IN RE: **PETITION FOR SPECIAL EXCEPTION** S/S Sulphur Spring Road, 1,300' N of c/line of Selford Road **(1101 Sulphur Spring Road)** 13th Election District 1st Council District	*	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY
SCI Maryland Funeral Services, Inc. Petitioner	*	**Case No. 2010-0320-X (Changed to 2010-0320-SPH)**

* * * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Exception filed by Petitioner, SCI Maryland Funeral Services, Inc. (SCI), through its Vice President, J. Michael Bennett, and its attorney, Todd K. Pounds, Esquire with Alexander & Cleaver, P.A. As filed, SCI requests a special exception to approve the use of the subject property as a cemetery and the construction of an additional mausoleum on the site.[1] The subject property and requested relief are more particularly described on the four-page redlined site plan submitted which was accepted into evidence and marked as Petitioner's Exhibit 1.

Appearing at the requisite public hearing in support of the request were J. Michael Bennett, on behalf of the property owner, Robert H. Vogel, P.E. of Vogel Engineering, Inc., the engineering firm that prepared the site plan, and Todd K. Pounds, Esquire, attorney for SCI. There were no Protestants or other interested persons present. It is further noted that Councilman Samuel Moxley, adjacent property owners and community leaders were advised of the nature of the proceedings and the desired improvements on the property and none voiced any objections. Dean Kasian, Esquire, President of the Huntsmoor Park Community Organization also reviewed the site plan prior to the hearing and had no concerns.

[1] At the outset of the public hearing, SCI's attorney amended the Petition to read as a request for the approval of a Petition for Special Hearing in order to amend the site plan previously approved in Zoning Case No. 93-463-SPHXA that was placed into evidence as Petitioner's Exhibit 3. The amendment was permitted and the hearing proceeded as scheduled.

ORDER RECEIVED FOR FILING
Date 7-19-10
By

Testimony and evidence offered revealed that the property has been used as a cemetery since approximately 1936 and is known as the Arbutus Memorial Park. As shown on the site plan, the 64.94 acre cemetery is irregularly shaped and split-zoned D.R.5.5 and D.R.10.5 (most of the site is zoned D.R.5.5, however, a small rectangular shaped parcel is zoned D.R.10.5). The property is positioned on the southeast side of Sulphur Spring Road just north of Interstate 95 in Halethorpe. The cemetery is improved with office buildings and seven (7) existing mausoleums that are clustered on the western portion of the site just north of the Huntsmoor Park. The mausoleums form a rectangular court yard. The proposed mausoleum (47' long x 23' wide x 19' high) will be built in a grassy area between the existing mausoleums and is needed as the other structures are beginning to be filled and there is a substantial need for this addition. Sediment control and storm water management will be maintained on site with landscaping and other features to be constructed. There will be no restroom facilities so water and sanitary sewers will not be affected.

In order to give context and some important background information to this request, it is necessary to briefly review the prior zoning history of the property. The property has been used as a cemetery since the 1930's. In those times, segregation between the races was a fact of life and the cemetery was established, a special permit approved (in 1941) and the Arbutus Memorial Park served thereafter as a prestigious final resting place for members of the African-American community. Zoning Case No. 1952-2351-R was next heard on September 8, 1952. This was a request to have the property reclassified for a public colored cemetery for Katie R. Williams. While granted, unfortunately a file was not established and the boundaries of the reclassification cannot be determined. However, Case No. 1978-0209-A is well documented and on March 30, 1978, setback variances were granted for proposed mausoleums. A zoning comment in the case file indicated that a special exception would be required for any future proposals. Thereafter, on

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Date 7-19-10
By BJ

August 10, 1993, William J. Callis, President of the Arbutus Memorial Park, Inc., applied for and received special exception approval from then Zoning Commissioner, Lawrence E. Schmidt in Case No. 1993-0463-SPHXA to use the D.R.5.5 portion of the property as a cemetery and also obtained a validation of the nonconforming cemetery use pertaining to the D.R.10.5 portion of the site[2] as well as variance relief from B.C.Z.R. Sections 1B01.2.C.1.a and 1B02.2 to permit minimum setbacks of 10 feet between non-residential buildings in lieu of the required 70 feet. A copy of the Order in Case No. 93-463-SPHXA and the site plan relating to it were marked and accepted into evidence as Petitioner's Exhibit 3. Lastly, in Case No. 2008-0502-SPHX, SCI and T. Mobile received special exception approval from B.C.Z.R. Section 426.5 to allow a telecommunications facility to be located on the southwestern portion of the property zoned D.R.5.5 by Deputy Zoning Commissioner Thomas H. Bostwick on August 1, 2008. A copy of that Order is marked as Petitioner's Exhibit 4.

The above historical overview clearly establishes and validates the lawful operation of the subject property as a cemetery in both the D.R.5.5 and D.R.10.5 portion(s) of the site and these prior rulings remain unchanged, effective and continue. The cemetery was established in 1936. The original owners of the property held significant acreage in this locale above and beyond what SCI presently owns. It is clear that the cemetery's owners originally held an adjoining parcel now owned by Baltimore County and shown on the site plan as the Huntsmoor Park located on the east side of Sulphur Spring Road at the northeast corner of Selford Road. That property is now being developed as the Arbutus Library, senior center, and community recreation center. *See* Case No. XIII-214. Further, property to the south, which has been developed with townhouses in the subdivision known as Arbor Manor, was also owned by the cemetery.

[2] Unlike a D.R.5.5 zone, a cemetery is not permitted either by right or special exception in a D.R.10.5 zone. Thus, in order for the cemetery use to be permitted in this rectangular parcel, the nonconforming nature of same had to be established.

ORDER RECEIVED FOR FILING
Date 7-19-10
By DJ

In the instant matter, SCI is requesting an amendment of the previously approved site plan in Case No. 93-463-SPHXA in order to gain approval of the plan before me that includes a new mausoleum facility. I will grant an amendment of the previously approved plan to reflect this latest change in the use on the property. As is the case with all cemeteries, grave sites and mausoleums, are prepared based upon demand. Full utilization of the property for burial can take many years. Although room remains at this property for additional grave sites, it is pointed out that the unutilized land does not constitute any type of abandonment of the special exception relief that was granted in Case No. 93-463-SPHXA.

Pursuant to the advertisement, posting of the property and public hearing on this Petition held, and for the reasons and history given above, the relief requested should be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 19th day of July 2010 that the Petition for Special Hearing, as amended, to allow a proposed mausoleum and to approve an amendment to prior Case No. 93-463-SPHXA, pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED.

- Petitioner may apply for its building permit and be granted same upon receipt of this Order; however, the Petitioner is made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of this Order has expired. If, for whatever reason, this Order is reversed, Petitioner would be required to return and be responsible for returning, said property to its original condition.

Any appeal of this decision must be taken in accordance with Section 32-3-401 of the Baltimore County Code.

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:dlw

ORDER RECEIVED FOR FILING
Date 7-19-10
By

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

WILLIAM J. WISEMAN III
Zoning Commissioner

July 19, 2010

Todd K. Pounds, Esquire
Alexander & Cleaver, P.A.
11414 Livingston Road
Fort Washington, Maryland 20744

RE: **PETITION FOR HEARING**
S/S Sulphur Spring Road, 1,300' N of c/line of Selford Road
(1101 Sulphur Spring Road)
13th Election District - 1st Council District
SCI Maryland Funeral Services, Inc. - Petitioner
Case No. 2010-0320-X

Dear Mr. Pounds:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Exception (revised to a Petition for Special Hearing) has been granted with conditions, in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Department of Permits and Development Management office at 887-3391.

Very truly yours,

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:dlw
Enclosure

c: J. Michael Bennett, Vice President, SCI Maryland Funeral Services, Inc.,
7250 Washington Boulevard, Elkridge, MD 21074
Robert H. Vogel, P.E., Vogel Engineering, Inc., 8407 Main Street,
Ellicott City, MD 21043
People's Counsel; DEPRM; File

Petition for Special Exception

SPECIAL HEARING

AMENDED

to the Zoning Commissioner of Baltimore County

for the property located at 1101 Sulphur Spring Road

which is presently zoned DR 5.5

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Exception under the Zoning Regulations of Baltimore County, to use the herein described property for a cemetery and the construction of an additional mausoleum on site.

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above Special Exception, advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser/Lessee:

Name - Type or Print

Signature

Address Telephone No.

City State Zip Code

Attorney For Petitioner:

Todd K. Pounds, Esq.
Name - Type or Print

Signature

Alexander & Cleaver, P.A.
Company

11414 Livingston Road 301-292-3300
Address Telephone No.

Fort Washington MD 20744
City State Zip Code

Legal Owner(s):

SCI Maryland Funeral Services, Inc.
Name - Type or Print

Signature

J. Michael Bennett, V.P.
Name - Type or Print

Signature

c/o Mike Bennett
7250 Washington Boulevard
Address Telephone No.

Elkridge, MD 21075
City State Zip Code

Representative to be Contacted:

Contact Attorney for Petitioner as indicated.
Name

Address Telephone No.

City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Case No. 2010-0320-X

ORDER RECEIVED FOR FILING

Reviewed By _____ Date 5-20-10

Date 7-19-10

By _____

REV 09/15/98

Petition for Special Exception

to the Zoning Commissioner of Baltimore County

for the property located at 1101 Sulphur Spring Road

which is presently zoned DR 5.5

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Exception under the Zoning Regulations of Baltimore County, to use the herein described property for a cemetery and the construction of an additional mausoleum on site.

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above Special Exception, advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser/Lessee:

Name - Type or Print

Signature

Address Telephone No.

City State Zip Code

Attorney For Petitioner:

Todd K. Pounds, Esq.
Name - Type or Print

Signature

Alexander & Cleaver, P.A.
Company

11414 Livingston Road 301-292-3300
Address Telephone No.

Fort Washington MD 20744
City State Zip Code

Legal Owner(s):

SCI Maryland Funeral Services, Inc.
Name - Type or Print

Signature

J. MICHAEL BENNETT, V.P.
Name - Type or Print

Signature

c/o Mike Bennett
7250 Washington Boulevard
Address Telephone No.

Elkridge, MD 21075
City State Zip Code

Representative to be Contacted:

Contact Attorney for Petitioner as indicated.
Name

Address Telephone No.

City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Case No. 2010-0320-X

ORDER RECEIVED FOR FILING Reviewed By JCM Date 5-20-10

Date 7-19-10

By DW

REV 09/15/98

EXHIBIT "A"

DESCRIPTION OF ARBUTUS MEMORIAL PARK, INC.

SITUATED ALONG SULPHUR SPRING ROAD – BALTIMORE COUNTY, MARYLAND

Beginning for the same at a point in the centerline of Sulphur Spring Road, a public road, where same is intersected by the easterly outline of the herein described property, thence leaving said beginning point, so fixed, and leaving the centerline of said road and running thence with and binding on said easterly outline,

1. **South 47° 44' 26" East 2588.31 feet** to a point where the aforementioned easterly outline is intersected by the northerly outline of a 16 feet wide public alley, thence leaving said easterly outline and running with and binding on the northerly and westerly outlines of said alley, the following six (6) courses and distances, viz:

2. **South 88° 55' 03" West, 155.17 feet** to an Iron Pipe & Cap previously set, thence

3 **North 88° 52' 57" West, 410.50** to an Iron Pipe & Cap previously set at a point of curvature, thence

4. **256.11 feet** along the arc of a curve to the right having a radius of **1044.00 feet** and a chord bearing and distance of **North 81° 51' 17" West, 255.47 feet** to an Iron Pipe & Cap previously set at a point of tangency, thence

5. **North 74° 49' 37" West, 1007.38 feet** to an Iron Pipe & Cap previously set, thence

6. **North 81° 14' 37" West, 65.21 feet** to an Iron Pipe & Cap previously set, thence

7. **South 08° 45' 23" West, 136.38 feet** to an X-Cut previously set in concrete at a point where the westerly outline of the aforementioned alley intersects the northerly right of way line of Elm Road, a 60 feet wide public right of way, thence leaving said alley and running with and binding on a portion of said northerly right of way line of Elm Road, the following two (2) courses and distances, viz:

8. **422.88 feet** along the arc of a curve to the left having a radius of **750.00 feet** and a chord bearing and distance of **South 73° 27' 13" West, 417.30 feet** to an Iron Pipe & Cap previously set at a point of tangency, thence

9. **S 57° 18' 03" W 329.23 feet** to an Iron Pipe & Cap previously set at a point formerly occupied by a concrete monument where the aforementioned northerly right of way line of Elm Road is intersected by the westerly outline of the herein described property, thence leaving said right of way line and running with and binding on said westerly outline, the following two (2) courses and distances, viz:

10. **North 14° 46' 20" West, 728.42 feet** to a Concrete Monument found, thence

11. **North 81° 31' 20" West, 569.31 feet** and passing over a Concrete Monument found at 510.33 feet and an Iron Pipe & Cap previously set at 542.35 feet along this line, to a point in the aforementioned centerline of Sulphur Spring Road, thence leaving the aforementioned westerly outline and running with and binding on a portion of said centerline, the following seven (7) courses and distances, viz:

12. **N 05° 40' 39" E, 172.60 feet** to a point of curvature, thence

13. **214.16 feet** along the arc of a curve to the right having a radius of **1150.00 feet** and a chord bearing and distance of **North 11° 00' 45" East, 213.85 feet** to a point of tangency, thence

14 **North 16° 20' 51" East, 225.79 feet** to a point of curvature, thence

15. **289.00 feet** along the arc of a curve to the right having a radius of **290.00 feet** and a chord bearing and distance of **North 44° 53' 49" East, 277.19 feet** to a point of tangency, thence

16. **North 73° 26' 47" East, 578.86 feet** to a point of curvature, thence

17. **86.45 feet** along the arc of a curve to the right having a radius of **1000.00 feet** and a chord bearing and distance of **North 75° 55' 23" East, 86.42 feet** to a point of tangency, thence

18. **North 78° 23' 59" East, 439.34 feet** to the **POINT OF BEGINNING, CONTAINING 72.3023 acres of land**, more or less, with the bearings described herein being referenced to the Baltimore County Metropolitan District Datum.

BEING ALL OR A PORTION OF the properties described in the following deeds: 1) Liber 973 folio 392; 2) Liber 986 folio 16; 3) Liber 1002 folio 501; 4) Liber 1004 folio 241; 5) Liber 1741 folio 240; 6) Liber 4028 folio 421; and 7) Liber 2198 folio 423.

SAVING AND EXCEPTING THEREFROM all that property described in the following deeds: 1) Liber 1040 folio 298; 2) Liber 2198 folio 420; and 3) liber 1748 folio 325.

This metes and bounds description was prepared directly by or under the direct supervision of Timothy A. Summerall, Maryland Registered Professional Land Surveyor #10958 and is in compliance with the Minimum Standards set forth by The Board for Professional Land Surveyors, Section 09.13.06.08.

03-12-2010

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
ZONING REVIEW

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

The Baltimore County Zoning Regulations (BCZR) require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property (responsibility of the petitioner) and placement of a notice in a newspaper of general circulation in the County, both at least fifteen (15) days before the hearing.

Zoning Review will ensure that the legal requirements for advertising are satisfied. However, the petitioner is responsible for the costs associated with these requirements. The newspaper will bill the person listed below for the advertising. This advertising is due upon receipt and should be remitted directly to the newspaper.

OPINIONS MAY NOT BE ISSUED UNTIL ALL ADVERTISING COSTS ARE PAID.

For Newspaper Advertising:

Item Number or Case Number: 2010-0320-X

Petitioner: SCI Maryland Funeral Services, Inc.

Address or Location: 1101 Sulphur Spring Rd., Arbutus, Md.

PLEASE FORWARD ADVERTISING BILL TO:

Name: Todd K. Pounds, Esq., Alexander & Cleaver, P.A.

Address: 11414 Livingston Road

Fort Washington, MD 20744

Telephone Number: 301-292-3300

Revised 2/20/98 - SCJ

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET AND FINANCE
MISCELLANEOUS CASH RECEIPT

No.

Date: _____

Fund	Dept	Unit	Sub Unit	Rev Source/ Obj	Sub Rev/ Sub Obj	Dept Obj	BS Acct	Amount

Total: _____

Rec From: _____

For: _____

_____

_____

_____

_____

DISTRIBUTION

WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER GOLD - ACCOUNTING

PLEASE PRESS HARD!!!!

CASHIER'S VALIDATION

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing in Towson, Maryland on the property identified herein as follows:

Case: # 2010-0320-X
1101 Sulphur Spring Road
S/side of Sulphur Spring Road, 1300 feet +/- north of Selford Road
13th Election District
1st Councilmanic District
Legal Owner(s):
SCI Maryland Funeral Services, Inc. c/o Mike Bennett
Special Exception: for a cemetery and the construction of an additional mausoleum on site.
Hearing: Thursday, July 15, 2010 at 9:00 a.m. in Room 104, Jefferson Building, 105 West Chesapeake Avenue, Towson 21204.

WILLIAM J. WISEMAN, III
Zoning Commissioner for Baltimore County
NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Zoning Commissioner's Office at (410) 887-4386.
(2) For information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391.

CERTIFICATE OF PUBLICATION

7/1, 2010

THIS IS TO CERTIFY, that the annexed advertisement was published in the following weekly newspaper published in Baltimore County, Md., once in each of 1 ~~successive~~ weeks, the first publication appearing on 6/29, 2010.

