampshire Avenue, Silver Spring, Maryland. The Hearing Examiner imposed 17 conditions of approval on the application. *Hearing Examiner's Report and Decision* (Report I), CU 21-06, Application of Reflections Park, Inc., pp. 51-53.

After an appeal of the October 21, 2021 decision, the Board of Appeals remanded the case back to the Hearing Examiner for additional testimony and evidence on the “potential impact of necroleachate on groundwater, the Rocky Gorge Reservoir, and the Patuxent watershed...” Exhibit 88. Public hearings on the remand took place on April 12, 13, and 14, 2022. After considering the scientific evidence presented, the Hearing Examiner granted the conditional use (on June 15, 2022) without changes to the conditional use plan, but with three additional conditions (*Hearing Examiner's Report and Decision*, CU 21-06 on remand, June 15, 2022 (Report II), p. 77):

1. The Applicant may clear no more than one burial section (shown on the Applicant's Master Plan for Burial and Reforestation) at a time.
2. The Applicant shall replant each burial section utilizing the Applicants Cemetery Section Development and Field to Forest Sequencing Strategies (Exhibit 47).
3. All reforested areas shall be consistent with the Reforestation Planting Concept shown on p. 12 of Exhibit 47.

The Hearing Examiner's decision on remand was not appealed.

On September 8, 2022, Reflection Park requested a minor amendment to the approved conditional use plan. Reflection states (Exhibit 152):

Since that date [the date of the original approval on October 21, 2021], Reflection Park, Inc. has worked diligently to prepare the property for development and use as a cemetery. Unfortunately, due to delays associated with a remand of the case by the Board of Appeals to OZAH for more hearings, culminating in publication of a Report and Decision on Remand on June 15, 2022, the Applicant is eight (8) months behind its original schedule in initiating work on the property and components of the program. Because of those extensive delays, the Applicant has sought ways to accelerate its efforts to ready the property for use as a cemetery and to provide facilities for marketing and storage/protection of equipment to be employed in the land development process.

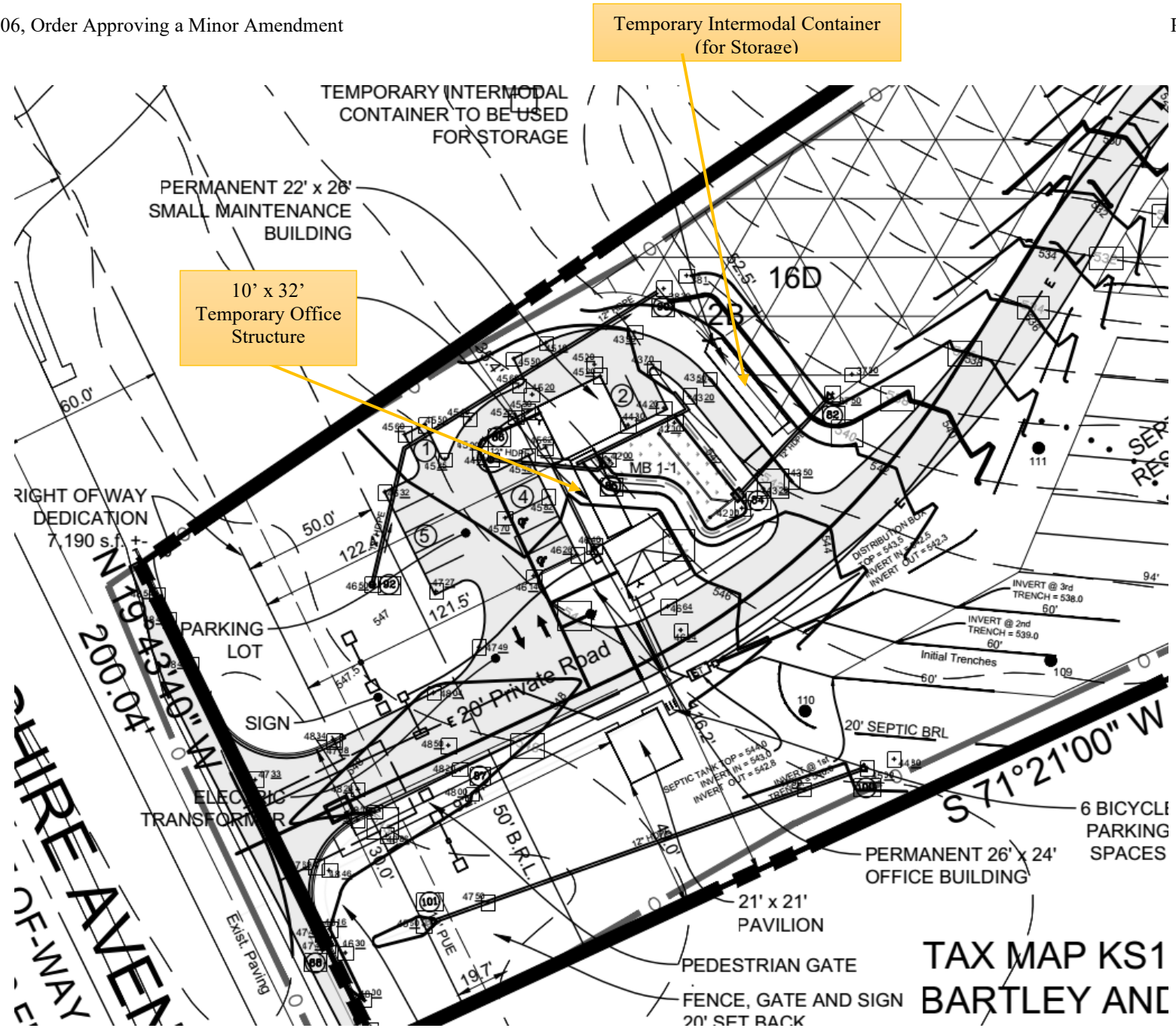
...there were to be three structures including ‘...a pagoda (open-air), ...a small administrative office, and a storage maintenance shed.’ [Report II, p. 16]. The small office building and the utility shed cannot be constructed until a plat of subdivision for the property has been recorded. Preliminary Plan of Subdivision No. 1-20210150 for the subject property is tentatively scheduled for review by the Planning board on Thursday, October 6 and recordation of a plat should then occur three to four months later.

