

**DISTRICT COUNCIL FOR PRINCE GEORGE'S COUNTY, MARYLAND  
OFFICE OF ZONING HEARING EXAMINER**

**SPECIAL EXCEPTION  
4823**

**DECISION**



Application: Cemetery  
Applicant: Catholic Cemeteries of the Archdiocese  
Opposition: None  
Hearing Dates: October 28 and December 2, 2020  
Hearing Examiner: Joyce B. Nichols  
Disposition: Approval

**NATURE OF PROCEEDINGS**

- (1) Special Exception 4823 is a request for permission to use approximately 100.5108 acres of land in the O-S (Open Space) M-I-O (Military Installation Overlay) Zones, located on the southeast side of Woodyard Road, approximately 0.7 miles southwest of its intersection with Rosaryville Road, also described as 8000 Woodyard Road, Clinton, for a Cemetery.
- (2) The instant Application is for a small portion of land on property which has been utilized as a cemetery since 1965, to add 105, 211 sq. ft. of additional paving in the form of a 20 foot drive aisle, a surface parking lot, site improvements for future gravesites, and associated storm water management facilities.
- (3) The Planning Board elected not to conduct a public hearing on this Application and the Technical Staff recommended approval with conditions. (Exhibit 9)

**FINDING OF FACTS**

**Subject Property**

- (1) The subject property is a 100.5108 acre parcel which is utilized as Resurrection Cemetery.
- (2) The subject property is currently occupied by Resurrection Cemetery, which has been in operation since the mid-1960s. The western third of the subject property is wooded and contains the area of the requested major revision. The remainder of the property contains gravesites, the administration building, a maintenance building, several mausoleums and columbaria with wooded areas along much of the property's perimeters and along a ravine. There is a maintenance yard at the eastern end of the property. Access to the subject property is from an existing monumental entrance on Woodyard Road, which is not proposed to be altered.

(3) The subject property comprises two deed parcels, Tax Map 108, Grid D4, Parcel 4, which comprises the vast part of the property area at approximately 100.22 acres, and Tax Map 117, Grid E-1, Parcel 135, which is a small parcel of 0.38 acres located at the very easternmost end of the subject property, in the floodplain of Piscataway Creek. The subject property is located on the south side of Woodyard Road, with its entrance approximately halfway between Rosaryville Road and Dangerfield Road.

### **Surrounding Uses**

(4) The immediate uses surrounding the subject property are as follows:

- |       |   |   |
|-------|---|---|
| North | - | Single-family detached residential lots in the Rural Residential (R-R) Zone and His Lordship's Kindness/Poplar Hill and Cemetery Historic Site (81A-001) and horse farm in the Residential-Agricultural (R-A) Zone. |
| East  | - | Woodland in the R-A and Reserved Open Space (R-O-S) Zones and single-family detached residential lots in the R-R (One-Family Detached Residential) Zone.  |
| South | - | Undeveloped land in the R-O-S Zone and single-family homes in the R-R Zone.   |
| West  | - | Woodyard Road and single-family detached residential lots in the R-R Zone.  |

### **Neighborhood**

(5) The Technical Staff's neighborhood is unduly large (more than five square miles) given the low impact of a cemetery use. At the same time, Woodyard Road, on which the subject property has its frontage, even though classified as an Arterial Roadway, is only physically a two-lane undivided roadway and as such does not form a meaningful land use barrier. The Applicant has proposed a smaller neighborhood which is accepted as follows:

- |       |   |   |
|-------|---|---|
| North | - | Bellefonte Land & Piscataway Creek                                |
| West  | - | Dangerfield Road  |
| East  | - | Piscataway Creek  |
| South | - | Unnamed tributary of Piscataway Creek north of Dangerfield Place. |

### **Zoning History**

(6) The subject property is located on Tax Map 108 in Grid D4, consists of two deed parcels, and contains a total of 100.5108 acres of land. The Existing Special Exception for the property (SE-1135) was originally approved on January 15, 1965 by the Prince George's County District Council without conditions. Since no Site Plan was initially approved in connection with the existing Special Exception, the as-built plans submitted for Building Permit No. 9649-94-CG were previously treated as the approved Site Plan for the existing Special Exception. Five minor revisions to the Site Plan for the Special Exception have been approved by the Planning Director to date:

- a. Revision of the Site Plan ROSP-1135-01, November 18, 2003, addition of a 14-foot-high granite shrine and a 6-foot-high chain-link fence.
- b. Revision of Site Plan ROSP-1135-02 and Alternative Compliance AC-04018, August 10, 2004, addition of a maintenance building (30 feet by 83 feet) and related access paving (1,375 sq. ft.), and Alternative Compliance to the *2010 Prince George's County Landscape Manual* for a Section 4.7 Type D bufferyard adjoining a historic property.
- c. Revision of Site Plan ROSP-1135-03 and Alternative Compliance AC-04018-01, January 8, 2007, addition of an 0.85-acre mausoleum site that included nine structures and one columbaria, and revision of alternative compliance to the *2010 Prince George's County Landscape Manual* for a Section 4.7 Type D bufferyard adjoining an historic property.
- d. Revision of Site Plan ROSP-1135-04, January 11, 2009, addition of two religious shrines to Section 7 of the cemetery.
- e. ROSP-1135-05, January 9, 2018, addition of a 120 square foot columbaria.

### **Master Plan/Sectional Map Amendment**

(7) The site is located in Planning Area 81A. The applicable Master Plan is in the Approved Subregion 5 Master Plan and Sectional Map Amendment, approved on July 24, 2013.

The Master Plan Map designated the site for "Institutional" future land use.

The Approved Sectional Map Amendment retained the site in the previously existing O-S Zone.

The Growth Policy Map in the May, 2014 General Plan placed the property in the Established Communities category, and the Generalized Future Land Use Map designated it for "Institutional" land use.

The site is not within a Priority Preservation Area.

## **Applicants Proposal**

(8) The proposed use for Special Exception Application SE-4823 is an extension of the grave area into the wooded western part of the subject property, as well as a new parking area in the vicinity of the maintenance and administration buildings. Because the extension will include new access roadways which, together with the new parking area, will constitute more than 15% of the land area covered by roadways, this amendment can not be considered to be a minor change and as such §27-323(a) requires the filing and approval of a new Application for the Special Exception use.

The new roadways and parking areas will be provided with modern stormwater management using Environmental Site Design (ESD) techniques.

## **LAW APPLICABLE**

(1) A Cemetery is permitted as a Special Exception in the O-S Zone by §27-441 in accordance with §27-317 and §27-341.

(2) Section 27-317(a) provides:

- (1) The proposed use and site plan are in harmony with the purpose of this Subtitle;
- (2) The proposed use is in conformance with all the applicable requirements and regulations of this Subtitle;
- (3) The proposed use will not substantially impair the integrity of any validly approved Master Plan or Functional Master Plan, or, in the absence of a Master Plan or Functional Master Plan, the General Plan;
- (4) The proposed use will not adversely affect the health, safety, or welfare of residents or workers in the area;
- (5) The proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood; and
- (6) The proposed site plan is in conformance with an approved Tree Conservation Plan.
- (7) The proposed site plan demonstrates the preservation and/or restoration of the regulated environmental features in a natural state to the fullest extent possible in accordance with the requirement of Subtitle 24-130(b)(5).

(3) Section 27-341 states:

A cemetery (including an animal cemetery) or a crematory may be permitted, provided that the use shall not be located within any proposed street or other public right-of-way, notwithstanding Section 27-259.

## **Burden of Proof**

(4) The Court of Appeals of Maryland has frequently expressed the applicable standards for judicial review of the grant or denial of a Special Exception use. The Special Exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of

the general welfare, and therefore, valid. The Special Exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any fact or circumstance negating this presumption. The duties given the Board are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the Plan.

The Applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of the disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a Special Exception use is arbitrary, capricious, and illegal. Turner v. Hammond, 270 Md. 41, 54-55, 310 A.2d 543, 550-51 (1973); Rockville Fuel & Feed Co. v. Board of Appeals of Gaithersburg, 257 Md. 183, 187-88, 262 A.2d 499, 502 (1970); Montgomery County v. Merlands Club, Inc., 202 Md. 279, 287, 96 A.2d 261, 264 (1953); Anderson v. Sawyer, 23 Md. App. 612, 617, 329 A.2d 716, 720 (1974). These standards dictate that if a requested Special Exception use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied. Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319, 1325 (1981). See also Mossberg V. Montgomery County, 107 Md. App. 1, 666 A.2d 1253 (1995).