- [X] The Jeffersonian
- [ ] Arbutus Times
- [ ] Catonsville Times
- [ ] Towson Times
- [ ] Owings Mills Times
- [ ] NE Booster/Reporter
- [ ] North County News

S. Wilkinson

LEGAL ADVERTISING

CERTIFICATE OF POSTING

ATTENTION: KRISTEN MATHHEWS
DATE: 06/26/2010
Case Number: 2010-0320-X
Petitioner / Developer: TODD POUNDS, ESQ.~MIKE BENNETT
Date of Hearing (Closing): JULY 15, 2010

This is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at:
1101 SULPHUR SPRING ROAD

The sign(s) were posted on: JUNE 25, 2010

Linda O'Keefe
(Signature of Sign Poster)

Linda O'Keefe
(Printed Name of Sign Poster)

523 Penny Lane
(Street Address of Sign Poster)

Hunt Valley, Maryland 21030
(City, State, Zip of Sign Poster)

410 – 666 – 5366
(Telephone Number of Sign Poster)

TO: PATUXENT PUBLISHING COMPANY
Tuesday, June 29, 2010 Issue - Jeffersonian

Please forward billing to:
Todd K. Pounds, Esq. 301-292-3300
Alexander & Cleaver, P.A.
11414 Livingston Road
Fort Washington, MD 20744

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 2010-0320-X
1101 Sulphur Spring Road
S/side of Sulphur Spring Road, 1300 feet +/- north of Selford Road
13th Election District – 1st Councilmanic District
Legal Owners: SCI Maryland Funeral Services, Inc. c/o Mike Bennett

Special Exception for a cemetery and the construction of an additional mausoleum on site.

Hearing: Thursday, July 15, 2010 at 9:00 a.m. in Room 104, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204

WILLIAM J. WISEMAN III
ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

TIMOTHY M. KOTROCO, *Director*
Department of Permits and Development Management

June 3, 2010

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 2010-0320-X
1101 Sulphur Spring Road
S/side of Sulphur Spring Road, 1300 feet +/- north of Selford Road
13th Election District – 1st Councilmanic District
Legal Owners: SCI Maryland Funeral Services, Inc. c/o Mike Bennett

Special Exception for a cemetery and the construction of an additional mausoleum on site.

Hearing: Thursday, July 15, 2010 at 9:00 a.m. in Room 104, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204

Timothy Kotroco
Director

TK:kl

C: Todd Pounds, Esq., 11414 Livingston Road, Fort Washington 20744
Mike Bennett, 7250 Washington Blvd., Elkridge 21075

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY WEDNESDAY, JUNE 30, 2010.**
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

TIMOTHY M. KOTROCO, *Director*
Department of Permits and Development Management

July 7, 2010

Todd Pounds, Esq.
Alexander & Cleaver, P.A.
11414 Livingston Rd.
Fort Washington, MD 20744

Dear: 2010-0323-SPHX,

RE: Case Number 2010-0320-X, 1101 Sulphur Spring Rd.

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on May 20, 2010. This letter is not an approval, but only a **NOTIFICATION.**

The Zoning Advisory Committee (ZAC), which consists of representatives from several approval agencies, has reviewed the plans that were submitted with your petition. All comments submitted thus far from the members of the ZAC are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. All comments will be placed in the permanent case file.

If you need further information or have any questions, please do not hesitate to contact the commenting agency.

Very truly yours,

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR:lnw

Enclosures

c: People's Counsel
Mike Bennett: SCI Maryland Funeral Services, Inc.; 7250 Washington Blvd.; Elkridge, MD 21075

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits &
Development Management

DATE: May 27, 2010

FROM: Dennis A. Kennedy, Supervisor
Bureau of Development Plans
Review

SUBJECT: Zoning Advisory Committee Meeting
For June 7, 2010
Item Nos. 2010- 302, 305, 309, 313,
314, 315, 316, 317, 318, 319, 320 &
321

The Bureau of Development Plans Review has reviewed the subject-zoning items, and we have no comments.

DAK:CEN:elm
cc: File
G:\DevPlanRev\ZAC -No Comments\ZAC-006072010 -NO COMMENTS.doc

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

JOHN J. HOHMAN, *Chief*
Fire Department

County Office Building, Room 111
Mail Stop #1105
111 West Chesapeake Avenue
Towson, Maryland 21204

May 27,2010

ATTENTION: Zoning Review Planners

Distribution Meeting Of: May 24th, 2010

Item Numbers: 0305,0309,0313,0315,0316,0317,0318,0320 and 0321

Pursuant to your request, the referenced plan(s) have been reviewed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

1. The Fire Marshal's Office has no comments at this time.

Lieutenant Roland P Bosley Jr.
Fire Marshal's Office
410-887-4881 (C)443-829-2946
MS-1102F

cc: File

BW 7-15-10

9am

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits and
Development Management

DATE: June 7, 2010

RECEIVED
JUN 11 2010
ZONING COMMISSIONER

FROM: Arnold F. 'Pat' Keller, III
Director, Office of Planning

SUBJECT: Zoning Advisory Petition(s): **Case(s) 10-320- Special Exception**

The Office of Planning has reviewed the above referenced case(s) and has no comments to offer.

For further questions or additional information concerning the matters stated herein, please contact Dennis Wertz in the Office of Planning at 410-887-3480.

Prepared By: Curtis M Murray

Division Chief: Lynn Lanham
CM/LL

Martin O'Malley, Governor
Anthony G. Brown, Lt. Governor

SHA State Highway Administration

Beverley K. Swaim-Staley, Secretary
Neil J. Pedersen, Administrator

MARYLAND DEPARTMENT OF TRANSPORTATION

Date: 06-01-2010

Ms. Kristen Matthews
Baltimore County Office Of
Permits and Development Management
County Office Building, Room 109
Towson, Maryland 21204

RE: Baltimore County
Item No. 2010-0320-X
1101 SULPHUR SPRING RD
SCI MARYLAND FUNERAL SERVICES, INC.
SPECIAL EXCEPTION

Dear Ms. Matthews:

Thank you for the opportunity to review your referral request on the subject of the above captioned. We have determined that the subject property does not access a State roadway and is not affected by any State Highway Administration projects. Therefore, based upon available information this office has no objection to Baltimore County Zoning Advisory Committee approval of Item No. 2010-0320-X.

Should you have any questions regarding this matter, please contact Michael Bailey at 410-545-5593 or 1-800-876-4742 extension 5593. Also, you may E-mail him at (mbailey@sha.state.md.us).

Very truly yours,

Michael P. Bailey

For Steven D. Foster, Chief
Engineering Access Permits
Division

SDF/mb

BW 7-15-10

9am

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

RECEIVED

JUN 15 2010

ZONING COMMISSIONER

TO: Timothy M. Kotroco

FROM: Dave Lykens, DEPRM - Development Coordination

DATE: June 14, 2010

SUBJECT: Zoning Item # 10-320-X
Address 1101 Sulphur Spring Road
(SCI Maryland Funeral Services, Inc.)

Zoning Advisory Committee Meeting of May 24, 2010

__X__ The Department of Environmental Protection and Resource Management offers the following comments on the above-referenced zoning item:

__X__ Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).

Reviewer: J. Russo Date: 6/11/10

RE:	PETITION FOR SPECIAL EXCEPTION 1101 Sulphur Spring Road; S/S Sulphur Spring Road, 1300' N of Selford Road 13th Election & 1st Councilmanic Districts Legal Owner(s): SCI Maryland Funeral Services, Inc Petitioner(s)	*	BEFORE THE ZONING COMMISSIONER FOR BALTIMORE COUNTY 10-320-X

* * * * * * * * * * * * * *

ENTRY OF APPEARANCE

Pursuant to Baltimore County Charter § 524.1, please enter the appearance of People's Counsel for Baltimore County as an interested party in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and the passage of any preliminary or final Order. All parties should copy People's Counsel on all correspondence sent and all documentation filed in the case.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S Demilio

CAROLE S. DEMILIO
Deputy People's Counsel
Jefferson Building, Room 204
105 West Chesapeake Avenue
Towson, MD 21204
(410) 887-2188

RECEIVED
MAY 28 2010

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of May, 2010, a copy of the foregoing Entry of Appearance was mailed to Todd K. Pounds, Esquire, Alexander & Cleaver, P.A., 11414 Livingston Road, Fort Washington, MD 20744, Attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Zoning History RE: Arbutus Memorial Park

The subject property has prior zoning history that is relevant to identify prior to resolution of Petitioner's present request for Special Exception relief. Zoning case No. 1952-2351-R, which was heard on September 8, 1952, reclassified property owned by Arbutus Memorial Park, Inc. from D.R.5.5, as an "A" Residence zone to D.R.10.5, as a "D" Residence zone. In Case No. 1978-0209-A, Petitioner received variance relief for a 20 foot, building-to-building setback between mausoleums in lieu of the required 80 feet. Thereafter, subsequent to a letter from W. Carl Richards, Jr., Zoning Coordinator, dated August 12, 1992, in Case No. 1993-463-SPHXA, Petitioner, applied for and received approval from the then Zoning Commissioner, Lawrence E. Schmidt, to establish a nonconforming use for a cemetery in that portion of the site zoned D.R.10.5 and to use the D.R.5.5 portion of the property for an existing cemetery. Moreover, Petitioner was granted a Variance to permit a minimum setback of 10 feet between non-residential buildings in lieu of the required 70 feet. In Case No. 2008-0502-SPHX, Petitioner received Special Hearing relief to approve a request for an amendment to Case No. 1993-463-SPHXA and also was granted Special Exception relief pursuant to Section 426.5 of the B.C.Z.R. to allow a telecommunications facility on property zoned D.R.5.5 by Thomas H. Bostwick, Deputy Zoning Commissioner.

July 21, 1941 Plat filed showing location of buildings thereon, filed.

July 21, 1941, Hearing held (no protest filed) by Zoning Comr & his order thereon granting petition for Re-classification, filed,

#171	Southeast Spring Rd. S.S., 1100' E. fr. Shelbourne Rd., 13th Dist. Re-Petition for Zoning Re-classification for – Public Colored Cemetery Katie R. Williams, Petitioner	July 2, 1941, Petition for Zoning Re-classification & Order of Zoning Comr thereon setting July 21, 1941, at 11 a.m., as date of hearing, filed. July 11, 1941, Property posted, Certificate of posting, filed. July 21, 1941, Certificate of Advertisement of notice & purpose of hearing, filed. July 21, 1941 Protests in writing, filed. July 21, 1941, Hearing held by Zoning Comr & his Order thereon, subject to certain requirements agreed to, granting petition for re-classification, filed.
#172	Joppa Road & Pleasant Plain Rds S.W. Cor. Baltimore, 9th Dist. Re-Petition for Zoning Re-classification – for – Grocery Store Essie P. Cook., Petitioner	July 5, 1941, Petition for Zoning Re-classification & Order of Zoning Comr thereon setting July 28, 1941 at 10 A.M., as date of hearing, filed. July 10, 1941, Property posted, Certificate of posting, filed. July 21, 1941, Certificate of Advertisement of notice & purpose of hearing, filed. July 28, 1941, Hearing held by Zoning Comr & his Order thereon granting petition for re-classification, conditioned as to terms of building, set backs to be approved by Zoning Dept., filed.

PETITION FOR ZONING RE-CLASSIFICATION AND/OR SPECIAL EXCEPTION

#5432-X

5132-X

MAP V #13 SEC. 2 1 3-A "X" 12/5/61

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I, ~~xxxx~~ Katie R. Williams legal owner of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition ~~(1) that the zoning status of the herein described property be re-classified, pursuant to the Zoning Law of Baltimore County, from an~~ zone to ~~the~~ zone; ~~and (2) for the following exceptions~~

See Attached Description

and (2) for a Special Exception, under the said Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property, for a cemetery.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above re-classification and/or Special Exception advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

Katie R. Williams
Katie R. Williams
Legal Owner

Contract purchaser

Address 321 N. Schroeder Street
Baltimore 23, Maryland

J. Royall Tippett, Jr.
Petitioner's Attorney

Protestant's Attorney

Address 806 Maryland Trust Building
Baltimore 2, Maryland
PLaza 2-7943

ORDERED By The Zoning Commissioner of Baltimore County, this 24th day of October, 1961, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 13th day of December 1961 at 3:00 o'clock P. M.

OCT 24 61
OFFICE OF PLANNING & ZONING
By

John G. [illegible]
Zoning Commissioner of Baltimore County

Katie R. Williams
S/S of Sulphur Spring Rd. 1285' E of Shelbourne Rd.
#5432-X
13th

5432

HINKLEY AND SINGLEY
ATTORNEYS AND COUNSELLORS AT LAW
606 MARYLAND TRUST BUILDING
16 SOUTH CALVERT STREET
BALTIMORE 2, MARYLAND

FREDERICK J. SINGLEY, JR.
JAMES P. WALSH
HERBERT F. KUENNE
J. ROYALL TIPPETT, JR.
WALTER E. BLACK, JR.
JOHN H. SOMERVILLE
DANIEL H. HONEMANN
H. DAWSON PENNIMAN
JON F. OSTER

JOHN HINKLEY
1868-1940
FREDERICK J. SINGLEY
1900-1950

TELEPHONE
PLAZA 2-7943

DEC 15 '61 AM
ZONING DEPARTMENT

December 14, 1961

John G. Rose, Zoning Commissioner
Baltimore County Office of Planning & Zoning
County Office Building
Towson 4, Maryland

Re: Petition for Special Exception for Cemetery - Katie R. Williams

Dear Mr. Rose:

Confirming the action taken yesterday, the above petition previously filed on behalf of Katie R. Williams for a Special Exception for a Cemetery is withdrawn.

Very truly yours,

J. Royall Tippett, Jr.

JRT,Jr/r

51.178

78-209-A #140

PETITION FOR ZONING VARIANCE FROM AREA AND HEIGHT REGULATIONS

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I, or we, Arbutus Memorial Park, Inc. legal owner of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof,

hereby petition for a Variance from Section 1 B02.2B(V.9.2) & 102.2

To permit a 20' setback (building face to building face) between mausoleums in lieu of the maximum required 80'.

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (indicate hardship or practical difficulty)

1. Proposed structures are not inhabited, making 80' setbacks unnecessary.
2. Proposed structures are viewed from the outside and do not have interior rooms, making front, rear and side yards difficult to determine.
3. A 20' setback will allow the development of a more intimate garden space which is desirable.

See attached description

4. Topographic changes across the site (7%+) make it difficult to attach the mausoleums through the use of a continuous roof.

MAP 2H SW-E

LB 1-5-78

6-26-78

Property is to be posted and advertised as prescribed by Zoning Regulations.
I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law For Baltimore County.

ORDER RECEIVED FOR FILING
DATE March 30, 1978
BY [signature] ADMINISTRATIVE ASSISTANT

Contract purchaser	William J. Callis (signature) William J. Callis, President Arbutus Memorial Park, Inc. Legal Owner
Address	Address 1101 Sulphur Spring Road Baltimore, Maryland 21227
Petitioner's Attorney	Protestant's Attorney
Address	

ORDERED By The Zoning Commissioner of Baltimore County, this 10th day of January, 1978, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 29th day of March, 1978, at 10:00 o'clock A. M.

JAN 10 '78 AM

[signature]
Zoning Commissioner of Baltimore County.

(over)

3/29/78

Pursuant to the advertisement, posting of property, and public hearing on the above Petition and it appearing that by reason of the following finding of facts that strict compliance with the Baltimore County Zoning Regulations would result in practical difficulty and unreasonable hardship upon the Petitioner.

---

the above Variance should be had; and it further appearing that by reason of the granting of the Variance requested not adversely effecting the health, safety, and general welfare of the community, the Variance to permit a 20 foot setback (building face to building face) between mausoleums in lieu of the maximum required 80 feet should be granted.

IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 30th day of March, 1978, that the herein Petition for the aforementioned Variance should be and the same is GRANTED, from and after the date of this Order, subject to the approval of a site plan by the Department of Public Works and the Office of Planning and Zoning.

ORDER RECEIVED FOR FILING
DATE March 30, 1978
BY Stella M. Pevelack

Zoning Commissioner of Baltimore County

Pursuant to the advertisement, posting of property and public hearing on the above petition and it appearing that by reason of

---

---

the above Variance should NOT BE GRANTED.

IT IS ORDERED by the Zoning Commissioner of Baltimore County, this _____ day of _____, 197 __, that the above Variance be and the same is hereby DENIED.

Zoning Commissioner of Baltimore County

Baltimore County Government
Office of Zoning Administration
and Development Management
Office of Planning & Zoning

111 West Chesapeak venue
Towson, MD 21204

(410) 887-3353

August 12, 1992

Frank Harvey, President
F.M. Harvey Construction
1616 Providence Road
Towson, MD 21204

RE: Building Permit Application for
243 Crypt Mausoleum and Shelter
Arbutus Memorial Park
N/S Layman Way & SE/S Clergyman Way
District: 13c1
Zoning: D.R.-5.5 & D.R.-10.5
Prior Hearing: 78-209-A

Dear Mr. Harvey:

Reference is made to the above referenced permit application submitted to this office on August 10, 1992 for approval. A review of the zoning records available to this office has indicated that the property is currently zoned D.R.-5.5, but a review of our files has not revealed that a special exception or special zoning permit has ever been granted on this site.

However, a 1941 zoning docket does indicate that case #171, a reclassification for a public colored cemetery for Katie Williams, was granted on July 21, 1941 in this general area. There is no zoning file available and the only zoning record found is the attached docket entry, which unfortunately does not establish a file or the boundaries of the reclassification. There was another zoning case (#5432-X) found in the records, interestingly enough for a special exception for a cemetery, but the petition was withdrawn on December 14, 1961. The most recent zoning case #78-209-A is well documented and on March 30, 1978, setback variances were granted for proposed mausoleums. A zoning comment in the case file indicates that a special exception would be required for future proposals. Apparently, since the three mausoleums (which were subject of the variance case) were built several other buildings have been constructed presumably with zoning approval, but without the benefit of a special exception hearing being granted.

Printed on Recycled Paper

Based on the above referenced zoning records and subsequent permit approvals, this office will conditionally approve the current permit. The condition of this approval, as agreed to below, is that prior to any future zoning permit approvals on the property. A completed application must be made in this office for a special exception zoning hearing for a cemetery. It is suggested that a petition should be filed without delay to ensure future permit approvals.

