

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
Stella B. Werner Council Office Building
Rockville, Maryland 20850
(240) 777-6660

IN THE MATTER OF
REFLECTION PARK, INC.

Applicants

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OZAH Case No. CU 21-06

Before: Kathleen Byrne, Hearing Examiner

ORDER ADMINISTRATIVELY APPROVING A SECOND MINOR AMENDMENT

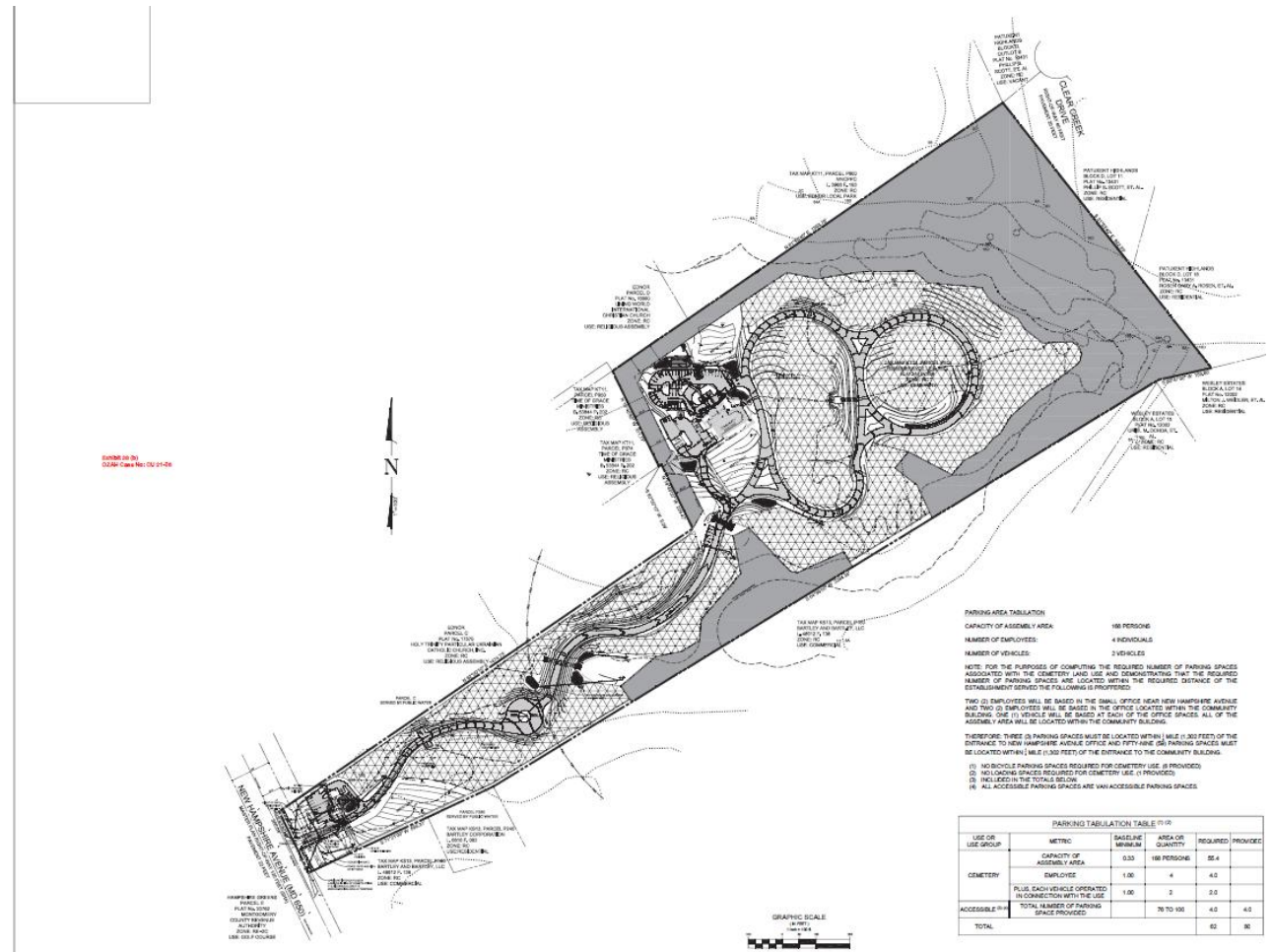
I. BACKGROUND

On October 11, 2021, Hearing Examiner, Lynn Robeson Hannan , approved a conditional use filed by the Applicant Reflection Park, Inc. (Applicant) to establish a cemetery pursuant to §59.3.5.4.A. of the Zoning Ordinance on property located at 16621 New Hampshire Avenue, Silver Spring Maryland, further identified as Parcel 911, Tax Map KT 121. *See* HE Report 10/11/2021. Parties in opposition requested an oral argument before the Board of Appeals who then remanded the matter back to Ms. Robeson Hannan to take additional evidence regarding the “potential impact of necroleachate on ground water, the Rocky Gorge Reservoir, and the Patuxent watershed... and such additional evidence from other parties ... relevant to the water quality issues raised in this case.” *See* HE Report 6/15/2022. After receiving additional evidence and testimony the Hearing Examiner again granted the conditional use adding additional conditions. *Id.