(5) The appropriate standard to be used in determining whether a requested Special Exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed and the particular location proposed would have any adverse effects above and beyond those inherently associated with such a Special Exception use irrespective of its location within the zone. Turner v. Hammond, 270 Md. 41, 54-55, 310 A.2d 543, 550-51 (1973); Deen v. Baltimore Gas & Electric Co., 240 Md. 317, 330-31; 214 A.2d 146, 153 (1965); Anderson v. Sawyer, 23 Md. App. 612, 617-18, 329 A.2d 716, 720, 724 (1974). Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319, 1331 (1981). See also Mossberg v. Montgomery County, 107 Md. App. 1, 666 A2d 1253 (1995).

## CONCLUSIONS OF LAW

(1) The general purposes of the Zoning Ordinance are listed in §27-102(a) and Special Exception 4823 is in harmony with these purposes:

(1) *To protect and promote the health, safety, morals, comfort, convenience, and welfare of the present and future inhabitants of the County;*

The proposed cemetery extension will be constructed with the use of modern stormwater management techniques, updated landscaping, and the provision of deeper wooded buffers abutting the adjacent residences, and will thus promote the health and safety of the present and future inhabitants of the County by continuing to provide for a secluded parklike setting for the burial of the dead.

(2) *To implement the General Plan, Area Master Plans, and Functional Master Plans;*

The relevant Plans which apply to this site are the 2014 General Plan, the 2013 *Approved Subregion 5 Master Plan and Sectional Map Amendment*, and a number of Functional Master Plans, including the Green Infrastructure Plan, the County Master Plan of Transportation, the Public Safety Facilities Master Plan, The Historic Sites and Districts Plan, and the Water Resources Functional Master Plan.

### **General Plan**

The General Plan classified the subject site in its Growth Policy Map<sup>1</sup> in the Established Communities category, and the Generalized Future Land Use Map<sup>2</sup> designated it for Institutional land use.

“Established Communities” are described by the General Plan as “the County’s heart – its established neighborhoods, municipalities and unincorporated areas outside designated centers,”<sup>3</sup> and recommends that, “Established communities are most appropriate for context-sensitive infill and low- to medium density development...”<sup>4</sup> The existing Cemetery with its extension will continue to constitute low density development, and its parklike character is context-sensitive to the surrounding single-family development and the adjacent His Lordship’s Kindness/Poplar Hill historic site.

“Institutional” land use is described by the General Plan as, “uses such as military installations, hospitals, sewage treatment plants, and schools.”<sup>5</sup> The subject Cemetery, as an arm of the Archdiocese of Washington, is an institutional use; in fact, the land use designation simply recognizes the existing longstanding use of the subject property.

Given the long history of this institutional use at the subject property, and the environmentally-friendly and substantively-buffered character of the extension, the approval of the subject application would constitute context-sensitive infill.

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<sup>1</sup> M-NCP&P, Plan Prince George’s 2035 – Approved General Plan (May, 2014), p. 107

<sup>2</sup> General Plan, p. 101

<sup>3</sup> Ibid., p. 106

<sup>4</sup> Ibid., p. 20

<sup>5</sup> Ibid., p.100

## Master Plan

The applicable Master Plan is the *Approved Subregion 5 Master Plan and Sectional Map Amendment*, approved on July 24, 2013. The Land Use and Development Pattern Element of the Master Plan places the subject property in the Clinton/Tippett Community.