Should you need any further clarification or if you discover any additional zoning records, please do not hesitate to contact me at 887-3391.

Very truly yours,

WCR

W. Carl Richards, Jr.
Zoning Coordinator

WCR:scj

cc: William J. Callis, Jr.
Arbutus Memorial Park

Enclosure

Signed Wm J Callis Jr
(Cemetery Owner)

PLEASE PRINT CLEARLY

Name ARBUTUS MEMORIAL PARK

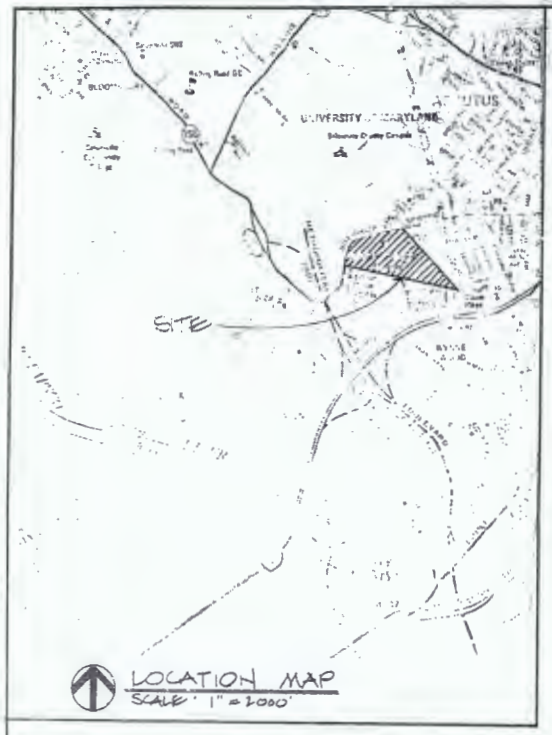
Address 1101 Sulphur Spring Rd

Baltimore, MD 21227

Work Telephone Number (410) 242-2700

Home Telephone Number (410) 666-3962

*PLEASE COMPLETE AND RETURN WITH PERMIT APPLICATION



CENTER LINE INTERSECTION OF SULPHUR SPRING RD & SHELBOURNE AVE

SULPHUR SPRING RD

SHELBOURNE AVE.

8" SANITARY SEWER

8" WATER

D.R. 35

SUPERINTENDENT'S HOUSE - EXISTING

EXISTING MAUSOLEUM

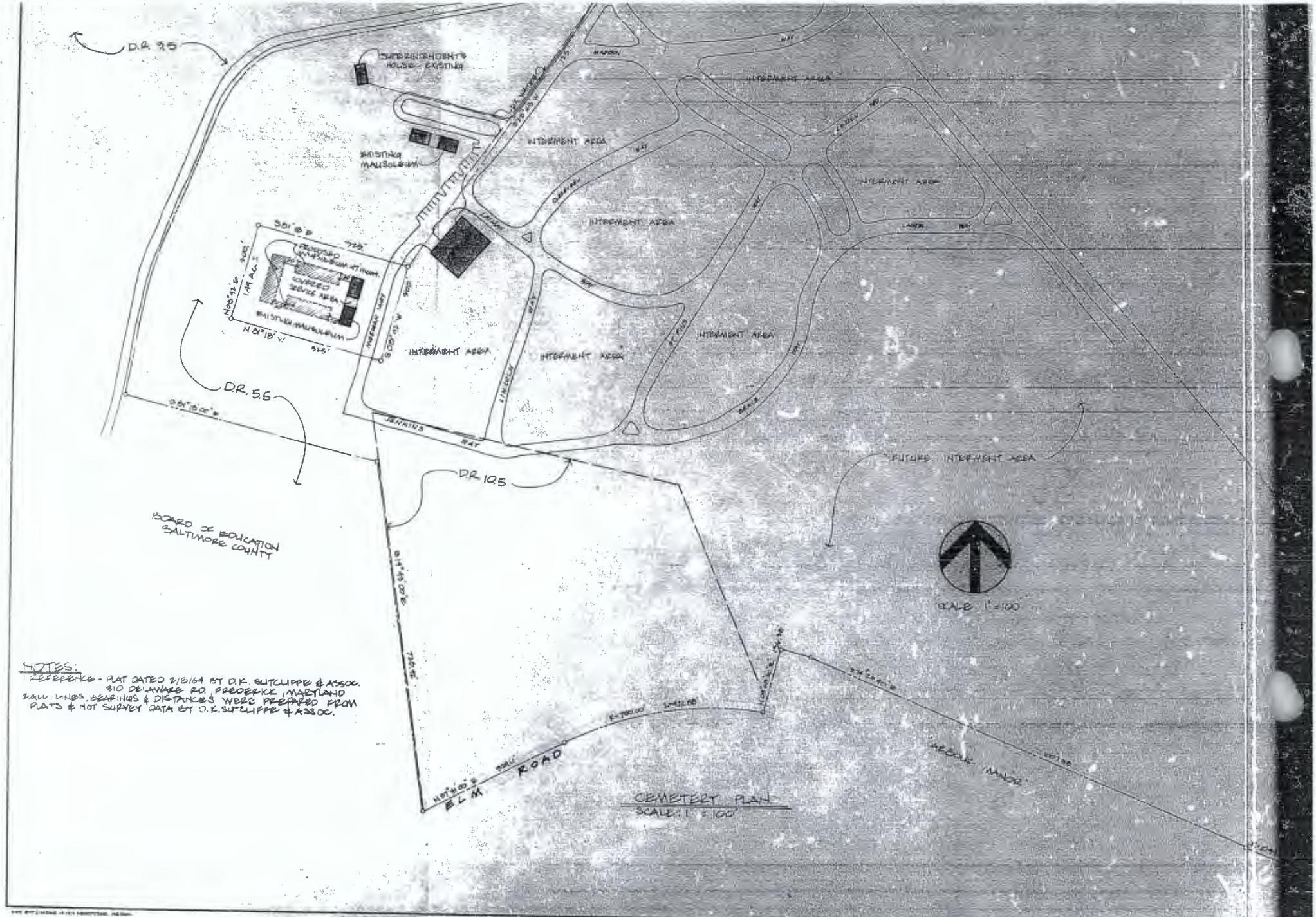
PROPOSED MAUSOLEUM

COVERED SEATING AREA

INTERMENT AREA

DR. 56

FUTURE INTERMENT AREA



NOTES:
1. REFERENCE - PLAT DATED 2/8/64 BY D.K. SUTCLIFFE & ASSOC. 310 DELAWARE RD., FREDERICK, MARYLAND
2. ALL LINES, BEARINGS & DISTANCES WERE PREPARED FROM PLATS & NOT SURVEY DATA BY D.K. SUTCLIFFE & ASSOC.

CEMETERY PLAN
SCALE: 1" = 100'

IN RE: PETITIONS FOR SPECIAL HEARING * BEFORE THE
SPECIAL EXCEPTION & ZONING VARIANCE
S/S Sulphur Spring Rd., 470 ft. E * ZONING COMMISSIONER
of c/l Shelbourne Avenue
1101 Sulphur Spring Road * OF BALTIMORE COUNTY
13th Election District
1st Councilmanic District * Case No. 93-463-SPHXA
William J. Callis, Jr.
Petitioner *

****

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as a Petition for Special Exception, Petition for Special Hearing and Petition for Zoning Variance; all for that property known as the Arbutus Memorial Park Cemetery, located at 1101 Sulphur Spring Road in the Arbutus section of Baltimore County.

The property owner seeks approval pursuant to the Petition for Special Exception to operate a cemetery in that portion of the site zoned D.R.5.5, pursuant to Section 1B02.1 of the Baltimore County Zoning Regulations (B.C.Z.R.). Further, relief is requested within the Petition for Special Hearing to establish a nonconforming use for a cemetery in that portion of the site zoned D.R.10.5. More particularly, the property owner requests that the validity and boundary of a 1941 special permit approval for a cemetery be verified. Further, the Petition for Special Hearing requests a determination that Residential Transition Areas (R.T.A.) do not apply to the site from the adjacent Baltimore County parcel which is more than two acres, pursuant to Section 1B01.1.B.1.c. Lastly, under the Petition for Variance, relief is sought from Sections 1B01.2.C.1.a and 1B02.2 of the B.C.Z.R. to permit a minimum setback of 10 ft. between non-residential buildings within the area designated on the site plan, in lieu of the required 70 ft. maximum. All of the relief is more fully described within the Petitions which

ORDER RECEIVED FOR FILING
Date 8/10/93
By

have been filed and the site plan which has been submitted as Petitioner's Exhibit No. 6.

Appearing at the public hearing in support of these Petitions was William J. Callis, Jr., owner of the subject property and Chief Executive Officer of the business located thereon. Also appearing in support of the Petition was William Monk, a Land Use Consultant, and James E. Dyer. Mr. Dyer appeared as an expert witness with expertise in the history and interpretation of the Baltimore County Zoning Regulations.

Numerous individuals appeared as interested persons/Protestants. These individuals all reside in the immediate neighborhood of the property. Collectively, they were represented by Edward N. Kane, Jr., Esquire.

At the onset of the hearing, Mr. Callis amended his Petitions. Specifically, he withdrew a previous request within the Petition for Special Exception to permit a funeral home on the site. That amendment was accepted and thus the special exception request is limited to the existing cemetery use on the D.R.5.5 portion of the property.

Mr. Callis testified that he has worked at the site and been familiar with the same for many years. In 1985, he and his father purchased the property and he became sole owner in 1988. Mr. Callis recounted the long and impressive history of the Arbutus Memorial Park. The property has been used as a cemetery since approximately 1936. In those times, segregation between the races was a fact of life and the cemetery was establish to provide a prestigious final resting place members of the the African-American community. Indeed, the list of African-Americans interred at the cemetery is impressive. Many of the former leaders of the African-American community in the Baltimore Metropolitan area are buried here. The neighborhood residents who appeared at the hearing obviously wish to ensure the continuation

ORDER RECEIVED FOR FILING
Date 4/6/93
By

of the prestigious tradition associated with this cemetery, a sentiment which is shared by Mr. Callis.

Mr. Monk also testified and presented the site plan. That plan depicts the subject property, which is approximately 72 acres in area and is split zoned D.R.5.5 and D.R.10.5. As the site plan shows, most of the site is zoned D.R.5.5, however, a small rectangular shaped parcel is zoned D.R.10.5. As noted above, the rectangular tract zoned D.R.10.5 is the subject of the property owner's Petition for Special Hearing. Unlike a D.R.5.5 zone, a cemetery is not permitted either by right or special exception in a D.R.10.5 zone. Thus, in order for the cemetery use to be permitted in the rectangular parcel, the nonconforming nature of same must be established. For the larger balance of the tract, zoned D.R.5.5, the property owner seeks approval under the Petition for Special Exception.

As to the existing improvements on the property, the site features an administrative building and several mausoleum structures which are clustered on the northwest side of the tract near the administration building. Further, a mausoleum building is located in the center portion of the D.R.5.5 acreage. There are no improvements on the D.R.10.5 parcel.

ORDER RECEIVED FOR FILING
Date 5/6/93
By

Mr. Monk and Mr. Callis' description of the history of the ownership and zoning of the property is significant. As noted above, the cemetery was established in approximately 1936. It is clear that the original owners of the property held significant acreage in this locale above and beyond what is presently owned. However, certain tracts were sold off and Mr. Callis now owns only the D.R.10.5 parcel and the D.R.5.5 parcel, as described above. It is noted that these parcels total 72 acres. Also, it is clear that the cemetery's owners originally held an adjoining parcel now owned by Baltimore County. Further, property to the south, which has now been devel-

oped with row houses in a subdivision known as Arbor Manor, was also owned by the cemetery.

Additional testimony regarding the history of the property and the prior County approvals was offered by James E. Dyer. Mr. Dyer was formerly employed by Baltimore County for many years. He enjoys a wealth of knowledge pertaining to the development of zoning in Baltimore County; having been employed in the Zoning Commissioner's office for many years. Mr. Dyer noted that the first zoning regulations came to Baltimore County in 1941. Those regulations are significantly different than the present regulations and were limited in scope. However, they did provide for a mechanism known as a Petition for Zoning Reclassification under which landowners could obtain approval for certain uses. In fact, evidence was offered that such a Petition was granted in 1941 approving the use of the property as a cemetery. Thus, it appears clear that the subject site did receive County approval for its current use over 50 years ago. Further, the testimony was persuasive that this use has continued uninterruptedly since that time. As is the case with all cemeteries, grave sites are prepared based upon demand and full utilization of the property for burial can take many years. Although room remains at this property for additional grave sites, the existence of utilized land does not constitute any type of abandonment of this use.

As to the Petition for Special Hearing relating to the nonconforming use, it is to be noted that comprehensive zoning came officially to Baltimore County on January 2, 1945 pursuant to previous authorization by the General Assembly. Baltimore County adopted a new set of comprehensive zoning regulations on March 30, 1955. These regulations dealt with the issue of nonconforming use in Section 104. That section remains in the current

ORDER RECEIVED FOR FILING
Date 3/22/95
By

version of the B.C.Z.R., however, has been amended over the years. Most recently, this section was amended by Bill 91-124.

Further, a nonconforming use is defined in Section 101 of the B.C.Z.R. Among the uses which are nonconforming, are those which pre-exist the effective date of legislation which prohibits the said use in a particular zone. In this instance, a cemetery is not permitted under the current regulations in a D.R.10.5 zone. However, it is clear that the approved cemetery use of the D.R.10.5 parcel in 1941 predates the adoption of zoning classifications in Baltimore County. Thus, the use is properly grandfathered and may continue to be used as a cemetery. Testimony and evidence was clear that the use has not been discontinued, abandoned or substantially altered since the founding of the cemetery in 1936. Thus, the Petition for Special Hearing grandfathering the use of the parcel zoned D.R.10.5 as a part of the cemetery should be granted.

Mr. Dyer's testimony was also persuasive as to the remaining request within the Petition for Special Hearing. Specifically, the Petitioner requests a determination that the site is exempt from R.T.A. requirements from the adjacent Baltimore County parcel. Mr. Dyer testified that the adjoining County property does not contain a single family dwelling, semi-detached or duplex dwelling. Further, although vacant, the property is greater than 2 acres in area. Thus, pursuant to Sections 1B01.1.B (1) and (2), an R.T.A. is not generated. Therefore, the Petition for Special Hearing in this respect should also be granted.

As to the Petition for Special Exception, same is sought for the D.R.5.5 tract. A cemetery is permitted in a D.R.5.5 zone by special exception, pursuant to Section 1B02.1 of the B.C.Z.R. As has been noted in prior opinions of this office and is well settled, a special exception use is part

ORDER RECEIVED FOR FILING
Date 6/6/93
By

of the comprehensive zoning plan and enjoys a presumption that it is in the interest of the general welfare and is, therefore, valid. See Anderson v. Sawyer, 23 Md. App. 612, 329 A2d. 716 (1974). Thus this special exception use should be approved, if the Petitioner adduces compelling testimony that said use complies with the standards imposed by the local jurisdiction. See Schultz v. Pritts, 291 Md. 1, 432 A2d. 1319 (1981). In Baltimore County, the test for any special exception use is found in Section 502.1 of the B.C.Z.R. In this instance, the Petitioner has shown that the use conducted at this site is without real detriment to the neighborhood and does not adversely affect the public interest. The use is not detrimental to the health, safety or general welfare of the locality, does not tend to create congestion in roads in roads, streets, or alleys therein, and is not inconsistent with the purposes of the property's zoning classification. Clearly, the cemetery use at this location is consistent with the spirit and intent of the B.C.Z.R. Therefore, the Petition for Special Exception should likewise be granted.

As further support for this approval, it is to be noted that this cemetery has operated at this location for many years. Continued operation and maintenance of this cemetery in a manner consistent with past practices is appropriate and will continue to provide the African-American community with a valuable asset which need be preserved.

Lastly, the Petitioner has requested variance relief from Sections 1B01.2.C.1.a. and 1B02.2. It is to be noted that this variance request relates to distance between buildings located in the interior of the site. That is, the Petitioner will maintain all property line setbacks. Thus, there will continue to be an adequate buffer between the cemetery and the surrounding properties. Nonetheless, the requested variance is necessary

ORDER RECEIVED FOR FILING
Date 3/9/93
By

for contemplated construction of mausoleums buildings. It is noted that mausoleum buildings are present on the northwest side of the site, having been approved pursuant to an Order of this office in case No. 78-209-A. As the site plan notes, additional mausoleums may be constructed on the south central portion of the site. The Petitioner requests the variance relief so that said buildings may be grouped in a consistent manner so as to properly utilize and preserve the architectural scheme of the property. Further, the Petitioner has proven that the granting of the variance will not be detrimental to the surrounding locale. Clearly, a denial of the variance would constitute practical difficulty upon the Petitioner and his property for the reasons set forth above. Thus, the Petitioner has satisfied his burden under Section 307.1 of the B.C.Z.R. and the variance should be granted.

For the reasons given above, I am, therefore, persuaded to grant the Petition for Special Exception, Petition for Special Hearing and the Petition for Zoning Variance.

Pursuant to the advertisement, posting of the property, and public hearing on these Petitions held, and for the reasons given above, the relief requested should be granted.

IT IS THEREFORE ORDERED by the Zoning Commissioner for Baltimore County, this 10th day of August, 1993 that the Petition for Special Exception for permission to use the D.R.5.5 portion of the property for an existing cemetery, be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that the Petition for Special Hearing for validation of the nonconforming use status of the D.R.10.5 portion of the site, be and is hereby GRANTED; and,

ORDER RECEIVED FOR FILING
Date 8/10/93
By W. Grant

IT IS FURTHER ORDERED, that the Petition for Special Hearing to determine that an R.T.A. requirement is not generated by the adjoining parcel owned by Baltimore County, be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that a Petition for Variance from Sections 1B01.2.C.1.a and 1B02.2 of the B.C.Z.R. to permit a minimum setback of 10 ft. between non-residential buildings within the area designated on the site plan, in lieu of the required 70 ft. maximum, be and is hereby GRANTED, all in accordance with Petitioner's Exhibit No. 6, subject, however to the following restriction which are conditions precedent to the relief granted herein:

1. The Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the 30 day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioner would be required to return, and be responsible for returning, said property to its original condition.

