Montgomery Planning

REMEMBRANCE PARK (AKA REFLECTION PARK) PRELIMINARY PLAN NO. 120210150



Description

Request to create one lot for a Cemetery as a Conditional Use (CU21-06 Reflection Park) and community assembly building with a capacity of up to 200 people, as previously approved by the Hearing Examiner.



Planning Staff

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LOCATION/ADDRESS

SP

16621 New Hampshire Avenue, on the east side of the road, approximately 2,800 feet north of Spencerville Road (MD 198) and approximately 2,600 south of Ednor Road in Silver Spring

MASTER PLAN

1997 Cloverly Master Plan

ZONE

Rural Cluster (RC)

PROPERTY SIZE

40.39 Acres

APPLICANT

Remembrance Life, LLC

ACCEPTANCE DATE

March 17, 2021

REVIEW BASIS

Chapters 50, 59 & 22A



Summary

- Staff recommends approval of the Preliminary Plan and Final Forest Conservation Plan, with conditions.
- The Application is consistent with Conditional Use 2021-06, as approved by the Hearing Examiner and the applicable development standards under the RC zone including a variance to the minimum lot width at front building line and a variance to minimum lot width at front lot line and a waiver of the parking standards.
- The Application is consistent with the recommendations of the 1997 Cloverly Master Plan and the 1993 Functional Master Plan for the Patuxent River Watershed by maintaining a very natural and mostly forested setting on the Property.
- The Property is located within the Patuxent Primary Management Area which limits imperviousness in the transition area. The total imperviousness proposed is averaged across the entire Property not to exceed 10 percent rather than the transition area only to maintain community character, achieve compatibility and accomplish master plan goals.
- The Application provides a 6-foot-wide sidewalk along the property frontage on New Hampshire Ave (MD 650).
- To date, no community correspondence, in opposition, has been received.

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SECTION 1: RECOMMENDATION AND CONDITIONS

PRELIMINARY PLAN NO. 120210150

Staff recommends approval with conditions of the Preliminary Plan to create one lot for a cemetery. All site development elements shown on the latest electronic version of the Preliminary Plan No. 120210150 as of the date of this Staff Report submitted via ePlans to the M-NCPPC, are required except as modified by the following conditions:

GENERAL APPROVAL

- 1. This Preliminary Plan is limited to one (1) lot for a Cemetery and community assembly building with a capacity of up to 200 people.
- 2. The Applicant must comply with conditions from the Hearing Examiner's Report and Decision, dated October 11, 2021, and June 15, 2022 and as amended on October 24, 2022, from the Office of Zoning and Administrative Hearings (OZAH) approving Conditional Use No. 21-06.

ADEQUATE PUBLIC FACILITIES AND OUTSIDE AGENCIES

3. The Adequate Public Facilities ("APF") review for the Preliminary Plan will remain valid for five (5) years from the initiation date (as defined in Montgomery County Code Section 50.4.3.J.5).

PLAN VALIDITY PERIOD

4. The Preliminary Plan will remain valid for three (3) years from its initiation date (as defined in Montgomery County Code Section 50.4.2.G), and before the expiration date of this validity period, a final record plat for all property delineated on the approved Preliminary Plan must be recorded in the Montgomery County Land Records or a request for an extension filed.

OUTSIDE AGENCIES

- 5. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated September 1, 2022, and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDOT if the amendment does not conflict with any other conditions of the Preliminary Plan approval.
- 6. Before recording a plat for the Subject Property, the Applicant must satisfy MCDOT's requirements for access and improvements.

- 7. Before the issuance of access permits, the Applicant must satisfy the SHA's requirements for access and improvements.
- 8. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Services ("MCDPS") – Water Resources Section in its stormwater management concept letter dated June 3, 2021, and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Water Resources Section if the amendment does not conflict with any other conditions of the Preliminary Plan approval.
- 9. The Planning Board has reviewed and accepts the recommendations of the MCDPS Well and Septic Section in its letter December 2, 2022, and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS Well and Septic Section if the amendment does not conflict with any other conditions of the Preliminary Plan approval.
- 10. The Planning Board has reviewed and accepts the recommendations of the MCDPS Fire Department Access and Water Supply Section in its letter dated March 3, 2021, and incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which MCDPS may amend if the amendment does not conflict with other conditions of Preliminary Plan approval.

OTHER APPROVALS

11. Before approval of a record plat or any clearing or grading for the Subject Property, the Applicant must receive Staff certification of this Preliminary Plan.

ENVIRONMENT

- 12. The Applicant must comply with the conditions of approval for the Final Forest Conservation Plan No. 120210150 ("FFCP"), subject to the following conditions:
 - a. The Applicant must schedule the required site inspections by M-NCPPC Forest Conservation Inspection Staff per Section 22A.00.01.10 of the Forest Conservation Regulations.
 - b. The Applicant must comply with all tree protection and tree save measures shown on the approved Final Forest Conservation Plan. Tree save measures not specified on the Final Forest Conservation Plan may be required by the M-NCPPC Forest Conservation Inspection Staff.
 - c. Before recordation of the plat and the start of any demolition, clearing, grading, or construction, whichever comes first, for this development Application, the Applicant must record a Category I Conservation Easement over all areas of forest retention, forest planting and environmental buffers as specified on the approved Final Forest Conservation Plan. The Category I Conservation Easement must be in a form approved by the M-NCPPC Office of the General Counsel and must be

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recorded in the Montgomery County Land Records by deed. The Book/Page for the easement must be referenced on the record plat.

- d. Before the start of any demolition, clearing, grading or construction for this development Application, whichever comes first, the Applicant must install permanent conservation easement signage along the perimeter of the conservation easements as shown on the FFCP, or as directed by the M-NCPPC Forest Conservation Inspection Staff.
- e. The Limits of Disturbance ("LOD") shown on the Final Sediment and Erosion Control Plan must be consistent with the LOD shown on the approved Final Forest Conservation Plan.

TRANSPORTATION

Frontage Improvements

- 13. The Applicant must provide the following dedications and show them on the record plat(s) for the following existing roads:
 - a) All land necessary to accommodate sixty (60) feet from the existing pavement centerline along the Subject Property frontage for New Hampshire Avenue (MD-650).
- 14. Before the recordation of plat(s), the Applicant must satisfy all necessary requirements of MDOT SHA to ensure construction of a 6-foot-wide sidewalk along the Subject Property's frontage on New Hampshire Avenue.

SURETY

- 15. Before issuance of any building permit or sediment control permit, whichever comes first, the Applicant must enter into a Surety and Maintenance Agreement with the Planning Board in a form approved by the M-NCPPC Office of General Counsel that outlines the responsibilities of the Applicant. The Agreement must include a performance bond or other form of surety, with the following provisions.
 - a) A cost estimate of the materials and facilities, which, upon Staff approval, will establish the surety amount.
 - b) The cost estimate must include all site elements shown on the Conditional Use Site Plan, approved by the Hearing Examiner, including, but not limited to, the internal drive-aisle, landscaping, lighting and sidewalks.
 - c) Completion of all improvements covered by the surety will be followed by inspection and potential reduction of the surety.
 - d) The bond or surety for each item shall be clearly described within the Surety & Maintenance Agreement, including all relevant conditions.

CERTIFIED PRELIMINARY PLAN

- 16. The certified Preliminary Plan must contain the following notes:
 - a. Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints, building heights, on-site parking, site circulation, and sidewalks shown on the Preliminary Plan are illustrative. The final locations of buildings, structures and hardscape will be determined at the time of issuance of building permit(s). Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot.
 - b. The Applicant must schedule an on-site preconstruction meeting with M-NCPPC inspection staff before any clearing, or grading occurs on-site. The Applicant, along with their representatives, must attend the pre-construction meeting with the M-NCPPC inspector. A copy of the approved Certified Preliminary Plan and Conditional Use Plan is required to be on-site at all times.
- 17. Before submittal of the Certified Preliminary Plan, the Applicant must make the following changes:
 - a) Show resolutions and approval letters on the certified set.
 - b) Include the approved Fire and Rescue Access plan in the certified set.
 - c) Revise the data table not to state that all building area considered principal buildings.

SECTION 2: LOCATION AND DESCRIPTION

SITE LOCATION & VICINITY

The Subject Property is located at 16621 New Hampshire Avenue (MD 650), on the east side of the road, approximately 2,800 feet north of Spencerville Road (MD 198) and approximately 2,600 feet south of Ednor Road ("Subject Property" or "Property"). The Subject Property is identified as Parcel 911, "Snowden's Manor" on Tax Map KT11 (Tax ID No.05-00272622), comprised of 40.39 acres (1,759,388 square feet) of land in the Rural Cluster (RC) zone. The Subject Property is within the "Agricultural Wedge" area of the 1997 *Cloverly Master Plan* and partially within the 1993 *Functional Master Plan for the Patuxent River Watershed.*



Figure 1: Vicinity Map

The area surrounding the Subject Property consists of a mixture of residential and nonresidential uses, with Endor Local Park abutting the northern Property line. Between the Park and New

Hampshire Ave are three (3) large religious institutions, also zoned RC and a handful of residential dwellings on large properties, some of them fronting on New Hampshire Avenue.

Abutting the Subject Property to the south is a 22-acre concrete manufacturing company, the Bartley Corp Concrete Contractor. The remainder of the surrounding area consists of singlefamily detached properties ranging from 6-10 acres in the RC zone.

PROPERTY DESCRIPTION

As depicted in Figure 1, the Subject Property is an irregular shaped parcel, with its narrowest edge (206-foot-wide) fronting on New Hampshire Avenue, from which it is accessed, widening at the center of the Property and 993 feet at the rear (eastern) Property line. The Property is currently unimproved.



Figure 2: Aerial View

The Property contains 40.29 acres of forest, and several streams also traverse the Property. There are no wetlands identified per National Wetlands online inventory; however, the Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) indicates that 0.03 acres of wetlands were found during site inspection. The Subject Property drains to the Lower Patuxent River, Rocky Gorge Watershed. There are no rare, threatened, or endangered species on the Property. The Property is not designated as historic nor is it currently included on the Burial Sites Inventory.

SECTION 3: PROJECT DESCRIPTION

PREVIOUS APPROVALS





Conditional Use No. CU2021-06

On October 11, 2021, the Montgomery County Hearing Examiner approved Conditional Use No. CU2021-06 (CU 21-06), Reflection Park Inc., for the establishment of a "green" Cemetery¹ on the Subject Property, under Section 59-3.5.4.A of the Zoning Ordinance ("Conditional Use" or "CU 21-06") (Attachment A). Landscape and Lighting plans were also approved as part of the Conditional Use Application. In conjunction with the Conditional Use, the Hearing Examiner approved a variance to the minimum lot width at front building line and minimum lot width at front lot line and a waiver of the parking standards. The accompanying Preliminary Forest Conservation Plan ("PFCP") No. CU2021-06, was approved on July 8, 2021, by Planning Board Resolution MCPB No. 21-061 (Attachment B).

Conditions of approval from the Hearing Examiners report, dated October 11, 2021:

- 1. Physical improvements to the Subject Property are limited to those shown on the Conditional Use Plan (Exhibits 38(a) through (g)), Landscape Plan (Exhibit (p), (q) (r) and (t), building plan (Exhibit 21), and Photometric Plan (Exhibit 38(u).
- 2. No more than seven employees may be on the property at any one time.
- 3. Hours of operation are between 8:30 a.m. to sunset, seven days a week.
- 4. The Applicant must remove all pulse generator components of implanted cardiac pacemakers, including batteries, from cadavers prior to burial.
- 5. Gravesites must be located within the area depicted on the Conditional Use Plan (Exhibit 38(b)).
- 6. The Applicant must obtain approval of BOA Case No. A-6693 prior to approval of a preliminary plan of subdivision.
- 7. During preliminary plan review, the Applicant must submit to the Planning Board an assessment of whether riparian buffers exist along on-site streams.

¹ According to the Hearing Examiner's Report, dated October 11, 2021, "the differences between traditional burials and "green burials". The major difference is that traditional graves have a vault lined in concrete. The casket itself is made of artificial materials, including polyethylene materials that make up the liner. Green gravesites use either a bamboo or cardboard box, a shroud, or a casket made of raw wood with no glues. This is placed 3½ - 4 feet below the surface because decomposition happens more quickly with exposure to air in the soil rather than at a depth of 5 feet, where the soil is more anaerobic. T. 79. The traditional burial vault is left permanently, the green burial gravesite will become soil itself within a very short time" (pg.10)."

- 8. Sediment and erosion control measures must be implemented during all clearing and grading on the property, including gravesite areas.
- 9. Trip generation for the approved use must not exceed 50 peak hour trips within the weekday morning and evening peak periods.
- 10. The Applicant must obtain a sign permit from the MCDPS for the proposed freestanding sign. A copy of the sign permit obtained from MCDPS must be submitted to the Hearing Examiner before the sign is installed on the property.
- 11. Prior to the issuance of any building permit for the subject Conditional Use, the Applicant must obtain approval of a Preliminary Plan of Subdivision and a Record Plat pursuant to Chapter 50 of the Montgomery County Code. If changes to the approved Conditional Use Site Plan or other plans filed in this case are required at Subdivision, the Applicant must file a copy of the revised site and related plans with OZAH.
- 12. The proposed development must comply with the Preliminary Forest Conservation Plan and the conditions of approval therein.
- 13. The Applicant must obtain approval of the Final Forest Conservation Plan by the Planning Board, after which time the Applicant must comply with the terms of the Final Forest Conservation Plan.
- 14. Prior to issuance of access permits, the Applicant must satisfy the provisions for access and improvements as required by the Maryland State Highway Administration ("SHA").
- 15. Impervious surfaces are limited to no more than 10.0 percent of the subject property as shown on Exhibit 38(z).
- 16. Prior to the start of any clearing or grading on the subject property, the owner of the subject property must enter into an agreement with the Planning Board to limit impervious surfaces within the transition area of the Patuxent River Primary Management Area ("PMA")² on the subject property to no more than 10.0 percent, as shown on Exhibit 38(z). The agreement must be in a form approved by the M-NCPPC Office of the General Counsel and recorded by deed in the Montgomery County Office of Land Records.
- 17. The Applicant and any successors in interest must obtain and satisfy the requirements of all Federal, State, and County licenses, regulations, and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the

² On December 1, 2022, the Hearing Examiner issued an Errata amending a clerical error (redlined) in condition 15 of her decision date October 11, 2021 (Attachment C).

conditional use premises and operate the conditional use as granted herein. The Applicant and any successors in interest shall at all times ensure that the conditional use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements, including the annual payment of conditional use administrative fees assessed by the Department of Permitting Services.

Subsequently, a community member requested oral argument before the Board of Appeals ("BOA"). On November 17, 2021, the Board of Appeals remanded the case back to the Hearing Examiner to take additional evidence regarding the potential impact of necroleachate on groundwater, the Rocky Gorge Reservoir, and the Patuxent watershed.

On June 15, 2022, after hearing additional evidence and expert testimony, the Hearing Examiner approved the Conditional Use, with conditions (Attachment D).

Conditions of approval from the Hearing Examiners report, dated June 15, 2022:

- 1. The Applicant may clear no more than one burial section (shown on the Applicant's Master Plan for Burial and Reforestation) at a time.
- 2. The Applicant shall replant each burial section utilizing the Applicants Cemetery Section Development and Field to Forest Sequencing Strategies (Exhibit 47).
- 3. All reforested areas shall be consistent with the Reforestation Planting Concept shown on p. 12 of Exhibit 47.

On October 24, 2022³, the Hearing Examiner approved a minor amendment to the approved Conditional Use plan to allow the installation of a temporary office building and utility shed (storage container) and modify the associated landscape plan (Attachment E). The temporary office building and utility shed will allow the Applicant to begin marketing and will only include limited land preparation, before constructing any of the permanent structures that require a building permit, which cannot be issued before recordation of the record plat. No new conditions were added with this amendment.

PROPOSAL

Preliminary Plan Application No. 120210150, Remembrance Park ("Application" or "Preliminary Plan") was submitted on March 17, 2021, by Reflection Park, Inc., to convert an existing unrecorded parcel to a 40.22-acre lot for a Cemetery, associated buildings and parking. As

³ On November 15, 2022, the Hearing Examiner issued an Errata to correct a typographical error which referred to the original date of approval (Attachment F).

proposed, the Preliminary Plan is consistent with the approved Conditional Use and conditions of approval (Figure 4 and Attachment G).



Figure 4: Preliminary Plan (Lot and dedication)

The Property will be developed in stages, on an as needed basis. In the first stage, the development will include a 520 square foot maintenance building, a 624 square foot office building and a 441 square foot entry pavilion/gazebo (greeting and information kiosk) that will be located at the western most portion of the Property near the entrance. The small office building will serve as a temporary office to staff who will be handling sales and administration of the Cemetery. The office function will be moved to the multipurpose community building that will be constructed at the later phases of the proposed development. The multipurpose, community building is proposed to have a maximum of 6,000 square-foot of area and a maximum height of 50 feet.

At full build-out, 79 parking spaces will be provided on-site. Twenty of these will be provided in the first phase near the entrance office and along the drive. Sixteen parking spaces are located at the visitor's center, the office, and the maintenance building near the Property entrance. Ten

parking spaces are provided at two locations along the long driveway, and 53 spaces are provided near the 6,000 square-foot multi-purpose building

According to the Applicant's Statement of Justification (SOJ), the community building, with a capacity of up to 200 people, is intended to serve a variety of functions including services associated with burials and commemorations, education presentation and a community center .The Conditional Use site plan shows parking for 53 spaces on a surface parking lot adjacent to the community building. The Applicant proposes that when the community building is fully operational, it will be used for the following purposes:

The last stage of the development also includes the construction of a 1,024 square-foot maintenance building that will be located near the proposed community building. This building will be used for storage of grounds maintenance equipment and burial equipment such as backhoes, chairs, tents, etc.

There are no existing pedestrian facilities along the Property frontage on New Hampshire Avenue. As part of this Application, the frontage will be improved with a six-foot-wide concrete sidewalk.

SECTION 4: COMMUNITY OUTREACH

The Applicant held a pre-submittal public meeting on December 15, 2021. The meeting was conducted virtually per COVID-19 Guidelines and has complied with all submittal and noticing requirements. In addition to the required public meeting, public testimony was heard by the Hearing Examiner as part of the Conditional Use approval process.

As of the date of this Staff Report, no correspondence has been received, other than requests for additional information (Attachment H). During the Conditional Use hearings, the Hearing Examiner heard testimony about the "green cemetery" concept and community concerns. The primary concern raised was the possible groundwater contamination from naturally decomposing bodies (necroleachate). After hearing public testimony, the Hearing Examiner determined that the cemetery is not a danger to the public.

SECTION 5: FINDINGS AND ANALYSIS

The Preliminary Plan would create one lot on 40.22 acres of land, for a Cemetery with a community building for a maximum of 200 occupants. This Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, Subdivision Regulations. The Application has been reviewed by other applicable agencies.

1. The layout of the subdivision, including size, width, shape, orientation and density of lots, and location and design of roads is appropriate for the subdivision given its location and the type of development or use contemplated and the applicable requirements of Chapter 59.

The proposed lot size, width, shape and orientation are appropriate for the location of the subdivision taking into account the recommendations included in the applicable master plans, and for the proposed use as a cemetery.

The lot was reviewed for compliance with the dimensional requirements for the RC zone as specified in the Zoning Ordinance. With the variance (described below) for lot width at front building line and lot width at front lot line, approved by the Hearing Examiner, the proposed lot will meet all the dimensional requirements for area, frontage, width, and setbacks in the RC zone. A summary of this review is included in Table 1 below. The Application has been reviewed by other applicable county agencies, all of whom have recommended approval of the plan.

Development Standards	Required	Approved with Proposed Preliminary	
		CU 21-06	Plan
Minimum Lot Area	5 ac	40.22 ac	40.22 ac (Net)
Minimum Lot width			
 at front lot line 	300 ft	214.0 ft (Variance)	214.0 ft (Variance)
 at front building line 	300 ft	205.8 ft (Variance)	205.8 ft (Variance)
Maximum Density	1 unit/5 ac	1 unit(CU)	1 unit (CU)
Maximum Building Coverage	10 percent or	0.6 <u>+</u> percent or	0.6 <u>+</u> percent or
	175,198 SF	11,263 SF total	11,263 SF total
Minimum Building Setback			
Principal Building:			
• front	50 ft	50 ft	50 ft
 side street setback 	N/A	N/A	N/A
• side	20 ft	20 feet	20 feet
• rear	35 ft	35 ft	35 ft
Minimum Building Setback			
Accessory structure:			
• front	80 ft	80 ft	80 ft
 side street 	N/A	N/A	N/A
• side	15ft	15 ft	15 ft
• rear	15 ft	15 ft	15 ft

Table 1: Preliminary Plan Data Table for Rural Cluster Zone, Standard or Optional Method,Section 59.4.3.4

Minimum Setback for parking		50.9 ft	50.9 ft
and loading			
Maximum Building Height			
 Principal Building 	50 ft	50 ft	50 ft
 Accessory Building 	50 ft	50 ft	50 ft
Parking			
Min Vehicle Parking spaces 59-	56	79	79 spaces (including ADA)
6.2.4			

Approved Variance No. A-6693

As shown in Table 1, the Subject Property does not meet the minimum requirements for lot width at front building line and at front lot line. The Applicant filed a request for a variance (A-6693) from these requirements with the Board of Appeals, which was transferred to OZAH for review in conjunction with the Conditional Use Application.

On March 5, 2021, the Board of Appeals ("BOA") referred Variance Case No. CU 21-06 (renumbered) associated with the application to the Hearing Examiner for hearing. As part of the Conditional Use, the Hearing Examiner approved the following:

- 1. A variance of 94.1 feet for the front lot line as the front lot line is 205.9 feet long and the minimum required is 300 feet (RC zone) per Section 59.4.3.4.B.1.
- 2. A variance of 85.9 feet for the lot width at the front building line as the lot width is 214.1 feet and the minimum required is 300 feet (RC zone) per Sections 59.4.3.4.B.1.