Map IV-1, the Future Land Use Map, recommends the subject property for “Institutional” land use.<sup>6</sup> The Master Plan text specifically cites Resurrection Cemetery as an example of institutional uses, stating that, “areas that are designated institutional reflect large, existing institutional land uses. In Clinton, these uses include: ... Resurrection Cemetery south of Woodyard Road near Rosaryville Road...”<sup>7</sup>

The Master Plan text for the Clinton Community is principally concerned with development and redevelopment in the historic center of Clinton and in the developing areas to its southwest. Nevertheless, one of the Strategies could be construed as having community-wide application:

*“Ensure that infill development complements the community. Use infill development guidelines above in this section when reviewing infill proposals.”<sup>8</sup>*

- **Compatibility:** *Ensure buildings are appropriately scaled for their site and recognize adjacent land use and development. Give consideration to similarity in density, setback, style, bulk, materials, and site layout to surrounding residential areas. Locate new structures to maintain existing rhythms of building width and spacing, with setbacks that respect predominant setbacks in the neighborhood.*

While the subject expansion does not propose any new buildings, the proposed expansion will be in keeping with the character of the existing Cemetery. The new gravesite areas will be strongly buffered with 100 feet of woodlands preserved along the subject property’s perimeter in the expansion area.

- **Heights:** *New dwellings should generally be within 10–15 percent of the height of adjacent dwellings. The proportion (relationship of height to width) of new structures should be as similar as possible and compatible with the proportion of existing adjacent structures.*

Again, no new structures are proposed, but the expansion area will extend the existing pattern of treed access roads meandering across the landscape.

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<sup>6</sup> M-NCP&C, *Approved Subregion 5 Master Plan and Sectional Map Amendment* (July, 2013), p. 32

<sup>7</sup> *Subregion 5 Master Plan*, p. 33

<sup>8</sup> *Ibid.*, p. 45

- **Variety:** *Use quality materials and architectural detailing and, where possible, provide a range of housing forms to add variety and provide diversity and choice.*

No new structures are proposed by the subject expansion.

- **Open space:** *Incorporate public and private open spaces, such as pocket parks and tot lots, to enhance the appearance and environmental character of the community.*

The subject expansion will continue the preservation of the subject property as a large tract of open space.

- **Trees:** *Mature trees are an important part of neighborhood character. Maintain mature trees wherever possible.*

Extensive areas of woodland will be preserved around the subject property's perimeter and around the regulated natural features on the site.

- **Fences:** *Use open fences or low hedges rather than high walls.*

No high walls are proposed.

- **Circulation and connectivity:** *Connect on-site and off-site roads, sidewalks, trails, streetscapes, and open space networks. Lay out new streets in a size and scale to maintain continuity of the existing community's circulation system. Avoid closed street systems, and generally restrict cul-de-sac to a short keyhole design*

The access road network existing on the subject property will be extended into the expansion area in a pattern and width which is in keeping with the existing on-site circulation system.

The Master Plan also puts a great deal of focus on the effects of Joint Base Andrews on the surrounding community. The substance of these recommendations was incorporated into the provisions of the Military Installation Overlay Zone, which is discussed in detail *infra*. In summary, because the proposed Application is consistent with the Master Plan's land use recommendation and with the recommendations for infill development in the Clinton



Community (to the extent that they are relevant), the approval of the subject Cemetery expansion would be in harmony with the recommendations of the Master Plan.

### **Other Applicable Functional Master Plans**

The Special Exception area contains some Regulated Areas of the County's Green Infrastructure Network; these areas are all indicated as being preserved. Additional areas of the subject property are within mapped "Evaluation Areas;" wooded buffers around the site's perimeter and other areas around the perimeter of the Regulated Areas are proposed to be preserved by the Tree Conservation Plan in keeping with the goal of the Green Infrastructure Plan to "preserve, enhance and/or restore an interconnected network of countywide significant environmental features that retain ecological functions, maintain or improve water quality and habitat, and support the desired development pattern of the General Plan."<sup>9</sup> Furthermore, the use of environmental site design measures to provide stormwater management will help to improve water quality. As such, the subject Application conforms to the Green Infrastructure Plan.

With regard to the Historic Sites and Districts Plan, His Lordship's Kindness/Poplar Hill, County Historic Site 81A-001, abuts the subject property. The proposed extension which is the subject of this Application, however, is more than 1,000 feet distant from the limits of the established Environmental Setting for the Poplar Hill mansion. As such, the approval of the subject Application will not have an adverse impact on this Functional Master Plan.