LAWRENCE E. SCHMIDT
Zoning Commissioner for
Baltimore County

LES:mmn

ORDER RECEIVED FOR FILING
Date
By

Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
pdmlandacq@co.ba.md.us

April 13, 2000

Mr. Ned Fowler
SCI Management L.P.
P.O. Box 130548
Houston, TX 77219-0548

Dear Mr. Fowler:

RE: Zoning Verification, Arbutus Memorial Park, 1101 Sulfer Spring Rd., 13th Election District

Your letter to Mr. Jablon dated March 16, 2000 has been referred to me for reply. No site plan information was included with your letter.

The above referenced property is currently zoned D.R.10.5. and 5.5. A portion of the property may also be zoned D.R.3.5. depending upon the extent of the property. Enclosed, please find a copy of a portion of Baltimore County zoning maps SW 5E and 6E.

You may contact the Baltimore County Office of Planning at 401 Bosley Avenue, Towson, Maryland 21204, (410) 887-3211 to discuss Master Plan considerations.

Cemetery use is permitted in the aforementioned zones by the grant of a Special Exception from the Zoning Commissioner for Baltimore County. The proposed use would be subject to the requirements of Sections 401 and 502 of the Baltimore County Zoning Regulations (B.C.Z.R.). I have included information on the Special Exception process.

If the cemetery has existed prior to the inception of zoning regulations in Baltimore County, which occurred in1945, and the use has continued uninterrupted since that date it may be considered as non-conforming. Non-conforming uses are subject to the requirements of Section 104, B.C.Z.R.. A search of the zoning records shows multiple cases associated with this property. These cases include but are not limited to 171-S, 5432-X, 78-209-A. I have included a copy of the order for the latter case. This is not to be considered the extent of zoning history for this property. It would be advisable to engage an attorney familiar with Baltimore County Zoning Regulations who can research the case files and assess the present and potential status of the property.

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Mausoleums are considered to be non-residential principal structures and are subject to the requirements of Section 1B01.2.C.1.a, B.C.Z.R.. A thorough assessment of the zoning case history for this property may show zoning relief granted for setback and design requirements.

Pursuant to Section 1B01.1.C.9, B.C.Z.R. funeral establishments are permitted by Special Exception in the D.R. zones. Setbacks are pursuant to Section 1B01.2.C.1.A, B.C.Z.R. Residential transition area requirements as per Section 1B01.1.B.1. will apply.

All development within Baltimore County must have full development, zoning and permit approval. You may contact the Office of Development Management at 111 West Chesapeake Avenue, Towson, Maryland 21204, (410) 887-3335 for inquires pertaining to site construction issues and the development approval process. You may contact the Office of Permits at the address above, (410) 887-3900 for building permit application requirements. I am enclosing a copy of the zoning checklist requirements for non-residential properties for your use. Additionally, I am including information on how to purchase a copy of the B.C.Z.R. If you plan to develop in the county, it is strongly advised you obtain these regulations.

I trust that the information set forth in this letter is sufficiently detailed and responsive to the request. If you need further information or have any questions, please do not hesitate to contact me at 410-887-3391.

Sincerely,

Lloyd T. Moxley
Planner II
Zoning Review

LTM:kew

IN RE: **DEVELOPMENT PLAN HEARING** E/S Sulphur Spring Road @ NE Corner Selford Road **(Arbutus Library Comm. & Sr. Ctr.)** 13th Election District 1st Council District Baltimore County, Maryland Owner/Developer	*	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY **Case No. XIII-214**

* * * * * * * *

HEARING OFFICER'S OPINION AND DEVELOPMENT PLAN ORDER

This matter comes before this Hearing Officer/Zoning Commissioner for a public hearing on a proposal submitted in accordance with the development review and approval process contained in Article 32, Title 4, of the Baltimore County Code (B.C.C.). The Owner/Developer of the property, Baltimore County, Maryland, a body corporate and politic, seeks approval of a three-page, red-lined development plan depicting the proposed construction of the Arbutus Library, Senior Center and Community Recreation Center. The subject property consists of a gross area of 12.9 acres, more or less, zoned D.R.5.5, and is located to the south and east of Sulphur Spring Road at the northeast corner of Selford Road in Arbutus. The subject property and requested relief are more particularly described on the three-page, red-lined development plan, which was marked and accepted into evidence as Baltimore County's Exhibits 2A-C.

As a preliminary matter, it should be noted that Baltimore County is a political subdivision and is therefore exempt from the provisions of the Baltimore County Zoning Regulations (B.C.Z.R.). *See Glascock v. Baltimore County*, 321 Md. 118 (1990). However, local governments such as Baltimore County are not exempt from the Development Regulations contained in the B.C.C. Accordingly, as to the history of this project, a concept plan of the proposed development was prepared and a Concept Plan Conference (CPC) was held on March 10, 2008 at 10:00 a.m. in Room 123 of the County Office Building. The concept plan is a

schematic representation of the proposed subdivision as initially reviewed by and between representatives of the Developer and the reviewing County agencies at the CPC. Thereafter, as is also required in the development review process, notice of a Community Input Meeting (CIM) is posted and scheduled during evening hours at a location near the proposed subdivision to provide residents of the area an opportunity to review and comment firsthand on the plan. The CIM in this case was held on April 21, 2008 at 7:00 p.m. at the Arbutus Middle School located at 5525 Shelbourne Road. Representatives of Baltimore County and the reviewing agencies attended, as well as a number of interested persons from the community. Subsequently, a development plan is prepared, based upon the comments received at the CPC and CIM, and the development plan is submitted for further review at a Development Plan Conference (DPC), which, again, is held between the Developer's consultants and the County agency representatives to further review and scrutinize the plan. The DPC occurred on July 30, 2008. A revised development plan (the redlined plan) incorporating those comments is submitted at the Hearing Officer's Hearing scheduled before the undersigned and conducted in its entirety on August 22, 2008.

Appearing at the requisite public hearing in support of development plan approval was Nancy C. West, Esquire, Assistant County Attorney for Baltimore County, who represented Baltimore County and the interests of three (3) affected county representatives and agencies including James H. Fish, Director of the Baltimore County Public Library, Joanne Williams, Deputy Director of the Baltimore County Department of Aging, and Francis Robert "Bud" Chrismer, Deputy Director of the Baltimore County Department of Parks and Recreation.[1] Also appearing in support of the development plan were Fritz Behlen with Site Resources, Inc., the

[1] Each of these agencies, and their respective officers, were directly affected due to the fact that this development plan proposes to bolster their existing facilities by constructing a new library, senior center, and community center.

professional landscape architect who designed the project, along with his colleagues Robert L. Royer, who served as the project manager, and John Conwell. Henry Leskinen, a professional ecologist with Eco-Science Professionals, Inc., testified for the County, and Benjamin Bates and David Kozera also appeared in support of the development plan.

The requested approval of the proposed development plan was contested. The opponents are generally residents of the neighborhood and included Dean Kasian, Esquire, Berchie Manley[2] and Susan Mazzoni (both coalition board members for the Preservation of Southwest Baltimore County), Richard E. Degroot, Jim Button and Cheryl Jordan. Mr. Kasian was personally involved as a nearby resident, and also spoke for the Huntsmoor Park Community Association, Inc., an organization dedicated to preserving Huntsmoor Park.[3] Mr. Kasian presented the majority of the community's case by cross-examining each witness, presenting a list of 35 exhibits, which are contained in the case file, and giving opening and closing arguments. Ms. Manley and Ms. Mazzoni also questioned several witnesses but permitted Mr. Kasian to largely handle the presentation as lead counsel for the Community's concerns.

Also in attendance were representatives of the various Baltimore County reviewing agencies, including the following individuals: Walter Smith, Project Manager, Department of Permits and Development Management (DPDM), David Lykens, Michael Kulis and Bryce Savage (Department of Environmental Protection and Resource Management [DEPRM]), Lloyd Moxley (Office of Planning), Dennis Kennedy, PE (Development Plans Review), Brad Knatz (Land Acquisition), Craig McGraw (Zoning Review Office), Jan Cook and Bud Chrismer

[2] It is to be noted that Berchie Manley served on the Baltimore County Council from 1990 to 1994 and represented this Council district.

[3] Ms. West initially objected to Mr. Kasian speaking on behalf of the corporate entity without written authority, but Mr. Kasian later located correspondence indicating that he was the President of the organization and authorized to speak in opposition to the project.

(Department of Recreation and Parks), Greg Carski (Department of Public Works – Traffic Engineering), Joanne Williams, Department of Aging, and James H. Fish, Baltimore County Public Library. These as well as other agency comments and the State Highway Administration findings are contained within the case file.

It should be noted at this juncture that the role of each reviewing County agency in the development review and approval process is to independently and thoroughly review the redlined development plan as it pertains to their specific area of concern and expertise. These agencies provide comments on the plan and make determinations where necessary as to whether the plan complies with applicable Federal, State, and/or County laws and regulations pertaining to development and related issues. In addition, these agencies carry out this role throughout the entire development plan and approval process.

Pursuant to B.C.C. Sections 32-4-227 and 32-4-228, which regulate the conduct of the Hearing Officer's Hearing, I am first required to identify any unresolved comments or issues related to the project. At the time of this hearing, all of the afore-mentioned representatives of the respective County reviewing agencies indicated that there were no outstanding issues, unresolved comments and, therefore, recommended plan approval. At the outset of the hearing, I also asked Nancy West, counsel for Baltimore County, if there were any unresolved comments from the County's perspective. Ms. West also indicated that there were no unresolved issues and explained that she would present Baltimore County's case by calling a series of witnesses to shed light on each aspect of the proposed development.

The first witness that testified for Baltimore County was Fritz Behlen, the professional landscape architect who designed the project for Baltimore County. Mr. Behlen's testimony provided a general overview of the project, which entails the construction of a new library, senior center, and community recreation center in Arbutus. Baltimore County presented a

landscape rendering, which was marked and accepted into evidence as Developer's Exhibit 3. The property, which currently comprises Huntsmoor Park, is located to the south and east of Sulphur Spring Road at the northeast corner of Selford Road. Mr. Behlen testified that there is over 40 feet of vertical change from north to south and the topography rolls off on the east and west sides with the lowest point located in the southeast corner of the property. Baltimore County or its assigns could develop the property in this zoning classification to construct 70 single-family dwellings, which could include multi-family structures, but is instead electing to build public facilities.

The project as proposed will include the construction of two (2) main buildings, which will be accessible through a single entrance from Sulphur Road at the north end of the property. Baltimore County submitted several elevation drawings, which were marked and accepted into evidence as Baltimore County Exhibits 6A-E. The first proposed structure is a 9,000 square foot building centered at the north end of the property which will be used as a community recreation center and have an address of 865 Sulphur Spring Road. This structure will be accompanied by 99 parking spaces located on the south side of the building. The second structure, a 33,000 square foot facility, will be used as a combined library and senior center. This building, 855 Sulphur Spring Road, will be located just south of the center of the property and provide 167 parking spaces located off of the west side of the structure. According to Mr. Behlen, the total number of parking spaces was an amount specifically directed by the respective County reviewing agencies.

Mr. Behlen also testified that a stormwater management pond would be located in the southeast quadrant of the property, where the elevation is at its lowest point. The pond, which will always be filled with water, will contain a fountain that is aesthetically pleasing and will create constant motion through aeration to decrease the presence of mosquitoes.

Mr. Behlen's testimony also described the sidewalk that will be constructed, which will conform with the ADA requirement to maintain less than a 5% grade. The sidewalk, which is marked with a dark colored line on Baltimore County Exhibits 2B and 2C, will begin in the northwest area of the property along Sulphur Spring Road where it will then outline the parking area and provide access to the entrance to the community recreation center. The sidewalk will extend to the south, connecting to and encompassing the library/senior center structure and associated parking area before ending at Elm Road, which borders along the southern boundary of the property.

Finally, Mr. Behlen testified that, as illustrated on Baltimore County's Exhibit 3, the property will maintain its natural state due to several forest buffer and forest conservation easements located at the northeast, southeast and northwest corners of the tract. The interior of the property will also be lined with flowering trees and shrubs to provide shade and add to the aesthetic nature of the property.

The second witness that testified for Baltimore County was James H. Fish, Director of the Baltimore County Public Library. Mr. Fish testified that there are currently 17 library locations throughout Baltimore County, and the closest location is 1¼ miles from the subject property in an existing business park. According, to Mr. Fish, the proposed facility would greatly benefit the public by tripling the children's area, increasing the amount of publicly available books from 82,000 – 112,000, and doubling the amount of public computers. On cross-examination, Mr. Kasian briefly questioned why the proposal includes 167 parking spaces if the current library location only has 20. Since Mr. Fish was not an expert in parking, he largely deferred this question but noted that the new facility will share a building with a senior center.

The third witness that testified for Baltimore County was Joanne Williams, Deputy Director of the Department of Aging. Ms. Williams testified that there are 19 existing senior

centers in Baltimore County, and the new facility would be comprised of an 18,000 square foot portion of the multi-purpose building that would increase access to services such as assistance for older citizens with Medicare and tax stimulus programs not currently available in this community. Additionally, the center would serve two (2) daily meals that comply with the federally mandated nutrition program and would offer lectures, cooking classes as well as entertainment and fitness programs for senior citizens. The Department of Aging will appoint a Director for this new facility and will conduct its operations largely through the assistance of volunteers. In Ms. Williams' opinion, this center is extremely important due to the increase in the number of senior citizens throughout Baltimore County and the attendant increased need for public programs. On cross-examination, Ms. Williams stated that she believed that approximately 100-150 people would visit the center each day, though it was impossible to fully predict public turnout. She also conceded that she had not had any conversation with County Executive James T. Smith, Jr. or County Councilman Samuel Moxley but believed that they supported the proposed development.

Bud Chrismer, Deputy Director of the Department of Recreation and Parks, testified and explained that the primary function of his department is to work with over 45 affiliated volunteer recreation councils and to formulate plans and policies for providing recreational programs throughout Baltimore County. (*See* Charter of Baltimore County Sections 531 through 533). One major issue of concern with this development was the initial proposal to construct outdoor basketball courts alongside the recreation center. However, after this proposal became contested, Baltimore County removed the outdoor facilities and will instead rely on the existing outdoor basketball courts at the nearby Arbutus Middle School. Mr. Chrismer testified that the center will typically open at 8:00 a.m. and will maintain regular programs from approximately 9:00 a.m. - 2:00 p.m. each day. The center will then host after school programs beginning at

approximately 6:00 p.m. and ending by 11:00 p.m. Since the building will closely resemble a large middle school gymnasium, the majority of the programs will consist of youth basketball and indoor soccer activities. On cross-examination, Mr. Kasian began to ask a series of questions about the construction of this facility on forested land currently preserved as open space. When Mr. Chrismer could not answer all of Mr. Kasian's questions, the parties agreed to briefly re-call Mr. Behlen to the witness stand to address several of the citizens' concerns.

On cross-examination, Mr. Behlen testified that the subject property is largely forested with a variety of oak trees that possess an average level of resilience. With regard to several additional decisions that Mr. Kasian questioned, such as the construction of 266 total parking spaces, the decision to maintain a single entrance, and the location of the stormwater management pond, Mr. Behlen testified that all of these issues were resolved by following the specific recommendations of the reviewing County agencies.

Ms. West proceeded to call Henry Leskinen, a professional ecologist with Eco-Science Professionals, Inc., to provide greater insight as to the existing trees on the subject property and the potential effects of the proposed development. Mr. Leskinen's curriculum vitae was marked and accepted into evidence as Baltimore County Exhibit 4. According to Mr. Leskinen, there are 14 specimen trees on the property, 7 of which are White Oak with several additional Scarlet Oak and American Beech trees. The existing site is largely forested and has experienced some recent trauma with a locust problem in the southeast area and a fire in the northeast corner of the property. Mr. Leskinen testified that DEPRM's requirements for reforestation were being met by virtue of Baltimore County's paying a fee to sponsor off-site reforestation. Additionally, 2.4 acres of the property will be retained in forest conservation easements as depicted on Baltimore County Exhibit 3. On cross-examination, Mr. Leskinen refuted the notion that this development created a significant adverse risk to the remaining forest and argued that the County had met all

of the DEPRM requirements for reforestation.

The next witness to testify for Baltimore County was Robert Royer, a project manager with Site Resources, Inc. that specializes in stormwater management. Mr. Royer's curriculum vitae was marked and accepted into evidence as Baltimore County Exhibit 5. Mr. Royer testified that he has 27 years experience constructing libraries, community centers, subdivisions, and commercial buildings. The stormwater pond for this project is designed to handle 10 and 100-year storm events and will outfall to reinforced concrete pipes (a 24" pipe from the stormwater management facility to a 30" pipe at Elm Road) adjacent to the cemetery along the eastern side of the property. The pond will drain into the existing cemetery system that is currently maintained by Baltimore County. The subject pond is 0.4 acres or approximately 20,000 square feet in size and is placed in the only logical location due to the topography and grade of the property. According to Mr. Royer, the pond meets the State requirement for minimizing the presence of mosquitoes as the proposed fountain will reduce stagnation of the water. The pond will also pose a minimal safety hazard as it was designed with a three-to-one foot slope, the water will only be 4 feet deep and the pond will be surrounded by a 6-foot high wrought iron style anodized aluminum decorative fence and further contain safety benches (one on dry land and one in the water), in the event that a person should breach the fence and fall into the facility.