Approved Parking Setback Waiver

In approving CU 21-06, the Hearing Examiner also approved a waiver of the parking standards (Section 6.2.1), allowing the on-site parking of the 79 spaces (53 parking spaces adjacent the community building and 6 spaces along the internal road), to be located further than ¹/₄ miles from the entrance of the establishment being served, the cemetery.

2. The Preliminary Plan substantially conforms to the Master Plan.

The Property is within the "Agricultural Wedge" area of the 1997 *Cloverly Master Plan* ("Master Plan"). It is also guided by recommendations in the 1993 *Functional Master Plan for the Patuxent River Watershed* ("Functional Master Plan"). The Master Plan does not provide explicit recommendations for the Property, nor does it identify areas that are deemed suitable for the proposed use. As discussed in the Hearing Examiner's Report, the use of the Property as a

Cemetery substantially conforms to the Master Plan and Functional Master Plan recommendations discussed below.

<u>1997 Cloverly Master Plan</u>

The Master Plan is guided by two fundamental concepts: protecting watersheds and reinforcing the character of Cloverly's communities (p. 13). The Property is in the Lower Patuxent River watershed, where the Master Plan highlights the importance of maintaining the quality of the bicounty water supply, namely the Rocky Gorge Reservoir. According to the Master Plan, the protection of open space rather than agriculture is the primary purpose of the Agricultural Wedge in this part of Cloverly (p. 9).

The Master Plan maintained low-density zoning for the area to help protect the watersheds as well as to reinforce the character of the Agricultural Wedge community. The Master Plan also expressed concern that special exceptions (now conditional uses), institutions, places of worship, and other large developments could adversely affect the rural character and water quality (p. 17). The Master Plan lists several recommendations that should be considered when reviewing an application for a conditional use, including:

- Maintain a residential appearance where feasible.
- Maintain compatibility with the scale and architecture of adjoining neighborhoods.
- Limit the impact of signs, lighting, and other features.
- Locate parking, loading, and other services in a way that maintains residential appearances to the extent feasible.
- Apply landscaping that minimizes the non-residential appearance from surrounding properties and the roads.

Conditional Use CU21-06 has already been approved by the Hearing Examiner, who found that the Cemetery conforms to the Master Plan by locating the larger buildings well away from New Hampshire Avenue, thereby preserving the residential/rural character of the area. The proposed use helps retain the low-density rural character of this part of Cloverly.

The Land Use Plan (p. 19) envisions single-family residential uses for the Property, and the Master Plan recommends maintaining the rural and suburban character of New Hampshire Avenue through a 100-foot front setback for non-residential uses. The Master Plan explains that this setback, which is 20 feet greater than the setback for houses, "is designed to minimize the impact of buildings that tend to be taller, wider, and more massive than homes" (p. 31). It recommends forest or naturalistic landscaping to help maintain the rural and suburban character of New Hampshire Avenue.

The Preliminary Plan shows three small buildings near New Hampshire Avenue: a small maintenance building, a small office building, and an entrance pavilion. The Application also

shows a trailer to be used as a temporary office. The maintenance building, office, and trailer appear to be about 120 feet from the right-of-way line, while the pavilion is about 95 feet from the line. Given the environmental constraints on this part of the Property and the required septic field, this is close enough to the recommended distance to not be a problem given the modest sizes of the three buildings compared to the more massive structures the Master Plan has concerns with. The approved Landscape Plan shows a wall of shrubs and several larger trees around the parking lot and along the road to screen the parking lot and buildings.

A larger community building (approximately 6,000 square feet and approximately 26 feet high) and a larger maintenance building (approximately 1,000 square feet and approximately 26 feet high) are proposed in a later phase of the development. These buildings will be in the rear of the Property at a substantial distance from New Hampshire Avenue. A 50-foot forest buffer is proposed between the Property line and the parking that will surround these buildings. Being set well back from the road, these buildings and surrounding parking lots should have no impact on the residential or rural character of the area.

1993 Functional Master Plan for the Patuxent River Watershed

Because of its proximity to tributary streams, the Property is located within the Patuxent River Primary Management Area (PMA). The PMA on the Property is the land area within ½ mile (660 feet) of the streams on and near the Property. The 660-foot-wide PMA consists of the stream valley buffer and the transition area. There are specific requirements outlined in the Environmental Guidelines for properties located within the PMA.



Figure 5: PMA Transition Area and Forest Conservation Plan

The stream valley buffer is delineated based on the stream buffer calculations outlined in the *Environmental Guidelines*. The ("Guidelines") remaining area within the 660-foot-wide PMA is the transition area. To protect the water quality within the Patuxent watershed, the Environmental Guidelines establish impervious limits and states the following:

Patuxent Primary Management Area: Overall imperviousness within the PMA transition area of a Subject Property should not exceed 10 percent. If a higher imperviousness is desirable in the transition area to maintain community character, achieve compatibility and/or accomplish master plan goals, imperviousness may be averaged over the entire Property (i.e., not to exceed 10 percent on the entire site, p. 25).

The Guidelines further state that the high water quality of the Patuxent River watershed is important to its use as a public drinking water supply and the high-quality aquatic communities currently found in the streams. Continuation of low-density land-use patterns and enforcement of the guidelines for the Primary Management Area are necessary to maintain this quality. Restoration and enhancement activities should be undertaken through the existing programs (p. 58). The Property has limited frontage on New Hampshire Avenue and the major and larger buildings are located further away from New Hampshire Avenue (and within the PMA) to take advantage of the greater property width there and to allow the New Hampshire Avenue frontage to be more in keeping with the semi-rural nature of the neighborhood. If the larger buildings were located outside the PMA, not only would they be visible from New Hampshire Avenue, but they would be out of character with this semi-rural neighborhood because they are larger than the modest dwellings in the area. Therefore, Staff calculated the imperviousness over the entire Property and not just within the transition area.

The Property is currently undeveloped. The new construction to accommodate the proposed use will add 3.95 acres of impervious surfaces which equates to 9.77 percent of the entire Property. Of that, 2.41 acres of impervious surface area will be located within the PMA transition area this equates to 12.8 percent imperviousness within the transition area.

When averaged across the entire Property, the Application is below the ten percent threshold as conditioned in CU21-06 (conditions 15 and 16) and as recommended by the *Environmental Guidelines*.

- 15. Impervious surfaces are limited to no more than 10.0 percent of the subject property as shown on Exhibit 38(z).
- 16. Prior to the start of any clearing or grading on the subject property, the owner of the subject property must enter into an agreement with the Planning Board to limit impervious surfaces within the transition area of the Patuxent River Primary Management Area ("PMA")⁴ on the subject property to no more than 10.0 percent, as shown on Exhibit 38(z). The agreement must be in a form approved by the M-NCPPC Office of the General Counsel and recorded by deed in the Montgomery County Office of Land Records.

The Hearing Examiner found that the proposed development conforms to both the Master Plan and the Functional Master Plan by providing more open space and less forest clearing than would be required for standard residential development.

Likewise, the Preliminary Plan substantially conforms to the recommendations of the 1997 *Cloverly Master Plan* and the 1993 *Functional Master Plan for the Patuxent River Watershed*. Both plans seek to protect water quality and rural residential character through low-density zoning and imperviousness limits. The Application will maintain a very natural and mostly forested

⁴ On December 1, 2022, the Hearing Examiner issued an Errata amending a clerical error (redlined) in condition 15 of her decision date October 11, 2021 (Attachment C).

setting on the Property, which will result in a much more rural character than would the large residential lots that are possible in the area.

Master-Planned Roadway and Bikeways

The Subject Property has frontage on New Hampshire Avenue (MD 650), identified by the 2018 *Master Plan of Highways and Transitways* as a two-lane Major Highway with a 120-foot right-of-way. To accommodate the master-planned right-of-way, the Applicant is dedicating all land necessary to accommodate sixty feet from the existing pavement centerline along the Subject Property frontage on New Hampshire Avenue. There is an existing 10-foot-wide asphalt shared-use path along the west side of New Hampshire Avenue, on the opposite side of the Subject Property. Per the 2018 *Bicycle Master Plan*, there are no bicycle improvements envisioned along the Property frontage.

3. Public facilities will be adequate to support and service the area of the subdivision.

a) Roads and other Transportation Facilities

Vehicular access to the Property will be from New Hampshire Avenue via a 20-foot driveway. The entrance driveway will transition to an internal roadway network consisting of loops throughout the Property that accommodate vehicular circulation. The office building is accessible via a full movement loop that connects to its associated parking, consisting of 16 parking spaces, including 2 ADA spaces. The community building is accessible via two different access points, consisting of 53 parking spaces, including 2 ADA spaces.

Pedestrian and Bicycle Facilities

Entering the Property, pedestrian access will be provided via a proposed 6-foot-wide sidewalk along New Hampshire Avenue that will connect through the front entrance pedestrian gate, leading to an internal natural surface trail system for gravesite access. The Applicant proposes to provide a total of 12 short-term bicycle parking spaces at the front entrance and the Community Building.

Internally, pedestrian access will be provided via 5-foot-wide sidewalks to parking areas and around buildings. A trail network will also be located throughout the entire Property, connecting to sidewalks that lead to building entrances providing efficient pedestrian circulation. All gravesites are also proposed to be located within a walkable distance from the circulating roadway and via the internal trail network.

b) Local Area Transportation Review (LATR)

The Application is for a 40-acre cemetery (ITE code 566). According to the Institute of Transportation Engineer's (ITE) 10th Edition Trip Generation Manual and adjusted for the Rural

East Policy Area, this cemetery use will result in seven (7) AM and 24 PM peak-hour person trips. The Applicant proposes to conduct workshops, seminars, and other educational programs as well as provide the community building to other community-oriented groups for meetings and events that will take place during off-peak hours. In addition, the Applicant proposes to offer educational seminars during both peak and off-peak hours for up to 15 students, resulting in 20 AM peak-hour person trips and 20 PM peak-hour person trips. The proposed uses for the Property, a cemetery and the unique educational seminar use for up to 15 students, results in a combined 27 AM and 44 PM peak-hour person trips.

The Applicant is not required to submit a transportation impact study to satisfy the LATR because the proposed land uses generate fewer than 50 peak-hour person trips within the weekday morning and evening peak periods. To ensure the use does not exceed 50 peak hour person trips, the Hearing Examiner placed a condition of approval on the Conditional Use stating that the CU cannot exceed 50 peak hour person trips within the weekday morning and evening peak periods.

	Dovelopment	AM	Peak H	lour	PM Peak Hour		
Use	Development	In	Out	Tota l	In	Out	Total
Existing (Credit) Vacant, undeveloped	0 sq. ft	0	0	0	0	0	0
Proposed: Cemetery (ITE-566)*		5	1	6	6	12	18
Up to 15 students visiting the site for Education Seminars		15	0	15	0	15	15
Total New Vehicle Trips		20	1	21	6	27	33
Total Peak Hour Person Trips				27			44

Table 2: Site Vehicle Trip Generation

Source: Traffic statement, Shahriar Etemadi, PTP., dated March 17, 2021. Sums may not add due to rounding; all numbers are rounded to the nearest whole number for presentation. *As explained via Transportation Exemption Statement

c) Other Public Facilities and Services

Other public facilities and services are available and adequate to serve the lot.

The Application has been reviewed by the MCDPS - Fire Department Access and Water Supply Section which determined that the Subject Property has adequate access for fire and rescue vehicles on a letter dated May 3, 2021 (Attachment I).

Due to the nature of the use, this Application does not generate any school-aged children; therefore, school facilities review is not necessary.

The Property is in the W-3 and S-1 water and sewer categories, respectively, and will be served by public water and septic disposal system. Water table and percolation testing to evaluate the Property have been successfully completed. MCDPS, Well and Septic Section, by memorandum dated May 10, 2021, has determined that the proposed septic reserve areas are adequate to serve the subdivision (Attachment J).

Other utilities, public facilities and services, such as electric, telecommunications, police stations, firehouses and health services are currently operating within the standards set by the 2020-2024 Growth and Infrastructure Policy in effect at the time that the Application was submitted.

4. All Forest Conservation Law, Chapter 22A requirements are satisfied.

Consistency with Environmental Guidelines

A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) No. 420202290 was approved for the Property on September 10, 2020. The Property contains 40.29 acres of forest, and several streams also traverse the Property. There are no wetlands identified per National Wetlands online inventory; however, the Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) indicates that 0.03 acres of wetlands were found during site inspection. The Subject Property drains to the Lower Patuxent River, Rocky Gorge Watershed. There are no rare, threatened, or endangered species on the Property. The Property is not designated as historic nor is it currently included on the Burial Sites Inventory.

The Property drains to the Lower Patuxent River Watershed, which is classified by the State of Maryland as Use Class I-P waters. The Property is located within the Patuxent River Primary Management Area (PMA).

There are no impacts to streams, wetlands, floodplains, or their associated buffers. The Application is incompliance with the January 2000 Planning Board approved Environmental Guidelines – Guidelines for Environmental Management of Development in Montgomery County ("Environmental Guidelines").

Final Forest Conservation Plan

The Application meets the requirements of Chapter 22A of the Montgomery County Forest Conservation Law. A Final Forest Conservation Plan has been submitted for review and is recommended for approval by the Planning Board.

The Application is subject to the Montgomery County Forest Conservation Law (Chapter 22A of the County Code) under Section 22A-4(b) a person required by law to obtain approval of a special exception or a conditional use, or a sediment control permit on a tract of land 40,000 square feet or larger, and who is not otherwise required to obtain an approval under subsection (a).

The Preliminary Forest Conservation Plan ("PFCP") was approved as part of Conditional Use Application, to operate a Cemetery.



Figure 6: Burial Area diagram

A Final Forest Conservation Plan has been submitted for review. The Application proposes to clear 25.63 acres existing forest. Based on the land use category and the forest conservation

worksheet there is no planting requirement generated for the Application. The Applicant proposes to retain 14.66 acres of existing forest onsite. All forest saved as well as environmental buffers will be protected in a Category I Conservation Easement. The FFCP is consistent with the approved PFCP.

All impacts to Variance Trees were approved as part of the PFCP and no additional impacts are requested, so no new Variance Request is needed.

5. All stormwater management, water quality plan, and floodplain requirements of Chapter 19 are satisfied.

The Preliminary Plan received an approved stormwater plan approval from the Montgomery County Department of Permitting Services, Water Resources Section on June 3, 2021 (Attachment K). The Application will meet stormwater management goals via microbioretention, enhanced microbioretention and bioswales.

6. Any burial site of which the applicant has actual notice or constructive notice or that is included in the Montgomery County Cemetery Inventory and located within the subdivision boundary is approved under Subsection 50-4.3.M.

Not applicable to this Property...yet.

SECTION 6: CONCLUSION

As conditioned, the Application meets all requirements established in the Subdivision Regulations in Chapter 50, Forest Conservation Law in Chapter 22A, and the proposed use substantially conforms to approved Conditional Use Plan No. CU21-06 and the applicable recommendations of the 1997 *Cloverly Master Plan.* Access and public facilities will be adequate to serve the proposed lot, and the Application has been reviewed by other applicable County agencies, all of whom have recommended approval of the Preliminary Plan with the conditions provided. Therefore, approval of the Application with the conditions specified herein is recommended.

ATTACHMENTS

- Attachment A Conditional Use Hearing Examiner's Report and Decision, October 11, 2021 and Approved CU Site Plan (updated per most recent approval)
- Attachment B Preliminary Forest Conservation Plan No. CU2021-06 Resolution
- Attachment C Hearing Examiner, Errata dated December 1, 2022

Attachment D – Conditional Use Hearing Examiner's Report and Decision, June 15, 2022

- Attachment E Amended Conditional Use Hearing Examiner's Report and Decision, October 24, 2022
- Attachment F Hearing Examiner, Errata dated November 15, 2022
- Attachment G Preliminary Plan No. 120210150
- Attachment H Community Correspondence
- Attachment I MCDPS Fire Department Access Approval Letter
- Attachment J MCPPS Well and & Septic Approval Letter
- Attachment K MCDPS Stormwater Concept Approval Letter
- Attachment L MCDOT Approval Letter

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
Stella B. Werner Council Office Building
Rockville, Maryland 20850
(240) 777-666

4	.40) /	77-000
IN THE MATTER OF:	*	
REFLECTION PARK, INC.	*	
Applicant	*	
	*	
Haroon Mokhtarzada	*	
Basil Eldadah	*	
Jack Goodnoe	*	
Shahriar Etemadi	*	OZAH Case No. CU 21-06/
Gene Von Gunten	*	BOA Variance Case No. A-6693
Stephen Crum	*	
David Post	*	
Behan Trock	*	
	*	
For the Application	*	
Jody Kline, Esquire	*	
Attorney for the Applicant	*	
* * * * * * * * * * * * * * * * * * * *	* *	
	*	
James Putman	*	
	*	
Opposing the Application	*	
* * * * * * * * * * * * * * * * * * *	* *	
Before: Lynn A. Robeson, Hearing Examine	r	

HEARING EXAMINER'S REPORT AND DECISION ON CONDITIONAL USE AND RECOMMENDED DECISION IN VARIANCES

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I. STATEMENT OF THE CASE

Filed on January 21, 2021, Reflections Park, LLC, (hereinafter "Applicant" or "Reflections") seeks a conditional use to establish a Cemetery under §59.3.5.4.A. of the Zoning Ordinance. Zoned R-C (Rural Cluster), the subject property is located at 16621 New Hampshire Avenue, Silver Spring, Maryland, and is further identified as Parcel 911, Tax Map KT 121.¹

On March 5, 2021, the Board of Appeals referred two variances associated with this application for hearing. Exhibit 26. The Applicant requested a postponement of the originally scheduled hearing to July 30, 2021, to address issues raised by Staff. Exhibit 31. On May 4, 2021, OZAH issued notice of the July 30th public hearing and ordered consolidation of the hearings on the variances and conditional use. Exhibit 33. Shortly thereafter (on June 23, 2021), the Applicant submitted a Motion to Amend the application along with amended plans. Exhibits 34, 38. OZAH issued Notice of the Motion to Amend on July 6, 2021, without subsequent objection. Exhibit 41.

Planning Staff issued its report on June 28, 2021. Staff recommended approval subject to the following conditions (Exhibit 39, p. 2):

- 1. Prior to the issuance of any building permit for the subject Conditional Use, the Applicant must obtain approval of a Preliminary Plan of Subdivision and a Record Plat pursuant to Chapter 50 of the Montgomery County Code. If changes to the approved Conditional Use Site Plan or other plans filed in this case are required at Subdivision, the Applicant must file a copy of the revised site and related plans with OZAH.
- 2. Prior to the approval of the Preliminary Plan of Subdivision application, the Applicant must obtain approval of the Stormwater Management Concept Plan from the Montgomery County Department of Permitting Services (MCDPS).

¹The original application listed the applicant as "Remembrance Park, Inc.". Exhibit 1. The Applicant later changed its name to "Reflections Park" because there was another "Remembrance Park" already operating in Montgomery County. T. 178.

- 3. The proposed development must comply with the Preliminary Forest Conservation Plan and the conditions of approval.
- 4. The Applicant must obtain approval of the Final Forest Conservation Plan by the Planning Board, after which time the Applicant must comply with the terms of the Final Forest Conservation Plan.
- 5. Prior to issuance of access permits, the Applicant must satisfy the provisions for access and improvements as required by the Maryland State Highway Administration ("SHA").
- 6. While the final amount of dedication will be determined at Preliminary Plan, it is anticipated that the Applicant must dedicate and show on the record plat(s) a minimum right-of-way of one hundred and twenty (120) feet, as measured from the opposite right-of-way line along the Subject Property frontage on New Hampshire Avenue (MD 650).
- 7. Trip generation for the approved use must not exceed 50 peak hour trips within the weekday morning and evening peak periods.
- 8. The Applicant must obtain a sign permit from the MCDPS for the proposed freestanding sign. A copy of the sign permit obtained from MCDPS must be submitted to the Hearing Examiner before the sign is installed on the property.
- 9. Landscaping must be in accordance with the Landscape Plans L2-01 through L2-05, Revision date 06-09-2021.
- 10. The Applicant must provide for two motorcycle spaces as required by Section 6.2.3.C.
- 11. Impervious surfaces are limited to no more than 10.0 percent of the subject property as shown on the Impervious Surface Plan dated March 16, 2021.
- 12. Prior to the start of any clearing or grading on the subject property, the owner of the subject property must enter into an agreement with the Planning Board to limit impervious surfaces within the transition area of the Patuxent River Primary Management Area ("PMA") on the subject property to no more than 10.0 percent, as shown on the Impervious Surface Plan dated March 16, 2021. The agreement must be in a form approved by the M-NCPPC Office of the General Counsel and recorded by deed in the Montgomery County Office of Land Records.

The Planning Board issued its recommendation to approve the application on July

14, 2021, concurring with Staff's recommendations and analysis. Exhibit 44.

OZAH's public hearing proceeded as rescheduled on July 30, 2021. The Applicant presented two witnesses that are principals of Reflections and six expert witnesses. Mr. James Putman appeared in opposition to the application. Relevant testimony from the hearing is summarized below. The record was left open until August 9, 2021, to receive the transcript and architectural modifications of an entrance building from the Applicant, and comments on the modification from Planning Staff and the parties. T. 201. On August 3, 2021, Reflections submitted additional comments on the environmental impact of necroleachate (a liquid discharged from decomposing bodies) on the ground water and the Rocky Gorge Reservoir. Mr. Putman responded to these on August 9, 2021, and the record closed. Exhibits 52, 54.

Upon review of the post-hearing comments submitted, the Hearing Examiner reopened the record to receive a recommendation from the Montgomery County Department of Environmental Protection (MCDEP) on whether the necroleachate from decomposition would harm the reservoir or the groundwater. She requested MCDEP to submit its recommendations by August 30, 2021 and left the record open until September 10, 2021 for the parties to respond. Exhibit 56(a). Before MCDEP responded, OZAH received several letters from individuals opposing the application, citing environmental hazards from necroleachate. Exhibit 57. Reflections requested that these not be included in the record, as they were not under oath and subject to cross-examination. The Hearing Examiner admitted them, subject to OZAH Rule 3.2(d), which gives them less weight than testimony under oath and subject to cross-examination. Exhibit 62. Dr. Linda Smoling Moore submitted written comments to MCDEP for their consideration. Exhibit 65. MCDEP filed its response and recommendation to the Hearing Examiner's referral on August 31, 2021. Exhibit 66. Both the Applicant and Mr. Putman made further responses and the record closed again on September 10, 2021. Exhibits 67 and 68.