* On October 24, 2022, the Hearing Examiner approved a minor amendment to permit a sales trailer and storage container to be temporarily located on the subject property until permanent structures could be built. *See* HE Order 10/24/2022.¹

The property is zoned RC (Rural Cluster). The Applicant now requests a second minor amendment to the conditional use plan approved on June 15, 2022 and altered by the first minor amendment on October 24, 2022. The conditional use approved on October 11, 2021 permitted the building and operation of the cemetery subject to 17 conditions, granted a waiver to the minimum distance required by the parking regulations and recommended the Board approve the variances requested. *Id.* The Hearing Examiner report issued on June 15, 2022 added an additional 3 conditions. *Id.* The approved Minor Amendment reiterated that the conditions established in the two prior decisions “were to remain in full force and effect, and except for the temporary uses authorized” by the October 24, 2022 Minor Amendment. *Id.*

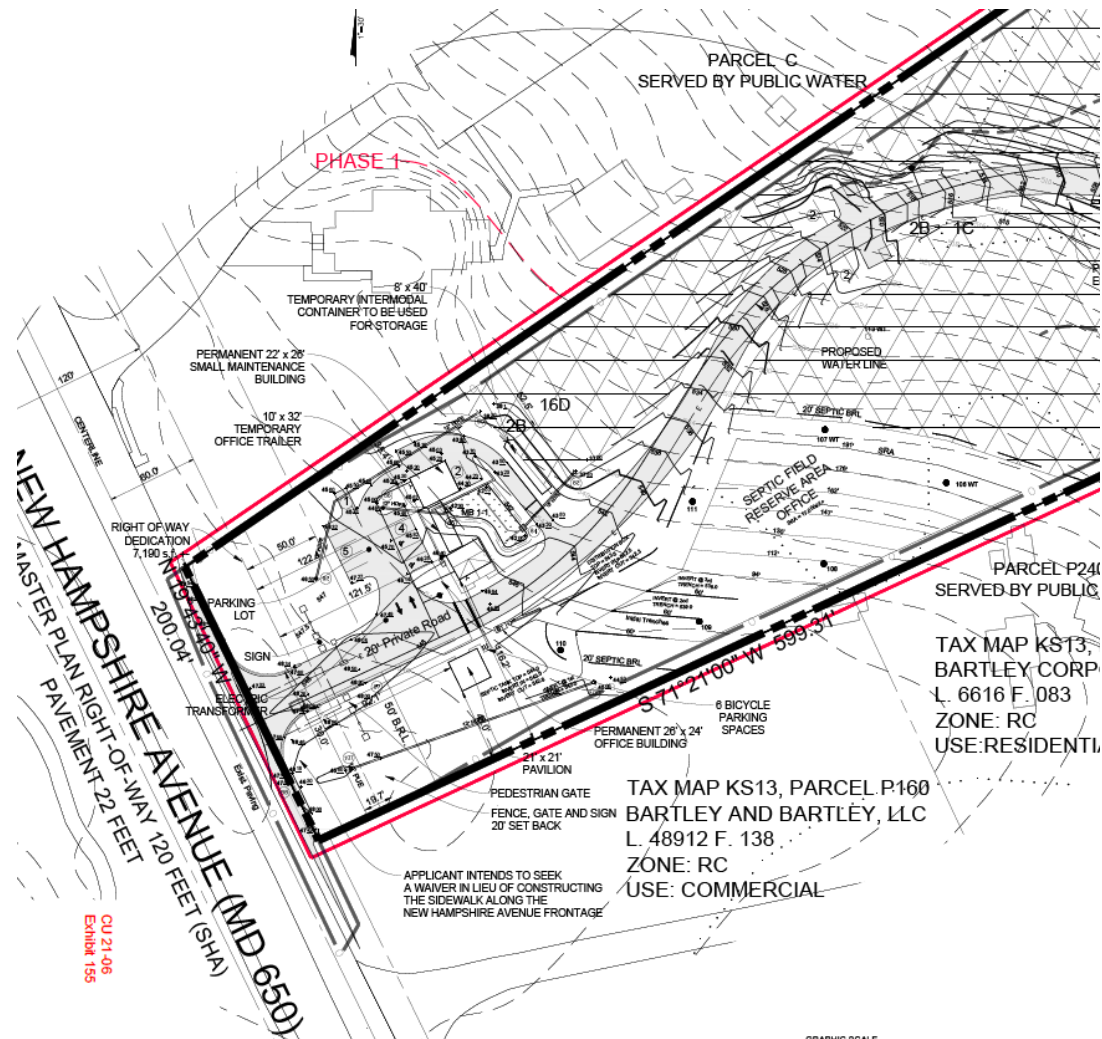
The previously approved conditional use site plan Exhibit 38(b) is reproduced on the following page. The site plan related to the temporary use as approved in the Minor Amendment is reproduced on page 3.