The Water Resources Functional Master Plan addresses broad regulatory policy and large-scale watershed planning, and as such makes no recommendations which are directly applicable to the subject application.

No proposed sites for Public Safety facilities are in the area affected by the subject Application.

The Countywide Master Plan of Transportation proposes the upgrade of Woodyard Road to a 6-lane, divided arterial, with a shared-use side path or wide sidewalk.<sup>10</sup> The ultimate right-of-way width in the area of the subject property is proposed to be 120'.<sup>11</sup> No improvements are proposed within this ultimate right-of-way; as such, the subject application is in conformance with this functional master plan.

In conclusion, because the proposed Cemetery is not in conflict with the General Plan, the Sector Plan or the applicable Functional Master Plans, approval of the subject Application will be in harmony with the Ordinance's purpose of implementing those Plans.

(3) *To promote the conservation, creation, and expansion of communities that will be developed with adequate public facilities and services;*

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<sup>9</sup> M-NCP&PC, Approved Countywide Green Infrastructure Plan (June, 2005), p. 27

<sup>10</sup> M-NCP&PC, Approved Countywide Master Plan of Transportation (November, 2009), pp. 27 & 51

<sup>11</sup> Subregion 5 Master Plan, p. 103

Because this Application does not propose any new buildings which would generate new traffic, its approval would be in harmony with this Purpose of promoting the conservation of a community which will be developed with adequate public facilities.

- (4) *To guide the orderly growth and development of the County, while recognizing the needs of agriculture, housing, industry, and business;*

Approval of the subject Application would be in harmony with this Purpose of the Ordinance by allowing for the reasonable extension of a long-existing use which is specifically recognized in the Master Plan, which is evidence of its place in the orderly growth and development of the County.

- (5) *To provide adequate light, air, and privacy;*

The subject Cemetery will be in harmony with this Purpose because, as a large tract of open space, it will ensure the provision of adequate light and air for its neighbors. The retention of deep wooded buffers around the property's perimeter will further provide them with privacy.

- (6) *To promote the most beneficial relationship between the uses of land and buildings and protect landowners from adverse impacts of adjoining development;*

The subject Cemetery expansion would be in harmony with this Purpose as it will preserve a large tract of open space. Furthermore, existing landowners which surround the subject property will be further protected by the preservation of wooded buffers.

- (7) *To protect the County from fire, flood, panic, and other dangers;*

This Purpose is not largely applicable to the subject Application, as no structures which could be affected by fire or flood are proposed by the requested expansion. The area of floodplain which does exist at the eastern edge of the subject property is in preserved woodlands, and thus the subject Cemetery expansion would be in harmony with this Purpose.

- (8) *To provide sound, sanitary housing in a suitable and healthy living environment within the economic reach of all County residents;*

Because the subject use is institutional in nature, this Purpose is not directly applicable to this Application. The preservation of a large tract of open space will, however, contribute to the healthy living environment of its surrounding neighbors.

- (9) *To encourage economic development activities that provide desirable employment and a broad, protected tax base;*

Because the proposed Cemetery expansion will not entail new activity to the existing intensity of use, and is not an economic development activity, this Purpose is not particularly applicable to

the subject Application. It is to be noted, however, that the maintenance staff at the existing facility will continue to have employment.

(10) *To prevent the overcrowding of land;*

The expansion of the subject Cemetery would be in harmony with this Purpose as it will continue to preserve a large tract of open space in the heart of the County.

(11) *To lessen the danger and congestion of traffic on the streets, and to insure the continued usefulness of all elements of the transportation system for their planned functions;*

The approval of the subject Cemetery expansion would be in harmony with this Purpose because it will continue to be a low-intensity use. No new buildings are proposed, and the proposed expansion will not increase the intensity of the activity at the subject property, it will only lengthen the time that gravesites are available there. As such, the proposed expansion will not add to any congestion of traffic on the streets.

(12) *To insure the social and economic stability of all parts of the County;*

As the Zoning Ordinance is the principal tool for the implementation of the planning process by enacting legal requirements which implement the planning goals that strive to maintain the social and economic stability of the County, conformance with the requirements and regulations of the Zoning Ordinance will be prima facie evidence of the Application's harmony with this Purpose.