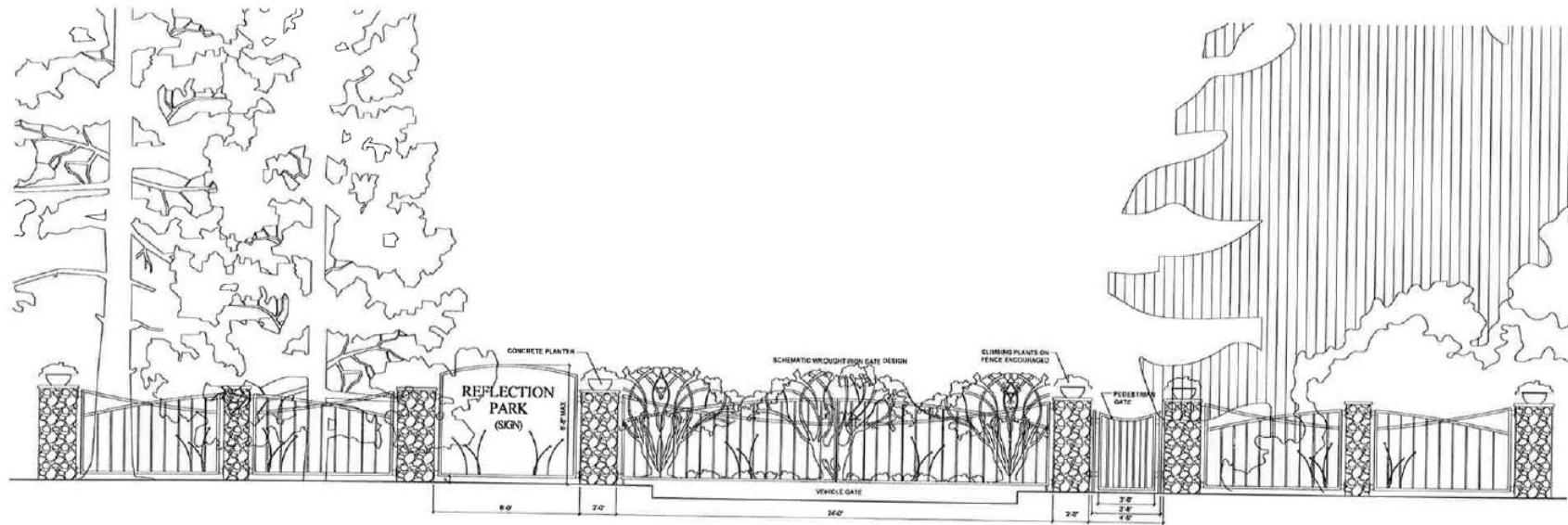
Reflection Park, Inc. cannot wait until another four to five months before it begins marketing and construction activities on the property...

In order to expedite implementing the conditional use, Reflection Park proposes to install a temporary office and utility structures on the site so that marketing and land preparation may proceed before the platting process is complete. It also seeks to alter the landscaping along the entrance. Reflection states that (Exhibit 152):

The proposed temporary buildings are smaller than the ultimate buildings that will be constructed on the property when the building permits can be issued, but their functions will remain the same as described in the Hearing Examiner’s report and decision in 2021. The changes to the fence are both functional and aesthetic and do not in any way alter the impact of the proposal on the surrounding community. Accordingly, these changes can be granted as a ‘minor amendment’ with the understanding that the small temporary office building and the temporary storage and utility building will ultimately be replaced by structures already reviewed and approved by the Hearing Examiner.