¹ The Hearing Examiner issued an errata on December 1, 2022 to the Minor Amendment correcting a typo in condition 16 of that order.



Site Plan - Exhibit 38(b)

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Portion of Phase 1 Site Plan – Exhibit 155

On October 11, 2021 the Hearing Examiner approved the application subject to the following conditions of approval. See HE Report 10/11/2021. pp. 54-53.

1. Physical improvements to the Subject Property are limited to those shown on the Conditional Use Plan (Exhibits 38(a) through (g)), Landscape Plan (Exhibit (p), (q) (r) and (t), building plan (Exhibit 21), and Photometric Plan (Exhibit 38(u).
2. No more than seven employees may be on the property at any one time.
3. Hours of operation are between 8:30 a.m. to sunset, seven days a week.
4. The Applicant must remove all pulse generator components of implanted cardiac pacemakers, including batteries, from cadavers prior to burial.

5. Gravesites must be located within the area depicted on the Conditional Use Plan (Exhibit 38(b)).
6. The Applicant must obtain approval of BOA Case No. A-6693 prior to approval of a preliminary plan of subdivision.
7. During preliminary plan review, the Applicant must submit to the Planning Board an assessment of whether riparian buffers exist along on-site streams.
8. Sediment and erosion control measures must be implemented during all clearing and grading on the property, including gravesite areas.
9. Trip generation for the approved use must not exceed 50 peak hour trips within the weekday morning and evening peak periods.
10. The Applicant must obtain a sign permit from the MCDPS for the proposed freestanding sign. A copy of the sign permit obtained from MCDPS must be submitted to the Hearing Examiner before the sign is installed on the property.
11. Prior to the issuance of any building permit for the subject Conditional Use, the Applicant must obtain approval of a Preliminary Plan of Subdivision and a Record Plat pursuant to Chapter 50 of the Montgomery County Code. If changes to the approved Conditional Use Site Plan or other plans filed in this case are required at Subdivision, the Applicant must file a copy of the revised site and related plans with OZAH.
12. The proposed development must comply with the Preliminary Forest Conservation Plan and the conditions of approval therein.
13. The Applicant must obtain approval of the Final Forest Conservation Plan by the Planning Board, after which time the Applicant must comply with the terms of the Final Forest Conservation Plan.
14. Prior to issuance of access permits, the Applicant must satisfy the provisions for access and improvements as required by the Maryland State Highway Administration ("SHA").
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 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.²

² On December 1, 2022, the Hearing Examiner issued an Errata correcting a typo in Condition 16 removing the words "within the transition area of the Patuxent River Primary Management Area ("PMA"). Paragraph 16 above reflects the correct language, not the exact language from the HR Report 10/11/21.

17. The Applicant and any successors in interest must obtain and satisfy the requirements of all Federal, State, and County licenses, regulations, 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 and any successors in interest 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, including the annual payment of conditional use administrative fees assessed by the Department of Permitting Services.