Beyond that, however, the subject Cemetery expansion would promote the social stability of the County by continuing to provide for a quiet and attractive place to memorialize the dead.

(13) *To protect against undue noise, and air and water pollution, and to encourage the preservation of stream valleys, steep slopes, lands of natural beauty, dense forests, scenic vistas, and other similar features;*

The subject Application will be fully in harmony with this Purpose of the Ordinance by continuing a use which preserves stream valleys, lands of natural beauty, scenic vistas and areas of dense forests around the subject property's perimeter and around the regulated natural features present on site.

The final two Purposes,

(14) *To provide open space to protect scenic beauty and natural features of the County, as well as to provide recreational space; and*

(15) *To protect and conserve the agricultural industry and natural resources.*

The subject Application is in harmony with these final two Purposes of the Zoning Ordinance. The existing cemetery with its expansion will preserve a large tract of open space, and the proposed Special Exception Site Plan indicates the preservation of the regulated natural features present at the subject property. §27-317(a)(1)

(2) In addition to the purposes of the broader Ordinance, there are two Purposes for the O-S (Open Space) Zone specifically, which are laid out in Section 27-425(a)(1), as follows:

*(A) To provide for low density and development intensity as indicated on the General or Area Master Plans;*

The existing Cemetery, together with the expansion proposed by the subject Application are low intensity development, and are in keeping with this Purpose of the O-S Zone.

*(B) To provide for areas which are to be devoted to uses which preserve the County's ecological balance and heritage, while providing for the appropriate use and enjoyment of natural resources.*

The low intensity of development and the low imperviousness of the existing use, together with the preservation of the regulated natural features and their wooded buffers are in harmony with this Purpose of the O-S Zone. §27-317(a)(1)

(3) With the exception of the provision of §27-341 relating to the limit of the Special Exception Area, the proposed use will be in conformance with all of the applicable requirements and regulations of the Zoning Ordinance. §27-317(a)(2)

(4) The subject Application is in harmony with the Purposes of the Zoning Ordinance generally to implement the General and Master Plans and to provide for the efficient and desirable use of land in accordance with those Plans. Accordingly, the approval of the subject Application will not impair the integrity of neither the approved Master Plan nor the County's General Plan. §27-317(a)(3)

(5) The conformance of the subject Application with the principles laid out in the purposes of the Zoning Ordinance, its compliance with the provisions of the Zoning Ordinance, its compliance with the provisions of other State and County regulations for environmental protection represent a high level of protection against adverse effects to the public health, safety and welfare.

Beyond those basic principles, however, the incorporation of modern stormwater management into the proposed development, and the provision of deep wooded areas to buffer the activity on the subject property from abutting single-family residences indicate that the proposed expansion will not adversely affect the health, safety and welfare of residents and workers in the area as compared to the activity currently existing on the subject property. § 27-317(a)(4)

(6) The long existence of the existing Cemetery as a large preserved area of open space indicates that the use of the subject property has been and will continue to be compatible with the surrounding residential neighborhoods, and because of the preservation of wooded buffers and the use of modern stormwater management, its expansion will not be detrimental to the use or development of adjacent properties or the general neighborhood. §27-317(a)(5)

(7) The subject Application is accompanied by Tree Conservation Plan TCPII-027-98-03 which has been revised as a part of the instant Application. (Exhibit 29) §27-317(a)(6)

(8) The regulated environmental features present on the subject site are proposed to be fully preserved. §27-317(a)(7)

### **Cemetery**

(9) There is only one provision of §27-341, which is:

*A cemetery (including an animal cemetery) or a crematory may be permitted, provided that the use shall not be located within any proposed street or other public right-of-way, notwithstanding Section 27-259.*

The subject property consists of two deed parcels of unsubdivided acreage, known as Parcel 4 and Parcel 135, which add up to approximately 100.5081 acres. The existing right of way and roadbed of Woodyard Road, however, cross over the westernmost corner of Parcel 4. Extending the alignment of the widened right-of-way of Woodyard Road which was dedicated by “Plat 12, Mount Airy Estates” (recorded in Plat Book VJ 186 at plat 10) indicates that approximately 0.42 acres of Parcel 4 will be in the ultimate right-of-way of Woodyard Road. This area is illustrated on an excerpt of Sheet 3 of the Special Exception Site Plan and is appended to Land Planning Analysis as Appendix B. (Exhibit 26)

It can be seen from the illustration in Appendix B that the existing monumental brick walls which form the entrance feature to the cemetery are outside of the ultimate right-of-way.