After the record closed a second time, OZAH received a request from Dr. Linda Smoling Moore to re-open the public hearing to allow additional testimony. After responses from the Applicant, the Hearing Examiner denied this request. Exhibit 75. After issuing her order, the Hearing Examiner received more requests from several other individuals to re-open the record, including one from Mr. Putman. Exhibits 76-81. The Hearing Examiner accepts these into the record and by Order of even date herewith, denies these requests and closes the record for a final time.

For the following reasons, the Hearing Examiner finds that the proposed use meets the standards for approval in the Zoning Ordinance, with the conditions imposed in Part IV of this Report.

II. FACTUAL BACKGROUND

A. The Subject Property

The Applicant's expert in civil engineering, Mr. Stephen Crum, testified that the property is located on the on the east side of New Hampshire Avenue approximately 2,760 feet south of Ednor Road and 2,940 feet north of Norbeck Road. T. 141. The Staff Report contains a map showing the general vicinity of the property (Exhibit 39, p. 2, on the following page).

Configured in a "flag-shape", Staff advises that the property consists of approximately 40.4 acres. It's width at the western boundary (adjoining New Hampshire Avenue) is 206 feet; the rear or eastern boundary measures 993 feet wide. Exhibit 3, p. 3. Almost all the property is forested,



primarily with Tulip Poplars. Most of the property has 8-15% slopes running from west to east, with the highest portion along New Hampshire Avenue. There is a promontory in the middle of the site that is 412 feet above mean sea level. Two unnamed tributaries to the lower Patuxent River Rocky Gorge Watershed run through the site, one from the southwest to northeast and one from the northwest to the southeast. There are no historic resources or rare or endangered species on the property. T. 141-144; Exhibit 39, p. 3. The NRI/FSD identified approximately 0.03 acres of channel wetlands on the property, which will not be disturbed. *Id.* The property drains to the Patuxent River and Rocky Gorge Reservoir. The Staff Report contains an aerial photograph showing the subject property (Exhibit 39, p. 3, on the next page).

B. Surrounding Area

To determine the compatibility of the proposed use with the surrounding area, it is



Aerial View of Subject Property Exhibit 39, p. 3

necessary to delineate the "surrounding area", which is the area that will be most directly impacted by the proposed use. Once delineated, the Hearing Examiner must assess the character of the neighborhood and determine whether the impacts of the proposed conditional use will adversely affect that character.

Staff and the Applicant agreed on the boundaries of the surrounding area, which are the area within a radius of 2,000 feet of the center of the site (Exhibit 39, p. 4, shown on the next page).



Surrounding Area Exhibit 39, p. 3.

Neighborhood Boundary

Millgrove Gardens

Staff characterizes the area as containing a mix of residential and non-residential uses bisected by the property, all in the R-C (Rural Cluster) Zone. The area to the north includes Ednor Local Park, some large religious uses, and some smaller single-family detached homes; the southern portion of the surrounding area has a 22-acre concrete manufacturing plant adjacent, a small subdivision of 44 single-family detached homes, and the Winchester Estates, single-family detached houses on six to eleven-acre lots, to the east. Confronting the property across New Hampshire Avenue is the New Hampshire Greens golf course and subdivision. Exhibit 39, p. 4.
C. Proposed Use

The Applicant proposes to develop a "green burial" cemetery on the subject property, which may also be used for community-serving uses such as hiking and nature trails. Mr. Haroon Mokhtarzada, a principle of Reflections, testified that their mission is to restore mankind's relationship with the cycle of life, death, and renewal so that people will live more conscientious and purposeful lives. T. 32.

Reflections embarked on this project for that reason and two others. Green burial is essentially a return to burials that occurred before we moved to the modern system of caskets and grave liners. Green lowers the burial lowers cost of burials. The average cost of a burial in Maryland is \$10,500.00. This can be very burdensome on many families in the community. The third reason for the project is to promote environmental stewardship. Green burial practices are much more environmentally friendly than the traditional burials because bodies are not embalmed and toxins from casket materials are not present. T. 32-33.

Mr. Jack Goodnoe, an expert in cemetery design, described the differences between traditional burials and "green burials". The major difference is that traditional graves have a vault lined in concrete. The casket itself is made of artificial materials, including polyethylene materials that make up the liner. Green gravesites use either a bamboo or cardboard box, a shroud, or a casket made of raw wood with no glues. This is placed $3\frac{1}{2}$ - 4 feet below the surface because decomposition happens more quickly with exposure to air in the soil rather than at a depth of 5 feet, where the soil is more anaerobic. T. 79. The traditional burial vault is left permanently, the green burial gravesite will become soil itself within a very short time. T. 79. Mr. Goodnoe

submitted a graphic designed to show the differences between green and traditional burials

(Exhibit 47):

A GREENER WAY TO GO

From preparing bodies to burying them in natural settings, the green burial movement is attempting to make death more environmentally friendly and, in some ways, closer to the way it was in the past. A comparison:



On the surface, traditional cemeteries have manicured landscaping that is treated with herbicides, pesticides, and fertilizers, all of which become more leachate than would ever be emitted by a green burial "casket". The surface of traditional cemeteries also has upright tombstones. Green burial cemeteries have natural landscape, such as a meadow or a forest floor, which needs maintenance primarily to prevent invasive species. Memorialization of the grave takes many forms. It can be a small metal disk in the ground that cannot be seen and may be mowed over, or a flat stone marker. At times, the memorial may be remote, such as one listed on a rock at a separate location. T. 80. Mr. Goodnoe submitted pictures of green burial grounds in different areas of the country. Characteristics from two of those are shown below (Exhibit 47):





Dr. Basil Eldadah, a principal of Reflections,² testified that the graves themselves are typically 4 feet by 10 feet in area, although the grave itself would be closer to about 3' x 7' in area and 4 feet in depth. Each grave, however, would be able to claim the 4' x 10' surface area, with at most 600 graves per acre. T. 43; Exhibit 39, p. 10. These dimensions are a "happy medium"

² Dr. Eldadah testified that he has a medical degree and some specialty training in internal medicine and clinical pharmacology. He also has a Ph.D in neuroscience and currently works for a large biomedical research funding agency. T. 41.

between shallow graves that may invite animals or emit smells, but also not too deep as to slow decomposition of the body.

Dr. Eldadah testified that the Green Burial Council, which is a nonprofit organization that promotes green burial options throughout the U.S., provides certification and guidance for green burial cemeteries. Six hundred graves per acre is their recommendation for maximum grave density because it allows for lighter use of the land and is more consistent with environmental stewardship and that is what they propose. T. 43.

Green burials use only natural, readily biodegradable materials for shrouding or containing the body. Depending on the family's wishes, a body may be contained in a shroud of biodegradable materials, such as cotton or linen, or a simple plywood box. Some caskets are made of willow or bamboo. T. 44.

These types of burials do not use concrete liners or vaults because they retard decomposition of the body and are not environmentally friendly. According to Dr. Eldadah, the production of concrete used in grave liners and vaults releases a tremendous amount of carbon into the atmosphere. Conventional caskets are made of metal or hardwoods and are not environmentally friendly either, as they have varnishes and adhesives that are toxic. T. 45. The lack of embalming is also environmentally beneficial. Embalming uses formaldehyde, which is toxic to funeral workers and morticians who hand those chemicals. There is a higher rate of certain neurologic conditions in people who routinely conduct embalming. T. 45.

1. Conditional Use Site Plan

Mr. Goodnoe described the site design. Currently, the subject property is 100% wooded, primarily with tulip poplars, which are soft wood. These are usually transitional species until

the area becomes covered with hardwoods. The cemetery will speed this transition.

According to him, development is guided by the unique natural characteristics of the site. The topography of the subject property is diverse with a distinct hilltop near the middle and an articulated stream to the northeast. They have designed development outside all environmentally protected areas, such as drainage areas and streams, which will be left in their natural condition. T. 81-82. These protected areas provide the important function of having permanent open space, trail systems, and overlooks so that the cemetery functions more like a park. T. 81-82. They have identified areas on the edges of promontories that will have good views and can be used for meditation, rest points, etc. T. 84. Graphics of the site topography, drainage and conceptual burial areas are shown below and on the next page (Exhibit 47):



CU 21-06, Reflections Park Inc. Hearing Examiner's Report and Decision



The drive aisle incorporates the natural topography. The curved design is not just aesthetically pleasing, but a way of reducing the grading required. Full maturity of the site, including vegetation, is very long term—it is a 200-year plan that will be developed in multiple phases. T. 85. After burial sites are developed, they will be reforested with tree species that include native hardwoods. A graphic depicting the phasing of clearing and reforestation is shown on the following page (Exhibit 47). The conditional use site plan (shown on page 17) delineates the outer boundaries of the burial areas. Exhibit 38(b).



Clearing and Reforestation Concept Exhibit 47

Dr. Eldadah described the phasing of buildings. Their intention is to create a natural looking place that looks more like a park than a cemetery. As you enter the property, they propose a line of trees that maintains the rural character of the area. Beyond that will be an entrance gate designed to complement the natural setting. T. 59. The first buildings constructed would be a pagoda (open-air), that can be used for gatherings, a small administrative office, and a storage/maintenance shed. These will be immediately behind the entrance gate. An elevation of the pagoda from the Staff Report (Exhibit 39, p. 6) is shown on page 18.

Approximately 900 hundred feet beyond these buildings, the drive proceeds through the center of the property to a cul-de-sac where there will be burial areas on both sides of the road. He believes that this will be the only burial area for the first five years of operation. T. 60

The second phase will proceed from the area surrounding the cul-de-sac and







continue along the drive to the northeast, where they propose to construct a larger community building with associated parking and a larger maintenance shed. T. 61. An elevation of the community building is shown on the next page (Exhibit 39, p. 8). The Staff Report summarizes the area of the buildings proposed for the property (Exhibit 39, p. 8, also on the next page).



Figure 6: Community Building Section and Elevation

Table 1: Proposed Buildings

Buildings	Phase	Size	Height
Small Maintenance Building -soutthwest	Phase I	20' x 26' (520 SF)	24 ft
Small Office Building-southwestt	Phase I	26' x 24' (624 SF)	24 ft <u>+</u>
Entry Pavilion/Gazibo- southwest	Phase I	21' x 21' (441 SF)	24 ft <u>+</u>
Community Building-northwest	Phase II	6,000 SF <u>+</u>	50 ft <u><</u>
Maintenance building northwest	Phase II	32' X 32' (1024 SF)	24 ft <u>+</u>

Exhibit 39,p. 8

Staff describes the use of the community building (from the Applicant's Statement of

Justification) as (Exhibit 39, p. 8):

...the community building is intended to serve a variety of functions and will include (a) an assembly hall, (b) meeting rooms (c) office space (for management), (d) bathrooms, (e) warming kitchen, (f) storage space, (g) outdoor terrace, (h) outdoor play structure for youth, (i) loading dock and (j) dumpster/enclosed waste storage area.

The community building will be used for funeral services ranging up to 150-200 people, educational programs and workshops about its mission, seminars on nature and the environment, and use by community groups. *Id.*

2. Operations

a. Hours of Operation

Dr. Eldadah described the daily operations. Hours of operation will typically be daily between 8:30 a.m. and sunset. The grounds will be open to the public during these times much like a park. They expect burials to occur outside of normal peak hour traffic times—between 9:30 a.m. and 3:30 p.m. T. 63.

b. Staffing

According to Dr. Eldadah, Reflections anticipates that initial staffing will be low—one employee and an executive director on site. As build-out continues, they will have up to seven employees, including both administrative and landscaping employees. T. 64; Exhibit 38, p. 10.

c. Proposed Activities.

The primary activities on the site will be related to burials, including family visits before the burial, which would be during normal operating hours. T. 65-66. They estimate that they will have one burial a week starting out and then grow to three to four burials a week between peak traffic periods during the week and on weekends. The length of the internal drive permits cars attending funerals to stack on-site without impacting New Hampshire Avenue. T. 66.

In addition to those activities, they plan to have activities that take advantage of the natural resources on the property. These would include small classes (subject to the same traffic conditions of approval), meetings of environmental groups interested in green burials and the

3. Parking

a. Parking: Number of Spaces

At full build-out, the Applicant proposes to provide 79 parking spaces. Twenty of these will be provided in the first phase near the entrance office and along the drive. Sixteen parking spaces are located at the visitor's center, the office, and the maintenance building near the property entrance. Ten parking spaces are provided at two locations along the long driveway, and 53 spaces are provided near the 6,000 square-foot multi-purpose building. Exhibit 39, p. 18. *b. Parking Waiver:*

Section 59.6.5.2.B of the Zoning Ordinance requires parking spaces to be located within a ¼ mile of the "establishment to be served". Staff concluded that the Applicant requires a waiver from the requirement of Section 6.2.5.B, which requires parking spaces to be located within ¼ mile of "an entrance to the establishment." Staff considered the entrance of the "establishment to be served" to be the smaller buildings closest to New Hampshire Avenue. Therefore, according to Staff, the spaces at the large community building would need a waiver from this requirement. *Id.*, p. 19.

4. Landscaping and Lighting

a. Landscape Plan

Mr. David Post, the Applicant's expert in landscape architecture, testified that the landscape plan calls for a mixture of shade and evergreen trees that are mostly native. These buffer the existing church to the north and the houses on the south. Along New Hampshire Avenue, they have added landscaping to buffer the view from the roadway. Right now, the property is 100% wooded. The trees replanted will be native to this area and may include Tulip Poplars but will also include other species more typical of a hardwood forest. T. 167. Because there is little reforestation/afforestation required due to the lower levels of disturbance, the Applicant is volunteering to plant to the native trees described. T. 167.

b. Lighting and Signage

Mr. Crum testified that the footcandles at the property line will not exceed 0.1 at any location. Lights are located on the drive aisle leading to the community building. They do not propose to light the two loop roads that serve only the cemetery because that area is intended to operate between dawn and dusk. Because the community building may be used after dark, they have providing enough lighting to negotiate the driveway safely. All lights use full cut-off lenses to reduce glare. T. 157. Staff advises that Reflections proposes 34 pole-mounted lights throughout the developed area (buildings and driveway) and none in the burial areas. Exhibit 39, p. 22.

Reflections also proposes a 40-square foot sign at the cemetery entrance, illuminated by two ground-mounted accent lights, shown in the Staff Report (Exhibit 39, p. 24):



D. Environmental Issues

The Planning Board has approved a Preliminary Forest Conservation Plan (PFCP) for the proposed use, which will establish a forest conservation area and prohibit disturbance of a small (0.3 acres) wetland on the property.) Exhibit 84. Staff reports that there are no impacts to streams, wetlands, floodplains or associated buffers and that development complies with the January 2000 Planning Board's *Environmental Guidelines--Guidelines for Environmental Management of Development in Montgomery County* (Environmental Guidelines). Exhibit 39, p. 25.

The major issue in this case is whether necroleachate from decomposing bodies will adversely affect the groundwater in the area and the Rocky Gorge Reservoir, a drinking water supply for the Maryland Metropolitan D.C. area. This issue is discussed in Part III.B of this Report

E. Community Response

Mr. James Putman appeared in opposition to the cemetery, citing the concerns referenced above. In particular, he is concerned that the leachate could contain certain chemotherapy agents that can adversely impact DNA if even in tiny amounts if they are present in drinking water. He also objecting to approving this by conditional use, which does not require involvement of the Montgomery County Department of the Environment.³ His concerns, the Applicant's response, and the recommendation of MCDEP are explained in detail below.

After the record closed in the public hearing, the Hearing Examiner received many communications asking that she re-open the record. On September 29, 2021, she issued an order

³³ While the conditional use process does not require the involvement of the MCDEP, the Hearing Examiner referred the necroleachate issue to them for analysis and recommendation. Exhibit 66.

denying these requests, finding that notice was adequate. She received several additional requests from individuals, alleging that they hadn't received notice. By Order of even date herewith, the Hearing Examiner re-opened the record to include these requests, the Planning Board's final Resolution approving the PFCP (Exhibit 84), and her Order denying these requests the requests to reopen the public hearing. Exhibits 76, 77, 79, 82, 84. These communications after the hearing expressed concern about groundwater contamination, the impact on wells in the area, and a possible decrease in property values if the conditional use is granted. *Id.* The record closed on October 11, 2021.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A conditional use is a zoning device that authorizes certain uses provided that pre-set legislative standards are met. Pre-set legislative standards are both specific to a use (in Article 59.3 of the Zoning Ordinance) and general (*i.e.*, applicable to all conditional uses, in Division 59.7.3 of the Zoning Ordinance). The specific standards applied in this case are those for a cemetery, contained in §59.3.5.4.A of the Zoning Ordinance.

Weighing all the testimony and evidence of record under a "preponderance of the evidence" standard (*Zoning Ordinance*, §7.1.1.), the Hearing Examiner concludes that the conditional use proposed in this application, with the conditions imposed in Part IV of this Report and Decision, satisfies all the specific and general requirements for the use. She also recommends granting the variances and parking waiver requested by the Applicant.

A. Necessary Findings (Section 59.7.3.1.E)

The general findings necessary to approve all conditional uses are found in Section 59.7.3.1.E. of the Zoning Ordinance. Standards pertinent to this approval, and the Hearing

Examiner's findings for each standard, are set forth below.⁴ The general standards for approval

fall into four main categories:

- 1. Substantial Conformance with the Master Plan;
- 2. Adequate Public Services and Facilities;
- 3. No Undue Harm from Non-Inherent Adverse Effects; and
- 4. Compatibility with the Neighborhood

E. Necessary Findings

1. To approve a conditional use application, the Hearing Examiner must find that the proposed development:

a. satisfies any applicable previous approval on the subject site or, if not, that the previous approval must be amended;

<u>Conclusion</u>: Staff advises that there no prior approvals applicable to this property. This criterion

is inapplicable.

b. satisfies the requirements of the zone, use standards under Article 59.3, and to the extent the Hearing Examiner finds necessary to ensure compatibility, meets applicable general requirements under Article 59.6;

<u>Conclusion</u>: This subsection reviews the development standards of the R-C Zone contained in

Article 59.4 (with approval of the variances requested); the specific use standards for a cemetery

contained in Article 59.3; and the development standards for all uses contained in Article 59.6.

Each of these Articles is discussed below in separate sections of this Report and Decision (Parts

III.B, C, D, and E respectively). The Hearing Examiner find that the application meets these

standards as explained therein.

⁴ Although §59.7.3.1.E. contains six subsections (E.1. though E.6.), only subsections 59.7.3.1.E.1., E.2. and E.3. apply to this application. Section 59.7.3.1.E.1. contains seven subparts, a. through g.

1. Substantial Conformance with the Master Plan

c. substantially conforms with the recommendations of the applicable master plan;

The subject property is guided by the recommendations of the *1997 Cloverly Master Plan* (Cloverly Plan) and the *1993 Functional Master Plan for the Patuxent River Watershed* (Functional Plan). Exhibit 39, pp. 10-14.

The "fundamental" goals of the Cloverly Plan were to support the existing character of its communities and to protect the Patuxent Watershed. *Cloverly Plan*, p. 13. To that end, it recommended retaining the low-density zoning already in place and recommended guidelines to mitigate non-commercial aspects of conditional uses (formerly special exceptions). *Cloverly Plan*, p. xii. According to Staff, the purpose of these guidelines is to steer non-residential uses to commercial areas and to preserve the suburban/rural character of the areas outside the commercial nodes. *Id.* Divided north/south by New Hampshire Avenue, the plan outlined two suburban "communities" in the southern portion of the Plan area, two "residential wedges" north of those, and an "agricultural wedge" covering the northern area of the Plan. The subject property is located within the agricultural wedge. The Plan's "primary purpose" for the agricultural wedge is to preserve open space. *Id.*, p. 9. The areas described are shown in Staff Report (Exhibit 39, p. 11, on the next page).

To preserve the existing rural character of the area, the Plan also recommends a 100-foot setback from New Hampshire Avenue to maintain the existing rural character of the area. *Cloverly Plan*, p. 32.

Staff summarized the goals for the Agricultural Wedge as follows (Exhibit 39, p. 11):



The Master Plan maintained a low-density zoning for the area to help protect the watersheds as well as to reinforce the character of the Agricultural Wedge Community. It also expressed concern that special exceptions, institutions, places of worship, and other large developments could adversely affect the rural character and water quality...Most of the property is within the Patuxent PMA, which was limited by the *1993 Functional Master Plan for the Patuxent River Watershed* to 10 percent imperviousness.

The Functional Master Plan designates the property within the Patuxent Primary

Management Area (PPMA), which is subject to the Planning Board's Environmental Guidelines.

The PPMA on the property includes land within 660 feet of streams, divided into the stream valley

buffer and a "transition" area. Because the larger buildings are within the PPMA transition area,

12.8% of that area will be impervious, although impervious area amounts to 9.77% if averaged over the entire property. *Id.*, p. 13. Exhibit 38(z).

Staff concluded that the application conforms to both the Cloverly and Functional Master Plans and, in fact, preserves the existing rural character better than residential development, which would have more impervious area. The smaller buildings to the east are setback "about" 100 feet from New Hampshire Avenue, conforming to the Cloverly Plan's recommendations to preserve the existing character along the road frontage. Exhibit 39, p. 12.

Staff also concluded that the proposed use met the goals of the Functional and Cloverly Plans because the smaller buildings are located closest to the road, in keeping with the residential neighborhood. The larger buildings were set further back on the much wider portion of the site. Siting the larger buildings outside the PMA on the narrow portion of the property would force them closer to the road and would be less in keeping with the existing rural/residential character of the area. For this reason, Staff recommended that impervious caps be calculated based on the entire property rather than simply the PPMA, subject to the condition that the Applicant limit imperviousness to 10% of the property's area.