After a public hearing upon remand from the Board of Appeals, on June 15, 2022, the Hearing Examiner added the following additional conditions:

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.

On October 24, 2022, the Hearing Examiner Ordered the following as it related to the temporary office and storage unit.

1. 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.
2. 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)).
3. That development of the subject property must conform to the approved Landscape Plan showing revisions to the entrance gate (Exhibits 157-159).



1st Minor Amendment Site Plan - Exhibit 153

II. SECOND MINOR AMENDMENT

1. Applicant's Proposal

On April 17, 2024 OZAH received a Second Minor Amendment Request from the Applicant seeking to use and incorporate 16641 New Hampshire Avenue with the approved conditional use at 16621 New Hampshire Avenue. Exhibit 172. After consulting with Planning, the Hearing Examiner responded on June 28, 2024 raising concerns that the April 17, 2024 submission lacked connectivity between the two lots, traffic, parking, light and landscaping to be more of a “major amendment” than a minor amendment”. Exhibit 182. The Hearing Examiner stated that if the Applicant wished to submit a minor amendment for a possible temporary use of the existing structure at the front of 16641 New Hampshire Avenue, the Hearing Examiner could review that submittal as a minor application. *Id.* Pursuant to the Hearing Examiner’s direction, on October 21, 2024, the Applicant filed a different second request for a minor amendment to the original conditional use approval.

The new second minor amendment request seeks to a) annex a portion of the adjacent land now owned by the Applicant at 16641 New Hampshire Avenue and to incorporate that land area into the subject conditional use and to b) use an existing residence within the annexed area to become the Applicant's "sales office" replacing the originally proposed "small office building" to be located at the main entrance of the cemetery at 16621 New Hampshire Avenue.³ See Minor Amendment 10.21.24, pp. 1 – Exhibit 181. Applicant believes that using the existing structure at 16641 New Hampshire Avenue as a sales office will allow the Applicant to establish a presence on the existing conditional use property sooner; additionally, the reuse of an existing structure is more environmentally sensitive than creating a new building. *Id.*

The Applicant updated the Hearing Examiner on another change regarding the proposed use at 16641 New Hampshire Avenue. Specifically, the Applicant seeks to add the opportunity for "spiritual and religious programming, services and events to satisfy that interest which would be carried out in conjunction with a partnering organization." *Id.* at pp. 3. The spiritual/religious programming would take place on 8.45 acres of the total 10.5-acre parcel, while owned by the Applicant would not be "subject to" the approved CU 21-06 and be leased to a 3rd party to provide those activities. After consulting with the County's Department of Permitting Services, the Applicant learned that the "residual uses" on 16641 "fall under the religious assembly use and would be allowed on the one lot as all part of the primary use." *Id.* pp. 4. Further the Applicant states at which time the religious assembly land starts to generate traffic, at that time, the Applicant will submit a use amendment application that would encompass changes to the original conditional use property at 16621 to "a) eliminate the Small Office Building and other structures approved to be constructed at the entrance to the cemetery and b) would also remove the Community Building shown on the approved development plan" as well as "propose relocation of the driveway to 16641 and remove some of the features from the original 40.39 acre conditional use approved property that will no longer be located on that property. *Id.*

2. Revised Plans

The Applicant submitted a revised site plan depicting both 16641 and 16621 New Hampshire Avenue identifying the area originally covered by the approved conditional use and the location of the "annexed" area to serve as the "sales office" for the approved conditional use. See image on next page. The Applicant wishes to use the structure at the front of 16641 New Hampshire Avenue as a permanent office space for the conditional use granted to 16621 New Hampshire Avenue

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³ The Hearing Examiner notes that this request not only seeks to alter the original conditional use approval, but also impacts the prior Hearing Examiner's decision granting the first minor amendment.