The temporary changes to the conditional use plan are shown on the following pages.

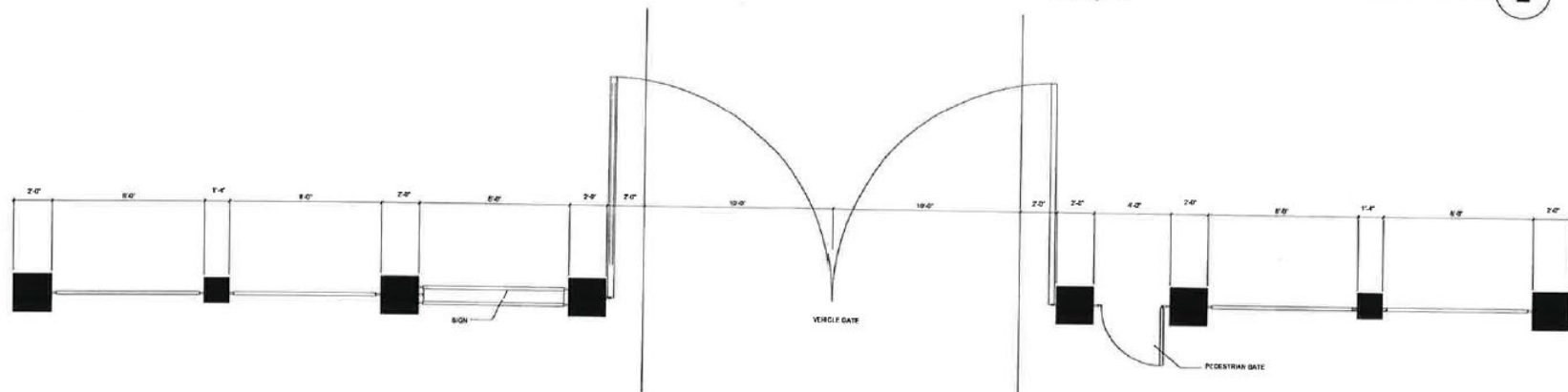




FRONT GATE ELEVATION

SCALE:  $\frac{1}{8}" = 1'-0"$ 

2



FRONT GATE PLAN

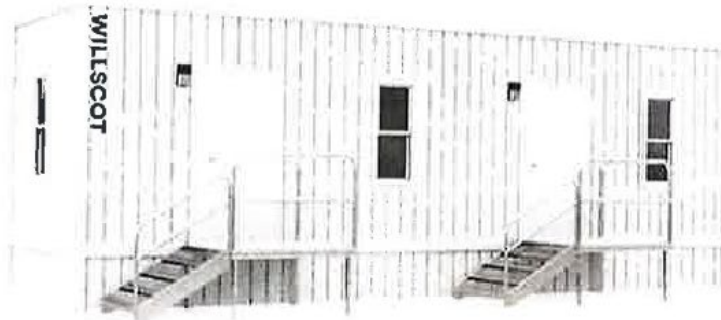
SCALE:  $\frac{1}{8}" = 1'-0"$ 

1

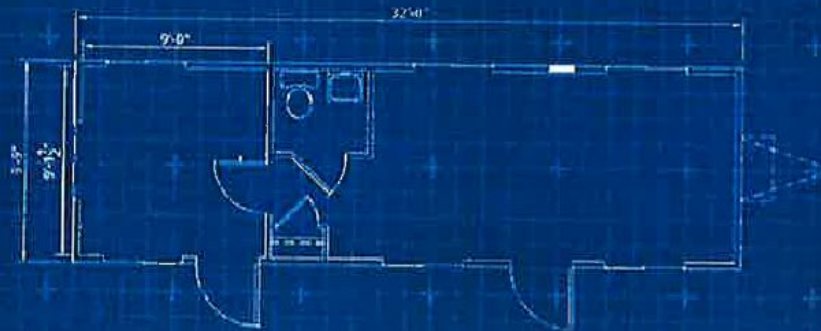
Revised Landscaping for Entrance Gate



## 36' x 10' OFFICE TRAILER



In addition to your office solution, we can provide additional products and services that complete your space- creating a more productive, comfortable, and safe work environment.



### CUSTOMIZATION

- Steps & Ramps
- Furniture & Appliances
- Technology
- Site Services
- Loss Protection



**Exhibit 161**  
**Temporary Storage Container**

The Hearing Examiner referred the above amendments to Staff for their review and recommendation on whether the proposed changes were a “major” or “minor” amendment to the conditional use plan. Staff determined that the temporary structures would be a “minor” amendment for several reasons. Staff concluded that (Exhibit 168):

...the closest temporary structure is about 120’ from the road as well as it is down grade from the road by 6’-8’ difference. The structure maybe viewed a little from the road because of the distance from the road as well as the elevation difference but if the fencing and landscaping were to be installed it would be totally hidden.”