<u>Conclusion</u>: The Hearing Examiner agrees with Staff that the use conforms to both the Cloverly and Functional Master Plans. By locating the buildings with the most mass well away from New Hampshire Avenue, the conditional use preserves the residential/rural character of the area. In addition, the conditional use plan provides far more open space, far less clearing and far less impervious area than required for standard residential development in the R-C Zone. This better preserves the existing character of the Agricultural Wedge and the environmental goals of the Functional Master Plan. No party discussed the impact of necroleachate in the context of Master Plan conformance, as both master plans address watershed protection primarily using tools such

as establishing low-density zoning, preserving open space, minimizing impervious area and other

environmental restrictions. The Hearing Examiner addresses this necroleachate issue in terms of

compatibility with the surrounding area, in Part III.A.4 of this Report.

2. Adequate Public Services and Facilities

f. will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities. If an approved adequate public facilities test is currently valid and the impact of the conditional use is equal to or less than what was approved, a new adequate public facilities test is not required. If an adequate public facilities test is required and:

i. if a preliminary subdivision plan is not filed concurrently or required subsequently, the Hearing Examiner must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; or

ii. if a preliminary subdivision plan is filed concurrently or required subsequently, the Planning Board must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; and

This property will need approval of a preliminary plan and review of the adequacy of public facilities will occur then. Exhibit 39, p. 8. Nevertheless, Mr. Shariar Etemadi, the Applicant's expert traffic engineer, testified that the use is not subject to testing under the Local Area Transportation Review (LATR) Guidelines because, as conditioned, it will generate fewer than 50 person trips. Staff proposes a condition prohibiting activities, such as large funerals,

from occurring during the peak periods of 6:30 a.m. to 9:30 a.m. and 4:00 p.m. to 7:00 p.m. Exhibit 39, p. 2.

Staff found that other public utilities were adequate. The property is will be served by public water and a septic system. *Id.,* p. 30. Staff advises police and fire facilities are adequate to serve the use. *Id.*

<u>Conclusion</u>: Based on this uncontroverted evidence, the Hearing Examiner finds that the Applicant has preliminarily demonstrated that public facilities will be adequate and available to serve the use, subject to the conditions in Part IV of this Report. The final determination will be made during review of the preliminary plan.

3. No Undue Harm from Non-Inherent Adverse Effects

g. will not cause undue harm to the neighborhood as a result of a non-inherent adverse effect alone or the combination of an inherent and a non-inherent adverse effect in any of the following categories;

i. the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood;
ii. traffic, noise, odors, dust, illumination, or a lack of parking; or
iii. the health, safety, or welfare of neighboring residents, visitors, or employees.

Staff identified the following inherent effects of a cemetery: (1) grave sites, (2) equipment storage buildings, (3) office and meeting rooms, (4) traffic generated by funeral attendees and employees, (5) potential for queuing vehicles on the site, (6) a gathering hall/prayer chapel, (7) signage, and (8) outdoor lighting. Staff identified one non-inherent physical characteristic of the proposed use—the flagged shaped lot, which necessitates two variances and a parking waiver. While non-inherent, Staff concluded that this did not justify denial of the application. Regardless of the shape of the lot, Staff found that the operations and impact of the use on the surrounding area were inherent, and the use was compatible with the surrounding area. Exhibit 39, p. 31.

<u>Conclusion</u>: This standard requires the Hearing Examiner to identify inherent and non-inherent adverse effects of the proposed use on nearby properties and the surrounding area. Inherent adverse effects are "adverse effects created by physical or operational characteristics of a conditional use necessarily associated with a particular use, regardless of its physical size or scale of operations." *Zoning Ordinance,* §1.4.2. Inherent adverse effects, alone, are not enough to deny a conditional use. Non-inherent adverse effects are "adverse effects created by physical or operational characteristics of a conditional use not necessarily associated with the particular use or created by an unusual characteristic of the site." *Id.* A conditional use may be denied if it will have non-inherent adverse effects, alone or in combination with inherent effects, that cause "undue" harm to the surrounding neighborhood.

<u>Conclusion</u>: The Hearing Examiner agrees with Staff that the unusual configuration of the lot is non-inherent. However, the shape does not drive any non-inherent adverse impacts of the use and in fact, forces the Applicant to locate the major buildings farther from New Hampshire Avenue, in keeping with the Cloverly Plan. Nor does the shape of the lot determine the opposition's primary concern in this case, which is the possible impact of the cemetery on the Rocky Gorge Reservoir and groundwater in the area.

4. Compatibility

Section 59.7.3.1.E.1 includes the standards of approval below:

d. is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the [master] plan.

e. will not, when evaluated in conjunction with existing and approved conditional uses in any neighboring Residential Detached zone, increase the number, intensity, or scope of conditional uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area; a conditional use application that substantially conforms with the recommendations of a master plan does not alter the nature of an area;

a. In General

Staff concluded that the conditional use met these standards (Exhibit 39, p. 28):

With the recommended conditions, the proposed use will be in harmony with the general character of the neighborhood. The proposed use will be operated in such a manner that it will not interfere with the orderly use, development and improvement of surrounding properties. The Conditional Use Plan provides for sufficient off-street parking with 79 spaces, 43 more than the minimum required, spread out at various locations on the property substantially minimizing the possibility of spill over traffic and parking.

The proposed Conditional Use is not likely to result in any notable negative impact on the residential neighborhoods, in terms of increased traffic and noise.

b. Impact of Necroleachate

Because the impact of necroleachate emitted from cadavers is not covered by the

Environmental Guidelines, Staff did not comment on this. Mr. James Putman, a member of the

Patuxent River Watershed Protective Association, did raise this issue at the public hearing.

Mr. Putman opposes the application due to the possibility that necroleachate will seep

into the groundwater or flow to the Rocky Gorge Reservoir, a drinking water supply for 800,000

people in Montgomery County and a back-up drinking supply for the Maryland/D.C. metropolitan area. T. 11. According to an article submitted by Mr. Putman, "necroleachate" is liquid that emanates from the body after death. T. 46. Mr. Putman described "necroleachate" as a substance slightly thicker than water that leaches from bodies that have been placed directly in the ground. T. 17-18.

Mr. Putman expressed concern that nearby properties that have large percentages of impervious area will cause large stormwater flows onto this property, saturate the ground, and drag pollutants from the necroleachate down to the on-site streams that feed the reservoir. T. 13.

Mr. Putman is also concerned that necroleachate could infiltrate the reservoir because the soil substrate in this area is fractured shale. He testified that the body sheds about 20-30 liters of "slurry" after death. Some will be treated in the ground, but some may reach the reservoir after hitting the shale substrate. T. 14.

Mr. Putman is particularly concerned about some of the newer chemotherapy medicines that are genotoxic. These work by interfering with cell DNA and cell division in both cancer and healthy cells. Some of these medicines do not biodegrade. According to Mr. Putman, a *European Journal of Pharmocology* article entitled, "Cytostatic Pharmaceuticals as Water Contaminants" (European Journal Article) reports that these drugs cause DNA mutations even at very low levels. The EU has classified them as hazardous waste without even having considered them in the context of a cemetery in a watershed that supplies drinking water. T. 14.

He quoted from a report by Eco, R.I., an ecology newsletter, which says (T. 14):

Cytotoxic chemotherapy drugs exit cancer patients as active and dangerous chemicals. Septic systems and wastewater treatment plans cannot remove 90

percent of them. So these dangerous chemicals migrate into lakes, rivers, and ponds and eventually into the drinking water supplies.

His concern about necroleachates also stems from a lack of federal regulation. According to him, the FDA and EPA each claim that the other is responsible for addressing the hazardous waste aspects of these drugs and neither has addressed the issue. Nor do the Montgomery County Planning Board's *Environmental Guidelines*, address the issue. In his opinion, a lot more study is needed before taking a risk like placing this project within a mile from the Patuxent River. T. 14. Mr. Putman expressed some skepticism of WSSC's opinions about groundwater contamination. In his opinion, while a "phenomenal" organization, they are also political and will never say publicly that they cannot treat whatever goes into the reservoir. T. 137.

Mr. Putman's concerns extend to a possible impact on groundwater and wells in the area. T. 15. He believes the R-C Zone was designed and established for residential use and conditional uses keep "creeping in", infringing on environmental standards. T. 15.

Dr. Eldadah disagrees with Mr. Putman's concerns. He testified that decomposing bodies do not generate the volume of leachate posited by Mr. Putman and the amount of soil underneath each grave is more than sufficient to absorb and treat the leachate before reaching the water table. According to him, soil is an excellent medium for decomposition of all organic compounds and that is a basis for green burials. It is the most natural and efficient way to return the body to earth. T. 49. Soil acts as a natural filter and promotes the degradation of any compound, including inorganic compounds. T. 56. Organic compounds tend to be the most readily biodegradable. Because the graves will be at least 6 feet above the seasonal high-water table, every grave has about 240 cubic feet of soil to filter the leachate. As a comparison, the amount of necroleachate that will filter into the soil is equivalent to pouring about two-thirds of a cup of liquid over a medium sized potted plan. T. 50.

In addition, Dr. Eldadah testified, the necroleachate disperses over time. It takes approximately 4-5 months for bodies to decompose naturally, so the filtration does not happen all at once. If decomposition takes about four months, that is equivalent to about a quarter of a teaspoon per day per cubic foot of soil—a very tiny amount is being filtered each day. They have located the gravesites a significant distance away from the water sources that run through the back of the property. T. 50-51.

Dr. Eldadah disputed the relevance of the European Journal Article submitted by Mr. Putman. According to him, the article focused on effluents from hospital patients who are undergoing active cancer treatment in hospitals, septic systems and other waste disposal systems that flow to a water supply. The article does not mention burial grounds, either traditional or green, as a source of these drugs. T. 116.

Dr. Eldadah questions Mr. Putman's assumption that cytotoxic drugs remain in the body after death. The Dana Farber Cancer Center, which is an internationally known cancer center in Boston, suggest that chemotherapeutic agents remain in the body for up to 2 to 3 days. Typically, a cancer patient will survive much longer than their last cancer treatment and will not be under active chemotherapy. Instead, they will likely be in palliative care or hospice. T. 116. Therefore, he believes that the chemotherapy drugs will have left the body before it is buried. The article stresses that the danger from these agents is really from our wastewater systems. T. 116.

In supplemental comments, Dr. Eldadah asserts that the amount of any cytotoxic agents that might possibly enter the reservoir would be in such small quantities that they would not pose a risk to the drinking water. To estimate the potential for harm to the drinking water supply, Dr. Eldadah calculated the concentration of one chemotherapy drug for which safety standards have been set. His calculations concluded that concentrations in the Rocky Gorge reservoir would be less than 0.01 grams per day. Safety standards in California, where the drug is regulated, identifies less than 1 gram of the drug as a "No Significant Risk" level.

Mr. Goodnoe testified that he has dealt with concerns about contamination of the water table many times. He has designed 120 green burial cemeteries and there has been no demonstration that any cemetery caused ground water and well contamination. T. 91-92. He cited to several studies that found no impact from various cemeteries.

Mr. Gene von Gunten qualified as an expert in environmental health specializing in septic systems. He worked for Frederick and Montgomery Counties as an environmental health specialist for 38 years. T. 120. This included evaluation, permitting, and managing water and septic systems, evaluated sites for soil testing, plan review, permitting, and inspections. He also works with homeowners whose septic systems have failed. T. 120. At the time of his retirement, he was manager of the Well and Septic section at the Montgomery County Department of Permitting Services. T. 121.

Mr. von Gunten described the soil testing performed on the property. This included numerous excavations with a backhoe to about 12 feet in depth. After examining the soils, they found no sign of any shallow groundwater that would have been of concern for a gravesite area. T. 125. This was followed up by additional testing by Montgomery County Department of Permitting Services (MCDPS). MCDPS asked them to perform the same tests used for septic systems at about 12 additional sites. MCDPS also found no signs of any shallow ground water that would be of concern. DPS informed the Planning Department that the grave site placement was acceptable. T. 127.

In Mr. von Gunten's opinion, there is very little concern here about bacterial and viral components of the remains. T. 130. The purpose of the limited use standard requiring test pits was to ensure that there is adequate soil be buffer beneath the graves, so the leachate created by decomposition of human remains is adequately filtered and does not pose a threat to the drinking water aquifer. T. 124. He opined that the process required for a green burial reduces the threat to the groundwater because it does not use toxins introduced by the vault, the casket, and embalming. In supplemental comments, he stated that total pollutant loads from green cemeteries are well under those associated with traditional cemeteries and residential development. Green cemeteries contribute 20 gallons of liquid; traditional cemeteries generate 17,000 gallons of liquid, and houses on two-acre lots would generate 45,000 gallons of liquid from septic systems. Exhibit 63. Because there will still be some leachate from a green cemetery, the buffer remains a "useful tool." T. 124.

Mr. von Gunten opined that the literature clearly supports that soil is an excellent media for attenuation and reduction of those components, especially fine-grained soils that are unsaturated. Those are the type of soils on the subject property. T. 128. While the substrate ultimately is shale, the shale on this site is weathered to the point where the soil has a loamy or clay-loam consistency which makes it an excellent filtration for the bacteria and the viruses. On this property, the soil is more than 12 feet thick. That provides the excellent filtration they are seeking. T. 129. In his opinion, the shale layer on this site is approximately 18-25 feet below the ground. T. 129-130. While all liquid will eventually end up in the shale substrate, the bacteria and viruses are rendered harmless in a few inches of soil, and the Applicant is providing four to six feet. Due to these conditions, in his opinion, the "vast majority" of the effluent will enter the aquifer and very little or none will enter the "body flow" into the Patuxent River and then to the reservoir. T. 134.

The Hearing Examiner referred the matter to MCDEP, who in turn consulted with WSSC, which has jurisdiction over the reservoir. Upon review of literature and comments submitted by both sides, as well as additional data, MCDEP found that "the cemetery poses little risk to the reservoir." Exhibit 66. WSSC echoed this finding. Exhibit 66(a). Noting concluded that a green burial cemetery may provide more protection of the drinking supply than traditional cemeteries, WSSC stated: "Overall, we think this proposed project poses little risk to Patuxent reservoir quality." *Id.* Stating that the reservoir already absorbed contaminates from animal feces, WSSC advised that chemical treatments to groundwater before distribution are "highly effective", and that "substantial dilution" of these contaminants would occur due to the distance between the streams on the property and the entry point to the reservoir. *Id.* WSSC further reports that there are already approximately 50 cemeteries in the watershed, without reported impact. *Id.*

WSSC's comments also included some recommendations: (1) that burial sites be located outside areas subject to flooding, (2) that the site be cleared progressively in smaller areas or phases and replanted, (3) that erosion and sediment control measures be implement during all clearing, and (4) that small streams on the property should be protected with a riparian buffer. Exhibit 66(a).

MCDEP confirmed (based on the test pits dug) that soils consist of unsaturated shale weathered up to the consistency of a loam or clay-loam consistency, which makes it an 'appropriate' media for the attenuation and reduction of bacteria and viruses that would be present in human remains." Exhibit 66. It also concluded that the amount of soil beneath the grave sites were sufficient to treat the amount of necroleachate from each body. *Id.* Among the materials MCDEP considered was a "White Paper" authored by an employee of the Baltimore County Bureau of Environmental Health and Sustainability, that used data from septic systems to apparently to recommend new regulations for burial grounds. While acknowledging that the amount of effluent from cadavers is well under the amount of effluent from a septic system, MCDEP found the comparison to septic systems "fair". Based on the test pits dug, MCDEP concluded the soils present could support a gravesite. *Id.*

As to cytotoxic drugs, MCDEP advises that its research showed that that only 2% of cadavers have any amount of these drugs in the body at the time of burial. Exhibit 66.

c. Overconcentration of Conditional Uses

Staff concluded that the proposed use would not result in an overconcentration of conditional uses within the surrounding area. It advised that there are five special exceptions within the surrounding area, three of which are accessory apartments. The other two are a landscape contractor and riding academy, given the residential nature of these special exceptions, the proposed use would not represent an over concentration of uses in the surrounding area. Exhibit 39, p. 28.

d. Conclusion

<u>Conclusion</u>: No party argues that the cemetery will be incompatible with the surrounding area, except for the possible impact of necroleachate. The record supports Staff's findings that there are sufficient parking spaces and stacking to handle funerals and community activities on-site.

Testimony indicates that, when not in active use for these purposes, the cemetery will be maintained as a park-like setting where members of the public can take advantage of the natural pathways throughout. Lighting meets all requirements of the Zoning Ordinance.

Upon review of the articles submitted by the parties, the agency recommendations, expert and non-expert testimony of the parties, the Hearing Examiner finds that the cemetery does not pose a significant risk to the drinking supply in the Rocky Gorge reservoir. Mr. von Gunten testified that the large majority of necroleachate will not enter base flow to the reservoir. Instead, the leachate will be adequately treated by the soil before entering the ground water. WSSC, which has jurisdiction over the reservoir, advises that the contaminants will not adversely impact drinking water because of the significant dilution that would occur after entry into the flow, the distance from the stream on the property to the point of entry at the reservoir, and the effectiveness of chemicals used to treat the water before distribution to customers. WSSC noted that the reservoir already absorbs contaminants from animal feces and cemeteries exist in the watershed. Both Mr. Von Gunten, the WSSC, and MCDEP noted that cemeteries already exist in the watershed without known impact, and Mr. Goodnoe, who has designed 120 cemeteries across the U.S., testified he has had no reports of groundwater contamination.

Nor does the record support a finding that cytotoxic drugs will enter the reservoir in any amount sufficient to harm the drinking water supply. Mr. Putman raises the possibility that cytostatic chemotherapy agents will contaminate the reservoir supply and, his argument continues, potentially have the impact of altering DNA of those whose drinking water comes from the reservoir. This possibility is simply not supported by the material in the record, including articles that he submitted. Dr. Eldadah correctly points out that the article from the European Journal of Pharmacology addresses sources of this drug that (1) generate far greater volumes of cytostatic agents, (2) are discharged generally from patients actively receiving the medication, and (3) focuses on the effect on aquatic life rather than the drinking water.

Mr. Putman dismisses this as a sincerely held "belief" that does not constitute evidence. However, the article from the European Journal of Pharmacology, submitted by Mr. Putman, is consistent with Dr. Eldadah's, MCDEP's and WSSC's analyses:

In the case of lifetime consumption of tap water which contains ultra-low concentrations of cytostatic drugs, it seems that the risk for human health is negligible (citations omitted). Their trace levels are not sufficient to induce acute magnitude lower than those known to cause toxicological and pharmaceutical effects (citations omitted), *e.g.*, a normal chemotherapeutic dose administered for bleomycin is equal to 20-30 mg/m², while its concentration found in potable water samples was 1.3×10^{-5} mg.l (citations omitted).

The only evidence in this record is that no more than trace levels might possibly enter the reservoir. Mr. Eldadah submitted calculations of the amounts of these agents that may enter the reservoir, well under the safety standard for a regulated chemotherapy drug. MCDEP advises that only two percent of cadavers contain any amount of cytotoxic drugs, and Mr. von Gunten testified that the vast majority of the leachate will not water flow to the reservoir.

Nor does this record support Mr. Putman's concern that necroleachate will adversely affect the groundwater. Mr. Von Gunten, an expert environmental health specialist, who oversaw the well and septic program in Montgomery County, testified that as little as a few inches of appropriate soils will treat bacteria and viruses contained in the necroleachate. Both Mr. von Gunten and MCDEP found that the test pits dug confirm that the sandy, loamy soil underneath are a good medium for treatment. While the effluent will reach the shale substrate, it will be treated by the soil before entering the ground water. T. 134.

The "White Paper" submitted by both Dr. Moore and the Applicant also supports conclusion as well. It cites to a United Kingdom Environment Agency study indicating that appropriate soils and the "unsaturated zone" are the "most important line of defense" again groundwater contamination. Exhibit 65.

Significantly, a review of the literature submitted demonstrates that the burial sites proposed here meet many of the recommended depths, soil coverage, soil types, and site conditions recommended in the various articles, although these very somewhat between jurisdictions. The grave sites meet all the recommended regulations proposed by the Baltimore County Department of Environmental Protection and Sustainability, except that no formal hydrogeologic study has prepared. However, this record includes expert testimony that there is more than adequate soil to treat the necroleachate before entering the groundwater, that the shale substrate is 18-25 feet below the surface, and that all graves will be an average of six feet above the seasonal high-water table.

The WSSC included several recommendations designed to ensure protection of water quality of stream on the site. The evidence demonstrates that the Applicants phased clearing and reforestation, depicted in Exhibit 47, already meets WSSC's recommendation that clearing and reforestation occur as gravesite areas are developed. As evidenced by the same exhibit, burial sites are located outside drainage areas that would be prone to flooding. The streams and wetlands will remain undisturbed in Forest Conservation Easements. To the extent necessary, the Hearing Examiner imposes a condition requiring the Applicant to provide an assessment of the existence of riparian buffers along on-site streams to the Planning Board during review of the preliminary plan and

final forest conservation plan. She also will require the Applicant to implement sediment and erosion controls during all clearing and grading on the property.

Mr. Putman takes issue with the comparison to septic systems, arguing that septic systems treat effluent with two anaerobic treatment compartments that then discharge onto a larger drain field. The Hearing Examiner doesn't find this persuasive as the record demonstrates septic systems generate far larger volumes of waste that the green burial sites proposed.

Finally, while Mr. Putman posits several weather-related and disasters such as earthquakes that could dislodge the cadavers, this is somewhat speculative. The denial of a conditional use must be based on a *probability* rather than a *possibility* of adverse impact. *Miller v. Kiwanis Club of Loch Raven, Inc.,* 29 Md. App. 285, 296 (1975)(Board could not deny special exception based on possibility that water table would be lowered with no evidence that the feared conditions presently exist or probably will exist.) These are generalized allegations related to climate change, but do not provide any evidence as to these will happen on this property and what the effects might be. All burials areas proposed are outside drainage areas and floodplains and there is no evidence that such catastrophes, including earthquakes, will occur on this property. Mr. Putman also raises concerns, again speculative, that stormwater from the concrete plant and other impervious surfaces will flow over the gravesites and dislodge the cadavers. Mr. von Gunten gave an expert opinion that the run-off from these properties would impact on the graves on this property because the they are down-grade from the subject property. T. 134. He also concluded that any run-off coming from neighboring property would be mitigated by the woodlands on the subject property. T. 135.

For the above reasons, the Hearing Examiner finds that necroleachate from decomposing bodies will not adversely affect the drinking water supply or the groundwater in the surrounding area.