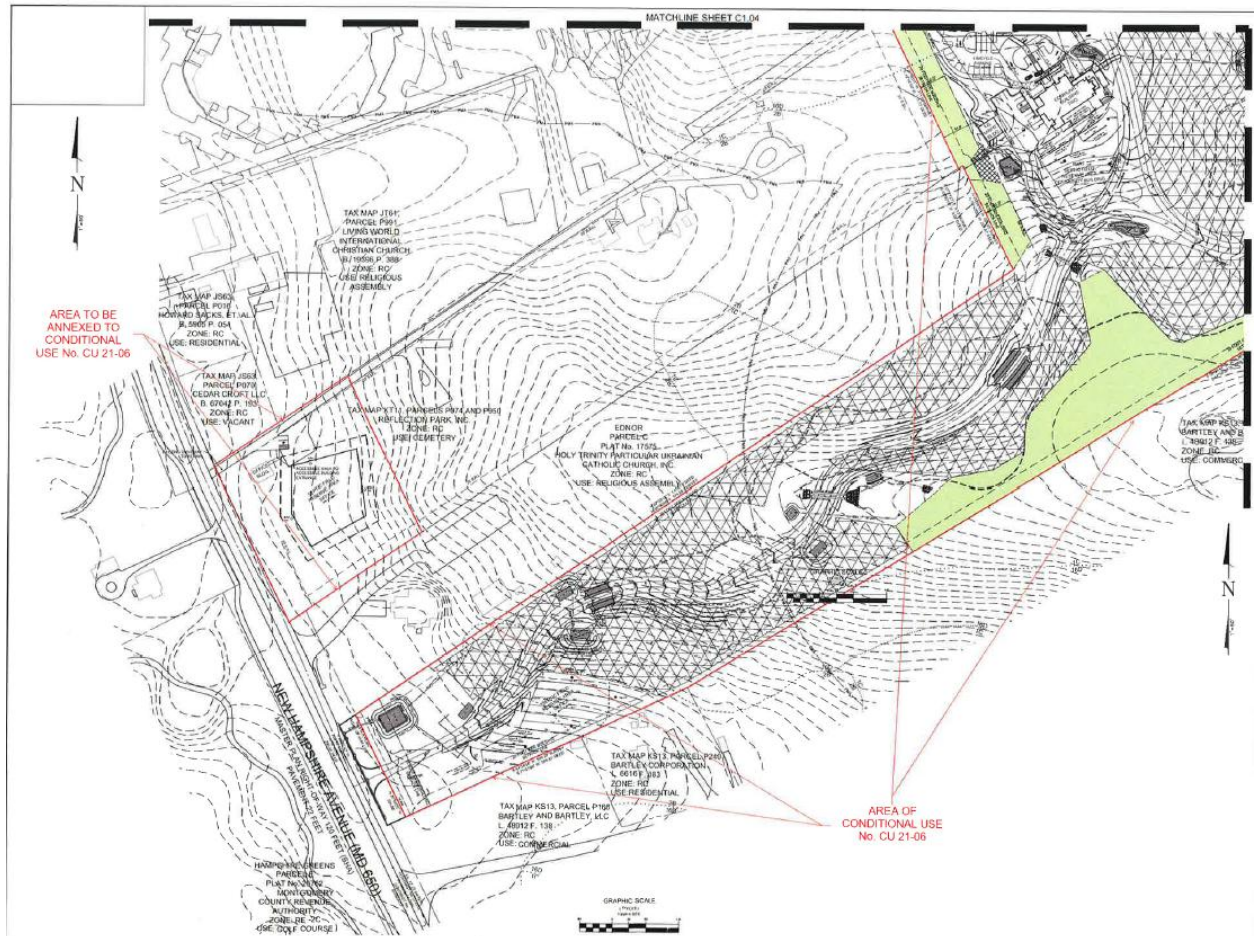


Exhibit 181, Attachment 3
“Coversheet for Minor Amendment Application”

The aerial photo and enlarged site plan of the “sales office” is shown on the following page.

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Exhibit 181 – Attachment 2



Exhibit 181 – Attachment 5

3. Use of 16641 New Hampshire Ave as Sales & Marking Office

With this second minor amendment request, the Applicant seeks only to shift “office” operations from their original location at the entrance from 16621 New Hampshire Avenue to the existing structure at the front of 16641 New Hampshire Avenue identified and shown on the “Minor Amendment Site Plan – West”. Shown above at Exhibit 181, Attachment 5. The Applicant consulted with the Department of Permitting Services (DPS) regarding the proposed operation and existing conditions surrounding the structure. To use the existing residential structure at the front of 16641 New Hampshire Avenue as an office for the Conditional Use operations, DPS requires that the Applicant pave an area within the existing gravel lot and provide two ADA parking spaces. Exhibit 181. After discussion with State Highway Administration (SHA), the agency determined that the driveway at 16641 New Hampshire to be “safe and adequate” without “signage or mirror” to serve for the proposed office after conversion of the existing structure from a residence to an office. *Id.* at Attachment 7.

