

As described by Technical Staff (Exhibit 29, p. 3), the Applicant “is a non-profit organization that provides comprehensive services to Asian Americans, both citizens and recent immigrants, in the Washington area. They provide a variety of services in the fields of health, immigration, elder care, and family support programs. Cultural and linguistic programs to address language barriers in housing, job placement, and other social needs are also offered. The headquarters is in Annandale, Virginia, with 3 branch offices in suburban Maryland. The proposed use will be another branch office of KCSCGW.”

No correspondence either for or against the conditional use application was received by either the Hearing Examiner or Technical Staff (Exhibit 29, p. 20). Three residents of the neighborhood, Michael Glasby, Winston Thames and Julio Gonzalez, participated in the hearing, asking questions and raising concerns; however, none of them expressed opposition to the application. Tr. 84-97.

In granting the conditional use, the Hearing Examiner noted in his Report, at p. 39, that “. . . no sign is proposed for the subject conditional use,” based on Technical Staff’s statement to that effect (Exhibit 29, p. 9). Therefore, the Hearing Examiner imposed Condition 8 in Part IV of this Report and Decision prohibiting the Applicant from erecting a sign on the subject site.

By letter dated January 16, 2018, counsel for the conditional use holder, the Korean Community Service Center of Greater Washington, Inc., requested that the Hearing Examiner approve a minor amendment of the conditional use by administratively modifying Condition No. 8, to allow the posting of a two square-foot wall sign, in compliance with Zoning Ordinance §59.6.7.8.A (Exhibit 46).

II. The Basis for the Modification Request

Soo Lee-Cho, Esquire, the attorney for the Conditional Use Holder, outlined the reasons for the request in her letter of January 16, 2018 (Exhibit 46):

I am writing on behalf of the Korean Community Service Center of Greater Washington, Inc. ("KCSC") to request a minor amendment of KCSC's conditional use approval Case No. 17-12 for installation of a small wall sign on the property. The Report and Decision issued by OZAH in conditional use Case No. CU 17-12 on May 5, 2017 approved the operation of a Private Club, Service Organization in the above-grade basement of the existing one-family, detached house at 700 Buckingham Drive in Silver Spring, Maryland subject to a number of conditions, including Condition of Approval No. 8, which states as follows: "*The Applicant must not erect a sign on the subject site.*" This minor amendment request seeks approval of a modest wall sign that is proposed to be installed on the south façade of the existing residential structure in compliance with the size and location requirements for wall signs in a residential zone as per Section 59.6.7.8.A of the Zoning Ordinance.

At the time of OZAH's public hearing in this matter, it was not clear to the Applicant that a modest wall sign that is within the size limit allowed in all residential zones by Section 59.6.7.8.A of the Zoning Ordinance (i.e., 2 square feet) generally, needed to be specifically requested to be allowed under the conditional use approval. Applicant's testimony in regard to the lack of proposed signage on the property at the public hearing was limited to their not having any interest in erecting a separate freestanding, monument sign only. The Applicant erroneously believed that wall signage did not need to be specifically addressed since it does not constitute a separate structure or landscape feature located on the property.

The Applicant requests that Condition of Approval No. 8 be amended to allow the installation of the proposed wall sign as depicted on the exhibits enclosed herein. Pursuant to Section 59.7.3.1.K.2 of the Zoning Ordinance, this minor amendment request does not substantially change the nature, character or intensity of KCSC's 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 and as such, can be approved by the Hearing Examiner administratively without the necessity of a public hearing.

In support of this request, Ms. Lee-Cho submitted the following materials:

1. A current list of adjoining and confronting property owners;
2. Photo of South Façade of Existing Structure, depicting location, height and dimensions of proposed wall sign (Exhibit 46(a));
3. Amended Conditional Use Plan, depicting location of proposed wall sign with a yellow star (Exhibit 46(b));
4. Enlarged Version of Proposed Sign Text with Amended Conditional Use Plan (Exhibit 46(c)); and
5. Filing fee check in the amount of \$820.00.

III. The Governing Law

Requests to amend a conditional use are governed by Zoning Ordinance §59.7.3.1.K. Whether an amendment request is characterized as one for a major amendment or for a minor amendment is significant because a *major amendment* application must “*follow[] the same procedures, must meet the same criteria, and must satisfy the same requirements as the original conditional use application . . .*” Zoning Ordinance §59.7.3.1.K.1.b. However, an application for a *minor amendment* need not go through those extensive procedures. Rather, “. . . *it may be approved administratively by the Hearing Examiner.*” Zoning Ordinance §59.7.3.1.K.2.a.