The final witness to testify for Baltimore County was Benjamin Bates, a Leadership in Energy and Environmental Design (LEED) accredited project architect, who coordinated with Site Resources on the proposed development. Mr. Bates testified that both of the proposed structures meet the LEED standards, which are dedicated to creating environmentally friendly, sustainable buildings. The community center would meet the basic LEED certification and the library/senior center would meet the more advanced silver certification. On cross-examination, Mr. Bates did concede that the LEED standard does not account for the state of the property prior

to construction, and the deforestation associated with this project does not affect the certification of the proposed buildings. This concluded the evidentiary portion of Baltimore County's presentation.[4]

At this point in the hearing, Dean Kasian, Esquire, proceeded to explain several issues with the development plan that concerned the Huntsmoor Park Community Organization, Southwest Baltimore Preservation Coalition and a number of citizens in the surrounding locale. Mr. Kasian first presented an extensive list of 35 exhibits that supported his opposition to the proposed development.[5] While the exhibits are too lengthy to individually describe in detail, they are all contained in the case file and those accepted into evidence are made a part of the record.

Mr. Kasian raised an initial issue pertaining to the effect of the development on the natural integrity of the area given the destruction of the existing scarce park resource. Mr. Kasian explained that he, as well as other neighboring residents, moved to their current location because of Hunstmoor Park. Currently, there are no commercial businesses for several miles around the subject property, and the proposed development could effectually change the nature of the surrounding locale.

The neighbors were also concerned with decreasing local open space in favor of impervious surfaces and destroying forested land, particularly in light of the fact that there are a number of specimen trees on the subject property[6]. Additionally, Mr. Kasian expressed concern

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[4] Ms. West also submitted several letters supporting the proposed development plan, which were marked and accepted into evidence as Baltimore County Exhibit 7.

[5] Ms. West made a continuing objection to the admission of these exhibits since they were not presented to Baltimore County prior to the public hearing. With the exception of Exhibits 7 and 25, all of the exhibits were marked and accepted into evidence as indicated on the numbered list contained in the case file.

[6] A Petition to preserve Huntsmoor Park was signed by 280 residents and received as Protestants' Exhibit 3.

with the location of the stormwater management pond and commented that residents are upset with their new "waterfront property."

Mr. Kasian also took issue with the fact that Baltimore County proposed a similar development in 2004 and denied the development after receiving considerable backlash from local citizens. Mr. Kasian explained that many citizens feel betrayed by Baltimore County and Councilman Moxley, who conveyed the denial of the project in 2004 to local residents and vowed to prevent the development in the future. *See* October 19, 2004 correspondence received as Protestants' Exhibit 8.

Mr. Kasian expressed further concern with the effect of the proposed development on local traffic due to the fact that the surrounding area contains primarily single lane roads without traffic calming devices. According to Mr. Kasian, in a five-year period, over 275 accidents have occurred in a one-mile stretch on nearby roads. Increased traffic, along with the risk associated with additional pedestrians and insufficient sidewalks, created additional safety concerns for nearby residents.

Mr. Kasian's final issue was the effect of the development plan on local property values. While Mr. Kasian is admittedly not a real estate expert, he expressed the belief that property located in close proximity to forested open space is generally more valuable than similarly sized property situated in more densely developed areas.

At this point, Mr. Kasian concluded his remarks and turned the community's case over to Berchie Manley. Ms. Manley raised two (2) additional issues beginning with her concern that the proposed development conflicts with Baltimore County's Master Plan. Though she conceded that the proposed facilities are both wanted and needed, Ms. Manley remarked that the proposed location was improper due to the classification of the area on the Master Plan as community recreation. Ms. Manley's second concern regarded Councilman Moxley's apparent opposition

to the proposed development. Ms. Manley characterized the position taken by Baltimore County as a betrayal of the commitment previously made by Councilman Moxley.

A brief comment is appropriate and in order here about the standard of review that the Hearing Officer must apply in this case. As noted in prior opinions issued by this Office, the development review regulations establish the "rules of the game" insofar as development in Baltimore County is concerned. The Developer may argue that these rules are too strict, while the Community may contend that they are not strict enough. Regardless, they are what they are. If the Developer meets the regulations, approval of the plan must follow. However, if the Community can show that the plan should be changed to appropriately mitigate an anticipated negative impact on the locale, then a restriction/condition to the plan can be imposed.

At the public hearing, I first identified pursuant to Sections 32-4-227 and 228 of the B.C.C. that that there were no outstanding issues from any of the County reviewing agencies and that all representatives recommended approval of the development plan submitted as Baltimore County's Exhibits 2A, B and C. As previously mentioned, the role of each agency throughout the development review and approval process is to independently and thoroughly review the redlined development plan as it pertains to their specific area of concern and expertise. Since all agencies had confirmed that, in their expert opinions, the plan met all applicable Federal, State, and/or County laws and regulations, the concerns raised by the community essentially asked the Hearing Officer to second guess the approval of specialized administrative agencies.

For example, while the community expressed concern over deforestation and the removal of several specimen trees, this is an area delegated to DEPRM under Section 36-6-111(b) of the B.C.C. This section states that priority forests shall be left in an undisturbed condition unless an applicant demonstrates *to the satisfaction of DEPRM* that certain criteria are met. *Id.* Here, David Lykens appeared on behalf of DEPRM and indicated that he supported approval of the

project since all rules and regulations had been met to the satisfaction of his department. Thus, there was no question that the development plan satisfied DEPRM as required by Section 33-6-111(b) of the B.C.C. Additionally, the testimony of Mr. Leskinen added further support to the forest conservation plan submitted by Baltimore County. Mr. Leskinen is a member of the State Forest Conservation Qualified Professional List qualified to render an opinion as to whether the plan meets the State standards pursuant to COMAR 08.19.0601. As the Hearing Officer I am not inclined to second-guess their specialized opinions.

With regard to several other issues raised by the community, a similar analysis ensues. Ms. Manley aptly raised an issue concerning a potential conflict with the Master Plan, however, this is an area that was previously reviewed by the Office of Planning, who conveyed departmental approval through the appearance of Lloyd Moxley at the public hearing. Additionally, while the citizens took issue with the placement of the stormwater management pond, Mr. Royer testified that the pond was placed in the only feasible location due to the topography of the subject property. Again, DEPRM, the Development Plans Review committee, and all reviewing agencies recommended their approval of the facilities as reflected on the County's development plan. Finally, the Protestants did not present any expert testimony to corroborate Mr. Kasian's testimony that the development plan may negatively affect nearby property values, and speculation is simply insufficient to overturn the findings of a number of administrative agencies.

In sum, Section 32-4-229(b) of the B.C.C. binds the Hearing Officer by stating that approval of a development plan "shall be granted" if the plan complies with the applicable provisions of the B.C.C. Thus, while the citizens should be commended for the professional and detailed manner in which they presented their case, and their concerns will be reflected in the conditions that I impose on my approval, the Hearing Officer is a creature of statute bound to

approve a development plan that meets all local, state, and federal rules and regulations.

Pursuant to the zoning and development plan regulations of Baltimore County as contained within the B.C.Z.R. and Article 32, Title 4 of the Baltimore County Code, the advertising of the property and public hearing held thereon, the development plan shall be approved consistent with the comments contained herein and the restrictions set forth below.

THEREFORE, IT IS ORDERED, by this Hearing Officer/Zoning Commissioner for Baltimore County, this _____ day of September 2008, that the three-page redlined development plan for the **Arbutus Library, Community and Senior Center**, identified as Baltimore County's Exhibits 2A, 2B and 2C, is hereby APPROVED, subject to the following conditions:

1. The County is permitted to proceed; however, the County is hereby made aware that doing so shall be at its own risk until the thirty (30) day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief herein could be rescinded.

2. Any additions to buildings (excluding storage or utility buildings) or the addition of any outdoor recreation facilities shall be considered a material change to the approved plan and require a Community Input Meeting (CIM) and a public hearing before the Zoning Commissioner/Hearing Officer.

3. The County shall enclose the stormwater management facility in the southeast quadrant of the site with a 6-foot high wrought iron style anodized aluminum decorative fence (including any attendant gate[s]) as opposed to a chain-link fence. The 15-foot wide landscape buffer and the electronically controlled pond fountain depicted on Developer's Exhibit 3 shall be maintained and kept in good, working order to provide for aesthetics and mosquito control.

4. Additional landscape screening shall be installed, as approved by the County's Landscape Architect, around the dumpster location adjacent to Elm Road.

5. The County shall install at least two (2) closed-circuit TV security cameras to be mounted on the buildings to survey the parking lots.

6. During construction, the Department of Public Works will have an inspector assigned to this project. The inspector's identify shall be communicated to the Huntsmoor Park Community Association upon request and shall serve as the "initial contact person". After the project is complete, each agency will have a manager at the facility who can be

contacted should difficulties arise and assist in getting problems resolved.

7. All Community Recreation Center (865 Sulphur Spring Road) activities shall be concluded and the facility closed on or before 11:00 PM daily.

8. Prior to the commencement of contemplated community activities and services at the Arbutus Center, the Department of Public Works shall install traffic-calming devices as detailed on the Bureau of Traffic Engineering's 2007 Plan for Elm Road. This condition is qualified upon the County's receiving the requisite approval(s) from those affected property owners where devices are to be located and installed. The County and Huntsmoor Park Community Organization, Inc. shall cooperate in this regard and use best efforts in obtaining residential consent within twelve (12) months of the date of this Order. The original traffic-calming plan (Traffic Engineering No. TC-69) will be maintained in the Department of Permits and Development Management's case file, however, a reduced version is attached for convenience.

9. Sidewalk(s) shall be built for pedestrian safety *where practicable* in three (3) areas. An aerial map is attached to this Order as Exhibit A for illustrative purposes.

   A. Area A - Sidewalks shall be constructed along the north side of Elm Road from the subject property line at the cemetery to a point in an easterly direction opposite Braxfield Road (approximately 750 feet). This is the same area where the storm drain outfall pipe is proposed behind the existing curb. Sidewalk should be extended along this section of Elm Road.

   B. Area B – This sector can best be described as the corner of Selford Road and Sulphur Spring Road. The approved development plan omits sidewalk in this area. Sidewalk is routed up into the library site instead of along the paved roads. There are two (2) reasons for this. First, the paved roads in this area are within the State Highway Administration's right-of-way. Second, there is no curb and gutter. In order to install sidewalks, the road should be improved with curb, gutter and storm drains. Accordingly, it shall be a condition of this Order that the Department of Public Works program these road improvements to the next Capital Budget.

   C. Area C – This area can best be delineated as running from the northeast property line next to the cemetery along Sulphur Spring Road to Delores Avenue. This length is approximately 2,400 feet long and traverses through undeveloped property until reaching Shelbourne Road. Curb and gutter would need to be installed along with storm drains and sidewalk. I shall require that the Department of Public Works study the feasibility of installing curb, gutter and sidewalk along this stretch as future improvements and recommend that these improvements be made a part of its (DPW) next Capital Budget.

Any appeal of this decision must be made in accordance with 32-4-281 of the Baltimore County Code.

WJW:dlw

WILLIAM J. WISEMAN, III
Hearing Officer/Zoning Commissioner
for Baltimore County

PLEASE PRINT CLEARLY

CASE NAME Arbutus Mem. Park
CASE NUMBER 2010-0323-SPHA
DATE 7/15/10

PETITIONER'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
Todd Pounds	1414 Livingston Rd. Ft. Washington, Md. 20744		[redacted] TPounds@alexander-cleaver.com
Mike Bennett	SCI	7250 Washington Blvd. Elkridge, Md. 21075	
Bob Vogel	8407 Main Street Ellicott City MD 21043		RVogel@Vogelinc.com

7-15 @ 9AM

CASE NO. 2010- 0320-X

CHECKLIST

Comment Received	Department	Support/Oppose No Comment
5-27	DEVELOPMENT PLANS REVIEW	No Comments
6-14	DEPRM	Comments
5-27	FIRE DEPARTMENT	No Comments
6-7	PLANNING (if not received, date e-mail sent _____)	No Comments
6-1	STATE HIGHWAY ADMINISTRATION	No objection
_____	TRAFFIC ENGINEERING	_____
_____	COMMUNITY ASSOCIATION	_____
_____	ADJACENT PROPERTY OWNERS	_____

ZONING VIOLATION (Case No. _____)

PRIOR ZONING (Case No. 78-209-A distance 40 bldgs)

7-9 Spoke to Dave Durell for copy

NEWSPAPER ADVERTISEMENT Date: 7-1-10

SIGN POSTING Date: 6-25-10

Scanned Image N/A on Database

PEOPLE'S COUNSEL APPEARANCE Yes ☑ No ☐

PEOPLE'S COUNSEL COMMENT LETTER Yes ☐ No ☐

Comments, if any: ① See, Statement of Justification from Todd Pounds, Esq.

② See Packet from Dave Durell

Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search (2007 vw6.3d)

Go Back
View Map
New Search

Account Identifier: District - 13 Account Number - 1700001993

Owner Information

Owner Name:	SCI MARYLAND FUNERAL SERVICES INC C/O SCI MANAGEMENT CORP	**Use:**	COMMERCIAL
		Principal Residence:	NO
Mailing Address:	PROPERTY TAX DEPT 8TH FL PO BOX 130548 HOUSTON TX 77219-0548	**Deed Reference:**	1) /12609/ 120 2)

Location & Structure Information

Premises Address
SULPHUR SPRING RD

Legal Description
64.9590 AC ES
PARTIAL EXEMPTION
600 SW SHELBOURNE RD

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
108	4	265						2	Plat Ref:

Special Tax Areas | **Town** | **Ad Valorem** | **Tax Class**

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1930	2,814 SF	64.94 AC	06

Stories	Basement	Type	Exterior

Value Information

	Base Value	Value As Of 01/01/2008	Phase-in Assessments As Of 07/01/2009	As Of 07/01/2010
Land	1,193,200	1,982,100		
Improvements:	561,400	541,300		
Total:	1,754,600	2,523,400	2,267,132	2,523,400
Preferential Land:	0	0	0	0

Transfer Information

Seller:	ARBUTUS MEMORIAL PARK	**Date:**	01/15/1998	**Price:**	$0
Type:	NOT ARMS-LENGTH	**Deed1:**	/12609/ 120	**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	

Exemption Information

Partial Exempt Assessments	Class	07/01/2009	07/01/2010
County	000	0	0
State	000	0	0
Municipal	000	0	0

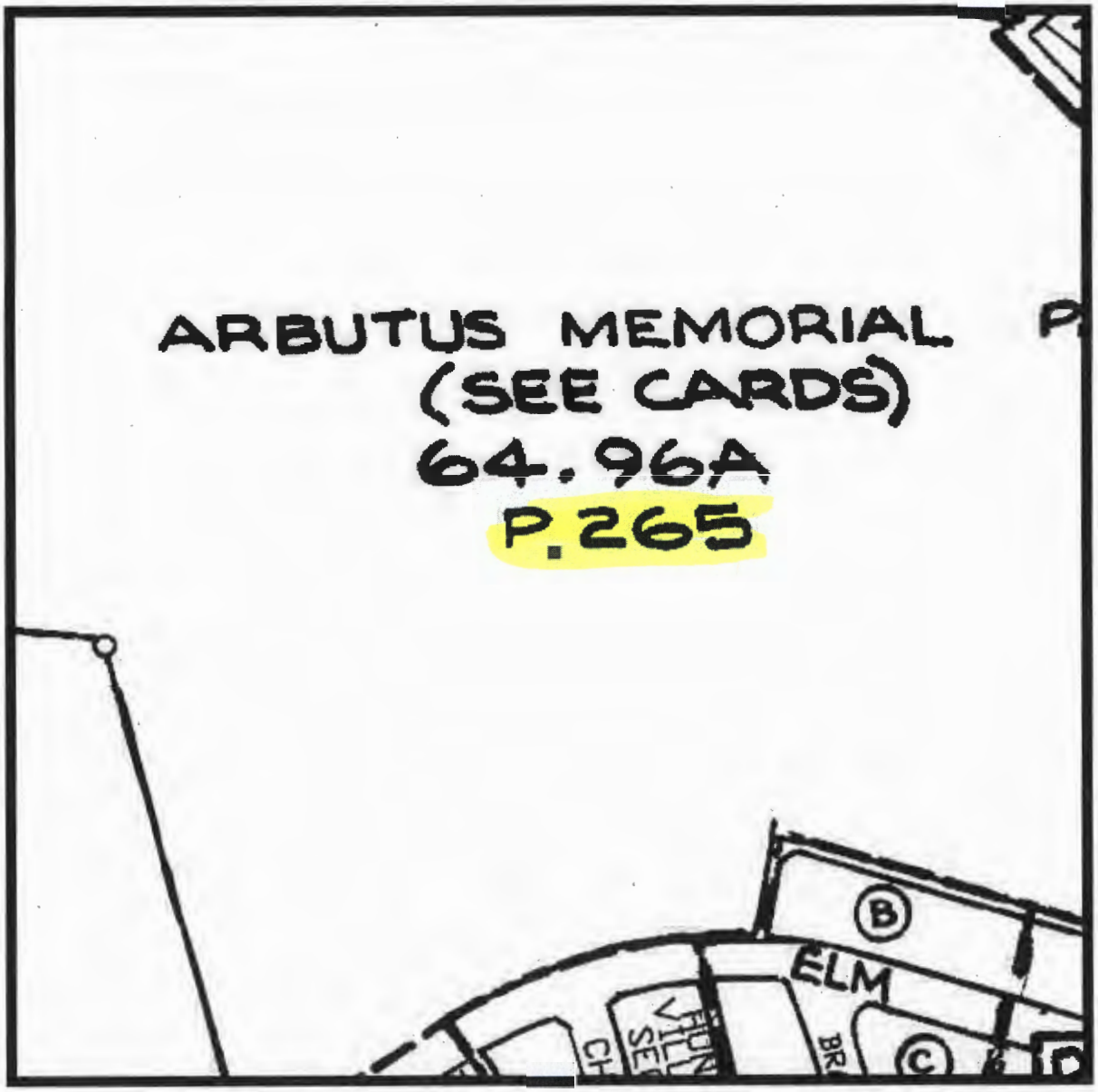
Tax Exempt: NO
Exempt Class:

Special Tax Recapture:
* NONE *

Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search

Go Back
View Map
New Search

District - 13**Account Number** - 1700001993



The information shown on this map has been compiled from deed descriptions and plats and is not a property survey. The map should not be used for legal descriptions. Users noting errors are urged to notify the Maryland Department of Planning Mapping, 301 W. Preston Street, Baltimore MD 21201.