Zoning Ordinance §59.7.3.1.E.1.e asks whether the proposed conditional use, in combination with other conditional uses in the surrounding area, will "tip the scales" and cause

the area to transition away from its existing residential character. The Hearing Examiner agrees with Staff that three of the conditional uses (accessory dwelling units) have minor impacts and are residential in nature. The riding academy is an agricultural use consistent with the Master Plan's designation of an "Agricultural Wedge (*See, Zoning Ordinance,* §59.3.1.6) and there is no evidence that the sole landscape contractor conditional use has altered the neighborhood. This standard has been met.

3. The fact that a proposed use satisfies all specific requirements to approve a conditional use does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require conditional use approval.

<u>Conclusion</u>: Mr. Putman urges the Hearing Examiner to deny the conditional use based on this provision. As noted, the Hearing Examiner finds that the far greater weight of probative evidence, including expert testimony and agency analysis, supports approval of the proposed cemetery.

B. Development Standards of the Zone (Article 59.4)

To approve a conditional use, the Hearing Examiner must find that the application meets the development standards of the R-C Zone, contained in Article 59.4 of the Zoning Ordinance. Staff concluded that the proposed use did meet the standards, except for the lot width at the front building and front lot lines, as summarized in the table below (Exhibit 39, p. 15, on the next page. The Applicant requests a variance from the minimum width required at the front building and front lot lines.

<u>Conclusion</u>: The Hearing Examiner recommends approval of the variances requested in Part III.E of this Report. With the two variances, and having no evidence to the contrary, the Hearing Examiner finds that conditional use meets the development standards of the R-C Zone.

4.3.4.B RC Zone	Required	Provided
Minimum Lot Area	5 ac	40.22 ac (Net)
Minimum Lot width:		
 at front lot line 	300 ft	214.0 ft (Variance Requested)*
 at front building line 	300 ft	<u>205.8</u> ft (Variance Requested) *
Maximum Building Coverage	10 percent or 175,198 sf	0.6 <u>+</u> percent or 11,263 square feet total
Minimum Building Setback		
Principal Building:		
• front	50 ft	50 ft
 Side Street Setback 	N/A	N/A
• side	20 ft	20 feet
• rear	35 ft	35 ft
Maximum Building Height	80 ft	<u><</u> 80 ft
Minimum Building Setback Accessory		
structure:		
• front	80 ft	80 ft
side street	N/A	N/A
• side	15ft	15 ft
• rear	15 ft	15 ft
Minimum Setback for parking and loading		50.9 ft
Maximum Building Height		
Principal Building	50 ft	50 ft
 Accessory Building 	50 ft	50 ft
Parking		
Min Vehicle Parking spaces 59-6.2.4	56	79
(See Table 4 below under: D Parking)		

Table 2:	Development Standards	
	bevelopment standards	

Exhibit 39, p. 15

C. Use Standards Specific to a Cemetery (Section 59.3.5.4.A.2.)

The specific use standards for approval of a cemetery are in Section 59.3.5.4.A.2 of the

Zoning Ordinance.

a. The proposed location must be compatible with adjacent land uses, and will not adversely affect the public health, safety, and welfare of the inhabitants of the area.

<u>Conclusion</u>: For the reasons discussed above, the Hearing Examiner has already found that the

use is compatible with adjacent uses and that necroleachate from graves will not adversely harm

the reservoir and the groundwater.
b. Screening under Division 6.5 is not required; however, all grave sites must be sufficiently set back from surrounding properties to establish a buffer.

Staff concluded that most of the burial areas will be screened by forest conservation easements, and remaining perimeter areas will have substantial landscaping and existing forest to further minimize views. Given the large size of the property and the distance from adjacent dwellings, Staff concluded that this standard has been met. Mr. Post testified that additional landscaping would buffer adjacent uses from the parking area associated with the community center.

<u>Conclusion</u>: A review of the conditional use site plan confirms Staff's analysis. There are significant forest conservation areas to the west and to some extent, north and south of the burial areas. The Hearing Examiner finds that this standard has been met for the reasons stated by Staff.

c. Where the subject property is located in an area not served by public water and sewer, water table tests must be conducted to assure that there is adequate filtration of drainage between burial depth and the level of highwater table.

Staff concluded that the soil testing performed by the Applicant, with the oversight of the Montgomery County Department of Permitting Services, met this requirement. <u>Conclusion</u>: The testing required and overseen by the Department of Permitting Services has been described, and additional test pits were done at their request. The Montgomery County Department of Environmental Protection reviewed the soil data and concurs that there is adequate space between the burial depth and the seasonal high-water table to treat the leachate and that exists soils have capacity to do so. The Hearing Examiner finds that this standard has been met. d. In the AR, R, and RC zones, a family burial site is allowed only as an accessory use on a residentially developed property and may only be approved on a lot or parcel that is appropriate to the circumstances and is a minimum of 25 acres in size. A family burial site must be set back a minimum of 100 feet from any abutting property in a Residential zone and a minimum of 50 feet from any existing or master-planned street. The use of any property for a family burial site must be recorded in the land records of Montgomery County. A family burial site is not restricted by Section <u>3.1.5</u>, Transferable Development Rights.

<u>Conclusion</u>: The Applicant does not propose a family burial site. This provision is inapplicable.

e. In the AR zone, a cemetery may be prohibited under Section <u>3.1.5</u>, Transferable Development Rights.

<u>Conclusion</u>: This property is not in the AR Zone; this standard is inapplicable.

D. General Development Standards (Article 59.6)

1. Parking Standards (Article 59.6.2.)

Division 59.6.2. of the Zoning Ordinance establishes parking standards for all uses and specific standards for conditional uses. Staff concluded that the parking standards have been met, although a waiver was required from the requirement that all spaces be ¼ mile from the "establishment to be served." *Zoning Ordinance*, §6.2.5.B.

Staff has interpreted the Zoning Ordinance to mean that all parking spaces be within ¼ mile from the smaller buildings near New Hampshire Avenue. While the Hearing Examiner questions whether the Ordinance instead intended to require parking spaces to be within ¼ mile of the different buildings on-site, she has no evidence in this case to decide. She agrees with Staff that the waiver is appropriate because it permits parking to be located away from New Hampshire Avenue and provides closer access to the buildings on-site. The Hearing Examiner does not set out all detailed parking requirements, which are numerous and listed in the Staff

Report. Having absolutely no evidence to contravene Staff's findings that the use complies with these requirements, the Hearing Examiner finds that these standards are met for the reasons stated in the Staff Report. Exhibit 39, pp. 18-22.

2. Landscaping and Screening

Division 6.4 and 6.5 of the Zoning Ordinance set minimum technical standards for site landscaping, which are intended to "preserve property values, preserve and strengthen the character of communities, and improve water and air quality." §59.6.4.1. Planning Staff concluded that the revised landscaping plan submitted (Exhibits 38(p), (q), (r), and (t) meet all requirements.

<u>Conclusion</u>: Staff considered all the requirements in its Staff Report and concluded that they have been met. Exhibit 39, pp. 22-24. Further, Section 3.5.4.A.2.b states that screening under Section 6.5 "is not required." Based on this uncontroverted evidence that all screening requirements have been met, and finding the screening proposed to be compatible with the surrounding area, the Hearing Examiner that the proposed conditional use meets these requirements.

3. Outdoor Lighting

Section 59.6.4.4.E of the Zoning Ordinance contains the following standard for conditional uses in residential zones:

Outdoor lighting for a conditional use must be directed, shielded, or screened to ensure that the illumination is 0.1 footcandles or less at any lot line that abuts a lot with a detached house building type, not located in a Commercial/Residential or Employment zone.

The Applicant submitted a photometric plan demonstrating that footcandles at the property line would meet this requirement, which Staff confirms. Exhibits 38(u), (v). Staff

concluded also that lighting was sufficient to provide safety and was compatible with the surrounding area. Exhibit 39, p. 31.

Conclusion: From this uncontroverted evidence, the Hearing Examiner finds that the lighting on

the property will be at residential levels compatible with the surrounding area and adjacent uses.

4. Signage

The Applicant proposes one sign on the entrance gate to the subject property (pictured

on page 22 of this Report), that will be illuminated. Staff advises that the sign meets the square

footage limits in the Rural Residential Zones. Exhibit 39, p.24.

<u>Conclusion</u>: The building plans submitted by the Applicant (Exhibit 21) confirm Staff's assessment. Based on this uncontroverted evidence, the Hearing Examiner finds that the sign proposed meets the standards required.

E. Variance

Necessary findings for approval of a variance include (Section 59.7.3.2.E):

Granting the variance may only authorize a use of land allowed by the underlying zone. To approve a variance, the Board of Appeals must find that:

- 1. denying the variance would result in no reasonable use of the property; or
- 2. each of the following apply:
 - a. one or more of the following unusual or extraordinary situations or conditions exist:

i. exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;

ii. the proposed development uses an existing legal nonconforming property or structure;

iii. the proposed development contains environmentally sensitive features or buffers;

iv. the proposed development contains a historically significant

property or structure; or

v. the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood;

- b. the special circumstances or conditions are not the result of actions by the applicant;
- c. the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;
- d. the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan; and

e. granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.

The Applicant requests a variance from the minimum width of the front building and front lot lines. The minimum width required for both is 300 feet. *Id.* Mr. Stephen Crum, the Applicant's expert in civil engineering, testified that the need for the variance arose from the unusual flagshaped configuration of the lot. After dedication, the conditional use plan will have a front lot line width of 214 feet and a front building line width of 205.6 feet. T. 153. According to Staff, the Applicant will need a variance of 94.1 feet from the minimum front building line width and 86 feet from the front lot line width. Exhibit 39, p. 31. Mr. Crum testified that Applicant has made no changes to the configuration of the lot that caused the existing situation. T. 155. Without the variance, the applicant will not be able to obtain a building permit for the property. T. 155.

Staff recommended approval of the variance because the property's configuration is "exceptional" and "extraordinary" due to the very narrow flag stem that suddenly expands to a width nearly five times the width of the stem. Staff found no other property configured in this manner in the R-C Zone between Ednor Road and Md 198. Exhibit 39, p. 32. Staff also advises that the current configuration was created by deed in 1945, pre-dating the creation of the R-C Zone, and therefore was not created by the Applicant. The practical difficulties standard has been met because the Applicant would have to acquire land to achieve full compliance with the Zoning Ordinance. Staff also found that the variance would not negatively impact neighbors because it is an existing condition.

<u>Conclusion</u>: The Hearing Examiner finds that Staff's analysis and recommendation that approval of the variances meet the applicable standards. Based on this uncontested evidence, the Hearing Examiner recommends approval of the variance for the reasons stated in the Staff Report.

IV. Conclusion and Decision

As set forth above, the application meets all the standards for approval in Articles 59.3, 59.4, 59.6 and 59.7 of the Zoning Ordinance. Based on the foregoing findings and conclusions, the Hearing Examiner recommends approval of BOA Case No. A-6693, requesting variances from the minimum width of the front building and lot lines in the R-C Zone, and hereby *GRANTS* the Applicant's (1) request for a waiver of the minimum distance required by the parking regulations, and (2) the application for a conditional use under Section 59.3.5.4.A. of the Zoning Ordinance to build and operate a cemetery at 16621 New Hampshire Avenue, Silver Spring, Maryland, subject to the following conditions:

- Physical improvements to the Subject Property are limited to those shown on the Conditional Use Plan (Exhibits 38(a) through (g)), Landscape Plan (Exhibit (p), (q) (r) and (t), building plan (Exhibit 21), and Photometric Plan (Exhibit 38(u).
- 2. No more than seven employees may be on the property at any one time.
- 3. Hours of operation are between 8:30 a.m. to sunset, seven days a week.

- 4. The Applicant must remove all pulse generator components of implanted cardiac pacemakers, including batteries, from cadavers prior to burial.
- 5. Gravesites must be located within the area depicted on the Conditional Use Plan (Exhibit 38(b)).
- 6. The Applicant must obtain approval of BOA Case No. A-6693 prior to approval of a preliminary plan of subdivision.
- 7. During preliminary plan review, the Applicant must submit to the Planning Board an assessment of whether riparian buffers exist along on-site streams.
- 8. Sediment and erosion control measures must be implemented during all clearing and grading on the property, including gravesite areas.
- 9. Trip generation for the approved use must not exceed 50 peak hour trips within the weekday morning and evening peak periods.
- 10. The Applicant must obtain a sign permit from the MCDPS for the proposed freestanding sign. A copy of the sign permit obtained from MCDPS must be submitted to the Hearing Examiner before the sign is installed on the property.
- 11. Prior to the issuance of any building permit for the subject Conditional Use, the Applicant must obtain approval of a Preliminary Plan of Subdivision and a Record Plat pursuant to Chapter 50 of the Montgomery County Code. If changes to the approved Conditional Use Site Plan or other plans filed in this case are required at Subdivision, the Applicant must file a copy of the revised site and related plans with OZAH.
- 12. The proposed development must comply with the Preliminary Forest Conservation Plan and the conditions of approval therein.
- 13. The Applicant must obtain approval of the Final Forest Conservation Plan by the Planning Board, after which time the Applicant must comply with the terms of the Final Forest Conservation Plan.
- 14. Prior to issuance of access permits, the Applicant must satisfy the provisions for access and improvements as required by the Maryland State Highway Administration ("SHA").
- 15. Impervious surfaces are limited to no more than 10.0 percent of the subject property as shown on Exhibit 38(z).

- 16. Prior to the start of any clearing or grading on the subject property, the owner of the subject property must enter into an agreement with the Planning Board to limit impervious surfaces within the transition area of the Patuxent River Primary Management Area ("PMA") on the subject property to no more than 10.0 percent, as shown on Exhibit 38(z). The agreement must be in a form approved by the M-NCPPC Office of the General Counsel and recorded by deed in the Montgomery County Office of Land Records.
- 17. The Applicant and any successors in interest must obtain and satisfy the requirements of all Federal, State, and County licenses, regulations, and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the conditional use premises and operate the conditional use as granted herein. The Applicant and any successors in interest shall at all times ensure that the conditional use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements, including the annual payment of conditional use administrative fees assessed by the Department of Permitting Services.

Issued this 11^h day of October 2021.

Lynn A. Robeson Hearing Examiner

RIGHT TO APPEAL

Any party of record may file a written request to appeal the Hearing Examiner's Decision by requesting oral argument before the Board of Appeals, within 10 days issuance of the Hearing Examiner's Report and Decision. Any party of record may, no later than 5 days after a request for oral argument is filed, file a written opposition to it or request to participate in oral argument. If the Board of Appeals grants a request for oral argument, the argument must be limited to matters contained in the record compiled by the Hearing Examiner. A person requesting an appeal, or opposing it, must send a copy of that request or opposition to the Hearing Examiner, the Board of Appeals, and all parties of record before the Hearing Examiner.

Additional procedures are specified in Zoning Ordinance §59.7.3.1.f.1. Contact information for the Board of Appeals is:

Montgomery County Board of Appeals

100 Maryland Avenue, Room 217 Rockville, MD 20850 (240) 777-6600 http://www.montgomerycountymd.gov/boa/

PLEASE NOTE THE FOLLOWING BOARD OF APPEALS FILING REQUIREMENTS DURING THE COVID-19 PANDEMIC:

Persons submitted requests for reconsideration, requests for a public hearing, or requests for oral argument/appeal regarding a conditional use decision by OZAH are also required to dual file their request, and should email a scanned copy (or photograph, if a scanner is not available) of their submission to BOA@montgomerycountymd.gov and then either mail the signed hard copy, via U.S Mail, to the following address: Montgomery County Board of Appeals, 100 Maryland Avenue, Room 217, Rockville, MD 20850 or make an appoint to hand-deliver the request between the hours of 10:00 a.m. and 4:00 p.m. on Tuesday and Thursday.

If you have questions about how to file a request for oral argument, please contact Staff of the Board of Appeals.

The Board of Appeals will consider your request for oral argument at a work session. Agendas for the Board's work sessions can be found on the Board's website and in the Board's office. You can also call the Board's office to see when the Board will consider your request. If your request for oral argument is granted, you will be notified by the Board of Appeals regarding the time and place for oral argument. Because decisions made by the Board are confined to the evidence of record before the Hearing Examiner, no new or additional evidence or witnesses will be considered. If your request for oral argument is denied, your case will likely be decided by the Board that same day, at the work session.

Parties requesting or opposing an appeal must not attempt to discuss this case with individual Board members because such *ex parte* communications are prohibited by law. If you have any questions regarding this procedure, please contact the Board of Appeals by calling 240-777-6600 or visiting its website: <u>http://www.montgomerycountymd.gov/boa/</u>.

Notifications sent to:

Jody S. Kline, Esquire Attorney for the Applicant James Putmam Dr. Linda Smoling Moore Craig and Leigh Zimmerman George Thomas Willingmyre John and Effie Macklin CU 21-06, Reflections Park Inc. Hearing Examiner's Report and Recommendation

Cynthia D. Wright Anna Richards David and Kimberly Bugden Michael Aladesuru George Willingmyre Tom DiPaola Patrick Butler, Planning Department Mr. Steven Shofar, MCDEP



PARKING AREA TABULATION

HIGHLANDS BLOCK D,

PLAT NO PHILLIPS

 $X \setminus X \setminus Y$

NAPXII, PARCEL 2911

OUTLOT B

ZONE: H

CAPACITY OF ASSEMBLY AREA:

NUMBER OF EMPLOYEES:

NUMBER OF VEHICLES: 2 VEHICLES NOTE: FOR THE PURPOSES OF COMPUTING THE REQUIRED NUMBER OF PARKING SPACES ASSOCIATED WITH THE CEMETERY LAND USE AND DEMONSTRATING THAT THE REQUIRED NUMBER OF PARKING SPACES ARE LOCATED WITHIN THE REQUIRED DISTANCE OF THE ESTABLISHMENT SERVED THE FOLLOWING IS PROFFERED:

168 PERSONS

4 INDIVIDUALS

VPATUXENT HIGHLANDS

BLOCK D, LOT 11 PLAT NO: 13431 PHILLIP S. SCOTT, ET. AL.

PATUXENT HIGHLANDS

ROSEN GARY A. ROSEN, ET. AL

408

WESLEY ESTATES

-PLAT No. 12002

BLOCK D, LOT 18

USE: RESIDENTIAL

_PLAT No. 13431

ZONE: RC

WESLEY ESTATES

/BLOCK A, 1.0T, 15/

PLAT/NO. 12002 /

URIEL M. OCHOA, ET.

94 THE ZOME RO USE RESIDENTIAL

USE: RESIDENTIAL

ZONE: RC -

ノーーー

TWO (2) EMPLOYEES WILL BE BASED IN THE SMALL OFFICE NEAR NEW HAMPSHIRE AVENUE AND TWO (2) EMPLOYEES WILL BE BASED IN THE OFFICE LOCATED WITHIN THE COMMUNITY BUILDING. ONE (1) VEHICLE WILL BE BASED AT EACH OF THE OFFICE SPACES. ALL OF THE ASSEMBLY AREA WILL BE LOCATED WITHIN THE COMMUNITY BUILDING.

THEREFORE: THREE (3) PARKING SPACES MUST BE LOCATED WITHIN $\frac{1}{4}$ MILE (1,302 FEET) OF THE ENTRANCE TO NEW HAMPSHIRE AVENUE OFFICE AND FIFTY-NINE (59) PARKING SPACES MUST BE LOCATED WITHIN $\frac{1}{4}$ MILE (1,302 FEET) OF THE ENTRANCE TO THE COMMUNITY BUILDING.

- (1) NO BICYCLE PARKING SPACES REQUIRED FOR CEMETERY USE. (6 PROVIDED)
- (2) NO LOADING SPACES REQUIRED FOR CEMETERY USE. (1 PROVIDED) (3) INCLUDED IN THE TOTALS BELOW.

(4) ALL ACCESSIBLE PARKING SPACES ARE VAN ACCESSIBLE PARKING SPACES.

PARKING TABULATION TABLE (1) (2)					
USE OR USE GROUP	METRIC	REQUIRED	PROVIDED		
	CAPACITY OF ASSEMBLY AREA	0.33	168 PERSONS	55.4	
CEMETERY	EMPLOYEE	1.00	4	4.0	
	PLUS, EACH VEHICLE OPERATED IN CONNECTION WITH THE USE	1.00	2	2.0	
ACCESSIBLE ^{(3) (4)}	TOTAL NUMBER OF PARKING SPACE PROVIDED		76 TO 100	4.0	4.0
MOTORCYCLE	2% of TOTAL NUMBER OF PARKING SPACE PROVIDED			2.0	2.0
TOTAL				62	80



PROJECT NO.

SHEET NO.