Zoning Ordinance Section 59.7.3.1.K. also defines major and minor amendments:

§59.7.3.1.K.1.a. *A major amendment to a conditional use 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.*

§59.7.3.1.K.2.a. *A minor amendment to a conditional use 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.*

Whether an application to amend a conditional use is characterized as a major amendment or a minor amendment, the County Council has recently made it clear that the request to amend a conditional use must be filed with the Hearing Examiner, and not the Board of Appeals.¹ See Zoning Text Amendment (ZTA) 16-16, (Ord. No. 18-25, eff. 2/27/17), which amended Zoning Ordinance §59.7.3.1.K. to clarify jurisdiction over applications to amend conditional uses and special exceptions.

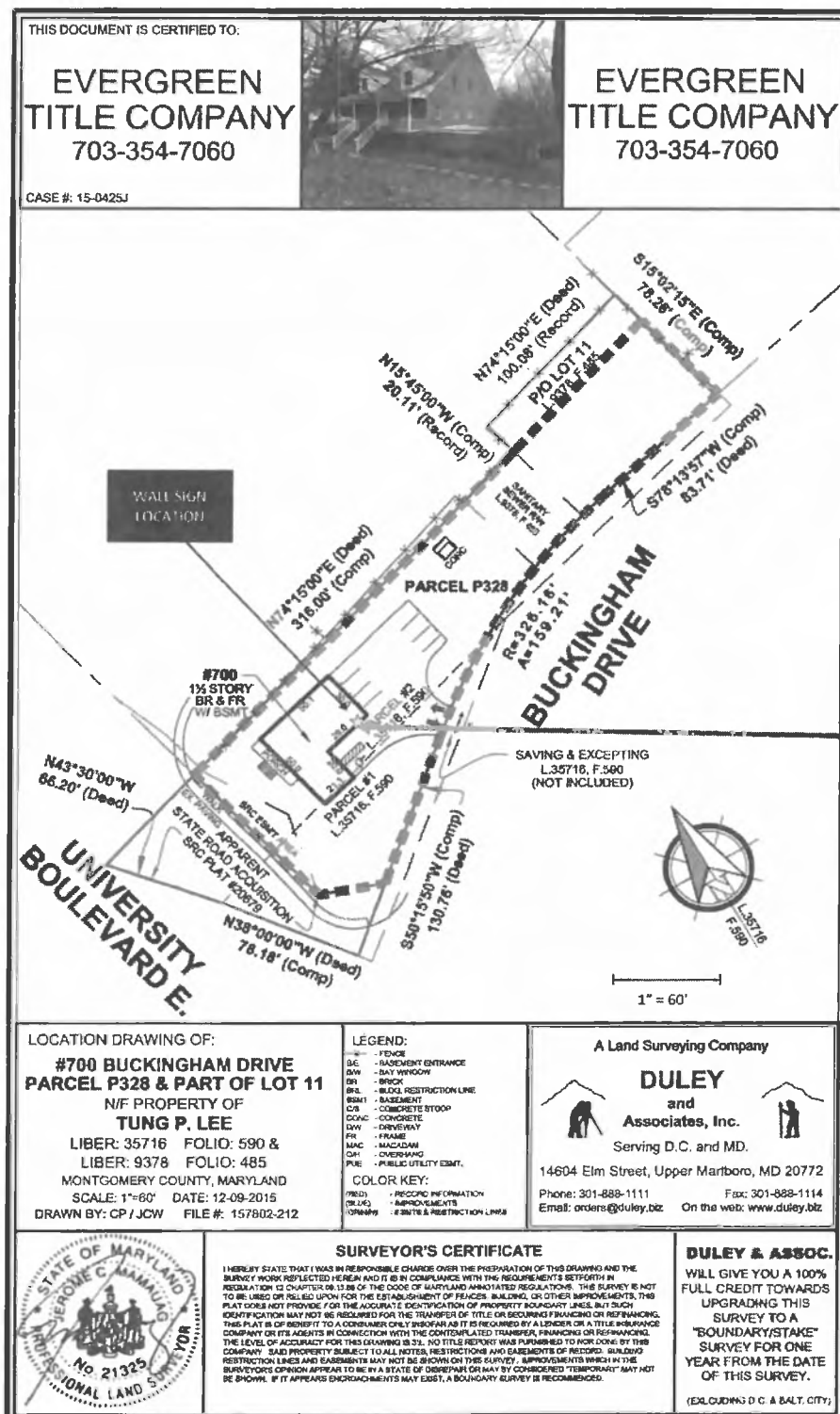
IV. Evaluation and Decision

It is clear from the above-cited jurisdictional provisions of the Zoning Ordinance, that the conditional use holder was correct in filing its request to amend CU 17-12 with the Hearing

¹ The opposite is true with requests to modify special exceptions. They must be filed with the Board of Appeals.