If this area is subtracted from the Special Exception area, the new area will be approximately 99.70 acres, and the Application will be in conformance with this provision of the Zoning Ordinance.

### **M-I-O (Military Installation Overlay) Zone**

(10) The site is also classified in the Military Installation Overlay (M-I-O) Zone. The conformance of the subject property to the provisions of the M-I-O Zone in Part 10C of the Zoning Ordinance:

Part 10C includes three Impact Maps which establish the boundaries of the M-I-O Zone. Figure A establishes the area subject to restrictions related to height, Figure B establishes the area

subject to restrictions related to noise, and Figure C establishes the area subject to the restrictions related to Accident Potential/Clear Zones North and South.

Based upon a review of the Impact Maps, the subject property is included within the boundaries of the areas regulated for height and noise.

(11) Requirements for maximum permissible structure height in the M-I-O Zone are found in Section 27-548.54. The subject property is located under the limits of parts of Inner Horizontal Surface D and parts of Conical Surface E, and as such is subject to the height restrictions.

The provisions of §27-548.54(e)(2)(D), related to Inner Horizontal Surface D, are the most restrictive, and apply as follows: The maximum height of a structure under Inner Horizontal Surface D may not exceed 150 feet. §27-548.54(e)(2) then requires that the difference between the highest elevation on the subject property (258) and the height of the runway surface (274), or thirteen (13) feet, be added to the 150-foot limit to yield a highest permissible structure of 163 feet.

As a check, however, the analysis of the limitations on the remainder of the subject property, which is under Conical Surface E is as follows:

The provisions of §27-548.54(e)(2)(D), followed verbatim, apply as follows: The distance between Surface A and the nearest boundary of the subject property is 6,415 feet, and the distance between the subject property and the border of Surfaces D and E is 0 feet; the subtotal per §27-548.54(e)(2)(D)(i):  $6,415 \text{ minus } 0 = 6,415$ ; and,  $6,415 \text{ divided by } 20 = 271$ , and 150 added to that yields 421 feet. The provisions of §27-548.54(e)(2) again add thirteen feet to that subtotal to yield a highest permissible structure of 434 feet.

An inspection of the Zoning Ordinance's definitions of the height limit surfaces, however, strongly suggests that the result of a 434-foot height limit at the subject site is not the intended result; Surface E, the "Conical Surface," is defined as, "an inclined imaginary surface extending outward and upward from the outer periphery of the inner horizontal surface....The slope of the conical surface is 20:1." Surface D, the "Inner Horizontal Surface," is defined as, "an imaginary surface that is an oval plane at a height of 150 feet above the established airfield elevation." Therefore, a property through which the boundary between Surfaces D and E passes should instead have its limit on a structure thereon by the same 150 foot height of Surface D, which would represent the maximum permissible height at an infinitesimal distance into Surface E from the edge of Surface D.

In any case, no existing buildings nor any proposed structures approach these limits. Given this, the proposed application will be in conformance with the height provisions of the Military Installation Overlay Zone.

(12) Requirements for Noise in the M-I-O Zone are found in Section 27-548.55. The subject property is located within the Noise Intensity Zone, but not within the High Intensity Noise

Zone. No uses are prohibited in the Noise Intensity Zone, and the requirements of §27-548.55(b) only provide for restrictions for new residential construction, which is not applicable to the subject property. Given this, the proposed Application will be in conformance with the noise provisions of the Military Installation Overlay Zone.