Staff also noted that the temporary office is permitted in most contexts as a limited use (not needing a conditional use) and that temporary use of the office and trailer did not affect the character of the underlying (permanent) conditional use. Exhibit 167.

The Applicant’s landscape architect confirms Staff’s determination that the structures will be adequately screened from adjoining properties, stating that the landscaping in the original conditional use was designed to be “generous enough” to screen both the temporary and permanent structures from New Hampshire Avenue and adjoining properties. Reflection also confirms that the landscaping will be installed either contemporaneously or before installation of the temporary structures.

## II. OPINION AND ANALYSIS

### A. Governing Law

Amendments to previously approved conditional uses are governed by Section 59.7.3.1.K of the Zoning Ordinance. A minor amendment 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.” *Zoning Ordinance*, Section 59.7.3.1.K.2.a. A “major amendment” is “one that changes 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.” *Id.*, Section 59.7.3.1.K.1.a.

### B. Opinion

Based on this record, the Hearing Examiner finds that the changes requested are a minor amendment to the originally approved conditional use plan. As Staff points out, the proposed uses are temporary and will not be “in combination with the underlying conditional use” but will be replaced with the permanent structures already approved. Thus, there is no change in the intensity or operations of the use; the temporary structures will simply avoid further delays in implementing the use originally approved.

The Hearing Examiner finds that installation of temporary structures will not alter the visual impact of the conditional use. Both the temporary office trailer and the temporary storage shed are smaller than the permanent buildings approved. Staff determined that the temporary structures will be hidden from New Hampshire Avenue due to the grade and with the landscaping installed.

The Applicant confirms that (1) installation of the temporary structures will not interfere with installation of the approved landscaping, (2) that the landscaping will be installed contemporaneously with or prior to installation of the structures, and that (3) the approved landscaping already generously screened the larger permanent buildings.

As the proposed amendment does not change the intensity in operations approved in 2021 and will have no additional impact on views and screening of the use, the Hearing Examiner finds that the amendment is minor and may be approved administratively.

## III. ORDER

Based on the foregoing, it is this 24<sup>th</sup> day of October 2022, hereby

ORDERED, the amendments proposed to CU 21-06, Application of Reflection Park, Inc., by and hereby are, APPROVED, and it is further

ORDERED, that all development on the subject property shall conform to the amended conditional use plan (Exhibit 153) until the removal of the temporary office and storage unit, and it is further

ORDERED, that all development after removal of the temporary structures shall conform to the conditional use plan approved on October 21, 2022 (Exhibits 38(a) through (g)), and it is further

ORDERED, that development of the subject property must conform to the approved Landscape Plan showing revisions to the entrance gate (Exhibits 157-159), and it is further

ORDERED, that all conditions of approval set forth in the Hearing Examiner's Reports dated October 21, 2021, and June 15, 2022, remain in full force and effect.



---

Lynn Robeson Hannan  
Hearing Examiner

### **NOTICE**

Under §59.7.3.1.K.2.b of the Zoning Ordinance, any party may request a public hearing on the Hearing Examiner's action within 15 days after this 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 Hearing Examiner must suspend her administrative approval and conduct a public hearing to consider whether the amendment is a major amendment or a minor amendment under the Zoning Ordinance. A minor amendment is one that does not "substantially changes the nature, character, or intensity of the conditional use or its effect on the immediate neighborhood." A major amendment is one that does substantially change the nature, character, or intensity of the conditional use on the immediate neighborhood. If the Hearing Examiner determines, after an objection, that the impact will be major, then the application must be treated as a major amendment. A decision of the Hearing Examiner may be appealed based on the Hearing Examiner's record to the Board of Appeals.

#### **COPIES TO:**

Jody S. Kline, Esq.  
Attorney for the Applicant  
Barbara Jay, Executive Director, Board of Appeals  
Victor Salazar, Dept. of Permitting Services  
Mark Beall, Planning Department

Michael Coveyou, Dir. Of Finance  
Cliff Royalty, Esq., Office of the County Attorney  
Current abutting and confronting property owners  
David and Rachel Hickson  
Michelle Albornoz  
Andy Bartley  
Patricia Thomas  
David Bachenheimer  
Parties to CU 21-06

All parties entitled to notice at the time of the original filing:

Abutting and Confronting Property Owners  
(or a condominium's council of unit owners or renters if applicable)  
Civic, Renters and Homeowners' Associations within a half mile of the site  
Any municipality within a half mile of the site.