If a plat for a property is needed, contact the local Land Records office where the property is located. Plats are also available online through the Maryland State Archives at www.plats.net.

Property maps provided courtesy of the Maryland Department of Planning ©2009.
For more information on electronic mapping applications, visit the Maryland Department of Planning web site at www.mdp.state.md.us/OurProducts/OurProducts.shtml

Case No.: 2010-0320-X 1101 SULPHUR SPRING RD

Exhibit Sheet

	Petitioner/Developer	Protestant
No. 1	RED LINED SITE PLAN	
No. 2	STATEMENT OF JUSTIFICATION	
No. 3	CASE 93-463-SPHXA	
No. 4	CASE NO. 2008-0502-SPHX	
No. 5		
No. 6		
No. 7		
No. 8		
No. 9		
No. 10		
No. 11		
No. 12		

Special Exception
Arbutus Memorial Park
1101 Sulphur Spring Road
Baltimore, MD 21227

STATEMENT OF JUSTIFICATION

The Applicant, SCI Maryland Funeral Services, Inc., is the owner of property located at 1101 Sulphur Spring Road, Baltimore, MD, Tax Map 108, Block 04, 13th Election District, County Council District No. 1, Grid 4, Parcel 265. This site contains approximately 64.94 acres and it is presently being used as a cemetery. This property is zoned DR5.5.

The properties to the north, east, and south are primarily single family home subdivisions and the property to the west is owned by Baltimore County, Maryland zoned DR5.5 with another property zoned OT.

This cemetery has been in existence for many years and presently contains two mausoleum buildings on this site with other structures used as offices on site. These mausoleums are beginning to be filled and the applicant has determined the need for a third mausoleum on this property. In accordance with the attached site plan, the new mausoleum is proposed for the grassy area between the two existing mausoleums. The new mausoleum will be substantially the same as the smaller mausoleum on the site.

As a history of this site, in 1941 the zoning docket indicates that Case No. 171 was a reclassification for a public colored cemetery for a Katy Williams. Years later, another zoning case was filed for a special exception for a cemetery but was withdrawn on December 14, 1961.

Also, this property has been the subject of previous variance applications. The first dated January 10, 1978 concerned a 20 foot setback between building faced mausoleums. In 1992, a

PETITIONER'S

EXHIBIT NO. 2

request was made for a building permit for a mausoleum on site which was constructed according to plan.

The applicant is not expecting this new mausoleum site to create any increased traffic as the applicant is simply looking to satisfy demand as the existing mausoleums become filled. As stated, there is a substantial need for this additional facility. Also, the sediment control and storm water management will be maintained onsite with landscaping and other features to be constructed. Water and sanitary sewers will not be affected as this mausoleum will not have any restroom facilities.

The Applicant asserts that this Special Exception request will not be detrimental to the health, safety, or general welfare of this area in that this cemetery has been in existence for 70 years including the existence of two mausoleums. This new mausoleum is simply to satisfy the demand for cemetery space.

This use will not create congestion in roads, streets, or alleys in that this request for Special Exception is not changing the use of the site nor will have it any effect on the traffic or the roadways other than what is presently existing. This new mausoleum will not change the present burial schedule at this site, but, is only intended to provide additional burial spaces.

This use will not create a potential hazard from fire, panic, or other dangers in that the structure of the premises will be substantially constructed of non-flammable materials in a quiet environment.

This use will not relate to over crowded land and/or cause undue concentration of population in that this Applicant is only seeking to extend the present use of the facility and not change that use.

This use will not interfere with adequate provisions for schools, parks, water, sewage, transportation, or other public requirements, conveniences, or improvements, since, this use will not have any impact upon any of those requirements.

This use will not interfere with adequate light and air in that it is simply an expansion of the previous use and the location of the mausoleum is scheduled to be in an area between two existing mausoleums.

That this Special Exception is not inconsistent with the spirit and intent of the BCZR in that the Special Exception is primarily a legalization of a long-existing use of this site and the construction of the new mausoleum will not effect or be a detriment as to that use.

That the use is not inconsistent with the impermeable surface and vegetative retention provisions of the BCZR in that the engineer has designed a new mausoleum to incorporate "green" aspects including downspouts and storm water management facilities to prevent water runoff. The present location for the proposed mausoleum is a grassy area between two existing mausoleums.

Respectfully submitted,

ALEXANDER & CLEAVER, P.A.

By: _____

TODD K. POUNDS, ESQ.
11414 Livingston Road
Fort Washington, MD 20744
(301) 292-3300
(301) 292-3264 fax
tpounds@alexander-cleaver.com
Attorneys for Applicant

IN RE: PETITIONS FOR SPECIAL EXCEPTION AND SPECIAL HEARING S side of Sulphur Spring Road, 470 feet E of c/l of Shelbourne Road Election District Councilmanic District **(1101 Sulphur Spring Road)**	*	BEFORE THE DEPUTY ZONING COMMISSIONER FOR BALTIMORE COUNTY
SCI Maryland Funeral Services, Inc.; Michael L. Deceil, Vice President *Petitioner* T. Mobile, by Liz West *Lessee*	* * * * *	**CASE NO. 2008-0502-SPHX**

* * * * * * * * * * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of Petitions for Special Hearing and Special Exception filed by the legal property owner, SCI Maryland Funeral Services, Inc., by Michael L. Deceil, Vice President, and the proposed lessee, T- Mobile, by their agent, Liz West. The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to approve a request for an amendment to prior zoning Case No. 93-463-SPHXA. The Special Exception is pursuant to Section 426.5 of the B.C.Z.R. to allow a telecommunications facility on property zoned D.R.5.5. The subject property and requested relief are more fully described on the site plan that was marked and accepted into evdience as Petitioner's Exhibit 1A, and the telecommunications compound detail that was marked and accepted into evidence as Petitioner's Exhibit 1B.

Appearing at the requisite public hearing in support of the Special Hearing and Special Exception requests was Liz West on behalf of Petitioner T-Mobile. Sean Hughes, Esquire, represented Petitioner. Also appearing in support of the requested relief was Michael McGarity with Daft McCune Walker, Inc., the engineering firm that prepared the site plan, and Amrish

PETITIONER'S

EXHIBIT NO. 4

Garg, Petitioner's radio frequency engineer. Appearing as interested citizens were Dean Kasian of 5601 Chelwynd Road and President of the Huntsmoor Park Community Organization, Darrin Williams and Donna Speights of 1102 Sulphur Spring Road, and Dorothy Briscoe of 1108 Sulphur Spring Road.

Testimony and evidence offered revealed that the subject property is irregular-shaped and consists of approximately 65 acres zoned D.R.5.5 and D.R.10.5. The property is located on the southeast side of Sulphur Spring Road, north of Interstate 95, in the Halethorpe area of Baltimore County. The existing site operates as a cemetery. As shown on the site plan, Petitioner desires to provide enhanced wireless services to its customers in the area by erecting a 110 foot monopole tower as well as a telecommunications facility on the subject property. In so doing, Petitioner is also requesting an amendment to prior zoning Case No. 93-463-SPHXA to approve the instant site plan. The proposed telecommunications facility would be located on the west side of the property with access from Sulphur Spring Road. This proposed area for the facility is zoned D.R.5.5. As also shown on the compound detail (Petitioner's Exhibit 1B), the facility would consist of an area approximately 50 feet by 50 feet, with a 10 foot by 20 foot concrete pad for the equipment cabinets.

In support of the instant zoning requests, Petitioner called Liz West as a witness. Ms. West is a Senior Planner with Network Building and Consulting in Hanover, MD. Her company acts as an agent for T-Mobile in facilitating development projects and telecommunications installations. A copy of Ms. West's resume was marked and accepted into evidence as Petitioner's Exhibit 3. Ms. West was offered and accepted as an expert in planning, land use, and interpretation of the Baltimore County Zoning Regulations. Ms. West discussed the details regarding the proposed monopole and compound. She explained that the facility would be located in a remote, elevated

area of the cemetery. As shown on the aerial photographs that were marked and accepted into evidence as Petitioner's Exhibits 4A and 4B, the facility would not be far from Sulphur Spring Road, but would be bordered by lush forested areas and trees to the west. The compound itself would consist of three cabinets constructed on the concrete pad for T-Mobile wireless equipment, as well as equipment for other carriers. The cabinets would be approximately 5½ feet high by 3½ feet wide by 2½ feet deep. The monopole would have interior antennae with a capacity for four potential carrier slots. The top two slots would be reserved for T-Mobile equipment, with the other two reserved for potential future carriers. Ms. West then introduced photographs of the site that were marked and accepted into evidence as Petitioner's Exhibits 5A through 5N. These photographs show the cemetery grounds and some of the church buildings including the existing mausoleum buildings near the proposed location of the facility. These photographs also show a very remote, topographically diverse area surrounded by wooded areas and trees.

Ms. West then discussed her company's review of potential alternative locations or co-locating its antennae on existing structures, but without success. She explained that they looked into working with the University of Maryland, Baltimore County (UMBC), but were turned down; they looked at potential elementary and middle school locations nearby, but were also turned down; and also looked at property owned by the state but were again turned down. With that backdrop, they concluded there was no other alternative but to build a new facility. She also indicated that in deciding where to build, several factors are taken into account, including a desire to locate in wooded areas away from existing residential areas, and ground elevations which dictate the location and height needed for a pole.

In order to demonstrate the potential impact of the proposed telecommunications facility on the community, Ms. West submitted photo simulations, which were marked and accepted into

evidence as Petitioner's Exhibits 7 through 7F. The simulations include a map of the surrounding area with red dot points, and photographs taken from those red dot locations in the direction of the proposed pole location, with the size and shape of the proposed pole superimposed on the photographs from the various distances. This gives the viewer a firsthand look at how visible the pole would be from the particular locations. As seen in the photographs, although the pole is visible from all these locations, the view certainly could not be characterized as unreasonably obtrusive. In addition, the proposal to have a unipole look with interior antenna slots would likely make the pole even less conspicuous.

Petitioner also took its request for a new telecommunications facility to the County's Tower Review Committee (TRC). Petitioner initially made application for a 103 foot monopole. After a number of discussions with the TRC, especially concerning the recommendation that the pole have the capacity to support two additional wireless service providers in addition to T-Mobile, Petitioner requested to raise the structure for a total height of 110 feet, which would allow T-Mobile to occupy the top two slots, and would enable other carriers to occupy the two additional slots. After reviewing the relevant information, the TRC unanimously recommended that a 110 foot disguised monopole (unipole) would meet all the requirements of Section 426 of the B.C.Z.R. A copy of the April 22, 2008 Interoffice Correspondence from the TRC recommending approval was marked and accepted into evidence as Petitioner's Exhibit 8. As to disguising the pole, Ms. West indicated the pole could easily be made to look similar to a flagpole. Marked and accepted into evidence as Petitioner's Exhibits 9, 10A and 10B were photographs of monopole structures that were made to resemble flagpoles. Petitioner's Exhibit 9 shows a white colored cell tower approximately 120 feet high located behind the scoreboard of the athletic field at St. Johns High School in Washington, D.C. Hanging from the tower is the American flag. Petitioner's Exhibits

10A and 10B are cell towers approximately 150 feet high located in Howard County, also with the American flag. Ms. West indicated the same type of disguising could be done in the instant matter.

As to the criteria set forth in Section 502.1 of the B.C.Z.R. concerning special exceptions, Ms. West opined that the proposed telecommunications facility would not be detrimental to the health, safety, and general welfare of the locale. The facility would generally be unmanned, would be of low voltage, and the compound would be locked at all times. There would be no traffic impacts as maintenance at the facility would be performed by a trained technician only one time per month. There would be no impact on public services or facilities, nor would there be any detrimental impacts on the other 502.1 criteria. This facility would not be inconsistent with the property's zoning classification or inconsistent with the spirit and intent of the zoning regulations. In accordance with Section 426 of the B.C.Z.R., Petitioner would also provide certifications every five years that the structure meets all relevant building codes for safety. Petitioner is also willing to affix the pole with the American flag and to provide light on the pole to allow for constant flying of the flag.

Testifying in support of the need for the enhanced wireless service and, hence the request for the telecommunications facility, was Amrish Garg. Mr. Garg is a radio frequency engineer employed with T-Mobile. Mr. Garg obtained a Bachelor's degree in engineering from India in 1994 focusing on electronics and communications. He has been employed in that field for 12 years. He has worked on approximately 3,000 sites internationally and in the United States. A copy of his resume was marked and accepted into evidence as Petitioner's Exhibit 11. He was offered and accepted as an expert in radio frequency engineering.

Mr. Garg introduced a computer generated propagation map showing the existing on air coverage without the proposed telecommunications facility, marked and accepted into evidence as Petitioner's Exhibit 12. He also submitted a similar map taking into account the predicted signal strength with the proposed tower at the subject location, marked and accepted into evidence as Petitioner's Exhibit 13. As shown on these exhibits, the color green indicates where the signal strength is sufficient indoors to have continuous communication and properly hand off to the next cell tower. In addition, the yellow areas indicated sufficient in-vehicle coverage. Mr. Garg then noted the lack of coverage in the subject area as indicated by white where callers would likely experience dropped calls. He indicated that presently, the existing coverage in the area is not very good, with much of the major roads and residential areas having deficient coverage. He also determined that adding the aforementioned facility would increase the overall coverage and provide the needed indoor and in-vehicle coverage as depicted in Petitioner's Exhibit 13. It would also allow for enhanced 911 services, enabling the system to potentially triangulate the location of an emergency call.

Following Petitioner's presentation, several interested citizens testified as well. Dean Kasian, President of the Huntsmoor Park Community Organization, testified that following the initial designs of the tower with antennae on the exterior of the pole, his organization opposed the facility; however, after seeing changes in the design and meeting with Petitioner prior to the hearing, he believes the new design with the antennae located inside the pole, and with the pole made to resemble a flag pole -- and to in fact have an American flag hanging from the pole -- is acceptable. Mr. Kasian submitted an email dated June 17, 2008 from him to T-Mobile's attorney, Mr. Hughes. This email was marked and accepted into evidence as Community Exhibit 1 and indicates that Huntsmoor Park Community Organization does not object to the proposed 110 foot

"flagpole" cell tower design provided it include an American flag. Also testifying was Dorothy Briscoe. Ms. Briscoe stated her opposition to the proposed telecommunications facility, expressing concerns over the visual appearance of the cell tower, as well as safety issues with the pole.

The Zoning Advisory Committee (ZAC) comments were received and are contained within the case file. Comments were received from the Office of Planning dated May 8, 2008 which indicates that in order to improve the appearance of the proposed monopole tower and also to reduce its visibility, the tower should be painted a suitable color. It is recommended that the tower be painted a brownish color that matches, to the extent possible, the color of the tree bark on the existing trees in the adjacent wooded area.

Turning first to the petition for Special Exception , I am persuaded that Petitioner has met its burden, and that the request meets all of the customary special exception criteria contained in Section 502.1 of the B.C.Z.R. Petitioner presented uncontroverted testimony that there is a need for wireless coverage in the area, that there were no other viable alternative locations or opportunities to co-locate their antennae, that the antennae would be mounted inside the pole and could be made to resemble a flag pole, and that the proposed telecommunications facility would have no detrimental impacts on the health, safety and general welfare of the surrounding community. Indeed, given the remote location of the proposed facility and its proximity to vegetation and trees, and the topography of the land, the subject property appears to present the least invasive location for the facility -- one that will have less of an impact on the community visually and aesthetically.

Turning now to the Special Hearing request, I am persuaded by the testimony and evidence presented that this relief should also be granted. The prior case involving this property was Case

No. 93-463-SPHXA. That case involved petitions for special hearing, special exception and variance and requested relief to establish a nonconforming use for a cemetery, a determination that Residential Transition Areas do not apply to the site, and to operate a cemetery in a portion of the site zoned D.R.5.5. The petitions were granted on August 13, 1993. In the instant matter, Petitioner is requesting an amendment of that previously approved site plan in order to gain approval of the site plan that includes the new telecommunications facility. In granting approval of the aforementioned telecommunications facility, it necessarily flows that I would grant an amendment of the previously approved site plan to reflect this latest change in the use on the property.

Pursuant to the advertisement, posting of the property, and public hearing on these Petitions held, and after considering the testimony and evidence offered by Petitioner, I find that Petitioner's requests for special exception and special hearing should be granted with conditions.

THEREFORE, IT IS ORDERED this 1st day of August, 2008 by the Deputy Zoning Commissioner, that Petitioner's request for Special Exception pursuant to Section 426.5 of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow a telecommunications facility on property zoned DR 5.5 be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Special Hearing request filed pursuant to Section 500.7 of the B.C.Z.R. to approve a request for an amendment to prior zoning Case No. 93-463-SPHXA be and is hereby GRANTED, subject to the following restrictions which are conditions precedent to the relief granted herein:

1. Petitioner may apply for its building permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at its own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.