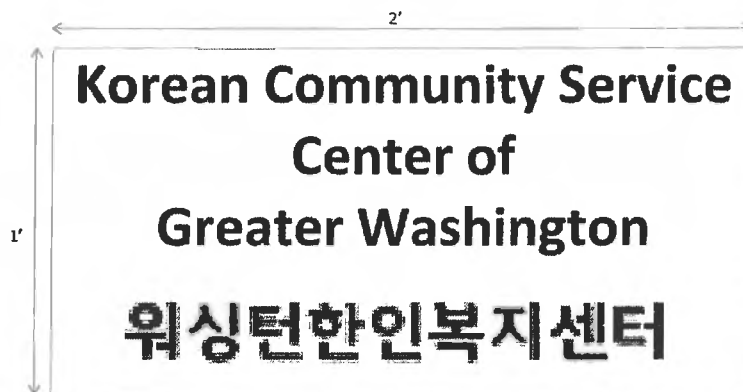
Examiner. The proposed location of the new sign is shown on the amended Conditional Use Site Plan (Exhibit 46(b)), attached to Ms. Lee-Cho's letter, and reproduced below:

CONDITIONAL USE PLAN
700 BUCKINGHAM DRIVE, SILVER SPRING, MD 20901



Proposed
Sign Location

The attachments to Ms. Lee-Cho's letter included a photo (Exhibit 46(a)) and a diagram (Exhibit 46(c)), depicting the proposed wall sign. Both are reproduced below:



The definitional distinction between a major and minor amendment is whether the proposal, if granted, would “*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.*” Under the facts of this case, the Hearing Examiner finds that the proposed change would clearly not change the

nature or character of the use. It would still be operating as a small service organization in the above-grade basement of the existing one-family, detached house. No additional traffic, parking, staffing or other site or operational changes are requested. One would not reasonably expect substantial adverse effects on the surrounding neighborhood just by adding a small wall sign of the size that is permitted by the Zoning Ordinance in a residential area.

There is no evidence in the factual record compiled by the Hearing Examiner to demonstrate that the posting of a small wall sign would be a significant issue for the neighborhood. In sum, the Hearing Examiner agrees with Ms. Lee-Cho that the addition of the small sign proposed here would have very little impact on the neighborhood.

The Hearing Examiner concludes that the proposed modification is properly characterized as a minor amendment – one which will 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. Thus, the statutory standard for an administrative modification to allow a minor amendment is satisfied, and it is hereby approved without a public hearing, subject to reconsideration if a request for a hearing is received in accordance with the provisions of this Order.

The Hearing Examiner hastens to add that this ruling does not address whether or not the conditional use holder must obtain a permit from the Department of Permitting Services (DPS) before posting the sign, per the dictates of Zoning Ordinance §59.6.7.2. That issue should be resolved by the conditional use holder with the Department of Permitting Services. The Hearing Examiner holds only that the amended terms of the conditional use do not prohibit the sign now proposed by the conditional use holder.

ORDER

Based on the foregoing, it is, this 22nd day of January, 2018:

ORDERED: That the request for a minor amendment to Conditional Use CU 16-07, allowing the small wall sign depicted in Exhibits 46(a) and (c) to be added to the site at the location specified in the Amended Conditional Use Site Plan (Exhibit 46(b)), is hereby administratively **APPROVED**, under the terms set forth below in a modified Condition 8; and, it is

FURTHER ORDERED: That Condition 8 of the Hearing Examiner's decision of May 5, 2017 is administratively amended to read as follows:

8. The conditional use holder may post a two square foot wall sign, as depicted in Exhibits 46(a) and (c), at the location specified in the Amended Conditional Use Site Plan (Exhibit 46(b)), after obtaining a permit therefor, if such a permit is required by the Department of Permitting Services, and filing a copy of any such permit with OZAH.

and, it is

FURTHER ORDERED: That this amendment and the continued use of the conditional use are subject to all terms and conditions imposed in connection with the initial approval, except as specifically amended by the Hearing Examiner in this Opinion and Order. The Conditional Use holder is directed to comply fully with all applicable county, state and federal regulations; and, it is

FURTHER ORDERED: That pursuant to Section 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 his administrative amendment and conduct a public hearing to consider whether the amendment substantially changes the nature, character, or intensity of the conditional use or its effect on the immediate neighborhood. If the Hearing Examiner determines that such impacts are likely, then the amendment application must be treated as a major amendment application. A decision of the Hearing Examiner may be appealed on the basis of the Hearing Examiner's record to the Board of Appeals.



Martin L. Grossman
Hearing Examiner

NOTICES TO:

Korean Community Service Center of Greater Washington, Inc.
Soo Lee-Cho, Esquire, Applicant's attorney
Elizabeth Kim
Phillip S. Cho
Somer Cross
Michael Glasby, Neighboring property owner
Winston Thames, Neighboring property owner

Julio Gonzalez, Neighboring property owner

Current abutting and confronting property owners

Parties of record

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

Barbara Jay, Executive Director, Montgomery County Board of Appeals

Kathy Reilly, Planning Department

Planning Board

Ehsan Motazed, Department of Permitting Services

Alexandre A. Espinosa, Director, Finance Department