2018.171.12

2 OF 10













Civil Engineers Land Planners Landscape Architects Land Surveyors	G
9220 Wightman Road, Suite 120 Montgomery Village, MD 20886 Phone: 301.670.0840 www.mhgpa.com Copyright @ 2020 by Macris, Hendric Glascock, P.A. All Rights Reserve	cks & ed
Professional Certificatio I hereby certify that these documents were approved by me, and that I am a duly li Professional Engineer under the Laws of the Maryland. Lic. No. 16905 Exp. Date. 04.	n prepared or censed he State of 21.2022
REFLECTION PARK, INC. 15116 BAUER DRIVE ROCKVILLE, MD 20853 ELDADAHB@GMAIL.COM	
DESIGN TEAM	
ENGINEER OR SURVEYOR: MACRIS, HENDRICKS & GLASCOCK, P.A. 9220 WIGHTMAN ROAD MONTGOMERY VILLAGE, MI (301) 670-0840 CONTACT: DAVID CROWE DCROW@MHGPA.COM	D 20886
ATTORNEY MILLER, MILLER & CANBY, CHARTERED 200-B MONROE STREET ROCKVILLE, MD 20850 (301) 762-5212 CONTACT: JODY KLINE JSKLINE@MMCANBY.COM TRAFFIC CONSULTANT	
STS CONSULTING 6449 RED KEEL COLUMBIA, MD 21044 (410) 718-8660 CONTACT: SHAHRIAR ETEM EREMADI.STS@GMAIL.COM <u>ARCHITECT</u> TROCK WORKS 205 NORMANDY DRIVE SILVER SPRING, MD 20901 (301) 922-5557 CONTACT: BEYHAN TROCK	IADI
BEYHANTROCK@GMAIL.CO	M
NO. DESCRIPTION	DATE
TAX MAP KT11 222	2NE01 & 02
L. 61240 F. 308 5TH ELECTION DISTRICT MONTGOMERY COUNTY MARYLAND	
REFLECTION PARK CEMETERY	
PARCEL -P 911 SNOWDEN'S MANOR	
PROJ. MGR	DAC
DRAWN BY	DBP 1"= 120'
DATE 08.	08.2022
VICINITY MAP	

RESERVED FOR APPROVAL	

FOR UTILITY LOCATIONS CONTACT "ONE CALL" AT 811 AT LEAST 48 HOURS PRIOR TO CONSTRUCTION

	TREE CANOP F
·	STREAM
—— FP ———	FLOODPLAIN
SVB	STREAM VALLEY BUFFER
W	WETLAND
WB	WETLAND BUFFER
	PROPERTY BOUNDARY
320	EXISTING CONTOUR
320	PROPOSED CONTOUR
0	LIMITS OF DISTURBANCE
	PROPOSED TRAIL
⊳	EPHEMERAL STREAM
	LANDSCAPE TREES & SHRU
*	PROPOSED LIGHT POLE
	FOREST SAVED CATEGORY I EASEMENT
	BURIAL SITE AREAS

FOR UTILITY LOCATIONS CONTACT "ONE CALL" AT 811 AT LEAST 48 HOURS PRIOR TO CONSTRUCTION

ANIAN

- RROPOSED

ASSEMBLY

MATCH LINE - SHEET L2.03

STORMWATER MANAGEMENT FACILITY (TYP)

NOTE:

FILED

* PRUNE ONLY DEAD, BROKEN OR CROSSING

* ALL STAKING AND GUYING TO BE REMOVED

EXPOSED ROOT FLARE LEVEL WITH FINAL GRADE -

* WATER @ PLANTING WHEN SOIL PIT IS ½ BACK

2 DOUBLE STRANDS OF 12 GAUGE GALVANIZED

OF TRUNK. (DO NOT WRAP TRUNK WITH WIRE &

FINISHED GRADE -----

HOSE) 3

WIRE TWISTED FOR SUPPORT. ALLOW FOR I" PLAY

BRANCHES (NO HEADING BACK)

AFTER 6 MONTHS.

FOR UTILITY LOCATIONS CONTACT "ONE CALL" AT 811 AT LEAST 48 HOURS PRIOR TO CONSTRUCTION

HERBACEOUS PLANTING & TRIANGULAR PLAN SPACING

SCREENING REQUIREMENTS 2014 MONTGOMERY COUNTY ZONING ORDINANCE CHAPTER 59 SECTION 6.5.2.C

		·	
	REQUIRED/ PERMITTED	PROVIDED	
7. General Building with a Non-Industrial Use	SCREENING A (356.0' S OPTION B	EGMENT) -	
Minimum Landscape Dimensions (depth)	12'	12'	
Canopy Trees	2 per 100' = 8 trees	8 trees	
Understory or Evergreen Trees	4 per 100' = 15 trees	15 trees	
Large Shrubs	8 per 100' = 29 shrubs	29 shrubs	
Medium Shrubs	12 per 100' = 43 shrubs	43 shrubs	
7. General Building with a Non-Industrial Use	SCREENING B (213.0' S OPTION B	EGMENT) -	
Minimum Landscape Dimensions (depth)	12'	12'	
Canopy Trees	2 per 100' = 5 trees	5 trees	
Understory or Evergreen Trees	4 per 100' = 9 trees	9 trees	
Large Shrubs	8 per 100' = 18 shrubs	18 shrubs	
Medium Shrubs	12 per 100' = 26 shrubs	26 shrubs	
7. General Building with a Non-Industrial Use	SCREENING C (64.0' SE OPTION B	EGMENT) -	
Minimum Landscape Dimensions (depth)	12'	12'	
Canopy Trees	2 per 100' = 2 trees	2	
Understory or Evergreen Trees	4 per 100' = 4 trees	4 trees	
Large Shrubs	8 per 100' = 8 shrubs	8 shrubs	
Medium Shrubs	12 per 100' = 12 shrubs	12 shrubs	

PARKING LOT PERIMETER LANDSCAPING REQUIREMENTS CHAPTER 59 SECTION 6.2.9.C.3.

	REQUIRED/ PERMITTED	PROVIDED
1. Perimeter planting area for a property that abuts any other zoned property that is improved with a civic and institutional use	PERIMETER SCREEN	A - 43 L.F.
i. Minimum width	6'	57'
ii. Minimum hedge height	3'	3'
iii. Canopy trees	30' o.c. 43 linear feet = 2 trees	2 trees

PARKING LOT REQUIREMENTS FOR 10 OF

2014 MONTGOMERY COUNTY ZONING ORDINANCE

2x WIDTH OF ROOT BALL (UP TO 5x IN COMPACT SOIL)

Chapter 59 Section 6.2.9.C.1. Landscaped Area

Parking Lot I: Minimum Landscaped Island Area Required Minimum Landscaped Island Area Provided Parking Lot Pavement Area Landscape Area required (5% of Total Pavement Area)

Total Landscape Area provided

Parking Lot II: Minimum Landscaped Island Area Required

Minimum Landscaped Island Area Provided

Parking Lot Pavement Area Landscape Area required (5% of Total Pavement Area) Total Landscape Area provided

SHADING FOR PARKING LOT PAVEMENT Chapter 59 Section 6.2.9.C.2. Tree Canopy

r					
PARKING LOT SHADE TREE LIST					
BOTANICAL NAME	COMMON NAME	20 YEAR CANOPY (DIA. IN FEET)*			
Carpinus caroliniana	American Hornbeam	39			
Celtis occidentalis	Hackberry	45			
Cercis canadensis	Eastern Redbud	20			
Fagus grandifolia	American Beech	46			
Ostrya virginiana	Ironwood	20			
Quercus rubra	Red Oak	35			
Quercus stellata	Quercus stellata Post Oak 26				
*20-year canopy diameters are calculated as shown in the Montgomery County Trees Technica Manual (September 1992), Appendix C, 'Plant Species Information: Montgomery County					

Maryland Landscape Tree Evaluation Criteria'.

Parking Lot Pavement Area Lot I Shaded Area required (25% of Total Pavement Area) Total Shaded Area provided

Parking Lot Pavement Area Lot II Shaded Area required (25% of Total Pavement Area) Total Shaded Area provided

PLANT TYP

PLAN -TRIANGULAR SPACIN

- DO NOT CUT CENTRAL LEADER ORIENT THE SIDE OF THE TREE THAT FACED NORTH IN NURSERY TO FACE NORTH IN THE PLANTING
- AREA GUYING SYSTEM: 2 HARDWOOD STAKES PER TREE; 2 STRANDS GALVANIZED WIRE TWISTED
- FOR SUPPORT; 1/2" HOSE LOOPS AT TRUNK - PLACE 1/8 OF ROOT BALL ABOVE ADJACENT FINISHED
- GRADE
- FLAGGING TAPE - BERM SOIL TO DRAIN AWAY FROM TREE
- PREPARE SOIL AS SPECIFIED
- 3" HARDWOOD MULCH TO COVER ENTIRE PLANTING AREA - EXCEPT 3" CLEAR AROUND TRUNK
- CUT ROPE AND TURN BACK TOP 1/3 OF BURLAP AWAY FROM ROOT BALL. FOR TREE WITH WIRE BASKET, CUT BASKET IN FOUR PLACES AND FOLD DOWN 12" INTO HOLE. REMOVE DEBRIS AND EXCESS SOIL FROM TOP OF BARE ROOT BALL
- UNDISTURBED SOIL - SLOPE SIDES
- ------ PLANTING MOUND TO INHIBIT SETTLING. ROOT BALL TO REST UPON UNDISTURBED SOIL EVERGREEN TREE PLANTING - UNDER 3" CALIPER

PLANTING NOTE 1. THIS PLAN IS FOR PLANTING PURPOSES ONLY.

- 2. CONTRACTOR SHALL BE SOLELY RESPONSIBLE FOR ALL PLANT MAINTENANCE, INCLUDING SHRUBS AND GROUNDCOVER, AND SHALL MAINTAIN AREA IN A WEED AND DEBRIS FREE CONDITION, THROUGHOUT THE ONE YEAR GUARANTEE PERIOD.
- 3. CONTRACTOR SHALL LAY OUT AND CLEARLY STAKE ALL PROPOSED IMPROVEMENTS INCLUDED ON THIS PLAN.
- 4. CONTRACTOR IS RESPONSIBLE FOR CONTACTING MISS UTILITY PRIOR TO BEGINNING CONSTRUCTION FOR LOCATION OF ALL UTILITY LINES. TREES SHALL BE LOCATED A MINIMUM OF 5 FEET FROM SEWER/WATER CONNECTIONS. CONTRACTOR SHALL BE LIABLE FOR DAMAGE TO ANY AND ALL PUBLIC OR PRIVATE UTILITIES.

5. QUANTITIES AS SHOWN ON THE PLAN SHALL GOVERN OVER PLANT LIST QUANTITIES. CONTRACTOR TO VERIFY PLANT LIST TOTALS WITH QUANTITIES SHOWN ON PLAN. LANDSCAPE ARCHITECT SHALL BE ALERTED BY CONTRACTOR OF ANY DISCREPANCIES PRIOR TO FINAL BID NEGOTIATION. UNIT PRICES FOR ALL MATERIAL SHALL BE SUPPLIED TO THE OWNER AT BIDDING TIME.

6. ALL MATERIALS SHALL BE SUBJECT TO APPROVAL BY THE LANDSCAPE ARCHITECT. OWNER SHALL RECEIVE TAG FROM EACH PLANT SPECIES AND A LIST OF PLANT SUPPLIERS. WHERE ANY REQUIREMENTS ARE OMITTED FROM THE PLANT LIST. THE PLANTS FURNISHED SHALL MEET THE NORMAL REQUIREMENTS FOR THE VARIETY PER THE AMERICAN STANDARD FOR NURSERY STOCK, LATEST EDITION, PUBLISHED BY AMERICANHORT. PLANTS SHALL BE PRUNED PRIOR TO DELIVERY ONLY UPON THE APPROVAL OF THE LANDSCAPE ARCHITECT.

7. CONTRACTOR IS RESPONSIBLE FOR SOIL TESTING AND PREPARATION AS OUTLINED IN THE CURRENT EDITION OF THE LANDSCAPE SPECIFICATION GUIDELINES OF THE LANDSCAPE CONTRACTORS ASSOCIATION OF MD-DC-VA (LCA). PREPARATION SHALL INCLUDE, BUT NOT NECESSARILY BE LIMITED TO, THE ADDITION OF SOIL AMENDMENTS, FERTILIZERS AND SUPPLEMENTAL TOPSOIL AS INDICATED BY TESTING; AND SUBGRADE, FINAL GRADE AND FINISH GRADE SOIL PREPARATION.

8. WHERE TREES ARE PLANTED IN ROWS, THEY SHALL BE UNIFORM IN SIZE AND SHAPE.

9. SIZES SPECIFIED IN THE PLANT LIST ARE MINIMUM SIZES TO WHICH THE PLANTS ARE TO BE JUDGED. FAILURE TO MEET MINIMUM SIZE ON ANY PLANT WILL RESULT IN REJECTION OF THAT PLANT. 10. ALL PLANTS SHALL BE FRESHLY DUG, SOUND, HEALTHY, VIGOROUS, WELL BRANCHED, FREE OF DISEASE, INSECT EGGS, AND LARVAE, AND SHALL

HAVE ADEQUATE ROOT SYSTEMS. 11. ALL CONTAINER GROWN MATERIAL SHALL BE HEALTHY, VIGOROUS, WELL-ROOTED PLANTS AND ESTABLISHED IN THE CONTAINER IN WHICH THEY ARE SOLD. THE PLANTS SHALL HAVE TOPS WHICH ARE GOOD QUALITY AND ARE IN A HEALTHY GROWING CONDITION.

12. GROUPS OF SHRUBS SHALL BE PLACED IN A CONTINUOUS MULCH BED WITH SMOOTH CONTINUOUS LINES. ALL MULCHED BED EDGES SHALL BE CURVILINEAR IN SHAPE FOLLOWING THE CONTOUR OF THE PLANT MASS UNLESS OTHERWISE NOTED. TREES LOCATED WITHIN FOUR FEET OF SHRUB BEDS SHALL SHARE SAME MULCH BED.

13. NO EXISTING TREES SHALL BE REMOVED WITHOUT WRITTEN AUTHORIZATION FROM THE OWNER EXCEPT WHERE NOTED ON PLANS. NO GRUBBING SHALL OCCUR WITHIN EXISTING TREE AREAS.

14. TREES SHALL BE LOCATED A MINIMUM OF 3 FEET FROM WALLS AND WALKS WITHIN THE PROJECT. IF CONFLICTS ARISE BETWEEN ACTUAL SIZE OF AREA AND PLANS, CONTRACTOR SHALL CONTACT LANDSCAPE ARCHITECT FOR RESOLUTION. FAILURE TO MAKE SUCH CONFLICTS KNOWN TO THE OWNER OR LANDSCAPE ARCHITECT WILL RESULT IN CONTRACTOR'S LIABILITY TO RELOCATE MATERIALS.

15. LARGE GROWING PLANTS ARE NOT TO BE PLANTED IN FRONT OF WINDOWS, UNDER BUILDING OVERHANGS, OR IN DRAINAGE SWALES. SHRUBS PLANTED NEAR HVAC UNITS TO BE LOCATED SO THAT SHRUBS AT MATURITY WILL MAINTAIN 1-FOOT AIRSPACE BETWEEN UNIT AND PLANT. 16. CONTRACTOR TO SLIGHTLY ADJUST PLANT LOCATIONS IN THE FIELD AS NECESSARY TO BE CLEAR OF DRAINAGE SWALES AND UTILITIES. FINISHED PLANTING BEDS SHALL BE GRADED SO AS NOT TO IMPEDE DRAINAGE AWAY FROM BUILDINGS.

17. TREE STAKING AND GUYING SHALL BE DONE PER DETAILS. CONTRACTOR SHALL ENSURE THAT TREES REMAIN VERTICAL AND UPRIGHT FOR THE DURATION OF THE GUARANTEE PERIOD.

18. ALL TREE PITS, SHRUB BEDS AND PREPARED PLANTING BEDS ARE TO BE COMPLETELY EXCAVATED IN ACCORDANCE WITH THE PLANTING DETAILS.

PROPERTY (ESPECIALLY AT ALL CURB, GUTTERS AND SIDEWALKS) DAILY DURING INSTALLATION.

19. MULCH IS TO BE DOUBLE SHREDDED HARDWOOD BARK FOR TREES AND SHRUBS.

20. CROWN OF ROOT FLARE SHALL BE 1/2" - 3" HIGHER (AFTER SETTLING) THAN ADJACENT SOIL. 21. TAGS AND TWINE ARE TO BE REMOVED AND BURLAP IS TO BE ROLLED BACK ONE-HALF ON ALL B&B PLANT MATERIAL.

22. SHRUBS SHALL BE TRIANGULARLY SPACED AT SPACING SHOWN ON PLANTING PLANS WHERE MASSING IS INDICATED.

23. SHADE TREES: HEIGHT SHALL BE MEASURED FROM THE CROWN OF THE ROOT FLARE TO THE TOP OF MATURE GROWTH. SPREAD SHALL BE MEASURED TO THE END OF BRANCHING EQUALLY AROUND THE CROWN FROM THE CENTER OF THE TRUNK. MEASUREMENTS ARE NOT TO INCLUDE ANY TERMINAL GROWTH. SINGLE TRUNK TREES SHALL BE FREE OF "V" CROTCHES THAT COULD BE POINTS OF WEAK LIMB STRUCTURE OR DISEASE INFESTATION.

SHRUBS: HEIGHT SHALL BE MEASURED FROM THE GROUND TO THE AVERAGE HEIGHT OF THE TOP OF THE PLANT. SPREAD SHALL BE MEASURED TO THE END OF BRANCHING EQUALLY AROUND THE SHRUB MASS. MEASUREMENTS ARE NOT TO INCLUDE ANY TERMINAL GROWTH.

24. ALL SUBSTITUTIONS OF PLANT MATERIAL ARE TO BE REQUESTED IN WRITING TO THE LANDSCAPE ARCHITECT AND APPROVED IN WRITING BY THE OWNER AND M-NCPPC. FAILURE TO OBTAIN SUBSTITUTION APPROVAL IN WRITING MAY RESULT IN LIABILITY TO THE CONTRACTOR. 25. ALL CONTRACTORS SHALL BE REQUIRED TO COMPLETELY REMOVE ALL TRASH, DEBRIS AND EXCESS MATERIALS FROM THE WORK AREA AND THE

26. DEAD PLANTS ARE TO BE REMOVED FROM THE JOB BY THE CONTRACTOR ON A MONTHLY BASIS. CONTRACTOR SHALL MAINTAIN AN UPDATED, COMPREHENSIVE LIST OF ALL DEAD MATERIALS REMOVED AND PRESENT A COPY OF THE LIST TO THE OWNER AT THE END OF EVERY MONTH DURING THE CONTRACT PERIOD.

27. CONTRACTOR SHALL BE RESPONSIBLE TO REGRADE, HYDRO-SEED, STRAW MULCH, AND TACK ALL LAWN AREAS DISTURBED AS THE RESULT OF HIS WORK

28. CONTRACTOR SHALL GUARANTEE ALL LANDSCAPE IMPROVEMENTS, INCLUDING SEEDING, FOR ONE FULL YEAR AS REQUIRED BY THE SPECIFICATIONS. CONTRACTOR MUST CONTACT THE OWNER AT LEAST 10 WORKING DAYS IN ADVANCE TO SCHEDULE ACCEPTANCE INSPECTION(S). CONTRACTOR MUST REPLACE ALL DEAD OR UNACCEPTABLE PLANTS DURING THE FOLLOWING RECOMMENDED PLANTING SEASON. 29. THE SPECIFICATIONS FOR ALL WORK INCLUDED IN THIS CONTRACT SHALL BE FROM THE LANDSCAPE SPECIFICATION GUIDELINES BY THE

LANDSCAPE CONTRACTORS ASSOCIATION MD-DC-VA (LCA), CURRENT EDITION, UNLESS OTHERWISE NOTED ON THESE PLANS. 30. ANY PLANTING WHICH IS SHOWN ADJACENT TO CONDENSER UNITS SHALL BE PLANTED AS REQUIRED TO SCREEN THE UNITS. SHOULD THE CONDENSER UNITS BE INSTALLED IN LOCATIONS DIFFERENT FROM THOSE SHOWN ON THE PLAN IT WILL BE THE CONTRACTOR'S RESPONSIBILITY TO

INSTALL THE MATERIALS AROUND THE CONDENSERS AND TO ADJUST OTHER ADJACENT PLANTING ACCORDINGLY.

LANDSCAPE PLANT LIST

31. FOR INFORMATION REGARDING APPROPRIATE PLANTING PERIODS FOR DIFFERENT SPECIES, SEE THE LATEST EDITION OF THE LANDSCAPE SPECIFICATION GUIDELINES FROM THE LANDSCAPE CONTRACTORS ASSOCIATION OF MD-DC-VA PART 1-EXTERIOR LANDSCAPE INSTALLATION, SECTION 1.12 (A-G) AT WWW.LCAMDDCVA.ORG.

R	MORE	SPA	CES

- = 100 s.f.
- = 100 s.f. = 5,386 s.f. = 269 s.f.
- = 1,009 s.f. (18.7%)
- = 100 s.f. = 110 s.f. = 32,037 s.f.
- = 1,602 s.f. = 5,797 s.f. (18.1%)
- = 5,386 s.f.
- = 1,347 s.f. = 1,952 s.f. (36.2%)
- = 32,037 s.f.
- = 8,010 s.f. = 8,252 s.f. (25.7%)

KEY	QTY	BOTANICAL NAME	COMMON NAME CAL		HGT	ROOT	SPACING
SHADE & O	RNAMENTA	AL TREES					
CCA	7	Carpinus caroliniana	American Hornbeam	2-2 ¹ / ₂ "		B&B	AS SHOWN
COC	8	Celtis occidentalis	Hackberry	2-2 ¹ / ₂ "		B&B	AS SHOWN
CCN	5	Cercis canadensis	Eastern Redbud		8-9'	B&B	AS SHOWN
FGR	11	Fagus grandifolia	American Beech	2-2 ¹ / ₂ "		B&B	AS SHOWN
NST	4	Nyssa sylvatica 'Tupelo Tower'	Tupelo Tower Black Gum	2-2 ¹ / ₂ "		B&B	AS SHOWN
OVI	3	Ostrya virginiana	Ironwood	2-2 ¹ / ₂ "		B&B	AS SHOWN
QRU	7	Quercus rubra	Red Oak	2-2 ¹ / ₂ "		B&B	AS SHOWN
QST	7	Quercus stellata	Post Oak	2-2 ¹ / ₂ "		B&B	AS SHOWN
EVERGREE	N TREES						
IOP	13	llex opaca	American Holly		7-8'	B&B	AS SHOWN
JVI	8	Juniperus virginiana	Eastern Redcedar		6-7'	B&B	AS SHOWN
MGG	129	Magnolia grandiflora 'Little Gem'	Little Gem Magnolia		5-6'	B&B	AS SHOWN
ΡΤΑ	3	Pinus taeda	Loblolly Pine		6-7'	B&B	AS SHOWN
DECIDUOU	S AND EVE	RGREEN SHRUBS	•	·	•		•
AAB	16	Aronia arbutifolia 'Brilliantissima'	Brilliant Red Chokeberry		24-30"	#3 Cont.	48" o.c.
CCD	53	Caryopteris clandonensis 'Dark Knight'	Dark Knight Bluebeard		18-24"	#3 Cont.	36" o.c.
CAP	12	Clethra alnifolia 'Pink Spires'	Pink Spires Summersweet		24-30"	#3 Cont.	48" o.c.
CAR	5	Clethra alnifolia 'Rosea'	Rosea Summersweet		24-30"	#3 Cont.	48" o.c.
DPB	28	Distylium 'PIIDIST-II'	Blue Cascade Distylium		24-30"	#3 Cont.	36" o.c.
IGD	38	llex glabra 'Densa'	Dense Inkberry		24-30"	#3 Cont.	48" o.c.
HVI	17	Hamamelis virginiana	Witchhazel		30-36"	#3 Cont.	60" o.c.
MCE	24	Morella cerifera	Wax Myrtle		30-36"	#3 Cont.	60" o.c.
PLO	22	Prunus laurocerasus 'Otto Luyken"	Otto Luyken Cherry Laurel		24-30"	#3 Cont.	48" o.c.
L	L	1	•		I		1

Note: Plant counts are provided for the convenience of the contractor. The plan dominates on any discrepancies between the table and the plan. Contractor is responsible for verifying the counts and bringing any discrepancies to the attention of the landscape architect and client before proceeding.