The Applicant exchanged correspondence with Ms. Patricia Wolford, Section Manager for Zoning Review for DPS regarding operations at 16641 New Hampshire Avenue. Ms. Wolford stated as follows:

The only concerning I have regarding what you have proposed in the letter is the construction of any new buildings or the obtaining a building permit for a non-permitted structure would require the recordation of a lot. Currently the property is a 10.5-acre parcel and the newly acquired 12,196 sf parcel adjacent to the large nonpermitted structure. My understanding is that the smaller parcel was purchased so that this building can meet minimum setback requirements. These two parcels must go through the subdivision process to create the record log. To obtain a new building permit you must have a record lot not a parcel.

Otherwise, the uses as proposed would all fall under the religious assembly use and would be allowed on the one lot as all part of the primary use.

The Hearing Examiner notes that both 16641 and 16621 New Hampshire Avenue are zoned RC and per the Zoning Ordinance Use Table §59.3.1.6 the use of Religious Assembly is a permitted use in the RC Zone.⁴ The Applicant intends to lease the rear portion of 16641 New Hampshire Avenue, currently operating a “religious assembly” use, to a religious institution to conduct a variety of services for those who have passed as well as religious education, pastoral care, etc. Exhibit 181. *At this time*, the Applicant does not propose incorporating the “religious assembly” use into the conditional use at 16621 New Hampshire Avenue, but rather keep the religious assembly as the primary use at 16641 New Hampshire Avenue. *Id.*

The Applicant notes however that the establishment of the proposed religious use at 16641 New Hampshire Avenue could cause an increase in traffic at that location require moving the

⁴ The Hearing Examiner notes that based on the email from DPS it appears that the structure at the front of 16641 New Hampshire Avenue could also serve on its own as an office space for the religious assembly use at 16641 New Hampshire Avenue.

existing driveway at 16641 New Hampshire Avenue which could impact the office use at that is the subject of this minor modification. *Id.* Additionally the Applicant notes that those changes would require a modification request to “a) eliminate the Small Office Building and other structures approved to be constructed at the entrance to the cemetery and b) would also remove the Community Building shown on the approved development plan since the function of that building will be transferred to the new office building authorized by this minor amendment and to structures to be used by a religious organization for the purposes described above.” *Id.*

III. 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.*

IV. OPINION

The Applicant states that this second amendment is minor because the proposed change simply shifts the location of the sales and marketing office to an existing structure at 16641 New Hampshire Avenue. Additionally, the Applicant points out that this proposed change eliminates the need for the previously approved small office building at 16621 New Hampshire Avenue, while maintaining the existing conditions at 16641 New Hampshire Avenue to the maximum extent possible.

Based on the record the Hearing Examiner agrees with the Applicant that the amendment is minor and is governed by §59.7.3.1.K.2.a of the Zoning Ordinance. Upon review of the final approval and first minor amendment, the Hearing Examiner finds that the amendment does not affect any of the findings required by §59.7.3.1.E (Necessary Findings), §59.3.5.2.C.2 (Use Standards). The use standards found at §59.3.5.4.A.2 for a cemetery focus grave site location,

impact on the public health, safety and welfare of the area inhabitants and water table issues related to burial. The first minor amendment grant approved the construction of a “temporary” office structure to eliminate delays in implementation of the use. This second minor amendment request also focuses on that same office/sales space and seeks to replace both the temporary office space approved on October 24, 2022 and the approved site plan for an office referenced in the October 11, 2021 decision.

The Hearing Examiner finds that shifting the office to an existing structure will lessen the visual impact of the use at 16621 New Hampshire Avenue and essentially leave the appearance of structure at 16641 New Hampshire Avenue unchanged aside from the paving and certain exterior improvements. As with the first minor amendment request, this request does not impact or alter the approved area to be used for the cemetery. The Hearing Examiner finds nothing about the burial locations are being changed by this minor amendment.