(13) The purposes of the M-I-O Zone, are laid out in Section 27-548.51, as follows:

*The purposes of the Military Installation Overlay Zone are to regulate the development and use of structures and property in order to promote land uses compatible with operations at Joint Base Andrews; to protect the safety and welfare of individuals in the area from the adverse impacts associated with high levels of noise from flight operations and the potential for aircraft accidents associated with proximity to Joint Base Andrews operations. The intent of the regulations is to recognize the rights of individual property owners while reducing interference with the military operations at Joint Base Andrews.*

As indicated by the foregoing analysis of Part 10C's limitations on structure height and noise, the approval of the subject application will be in conformance with the purposes of the M-I-O Zone.

### **Parking/Loading**

(14) In accordance with the parking and loading regulations contained in Section 27-568(a)(6) of the Zoning Ordinance, the existing office (6,000 square feet) is required to provide 18 spaces and the existing maintenance building (2,490 square feet) is required to provide 5 parking spaces for a total of 23 parking spaces. The Site Plan shows that a total of 36 parking spaces will be provided, including 34 regular parking spaces and 2 standard handicap -accessible spaces. Section 27-582(a) of the Zoning Ordinance does not require loading spaces for an office building that has less than 10,000 square feet of gross floor area. Required parking will be accommodated around the site via several drive aisles, all of which are proposed to be at least 22 feet in width, as shown on the Site Plan. (Exhibit 28)

### **2010 Prince George's County Landscape Manual Requirements**

(15) The Application is subject to the following sections of the 2010 Prince George's County Landscape Manual (Landscape Manual): Section 4.3, Parking Lot Requirements; Section 4.6, Buffering Special Roadways; Section 4.7, Buffering Incompatible Uses; and Section 4.9, Sustainable Landscape Requirements.

Section 4.3 of the Landscape Manual requires parking lots that are between 7,000 to 49,999 square feet to provide 8 percent of the interior of the parking lot as planting area. The Section 4.3 schedules included on the landscape plan show conformance to the requirements.

Section 4.6 of the Landscape Manual requires special roadways to be buffered from development. Woodyard Road is a designated historic roadway in the *2009 Approved Countywide Master Plan of Transportation*. Adjacent to a historic road, the Landscape Manual,

which became effective on December 13, 2010, requires a Section 4.6 landscape buffer (Buffering Development from Special Roadways) based on the development tier. Conformance to this standard shall be established prior to certification of the special exception.

In accordance with Section 4.7 of the Landscape Manual, a Type C bufferyard is required when a low impact use is adjacent to single-family detached houses. A Type C bufferyard includes a minimum 30-foot-wide building setback and 2-foot-wide landscape yard to be planted with 80 plant units per 100 linear feet of the property line. The requirements of the Type C are fulfilled by existing woodlands. In addition, a Type D bufferyard is required to buffer incompatible uses adjacent to an historic site that includes a minimum 50-foot-wide building setback and 40-foot-wide landscaped yard to be planted with 160 plant units per 100 linear feet of property line. Alternative Compliance (AC-04018) in ROSP-1135-02 for the Type D bufferyard requirements. The landscape plan provides the appropriate schedules showing conformance with the requirements.

Section 4.9 of the Landscape Manual promotes sustainable landscaping as an environmentally sensitive design approach. A percentage of plants within each plant type (including shade trees ornamental trees, evergreen trees, and shrubs) shall be native species (or cultivars thereof) and shall be identified on a planting schedule on the landscape plan. Any existing trees and/or vegetation retained in fulfillment of the requirements shall not contain invasive species, which must also be reflected in the schedule. Trees proposed in fulfillment of the requirements shall not be planted on slopes steeper than three-to-one (3:1). Conformance to this standard shall be established prior to certification of the Special Exception.

### **Tree Canopy Coverage**

(16) In accordance with Section 25-127(b)(1)(D) of the Tree Canopy Coverage Ordinance, this application is exempt because it is located in the O-S Zone. The regulated environmental features on the subject property have been preserved and/or restored in a natural state to the fullest extent possible based the limits of disturbance shown on the TCP11 and the evaluation provided with Special Exception SE-4823.

### **Signage**

(17) No changes to the existing signage and no new signage are proposed with this application; therefore, this application does not require review of the sign regulations.

## **DISPOSITION**

Special Exception 4823 is APPROVED

The Approved Site and Landscape Plan is Exhibit 28.

The Approved Tree Conservation Plan is Exhibit 29.