Civil Engineers Land Planners Landscape Architects Land Surveyors

9220 Wightman Road, Suite 120 Montgomery Village, MD 20886 Phone: 301.670.0840 www.mhgpa.com Copyright @ 2020 by Macris, Hendricks & Glascock, P.A. All Rights Reserved

Professional Certification I hereby certify that these documents were prepared or approved by me and that I am a duly licensed Landscape Architect under the laws of the State of Maryland Lic. No. 615 Exp. 09.10.2021

OWNER/APPLICANT: **REFLECTION PARK. INC.** 15116 BAUER DRIVE ROCKVILLE, MD 20853 (301) 789-8309 CONTACT: BASIL ELDADAH ELDADAHB@GMAIL.COM

DESIGN TEAM

ENGINEER OR SURVEYOR:

MACRIS, HENDRICKS & GLASCOCK, P.A. 9220 WIGHTMAN ROAD MONTGOMERY VILLAGE, MD 20886 (301) 670-0840 CONTACT: DAVID CROWE DCROW@MHGPA.COM ATTORNEY

MILLER, MILLER & CANBY, CHARTERED 200-B MONROE STREET ROCKVILLE, MD 20850 (301) 762-5212 CONTACT: JODY KLINE

JSKLINE@MMCANBY.COM TRAFFIC CONSULTANT

STS CONSULTING 6449 RED KEEL COLUMBIA, MD 21044 (410) 718-8660 CONTACT: SHAHRIAR ETEMADI EREMADI.STS@GMAIL.COM ARCHITECT

TROCK WORKS 205 NORMANDY DRIVE SILVER SPRING, MD 20901 (301) 922-5557 CONTACT: BEYHAN TROCK BEYHANTROCK@GMAIL.COM

REVISIONS NO. DESCRIPTION

DATE

WSSC GRID: 222 NE 01 TAX MAP: KT11

B. 61240 P. 308

5TH ELECTION DISTRICT MONTGOMERY COUNTY MARYLAND

REFLECTION PARK CEMETERY

PARCEL -P 911

SNOWDEN'S MANOR

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DATE	08.08.202

LANDSCAPE PLAN

PROJECT NO.	
SHEET NO.	

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MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

JUL 27 2021

MCPB No. 21-061 Forest Conservation Plan No. CU202106 Reflection Park Date of Hearing: July 8, 2021

RESOLUTION

WHEREAS, under Montgomery County Code Chapter 22A, the Montgomery County Planning Board is authorized to review forest conservation plan applications; and

WHEREAS, on October 7, 2020, Remembrance Life, Inc. ("Applicant") filed an application for approval of a forest conservation plan on approximately 40.39 acres of land located at 16621 New Hampshire Ave. ("Subject Property") in the Patuxent Policy Area and Cloverly Master Plan("*Master Plan*") area; and

WHEREAS, Applicant's forest conservation plan application was designated Forest Conservation Plan No. CU202106 Reflection Park ("Forest Conservation Plan" or "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board Staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board dated June 25, 2021, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on July 8, 2021, the Planning Board held a public hearing on the Application at which it heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on July 8, 2021, the Planning Board approved the Forest Conservation Plan on motion of Commissioner Verma; seconded by Commissioner

2425 Reedie Drive, 14th Floor, Wheaton, Maryland 20902 Phone: 301.495.4605 Fax: 301.495.1320 www.montgomeryplanningboard.org E-Mail: mcp-chair@mncppc.org MCPB No. 21-061 Forest Conservation Plan No. CU202106 Reflection Park Page 2

Patterson; with a vote of 5-0, Commissioners Anderson, Cichy, Fani-Gonzales, Patterson and Verma voting in favor.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Forest Conservation Plan No. CU202106 on the Subject Property, subject to the following conditions:¹

- 1. This Preliminary Forest Conservation Plan approval is no longer valid if the Montgomery County Hearing Examiner denies Conditional Use No. CU202106.
- 2. Applicant must submit a Final Forest Conservation Plan ("FFCP") to M-NCPPC Staff for review with the Preliminary Plan of Subdivision submittal.
- 3. The FFCP must be consistent with the final approved PFCP.
- 4. Applicant must obtain approval of the FFCP prior to certification of the preliminary plan of subdivision.

BE IT FURTHER RESOLVED that having given full consideration to the recommendations and findings of its Staff as presented at the hearing and as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference, and upon consideration of the entire record, the Planning Board FINDS, with the conditions of approval, that:

- 1. The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code Chapter 22A, and ensures the protection of environmentally sensitive features.
 - A. Forest Conservation

The Board finds that as conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law.

The project proposes to clear 25.63 acres existing forest. Based on the land use category and the forest conservation worksheet there is no planting requirement generated for the Application. The Applicant proposes to retain 14.66 acres of existing forest onsite. All forest saved as well as environmental buffers will be protected in a Category I Conservation Easement.

B. Forest Conservation Variance

¹ For the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner, or any successor in interest to the terms of this approval.

MCPB No. 21-061 Forest Conservation Plan No. CU202106 Reflection Park Page 3

Section 22A-12(b)(3) of the Forest Conservation Law identifies certain individual trees as high priority for retention and protection ("Protected Trees"). Any impact to these Protected Trees, including removal or any disturbance within a Protected Tree's critical root zone ("CRZ"), requires a variance under Section 22A-12(b)(3) ("Variance"). Otherwise such resources must be left in an undisturbed condition.

This Application will require the removal or CRZ impact to 128 Protected Trees as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant requested a Variance, and the Board agrees that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance.

The Board makes the following findings necessary to grant the Variance:

1. Granting the Variance will not confer on the Applicant a special privilege that would be denied to other applicants.

Granting the variance will not confer a special privilege on the Applicant as the removal and impacts of the trees is due to the location of the trees and necessary site design requirements unique to a cemetery use. The Applicant proposes removal of the seventyseven trees that are located within the existing forest stand and impact to fifty-one specimen trees. It is M-NCPPC policy not to require mitigation for specimen trees removed within forest stand. Additional no mitigation is required for trees that are impacted but retained. Therefore, granting of this variance is not a special privilege that would be denied to other applicants.

2. The need for the Variance is not based on conditions or circumstances which are the result of the actions by the Applicant.

The requested variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based upon the existing site conditions and necessary design requirements of this specific use.

3. The need for the Variance is not based on a condition related to land or building use, either permitted or non-conforming, on a neighboring property.

The requested variance is a result of the existing conditions and not as a result of land or building use on a neighboring property.

4. Granting the Variance will not violate State water quality standards or cause measurable degradation in water quality.

MCPB No. 21-061 Forest Conservation Plan No. CU202106 Reflection Park Page 4

> The variance will not violate State water quality standards or cause measurable degradation in water quality. The specimen trees being removed are not located within a stream buffer, wetland, or special protection area. Therefore, the project will not violate State water quality standards or cause measurable degradation in water quality.

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Planning Board in this matter, and the date of this Resolution is <u>'JUL 27 202</u> (which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

* * * * * * * * * *

CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission on motion of Commissioner Verma, seconded by Commissioner Cichy, with Chair Anderson, Vice Chair Fani-González, and Commissioners Cichy and Verma voting in favor of the motion, and Commissioner Patterson absent at its regular meeting held on Thursday, July 22, 2021, in Wheaton, Maryland.

Casey Anderson, Chair Montgomery County Planning Board

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS Stella B. Werner Council Office Building Rockville, Maryland 20850 (240) 777-6660 https://www.montgomerycountymd.gov/ozah

IN THE MATTER OF: REFLECTION PARK, INC.														*														
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OZAH Case No. CU 21-06

Before: Lynn Robeson Hannan, Hearing Examiner

ERRATA TO ORDER APPROVING CONDITIONAL USE

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

On November 17, 2022, Staff of the Planning Department informed the Hearing Examiner

that "that an error in in Condition #12 of the Planning Board Conditional Use Staff Report was

carried through to the Hearing Examiner's approval in condition #16 [of Decision I]." Exhibit

171. Staff stated (Id.):

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

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

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

The Hearing Examiner's conditions should have read:

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

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

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

A review of Decision I demonstrates that Planning Staff correctly states that the language

shown in red from Condition No. 16 (above) was a clerical error and should have been deleted

from the Decision. Exhibit 38(z), cited in Condition 16, shows that the impervious area limit of

10 percent, recommended by the 1993 Functional Master Plan for the Patuxent River Watershed

(Master Plan), was based on the acreage of the entire property and not just the transition area of

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

For the foregoing reasons, the Hearing Examiner hereby corrects the clerical error and

revises Condition No. 16 of her Decision dated October 11, 2021, to read:

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

Correction of this clerical error does not change the substance of Decisions I and II, or the

minor amendment approved on October 24, 2022. All remaining conditions imposed in Decisions

I and II, and the Order Approving the Minor Amendment, remain in full force and effect.

So Ordered this 1st day of December, 2022.

Male

Lynn Robeson Hannan Hearing Examiner

COPIES TO:

Jody S. Kline, Esq. Attorney for the Applicant David Brown, Esq. Attorney for PWPA Victor Salazar, Dept. of Permitting Services Mark Beall, Planning Department Patrick Butler, Planning Department Cliff Royalty, Esq., Office of the County Attorney David and Rachel Hickson Michelle Albornoz Andy Bartley Patricia Thomas David Bachenheimer Parties to CU 21-06

Attachment D

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS Stella B. Werner Council Office Building 100 Maryland Avenue, Room 200 Rockville, Maryland 20850 (240) 777-6660

www.montgomerycountymd.gov/ozah

IN THE MATTER OF:	*	
REFLECTIONS PARK, INC.	*	
Applicant	*	
	*	
Haroon Mokhtarzada	*	
Richard Pleus, PhD, MS	*	
Helen Dawson, PhD	*	
	*	
For the Application	*	
Jody Kline, Esquire	*	
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Attorneys for the Applicant	*	
* * * * * * * * * * * * * * * * * * * *	* *	OZAH Case No. 21-06
	*	
James Putman	*	
Donald Chamberlin	*	
George Willingmyer	*	
Quentin Remain	*	
Luther King Abia Akebe, PhD	*	
Theresa O'Keefe, PhD	*	
James Mullowney	*	
Linda Moore, PhD	*	
	*	
Opposing the Application	*	
David Brown, Esquire	*	
Attorney for the Patuxent River	*	
Watershed Association	*	
	*	
* * * * * * * * * * * * * * * * * *	* *	

Before: Lynn A. Robeson, Hearing Examiner

HEARING EXAMINER'S REPORT AND DECISION ON REMAND

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I. STATEMENT OF THE CASE

Originally filed on January 21, 2021, Reflections Park, LLC, (hereinafter "Applicant" or "Reflections Park") filed an application seeking a conditional use to establish a Cemetery under §59.3.5.4.A. of the Zoning Ordinance. Zoned R-C (Rural Cluster), the property is located at 16621 New Hampshire Avenue, Silver Spring, Maryland, and is further identified as Parcel 911, Tax Map KT 121.¹ On March 5, 2021, the Board of Appeals referred a variance associated with this application for hearing. Exhibit 26.

The Hearing Examiner approved the conditional use and recommended approval of the variance on October 11, 2021. *Hearing Examiner's Report and Recommendation in CU 21-06,* issued October 11, 2021 (HE Report). Mr. James Putman, who testified at the original hearing, and other individuals requested oral argument before the Board of Appeals.² Exhibit 116.

On November 17, 2021, the Board of Appeals held a worksession during which it decided

to remand the case to the Hearing Examiner to take additional evidence (Exhibit 127):

...for the limited purpose of allowing one or more experts to present views counter to those that formed the basis for the Hearing Examiner's decision regarding the potential impact of necroleachate on groundwater, the Rocky Gorge Reservoir, and the Patuxent watershed, as well as to allow cross-examination of those experts and rebuttal testimony.

Afterward, the Applicant asked the Board to clarify that it could also present expert

witnesses. The Board revised its original remand order to permit evidence (Exhibit 88):

...to be presented by the Patuxent Watershed Protective Association or the applicant, that is relevant to the potential impact of necroleachate on groundwater, the Rocky Gorge Reservoir, and the Patuxent watershed, including testimony and cross-examination of experts deemed qualified to offer opinion evidence on those issues, and such additional evidence from other parties as the Hearing Examiner deems relevant to the water quality issues raised in this case...

¹The original application listed the applicant as "Remembrance Park, Inc.". Exhibit 1. The Applicant later changed its name to "Reflections Park" because there was another "Remembrance Park" already operating in Montgomery County. T. 178.

² Under Section 7.3.1.F.1.c of the Zoning Ordinance, filing a request for oral argument transfers jurisdiction of the case to the Board of Appeals.

After a pre-hearing conference with the parties, the Hearing Examiner issued a Notice of Hearing and Scheduling Order governing the remaining proceedings. Both parties were to submit expert reports no later than Monday, March 14, 2022. Rebuttal reports from both sides were due on March 28, 2022, and the public hearing was scheduled for April 12, 2022. Exhibit 94.

Both PWPA and the Applicant timely filed their expert reports and pre-hearing statements on March 14, 2022. Exhibits 97-106, 108. The Hearing Examiner forwarded copies of the expert reports to representatives of the Washington Suburban Sanitary Commission (WSSC) (which has jurisdiction over the Rocky Gorge Reservoir) and the Montgomery County Department of Environmental Protection (MCDEP), both of whom had provided comment in the original case.³ Exhibit 109.

Reflections Park also filed a Motion to Disqualify the Patuxent River Watershed Association (PWPA) from participating in the remand because it had forfeited its corporate charter in 2017. Exhibit 96. Shortly after (on March 16, 2022), Reflections Park requested that testimony and evidence from one of PWPA's identified experts be excluded because his expert report had not been filed by the date set in the Scheduling Order. PWPA filed an opposition to Reflection's motion to exclude them from the proceedings on March 24, 2022. Exhibit 112. On March 25, PWPA filed a letter explaining why one of their expert witness' report was delayed. Exhibit 113.

Reflections Park filed their expert rebuttal reports on March 28, 2022. Exhibits 118, 119. The opposition did not file expert rebuttal reports. The Applicant's rebuttal reports were forwarded to the WSSC and MCDEP. Exhibit 109.

The Hearing proceeded as scheduled on April 12, April 13, and April 14, 2022. Three expert witnesses appeared on behalf of PWPA. Five additional non-expert witnesses appeared in

³ The Hearing Examiner contacted both representatives on January 31, 2022, to let them know that she would be seeking further comment from them. Exhibit 92.

opposition. A representative of the Reflections Park and two expert witnesses testified on behalf of the Applicant. Their testimony is summarized below.

After the public hearing, those in opposition sought input on the questions that the Hearing Examiner would be forwarding to WSSC and MCDEP for review. The Hearing Examiner granted this request, and after revising some of her initial questions to address changes sought by both sides, she forwarded a final set of questions to the agencies on April 19, 2022. Exhibit 140. The WSSC and MCDEP timely responded with recommendations and analysis on May 10, 2022. PWPA submitted final comments on WSSC's and MCDEP's responses and the record closed on May 17, 2022.⁴

After very careful consideration of the expert and lay testimony in this case, the Hearing Examiner concludes that the weight of evidence and testimony in this case supports a finding that the proposed cemetery will not cause harm to nearby wells, streams, or the Rocky Gorge Reservoir and will be compatible with the surrounding area based on the limited environmental issues considered.

II. FACTUAL BACKGROUND

The factual background of the subject property, the surrounding area, and the proposed use were described in detail in the Hearing Examiner's Report and are not repeated here. For convenience, the Hearing Examiner includes the conditional use site plan proposed by the Applicant (Exhibit 38(b), on the next page).

III. PARTICIPATION OF PWPA AS A PARTY TO THE PROCEEDINGS

The main thrust of the Applicant's motion to prevent PWPA from participation was that it

⁴ The Applicant chose not to file a response to the comments from the WSSC and MCDEP. Exhibit 149.

had forfeited its corporate charter and therefore was without power under State law to pursue litigation. Exhibit 96, pp. 7-9. The motion also alleged that PWPA misrepresented its status as an environmental steward in Montgomery County in prior proceedings. Exhibit 96. During the first day of hearings, the Applicant maintained that the expert reports submitted by PWPA's witnesses should be excluded because they had been filed while PWPA's charter was forfeited.

Mr. James Putman testified that PWPA forfeited its corporate status in 2017. Once he realized that oversight, he immediately refiled all seven delinquent property tax returns with the State Department of Assessments and Taxation (SDAT). The returns were accepted the next morning. PWPA then hired an attorney to file articles of revitalization and PWPA paid for expedited review. The expedited review was completed on April 11, 2022 (the day before the first hearing on the remand). PWPA's status on SDAT's website was changed the afternoon of April 11, 2022 to a corporation in good standing. He had not yet received an email from SDAT confirming this but did print the screenshot from SDAT's website and submitted it into evidence. T. 8-9; Exhibit 129. Mr. Putman also submitted into the record the Articles of Revitalization of PWPA. Exhibit 131. At 2:00 p.m. on the day of the first hearing (April 12, 2022), Mr. Putman submitted an email from SDAT confirming that the Articles of Incorporation had been accepted. Exhibit 133.

Mr. Putman also addressed statements in the Applicant's motion alleging that his testimony before the Hearing Examiner prior to remand was inaccurate. He testified that, as a volunteer organization, they are not always "as tidy" as they should be. T. 14. PWPA is not a 501(c)(3) corporation as he originally through. PWPA is a 501(c)(4). It's his understanding that the difference is that if PWPA was a 501(c)(3) corporation, individuals could deduct donations on their tax returns. He apologized for his mistake. T. 9-12.

The Applicant makes several arguments regarding PWPA's representations at the first hearing, its standing as a party to this proceeding, and whether the Hearing Examiner has authority to consider the expert reports filed by PWPA when its charter was forfeited. Alleged misrepresentations include: (1) PWPA's assertion that it is a long-standing spokesperson for environmental protection is incorrect, (2) that PWPA can't be an aggrieved party under *Bryniarski v. Montgomery County Board of Appeals*, 247 Md. 137 (1967) because it owns no property within the surrounding area, (3) that it hasn't been a long-standing spokesman on environmental matters because it wasn't included in the Citizen's Advisory Committee of the Cloverly Master Plan or the "Technical Advisory Group" that participated in development of the 1998 Patuxent River Watershed Functional Master Plan, and (5) that it wasn't an organization recognized by the Montgomery County Planning Department.

In response to its corporate authority, PWPA's attorney cites to Md. Code Ann., Corps. &

Ass 'ns § 3-512, which provides:

The reinstatement and extension of a corporation's existence under § 3-501 of this subtitle or the revival of a corporation's charter under § 3-507 of this subtitle has the following effects:

(1) If otherwise done within the scope of its charter, all contracts or other acts done in the name of the corporation while the charter was void are validated, and the corporation is liable for them; and

(2) All the assets and rights of the corporation, except those sold or those of which it was otherwise divested while the charter was void, are restored to the corporation to the same extent that they were held by the corporation before the expiration or forfeiture of the charter.

In Reply, the Applicant cites Tri-County Unlimited, Inc. v. Kids First Swim Sch., Inc., 191

Md. App. 613, 622-23, 993 A.2d 146, 151 (2010), which holds that a complaint filed by a defunct

corporation is a nullity as a matter of law. Exhibit 120.

The Hearing Examiner finds that the facts here are distinguishable from those in *Tri-County*. The *Tri-County* Court recognized that a corporation was free to sue again if the statute of limitations hadn't passed. *Tri-County, supra*, at 621 ("Tri-County certainly has the right to initiate a lawsuit now that its charter has been revived and it is a legal entity; in fact, the circuit court instructed Tri-County to re-file its complaint.") The Hearing Examiner finds credible Mr. Putman's testimony and evidence (the screen shot from SDAT's website) that PWPA was restored to a corporation in good standing as of April 11, 2022. Even were it not until April 12, 2022, the restoration permitted PWPA to continue to participate as a party to the proceedings.

At the hearing, the Applicant argued that the expert reports should still be excluded because they weren't filed within the time required in the Hearing Examiner's scheduling order. The Hearing Examiner disagrees. As of the first day of the hearing, PWPA had the ability to present and rely on reports, which it did at length during the public hearing. Therefore, the only technical defect at the time of the hearing was that the expert reports were presented late. Late filings may be subject to sanctions, but the Applicant did not make this motion, nor can the Hearing Examiner find any prejudice. The expert reports relied upon by PWPA were not changed at the time of the hearing from those submitted in March and the Applicant did, in fact, file lengthy rebuttals to them. The Hearing Examiner refuses to exclude them.

The Hearing Examiner finds that many of the allegations in the Applicant's motion are either irrelevant, or inaccurate, or both. She does not understand why accusations of past alleged misrepresentations relate to the legal issues surrounding the forfeiture of PWPA's charter.⁵ Some of the propositions in the Applicant's motion are inaccurate. Just as an example, the Hearing

⁵ If the Applicant intends to attack Mr. Putman's credibility based on the alleged misrepresentations in prior proceedings, the Hearing Examiner strongly disagrees. The Hearing Examiner has viewed Mr. Putman's demeanor and comportment on the stand in both the first hearing and this hearing and finds that he has never intentionally misrepresented facts to the Hearing Examiner, as his testimony demonstrates.