While proposed religious uses at 16641 New Hampshire Avenue are permitted as of right, the Hearing Examiner notes that those uses may ultimately serve the needs of those that utilize the cemetery at 16621 New Hampshire Avenue. While the Applicant anticipates that the sales/marketing office at the front of 16641 New Hampshire will generate very little overall traffic, let alone any back and forth traffic between the two parcels, the establishment of religious operations that connect to the cemetery function will require the Applicant to submit a modification of CU 21-06 to reflect the impact of those religious uses at 16641 New Hampshire Avenue, including but not limited to site plan modifications accommodate vehicle and pedestrian traffic between the two parcels. Additionally, the Applicant notes in this request it may wish to remove some structures currently depicted on the approved conditional use site plans, identified as Exhibits 38 (a) through (g) and Exhibits 153-159 and the attachments to Exhibit 181. To make permanent changes to approved by reports issued by the previous Hearing Examiner, including altering landscaping, roads, paths, removal or addition of structures, or any other changes to those approved conditional use site plans will require the Applicant to submit another amendment of the conditional use to the Hearing Examiner to seek approval of those permanent changes.

Because the changes proposed only impact the “office use” associated with the cemetery use and lessens the overall impact of the use on 16621 New Hampshire Avenue, the Hearing Examiner determines that the incorporation of “Minor Amendment Site Plan – West” in conjunction with the elimination of the temporary office structures as identified the HE Report for the First Minor Amendment on October 24, 2022 and revised site plan at 16641 New Hampshire Avenue depicted at Exhibit 181, Attachment 4 to be a minor amendment. The Hearing Examiner approves ONLY the transfer of the permanent office/sales location from the proposed original structure location as identified in the HE Report dated October 11, 2021 to the existing structure in the area identified on the “Minor Amendment Site Plan – West.” This minor amendment to relocate the office/sales location and function 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,” and may be administratively approved.

V. ORDER

Based on the foregoing, it is this 13th day of March 2025,

ORDERED, that second amendment proposed to CU 21-06, Application of Reflection Park, Inc. to establish the office/sales for the conditional use in the structure identified on “Minor Amendment Site Plan – West” is hereby APPROVED, and it is further

ORDERED, the area identified on Exhibit 181 known as “Minor Amendment Site Plan – West” is incorporated into the approved conditional use for use as an office/sales building for the cemetery use only; and it is further

ORDERED, that all development on 16641 New Hampshire related to the office space shall conform to the amended conditional use plan depicted at Exhibit 181, Attachment 4 and 5, and it is further

ORDERED, that all development on 16621 New Hampshire Avenue shall conform to the conditional use plan approved on October 21, 2022 (Exhibits 38(a) through (g)), and it is further

ORDERED, that all development on 16621 New Hampshire Avenue shall confirm to the amended conditional use site plan and conditions in Hearing Examiner’s Order Approving the Minor Modification dated October 24, 2022 (Exhibits 153-159) to extent they apply, and it is further

ORDERED, that the Applicant shall NOT seek building permits or any other approvals to construct a permanent office/sales structure as depicted on Exhibits 38(a) through (g), and it is further

ORDERED, that the Applicant shall NOT seek building permits or any other approvals to construct a temporary office/sales structure as depicted on Exhibits 153-159, and it is further

ORDERED, that the Applicant must submit a future amendment for approval to capture the following:

1. Identify any connection and its impact between of the religious use at the rear of 16641 New Hampshire Avenue to that of the cemetery function at 16621 New Hampshire Avenue;
2. To identify the removal of the originally planned permanent office/sales space and related changes to parking and landscaping;
3. Removal, reconfiguration or addition of any structure, path, road, landscape or burial area or any other impact related to the approved conditional use; and
4. Submittal of all required site plans to reflect any and all changes to the approved plans found at Exhibits 38(a) through (g), Exhibits 153-159 and Exhibit 181;

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.



Kathleen Byrne
Hearing Examiner

NOTICE OF RIGHT TO REQUEST A HEARING

Under §59.7.3.1.K.2.b of the Zoning Ordinance, any party may object by requesting 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 following a public hearing on a minor modification may be appealed based on the Hearing Examiner's record to the Board of Appeals.

COPIES TO:

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Montgomery County Board of Appeals
All parties of record
Greg Nichols, DPS
Victor Salazar, DPS
Patrick Butler, Planning Department
Mark Beall, Planning Department
Michael J. Coveyou, Director, Finance
Elana Robinson, 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