

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS

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

Applicant

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OZAH Case No. CU 21-06

Before: Lynn Robeson Hannan, Hearing Examiner

ERRATA TO ORDER APPROVING CONDITIONAL USE

On October 11, 2021, the Hearing Examiner issued an Report and Decision (Decision I) approving the above-captioned application for a conditional use to operate a cemetery under §59.3.5.4.A of the Montgomery County Zoning Ordinance. The subject property is located at 16621 New Hampshire Avenue, Silver Spring, Maryland. Decision I made the approval subject to 17 conditions. Decision I was appealed to the Board of Appeals and subsequently remanded for additional testimony and evidence on the impact of the cemetery on groundwater and the WSSC Reservoir. Exhibit 88. After public hearings on remand, the Hearing Examiner issued a second Report and Decision (Decision II) approving the conditional use on June 15, 2022. Decision II incorporated all the conditions in Decision I and added three new conditions. The Hearing Examiner approved a minor amendment to the conditional use on October 24, 2022, to permit a sales trailer and storage container to be temporarily located on the subject property until permanent structures could be built. The Order reiterated that all conditions in Decisions I and II were to remain in full force and effect, except for the temporary uses authorized by the Order approving the minor amendment.

On November 17, 2022, Staff of the Planning Department informed the Hearing Examiner that “that an error in in Condition #12 of the Planning Board Conditional Use Staff Report was carried through to the Hearing Examiner’s approval in condition #16 [of Decision I].” Exhibit 171. Staff stated (*Id.*):

Condition #11 in the Planning Board Staff Report (similarly worded) is correct and was carried through correctly to Condition #15 of the Hearing Examiner’s approval.

The Planning Board Staff Report, Presentation, and Impervious Surface Plan (aka Exhibit 38(z)) all correctly show the impervious surface limit was calculated across the entire property and not just within the transition area of the Patuxent River Primary Management Area (PMA).

This was correctly worded in #11[in the Staff Report]/#15 [in Decision I] but was incorrectly worded in #12 [of the Staff Report]/#16 [of Decision I].

The Hearing Examiner’s conditions should have read:

15. Impervious surfaces are limited to no more than 10.0 percent of the subject property as shown on Exhibit 38(z).

16. Prior to the start of any clearing or grading on the subject property, the owner of the subject property must enter into an agreement with the Planning Board to limit impervious surfaces ~~within the transition area of the Patuxent River Primary Management Area (“PMA”)~~ on the subject property to no more than 10.0 percent, as shown on Exhibit 38(z). The agreement must be in a form approved by the M-NCPPC Office of the General Counsel and recorded by deed in the Montgomery County Office of Land Records.

The recommended conditions were in the Conditional Use portion of the Planning Board item. The regulatory Resolution on the Forest Conservation Plan is correctly worded and does not need to be amended.

A review of Decision I demonstrates that Planning Staff correctly states that the language shown in red from Condition No. 16 (above) was a clerical error and should have been deleted from the Decision. Exhibit 38(z), cited in Condition 16, shows that the impervious area limit of 10 percent, recommended by the *1993 Functional Master Plan for the Patuxent River Watershed* (Master Plan), was based on the acreage of the entire property and not just the transition area of

the PMA. In Decision I, the Hearing Examiner explicitly adopted Staff's conclusion that calculating impervious area limits based on the area of the entire property met the recommendations of the Master Plan. *See, Decision I*, pp. 28-29. This is further evidenced by Condition No. 15 of Decision I, which correctly states that the 10.0 percent impervious level should be calculated based on the acreage of the entire property.

For the foregoing reasons, the Hearing Examiner hereby corrects the clerical error and revises Condition No. 16 of her Decision dated October 11, 2021, to read:

16. Prior to the start of any clearing or grading on the subject property, the owner of the subject property must enter into an agreement with the Planning Board to limit impervious surfaces on the subject property to no more than 10.0 percent, as shown on Exhibit 38(z). The Agreement must be in a form approved by the M-NCPPC Office of the General Counsel and recorded by deed in the Montgomery County Office of Land Records.

Correction of this clerical error does not change the substance of Decisions I and II, or the minor amendment approved on October 24, 2022. All remaining conditions imposed in Decisions I and II, and the Order Approving the Minor Amendment, remain in full force and effect.

So Ordered this 1st day of December, 2022.



Lynn Robeson Hannan
Hearing Examiner

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