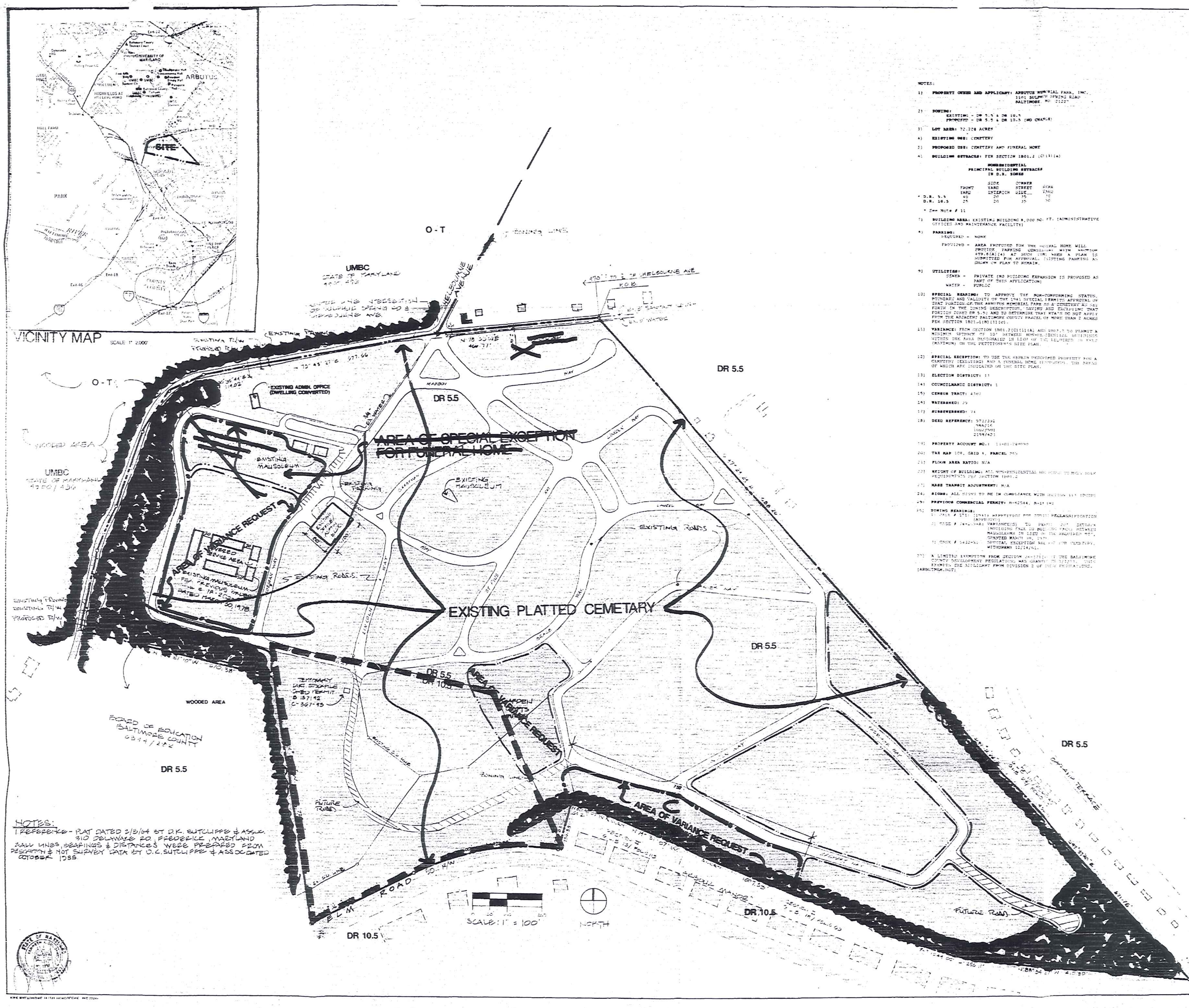
2. The monopole tower shall be erected to resemble a flagpole, with interior antenna slots and a color consistent with that of a flagpole (possibly white or gray?). It shall fly an American flag of a suitable size and Petitioner shall either make arrangements for the flag to be taken down daily or for the flag to be permanently lit so that it may fly at all times.

3. Petitioner shall in all other respects comply with the requirements of Section 426 of the B.C.Z.R.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz



NOTES:

1) PROPERTY OWNER AND APPLICANT: ARBUTUS MEMORIAL PARK, INC.
1101 SULPHUR SPRING ROAD
BALTIMORE, MD 21227

2) ZONING:
EXISTING - DR 5.5 & DR 10.5
PROPOSED - DR 5.5 & DR 10.5 (NO CHANGE)

3) LOT AREA: 72.208 ACRES

4) EXISTING USE: CEMETERY

5) PROPOSED USE: CEMETERY AND FUNERAL HOME

6) BUILDING SETBACKS: PER SECTION 1B01.2 (C)(1)(a)

NONRESIDENTIAL
PRINCIPAL BUILDING SETBACKS
IN D.R. ZONES

	FRONT YARD	SIDE YARD INTERIOR	CORNER STREET SIDE	REAR YARD
* D.R. 5.5	40	20	35	30
D.R. 10.5	25	20	35	30

* See Note # 11

7) BUILDING AREA: EXISTING BUILDING 8,000 SQ. FT. (ADMINISTRATIVE OFFICES AND MAINTENANCE FACILITY)

8) PARKING:
REQUIRED - NONE
PROVIDED - AREA PROPOSED FOR THE FUNERAL HOME WILL PROVIDE PARKING CONSISTENT WITH SECTION 409.6(A)(4) AT SUCH TIME WHEN A PLAN IS SUBMITTED FOR APPROVAL. EXISTING PARKING AS SHOWN ON PLAN TO REMAIN.

9) UTILITIES:
SEWER - PRIVATE (NO BUILDING EXPANSION IS PROPOSED AS PART OF THIS APPLICATION)
WATER - PUBLIC

10) SPECIAL HEARING: TO APPROVE THE NON-CONFORMING STATUS, BOUNDARY AND VALIDITY OF THE 1941 SPECIAL PERMITS APPROVAL OF THAT PORTION OF THE ARBUTUS MEMORIAL PARK AS A CEMETERY AS SET FORTH IN THE ZONING DESCRIPTION, SAVING AND EXCEPTING THAT PORTION ZONED DR 5.5; AND TO DETERMINE THAT RTA'S DO NOT APPLY FROM THE ADJACENT BALTIMORE COUNTY PARCEL OF MORE THAN 2 ACRES PER SECTION 1B01.1(B)(1)(c).

11) VARIANCE: FROM SECTION 1B01.2(C)(1)(A) AND 1B02.2 TO PERMIT A MINIMUM SETBACK OF 10' BETWEEN NON-RESIDENTIAL BUILDINGS WITHIN THE AREA DESIGNATED IN LIEU OF THE REQUIRED 20 FEET (MAXIMUM) ON THE PETITIONER'S SITE PLAN.

12) SPECIAL EXCEPTION: TO USE THE HEREIN DESCRIBED PROPERTY FOR A CEMETERY (EXISTING) AND A FUNERAL HOME (PROPOSED), THE AREAS OF WHICH ARE INDICATED ON THE SITE PLAN.

13) ELECTION DISTRICT: 13

14) COUNCILMANIC DISTRICT: 1

15) CENSUS TRACT: 4302

16) WATERSHED: 29

17) SUBSEWERSHED: 74

18) DEED REFERENCE: 972/392
986/16
1002/501
2198/421

19) PROPERTY ACCOUNT NO.: 13-01-240090

20) TAX MAP 108, GRID 4, PARCEL 265

21) FLOOR AREA RATIO: N/A

22) HEIGHT OF BUILDING: ALL NON-RESIDENTIAL BUILDINGS TO MEET BULK REQUIREMENTS PER SECTION 1B01.2

23) MASS TRANSIT ADJUSTMENT: N/A

24) SIGNS: ALL SIGNS TO BE IN COMPLIANCE WITH SECTION 413 (BCZR)

25) PREVIOUS COMMERCIAL PERMIT: B-62544, B-13 142

26) ZONING HEARINGS:
1) CASE # 171: (1941) REPETITION FOR ZONING RECLASSIFICATION (APPROVED)
2) CASE # 78-245-A: VARIANCE(S) TO PERMIT 20' SETBACK (BUILDING FACE TO BUILDING FACE) BETWEEN MAUSOLEUMS IN LIEU OF THE REQUIRED 40', GRANTED MARCH 10, 1978.
3) CASE # 5432-X: SPECIAL EXCEPTION REQUEST FOR CEMETERY, WITHDRAWN 12/14/61.

27) A LIMITED EXEMPTION FROM SECTION 26-171(a) OF THE BALTIMORE COUNTY DEVELOPMENT REGULATIONS WAS GRANTED ON 3/1/93. THIS EXEMPTS THE APPLICANT FROM DIVISION 2 OF THESE REGULATIONS.
(ARBUTMEM.NOT)

ARBUTUS MEMORIAL PARK
PLAT TO ACCOMPANY SPECIAL EXCEPTION, SPECIAL HEAING, AND VARIANCE APPLICATION
1101 SULPHER SPRING ROAD
BALTIMORE, MD. 21227

PROPERTY OWNER AND APPLICANT:
ARBUTUS MEMORIAL PARK
1101 SULPHER SPRING ROAD
BALTIMORE, MARYLAND 21227

PETITIONER'S EXHIBIT 6

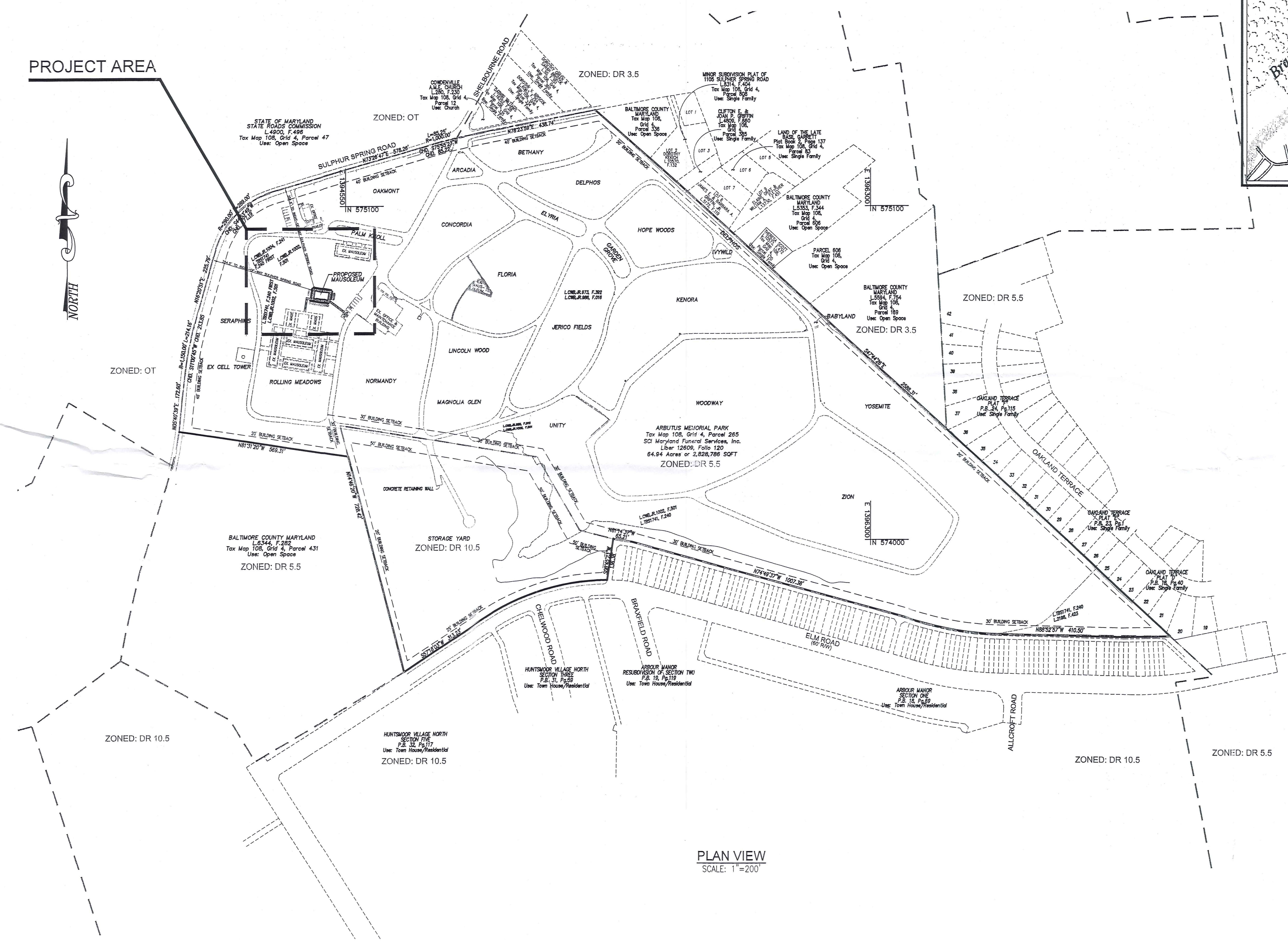
WILLIAM MONK, INC
PLANNING • LANDSCAPE DESIGN
ENVIRONMENTAL RESOURCE MANAGEMENT

COVER SHEET
ADMINISTRATIVE SITE PLAN
SPECIAL ~~EXCEPTION~~ HEARING SITE APPLICATION
ARBUTUS MEMORIAL PARK

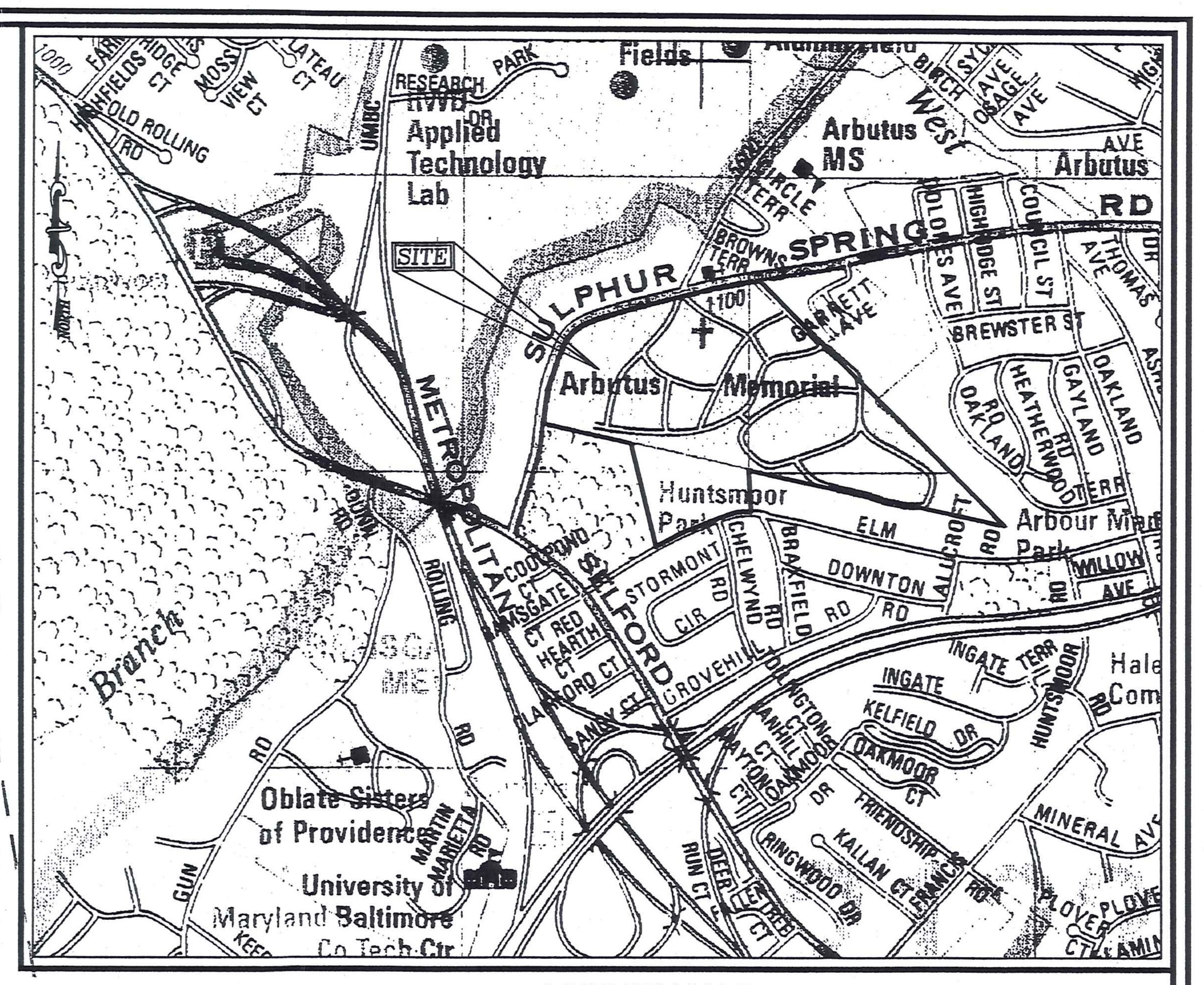
LEGEND

- RIGHT-OF-WAY
- BOUNDARY LINE
- ADJACENT BOUNDARY LINE
- EXISTING CENTERLINE STREAM
- EXISTING STREAM BANK BUFFER
- EXISTING WETLANDS BUFFER
- EXISTING TREELINE
- EXISTING UTILITY POLE
- EXISTING SIGN
- EXISTING WATER LINE
- EXISTING SEWER LINE
- EXISTING GAS LINE
- EXISTING OVERHEAD LINES
- EXISTING FENCE LINE
- EXISTING CURB LINE
- EXISTING EDGE OF PAVING
- EXISTING LIGHT POLE
- EXISTING MAILBOX
- EXISTING SANITARY CLEANOUT
- EXISTING FIRE HYDRANT
- PROP. 2' CONTOUR
- PROP. 10' CONTOUR
- PROP. STORM DRAIN INLET
- PROP. SIDEWALK
- PROP. TREELINE
- PROP. CURB

PROJECT AREA



PLAN VIEW
SCALE: 1"=200'



VICINITY MAP
SCALE: 1"=1000'
ADC MAP COORDINATE: PAGE 41 H8 + J8
BALTIMORE COUNTY, MARYLAND

SITE TABULATION

TAX MAP:108 GRID:4 PARCEL:265
EXISTING ZONING: DR 5.5
EXISITNG USE: CEMETARY
TOTAL SITE ACREAGE: 64.94 Ac., 2,828,786 sqft
100 YEAR FLOODPLAIN: NONE
TIDAL / NON-TIDAL WETLANDS: N/A

TAX ID NUMBER: 1700001993

BLDG COVERAGE:
EXISTING BUILDINDS: 37,114 SQFT (OFFICE AND MAUSOLEUMS)
PROPOSED MAUSOLEUM: 1,100 SQFT
TOTAL COVERAGE: 38,214 SQFT OR 1.35%OF SITE AREA

PROPOSED MAUSOLEUM HT: 19'

	PARKING REQUIRED	PARKING PROVIDED
NUMBER OF EMPLOYEES: 12	6	16

NOTE: ADDITIONAL PARKING AVAILABLE ALONG PRIVATE DRIVES TOTALLING 450 SPACES

BUILDING RESTRICTION LINES
STREET: 40'
SIDE: 20'
REAR: 30'

ZONING HEARINGS NUMBERS: 78-209A DATED JANUARY 10, 1978 PERMITS THE CONSTRUCTION OF A MAUSOLEUM (VARIANCE)
1952-2351-R RECLASSIFICATION FOR CEMETERY USE
1993-463-SPHXA NONCONFORMING USE FOR CEMETARY IN DR10.5 AND CEMETARY IN DR 5.5
2008-502 SPHX AMEND PRIOR SITE PLAN FOR TELECOMMUNICATIONS FACILITY

OWNER/DEVELOPER

SCI MARYLAND FUNERAL SERVICES INC
C/O MR. MIKE BENNETT
7250 WASHINGTON BLVD.
ELKRIDGE, MARYLAND 21075
410-796-1144

NO.	REVISION	DATE

GENERAL NOTES

1. THE PURPOSE OF THIS PLAN IS TO VALIDATE THE EXISTING CEMETARY AND ALLOW FOR THE CONSTRUCITON OF A NEW MAUSOLEUM.
2. TOPOGRAPHIC INFORMATION BY FIELD RUN SURVEY PROVIDED BY SUMMERALL LAND SURVYING INC, DATE 11-17-2005.
3. BOUNDARY TAKEN FROM ALTA SURVEY BY SUMMERALL LAND SURVEYING INC, DATED 4-12-2004.

PETITIONER'S EXHIBIT NO. 1

SHEET INDEX

DESCRIPTION	SHEET NO.
COVER SHEET	1
EXISTING CONDITIONS LAYOUT	2
EXISTING CONDITIONS LAYOUT	3
PROPOSED CONDITIONS LAYOUT	4

~~ADMINISTRATIVE~~ SITE PLAN FOR
SPECIAL ~~EXCEPTION~~ HEARING SITE APPLICATION
ARBUTUS MEMORIAL PARK
1101 SULPHUR SPRING ROAD
BALTIMORE, MARYLAND
COVER SHEET

TAX MAP 108 BLOCK 04
13TH ELECTION DISTRICT
COUNTY COUNCIL DISTRICT #1
PARCEL 265
BALTIMORE COUNTY, MARYLAND

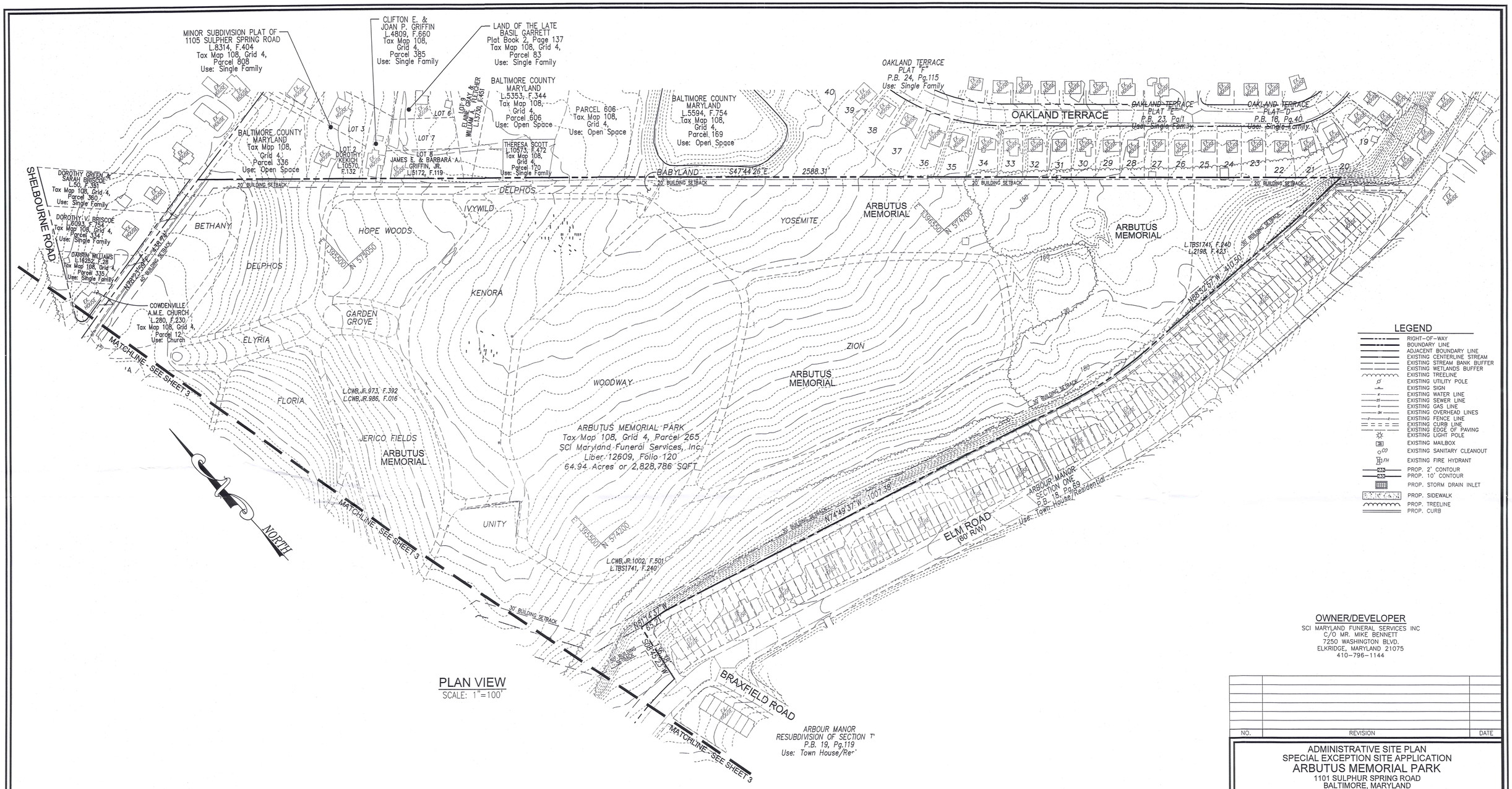
ROBERT H. VOGEL ENGINEERING, INC.
ENGINEERS • SURVEYORS • PLANNERS
8407 MAIN STREET
ELLICOTT CITY, MD 21043
TEL: 410.461.7666
FAX: 410.461.8961

STATE OF MARYLAND — JAMES A. RUFF — 21774 — PROFESSIONAL ENGINEER
JAMES A. RUFF, PE No.21774

DESIGN BY: JAR
DRAWN BY: JAR/JMR/HS
CHECKED BY: RHV
DATE: MARCH, 2010
SCALE: AS SHOWN
W.O. NO.: 06-68.01

PROFESSIONAL CERTIFICATE
I HEREBY CERTIFY THAT THESE DOCUMENTS WERE PREPARED OR APPROVED BY ME, AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MARYLAND, LICENSE NO. 21774 EXPIRATION DATE: 11-10-2010

SHEET 1 OF 4



PLAN VIEW
SCALE: 1"=100'

LEGEND

- RIGHT-OF-WAY
- BOUNDARY LINE
- ADJACENT BOUNDARY LINE
- EXISTING CENTERLINE STREAM
- EXISTING STREAM BANK BUFFER
- EXISTING WETLANDS BUFFER
- EXISTING TREELINE
- EXISTING UTILITY POLE
- EXISTING SIGN
- EXISTING WATER LINE
- EXISTING SEWER LINE
- EXISTING GAS LINE
- EXISTING OVERHEAD LINES
- EXISTING FENCE LINE
- EXISTING CURB LINE
- EXISTING EDGE OF PAVING
- EXISTING LIGHT POLE
- EXISTING MAILBOX
- EXISTING SANITARY CLEANOUT
- EXISTING FIRE HYDRANT
- PROP. 2' CONTOUR
- PROP. 10' CONTOUR
- PROP. STORM DRAIN INLET
- PROP. SIDEWALK
- PROP. TREELINE
- PROP. CURB

OWNER/DEVELOPER
SCI MARYLAND FUNERAL SERVICES INC
C/O MR. MIKE BENNETT
7250 WASHINGTON BLVD.
ELKRIDGE, MARYLAND 21075
410-796-1144

NO.	REVISION	DATE

ADMINISTRATIVE SITE PLAN
SPECIAL EXCEPTION SITE APPLICATION

ARBUTUS MEMORIAL PARK

1101 SULPHUR SPRING ROAD
BALTIMORE, MARYLAND

EXISTING CONDITIONS LAYOUT

TAX MAP 108 BLOCK 04
13TH ELECTION DISTRICT
COUNTY COUNCIL DISTRICT #1

PARCEL 265
BALTIMORE COUNTY, MARYLAND

ROBERT H. VOGEL ENGINEERING, INC.
ENGINEERS • SURVEYORS • PLANNERS
8407 MAIN STREET
ELLICOTT CITY, MD 21043
TEL: 410.461.7666
FAX: 410.461.8961

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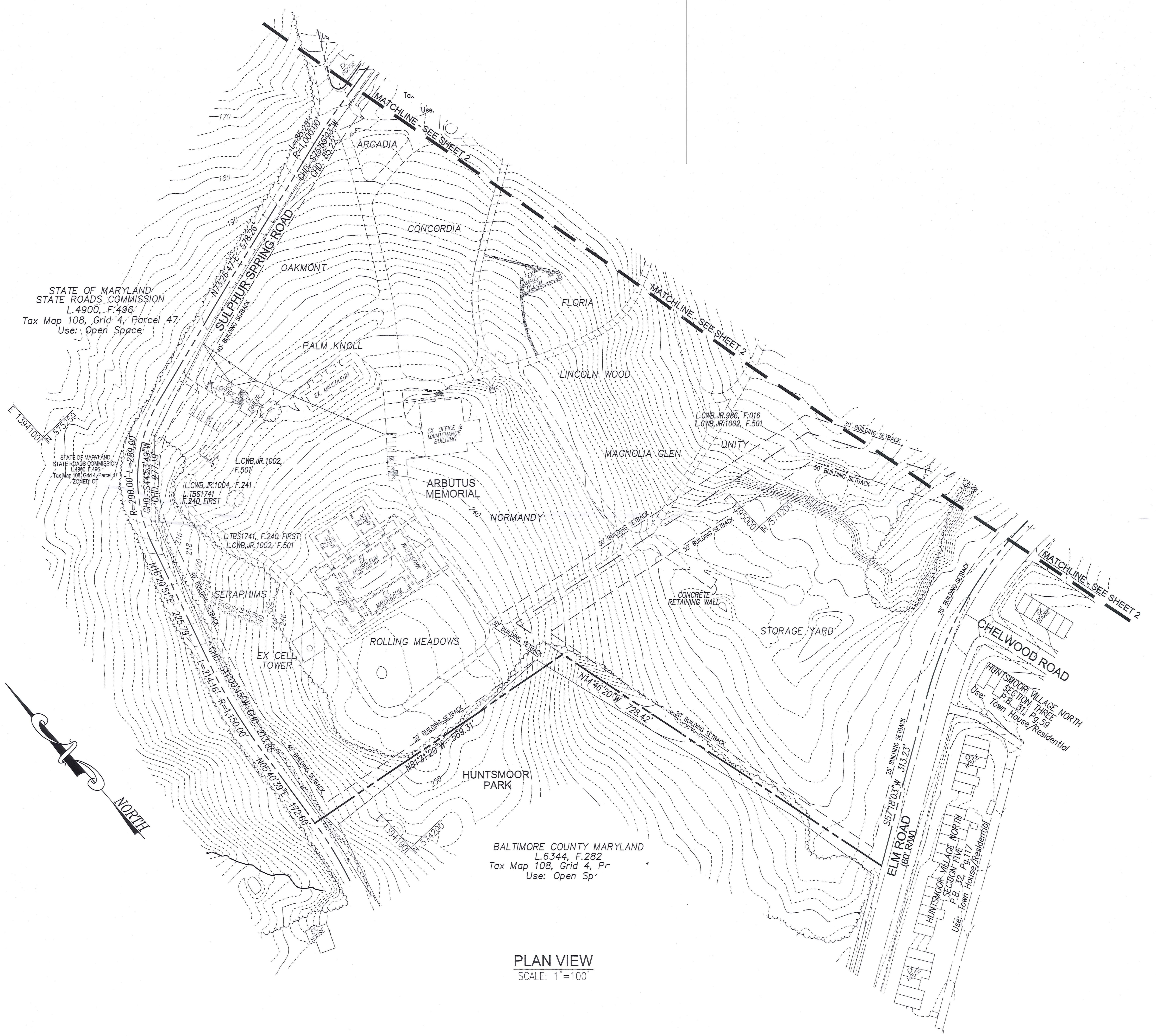
SHEET 2 OF 4



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SCALE: 1"=100'

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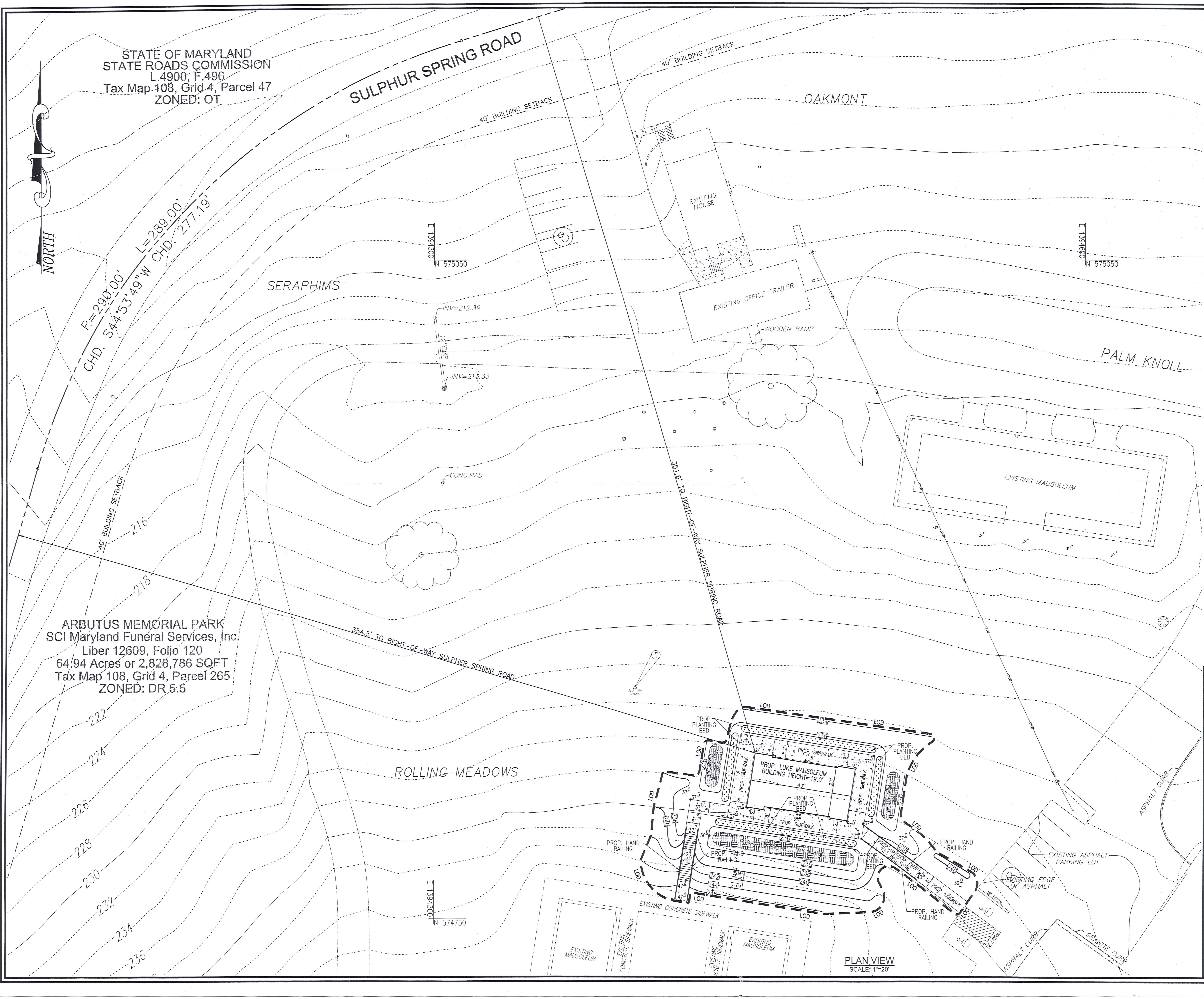

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PROPOSED CONDITIONS LAYOUT

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