Examiner is unaware of any law that requires PWPA to be an "aggrieved party" under *Bryniarski* to participate in a hearing where OZAH exercises original jurisdiction.

V. EXPERT TESTIMONY

A. Opposition's Expert Evidence and Testimony (Day 1)

1. Dr. Luther King Abia Akebe (Dr. Abia)

Dr. Abia has a PhD in environmental microbiology and was recently appointed as an assistant professor of applied environmental microbiology at the University of KwaZulu-Natal. He is a member of the South African Council of Professional Natural Scientists, that researches environmental aspects, human aspects, and animal aspects from a microbiological point of view. T. 193-194. He recently joined the Aspen New Voice Fellowship, which is a platform that allows him to translate his research into popular articles that non-specialists may read. T. 196. From 2015 to 2018, Dr. Abia studied the impact of internment, or burials, on groundwater.⁶ Dr. Abia qualified as an expert in the field of micro-bio impacts of interments on water resources, including wells and water supplies. T. 195.

Dr. Abia testified that any form of cemetery or burial, whether traditional, green, or otherwise, is a bad idea in an area that serves as a water catchment for drinking water, as many of the articles in Exhibit 102(a) point out. T. 196. He opined that the natural environment contains innate processes for cleaning itself. T. 197. Anthropological activities, however, may upset that balance. Once humans alter the environment, it can change the natural system so that it does not function as normal. Dr. Abia's research focuses on bacteria. The environment can clean excretions from animals, birds, etc., because they excrete only small quantities. Human activities, however, change that setting. T. 197.

⁶ Dr. Abia's resume is Exhibit 101.
Dr. Abia testified that the first area of concern in human burials is that any decomposing bodies are a rich source of nutrients. However, not all organisms come from within the body. There are organisms that are already found in the soil and have developed ways of protecting themselves in the environment. T. 198. Interred bodies provide those bacteria with a rich source of nutrients that will allow them to grow more than they normally would. Apart from leaching into the ground water, the nutrient load will provide a high level of nutrients to bacteria already in the soil. T. 198.

Dr. Abia opined that high levels of bacterial nutrients can generate larger concentrations of antibiotic resistant bacteria. He explained that organisms in the environment are already in competition. They are forced into competing as a mechanism of survival. One of the mechanisms of survival is that they produce antibodies or antibiotics. These are meant to eliminate competitors to gain enough food to survive. Other organisms that are targeted by the antibiotics need to develop a defense mechanism, which means they automatically develop a resistance to the antibodies to survive. T. 198.

A problem arises when the resistant organisms have enough nutrients to grow faster than they could have grown with more limited nutrients in their environment. When the micro-load is boosted beyond the capacity of the environment to contain it, they leach down through cracks in the soil. Digging graves creates "cracks" in the soil and the soil can't be returned to its normal state. The decomposing leachate passes through and may create an underground stream that can get down to nearby waters. T. 199.

In this environment, organisms produce extracellular proteins that allows them to bind and form a "mat." T. 199. This can be seen in sanitary filtration systems for water treatment. At some point, part of the surface needs to be removed because the mat formed by the bacteria allows these

organisms to slough off gradually and get into groundwater that is already treated. T. 199-200. This means that the ground's natural filtering capacity ultimately breaks down. Once the amount of bacteria present grows beyond the soil's capacity to filter them, they begin to peel off gradually and can contaminate water through runoff or other ways, depending on the soil type. T. 200.

Even if these bacteria die again, they are not completely dead. Their DNA is still available, especially with resistant genes. DNA fragments that carry resistant genes have been found in soil far before anyone examined the effect of antibiotics. If we create a huge concentration of these organisms, we have also created a huge DNA pool within the environment. Dr. Abia explained that DNA has been found in 30-year-old perma-frost. These DNA can be transferred to closely related organisms by conjugation, which is a form of mating, or by transduction, which is the transfer of DNA from special bacteria viruses that are in the soil. When these viruses feed on those bacteria, they can transfer that DNA to other bacteria. T. 200-201.

There is a third form of antimicrobial resistance called "transformation". In that method, the bacteria themselves pick up free DNA from the environment and, in the case of burial, is likely what will occur most often. Even though the bacteria will die, the DNA will be available. The DNA is much smaller than the bacteria and a very minute fraction may easily go through cracks and find itself at longer distances than intact bacteria. T. 201.

The DNA of resistant bacteria have already been found in groundwater sources, surface waters and wells. They can join non-resistant bacteria already present and develop resistance also. Microbial resistance is a very big problem and is being discussed at the U.N. and World Health Organization (WHO). There is no way to eliminate the threat that these bacteria pose to the environment. WHO advocates a "one-herd" approach to solving the problem, which means that the entire interaction between humans, animals, and the environment be considered, instead of

focusing only on human health. T. 202. There is no way that human health can be separated from the environment. *Id*.

According to Dr. Abia, this means that all human pollution will cause a problem downstream, especially if the source is not well-located. While Dr. Abia believes that green cemeteries are beautiful ideas, they should not be in a catchment that serves drinking water. In his opinion, that would be a "very bad" idea. T. 202.

On cross-examination, Dr. Abia testified that, in the cemeteries he has studied, the water table was low in some areas and high in others. Whether it was low or high, they were seeing comparable micro-communities. They were also seeing comparable disease-causing bacteria. T. 203. Bacteria and viruses have been found to attach more to smaller soil particles. However, even if they are smaller particle sizes, when they form the biofilm mat, the mat becomes like a reservoir, an environmental reservoir that constantly releases bacteria into the environment. T. 204. If clay soils exist under the graves, the water drains slowly and may return to the surface and runoff. T. 206.

Dr. Abia acknowledged that he had not done a site-specific analysis of the soils in this area. He believes that any digging that create cracks will yield the same problem. T. 208. He agreed that the best considerations would be depth to groundwater and burial depth. T. 210. A 6-foot depth has been held to be the best depth to ensure that nothing surfaces, although he did not know the basis of that calculation. T. 210. It should be deep enough to prevent scavengers from digging up the bodies. T. 210. However, we create cracks in the subsoil simply by digging the graves. In his opinion, the site-specific conditions have been reported in many other countries and he believes will be like this site. T. 210.

2. Dr. Theresa O'Keefe

Dr. O'Keefe is a scientist that develops drug therapies for humans. She specializes in cancer therapies and is concerned that there isn't enough consideration of the impact of pharmaceutical therapies on the environment. She has a master's degree in veterinary science and physiology and a PhD in molecular immunology. She received training from two Nobel Prize winners and has worked for we years in biotech companies. She has invented drug treatments for Chrohn's disease and ulcerative colitis. T. 148.⁷ She qualified as an expert in risks from hazardous drugs. T. 152.

Dr. O'Keefe opined that it is "critical" to keep hazardous chemicals out of the water supply because it is the best way to treat birth defects and cancer. Exhibit 106, p. 1. A woman is born with all her eggs formed; if a woman is exposed while carrying a fetus, both her child and grandchild can be severely injured. In her expert report, she states, "It is critical that pregnant women are protected from Hazardous Chemicals because almost ALL childhood cancers start before a child is born...a dose of Hazardous Chemical that can be tolerated by an adult (100+ lbs) is a disaster for a fetus that weights only a few ounces." *Id*.

Dr. O'Keefe testified that the typical focus on hazardous drugs is on the risk to the standard patient. A standard patient is considered to be a 70 kilogram (kg) adult, who has an A1c of less than 5.8 who is a non-smoker and who lived a perfect life.⁸ They are at a small risk of anything. T. 154.

As a prelude to her conclusions, Dr. O'Keefe explained the concept of "ADME", which

⁷ Dr. O'Keefe's CV is Exhibit 105.

⁸ 70 kg converts to approximately 154 pounds. "Convert Units - Measurement Unit Converter." ConvertUnits.com. Web. 8 Jun 2022. https://www.convertunits.com/from/70+kg/to/lbs.

stands for absorption, distribution, metabolism and excretion. An example is a medication administered in pill form: "Absorption" is the amount that passes from the gut to the blood. "Distribution" is the method by which the drug moves throughout the body into different organs. Metabolism is the process by which the body breaks down or changes the drug, and "excretion" is the process by which the drug is excreted from the body. Here, the key steps are metabolism and excretion because none of the drug will be excreted if it's completely metabolized by the body. *Id.*, pp. 1-2. She testified that most people don't realize that the majority of human drugs in the environment are excreted from our bodies. *Id.*, p. 2.

The National Institute for Occupational Safety and Health (NIOSH), the research arm of Occupational Safety and Health Administration (OSHA), creates a "Hazardous Drug List" based on information supplied by drug companies to the FDA, including extensive committee reviews. The goal of NIOSH is to provide information to health care workers about any drugs that could cause cancer, birth defects or serious injury. *Id.* The list is comprised of 200 drugs that are dangerous to humans other than the patient. The list includes several drugs used to treat cancer, including Cyclophosphamide and Tamoxifen, which are usually used acutely and "chronically", (*i.e.*, for five or more years). *Id.* Another chronically used hazardous drug is Valproic acid, which is used to treat epilepsy. All must be handled and disposed of using hazardous chemical disposal pathways and protocols. *Id.*

What causes the most concern in her area of expertise is the risk of harm from these drugs to fetuses. The hazardous drug list contains 188 drugs and 88 percent of those drugs ended up on the list because of the harm they do to fetuses. T. 154. So instead of the 70-year-old male, the focus is now on something that is less than 100 grams and under 2 ounces. Their liver is the size of an adult fingernail. This changes the level of risk. Lots of chemotherapy drugs, the oldfashioned ones that are so potent, like cyclophosphamide, tamoxifen, or methotrexate, are used not only for cancer, but are very effective for rheumatoid arthritis. T. 155.

However, 25 to 80% of the drugs we give to those patients will be absorbed into the bloodstream. It will be distributed through the body and the metabolized. There are some parts that our digestive systems are unable to break them down. These are excreted from the patient as the original cyclophosphamide, methotrexate, and tamoxifen. T. 155.

These can contact the skin, drinking water and many other ways. They are found in wells of people on chemotherapy. Then, if a pregnant woman drinks even a tiny amount, can cause tremendous harm to fetuses. That is why these drugs are on the hazardous drug list. Sixty-four of the drugs on the list may cause cancer, birth defects, miscarriages, and many other adverse health effects on fetuses, children, and babies. T. 156.

She and other scientists are very worried about any of these chemicals getting into any water, any well, or anything else because in the U.S. The cost to treat childhood cancer is \$800,000. Almost all cancer in children begins before the baby is born. Childhood leukemia, one of the common forms of cancer in children, may require a T-cell treatment, which of itself is \$1,000,000. T. 156.

She recommends not taking any chances with excretion of these hazardous drugs. Cyclophosphamide used for breast cancer, ovarian cancer, lung cancer, and most types of blood cancer, is the chemical that causes hair loss. What people don't realize is that it also used for palliative care. If cancer is not remitted, that drug is used to reduce the size of tumors, so they don't metastasize, or grow so large that they press on nerves or even break bones. For this reason, a "lot of people" die with chemotherapy in their body. It is not used for treatment, but pain control. T. 157.

Tamoxifen is used for the entire life of a breast cancer patient who is not responding to treatment to keep the tumor volume down. There are other drugs that are not as much in her area of expertise. However, over 1 percent of people in the U.S. have epilepsy. Twenty percent of the drugs used today for this condition are using hazardous drugs, which are excreted in large quantities. T. 158. Those patients will be taking those drugs until the day they die. The drugs will get into the water after excretion from the body. T. 158. It takes "very, very little" of these drugs to cause childhood cancer because cells in fetuses have no immune system. T. 159.

Hormone therapy also has hazardous effects. Estrogen takes eight different mammalian enzymes to break down. These do not exist in bacteria. That is why estrogen is found in streams, waterways downstream of municipal wastewater treatment plants, and septic tanks. This has caused the feminization of fish. T. 159. Her research indicates that over 12 million patients in the U.S. are on estrogen drugs. Estrogen is "very, very hardy". T. 159. One of the first estrogen drugs, Premarin, has been found to cause cancer. It is now on the hazardous drug list because it is FDA pregnancy category X. There are 64 of these types of drugs, that can cause such damage in very tiny amounts. If you put these in the ground, they will come out of the ground. T. 160.

On cross-examination, Dr. O'Keefe testified that she has not analyzed the exposure pathway on the subject property. T. 162. However, the CDC, NIOSH and everybody worries about the exposure. It is one of the textbook things we must worry about. The presence of estrogen in drinking water is not from flushing pills down the toilet, it is from human excretion into the wastewater supply. Municipal wastewater plants cannot treat the estrogen. She does not know of a single study testing for the presence of estrogen that has not found it present. T. 163. Nor will septic systems degrade many of the drugs she's worried about. T. 164. In her opinion, the volumes of drugs excreted from dead bodies compared to living bodies may be the same, depending on the dosage and the number of days before death the drugs were administered. Palliative care can continue until death. One of the drugs, Estramustine, is given to men with terminal prostate cancer for palliative care. It is equivalent to estrogen but is given in doses a "million times" the amount that a woman would produce in a day. It is given every day until death to prevent the tumors from pushing on the nerves. T. 165-166.

Dr. O'Keefe opined that the exact exposure pathway after excretion from the body is not as important with some of these drugs because they do not bio-degrade. To break down estrogen, you need eight mammalian enzymes. So, until the excretion becomes absorbed by a mammal, it will flow somewhere. T. 173. Mammalian enzymes in the dead bodies break down very quickly because they need oxygen. The enzymes will be destroyed "within minutes" after oxygen deprivation. That's why industrial enzymes cannot be mammalian. If the PH becomes acidic, they're destroyed. T. 174. The only items left in the body tend to be bacterial enzymes, which are not very efficient at destroying these hazardous drugs. T. 174. Estrogen and other mammalian enzymes are like the plastics of the drug world. *Id*.

These drugs are on the NIOSH list, which measures hazard levels for people to work with patients who work with the drugs. Despite this, they do not have to be exposed frequently. If they are pregnant, they only must be exposed once. T. 176.

Dr. O'Keefe testified that drugs that are in your body on the day of death remain in the body the following day and days beyond. In living persons, most drugs are excreted within 12 hours; some take 36 to 48 hours. Before death, metabolism slows and drugs taken the day of death will remain in the body and be excreted at a slower rate. Some cancer drugs are used for palliative care to keep the patients out of pain, and full doses may be within the body at the time of death.

T. 183. Hazardous pharmaceuticals are not just used for cancer patients, but also for patients with rheumatoid arthritis. More drugs may remain in the body of patients with renal failure because their normal metabolism does not work. T. 184.

Dr. O'Keefe acknowledged that she did not do an analysis of the exposure pathway on the subject property after excretion. She felt that there have been "too many" papers that already show these chemicals getting into the water supply. T. 160-161. According to her, environmental textbooks already document the problems with estrogen. T. 161. In her opinion, the nature of the drug is more important than subsurface conditions on the property. T. 172. It will not be degraded by other bodies because the mammalian enzymes break down very quickly because they need oxygen.

Dr. O'Keefe also acknowledged that she had not studied the subsurface conditions on the subject property. She testified that most of the drugs she described were excreted within a couple of days of someone taking them. In her opinion, septic systems will degrade a lot of substances, but not the ones she is most worried about. She analogized these drugs to "plastic". T. 164.

She testified that the amount of drugs excreted from a body at death varies with the number of days before death they received the dose and the size of the dose. One of the big issues of palliative care is that doses given are much higher. For instance, Estramustine is given to men who have terminal prostate cancer for palliative care. It is equivalent to estrogen but given in doses a "million times" the amount a woman would produce in a day. They give that drug to terminal prostate cancer patients to prevent the cancer from growing so big that it pushes on the nerves. T. 165. The amount excreted into the ground would be the equivalent of the dose administered just before death. T. 166. Dr. O'Keefe acknowledged that the NIOSH Hazardous Drug List is a guide to assessing occupational risk. While most people must be exposed more than once, pregnant woman need only be exposed once. T. 177. She acknowledged that the risk potential of a person who handles hazardous drugs on a regular basis is different than someone who might drink the water once or twice.

3. Mr. James Mullowney

Mr. Mullowney worked for 35 years in the hazardous waste business⁹. Part of his work involved cleaning up hazardous waste sites. This included determining what needed to be removed, identifying the point source, and analyzing engineering reports on the groundwater flow. Once the point source was identified, them would remove it to enable them to clean up the groundwater. T. 215-216. He worked on diagnosis and remediation of the hazardous waste site at Love Canal. He has never analyzed a cemetery as a hazardous waste site. T. 216. Mr. Mullowney qualified as an expert in the risk of releasing toxic chemicals. T. 216.

Mr. Mullowney was directed to this project by Dr. Christian Daughton, who is the number one expert on drugs in the environment in the U.S. and one of the top in the world. T. 217. When he first started discussing this with Dr. Daughton 15 years ago, Dr. Daughton mentioned that no one is researching the discharge of chemotherapy drugs into the environment. As Mr. Mullowney began studying the issue, he believes that examining the dose of the drug given to patients has no bearing on the level of environmental pollution. T. 218.

This is because some of the cytotoxic chemicals are harmful even in minute doses. Unlike lead exposure, which becomes toxic when certain amounts accumulate, one molecule of these

⁹ Mr. Mullowney's resume is Exhibit 104.

drugs starts a chain reaction that alters DNA. All the cells in fetuses and children are dividing, so if one molecule gets in, it can block the replication. T. 218.

In chemo patients, these drugs can cause death. If they don't die, they become a mutation, which in a child is a birth defect. He became involved in preventing this hazard in 2007 when he realized how dangerous these chemicals are and how they can harm rapidly dividing cells at any level. T. 218. He also noticed among his friends a correlation between autistic children and parents that had chemotherapy treatment. This is a new field that is receiving a lot of research, but in Europe, it is part of the clean water directive. T. 219.

He testified that these concerns haven't been addressed in the U.S. due to confusion about the jurisdiction over these pharmaceuticals. The U.S. Environmental Protection Agency (EPA) will state that it is the Federal Drug Administration's (FDA) jurisdiction, and the FDA says it's the EPA's jurisdiction. As no agency takes responsibility for this, the problems with discharge of hazardous drugs is not being addressed in the U.S. as it is in the rest of the world. T. 219.

Under the CERCLA Super Fund regulations, the polluter pays for remediation. Mr. Mullowney holds a series of patents on mechanisms for collecting human waste from chemotherapy agents, so it doesn't travel through a septic system and get into water supplies. The goal is that it never goes down the drain. T. 220.

Mr. Mullowney opined that in future years, this type of waste will not flow into septic systems and will be handled like every other dangerous chemical. In his opinion, 10 years from now, this cemetery will be a superfund site that they will have to dig up because it will become the point source of pollution. T. 220.

Mr. Mullowney opined that putting a cemetery of any type in a watershed is a "bad idea". But a green cemetery is even worse because of the water drains so quickly and breaks down into the water. These chemicals will go into the water and polluting Silver Spring is not a good idea. T. 221. He works every day on getting people to control these genotoxic, cytotoxic chemo drugs, and once we solve that problem, the next will be the bodies that drain into the reservoir. T. 221.

Mr. Mullowney clarified that he is not opposed to green burial cemeteries outside of a watershed that does not drain to a drinking water supply. T. 222. There are "plenty" of places where it will not enter the groundwater. Some of these take 20 years to degrade and should not be in the drinking water. T. 221.

Mr. Mullowney gave an example of how protective disposal of hazardous chemical must be. He testified that when he worked at a hazardous waste facility in Framingham, MA, they were receiving drums full of syringes. They had to break the tip off and put it in a 5-gallon pail to go to the medical waste incinerator and placing the syringes in a 5-gallon pail to go to a non-regulated waste facility. The chemical used in the syringes was mustargen. It's a liquid mustard gas. In 2007, the EPA was starting to look at these drugs as environmental pollutants, but they stopped because it "terrifies" them. T. 222. In his opinion, it's irresponsible to place a cemetery in this location with the excuse that it's "no worse than a septic system." T. 222. He believes that governments that allow this to happen are "insidious." T. 222.

Mr. Mullowney testifies that for some drugs, more care is placed into how the drug goes into the human body rather than how it gets excreted. For instance, the wrapper from methotrexate is so toxic that the EPA makes it a felony to place it in the regular trash. However, 90 percent of that drug is excreted by the patient ungoverned by regulations. Methotrexate is used to terminate pregnancy and can kill the fetus within hours. These new drugs that can harm with such minimal dosages remain dangerous when excreted and he believes there will be more research on it. T. 224.

He believes that the green burial cemeteries will become a future pollutant point sources based on common sense. It doesn't make sense to place it in the water supply for drinking water. There's a tremendous amount of legislation on this in Europe. They already added chemotherapy drugs to Europe's clean water directive, although implementation has been delayed due to COVID. This is not true for every watershed, but it is true for watersheds that drain into a drinking supply. T. 225. There is a tremendous amount of information on fate and transport of cytotoxic drugs both through soil and wastewater throughout the world. T. 226. There are many studies that have confirmed that it is in the soil. T. 226. An example is cyclophosphamide. When the human body destroys a molecule, the first breakdown product, or metabolite, is acrolein. Acrolein is ranked as a high-level poison by the EPA. Cyclophosphamide is a lower level. The other biproduct of the drug is phospine mustard that is used in chemical weapons. Drinking water is not completely screened for these byproduct. You must ensure that it doesn't get in the drinking water supply or you will never get it out again. T. 227.

Mr. Mullowney does not believe that the site specifics change is analysis. He believes it "fairly clear" from the literature that where there is flow of groundwater the chemicals will get to a drinking supply. T. 228.

B. Applicant's Expert Testimony (Day 2)

1. Dr. Richard Pleus

Dr. Pleus is a pharmacologist and toxicologist with 30 years of experience evaluating human exposures to chemicals in the air, in water, in food, in drugs, in consumer products and occupational environments. He has a bachelor's degree in physiology, a master's degree in public health, focused on environmental public health, and a PhD in pharmacology.¹⁰ Mr. Pleus testified

¹⁰ A summary of Dr. Pleus' qualifications is at Exhibit 119, p. 1.

that toxicology is the study of how chemicals adversely affect the human body. Pharmacology is a study of how chemical agents affect the body as well, although the focus is on the therapeutic intention or value. An example would be an opiate to relieve pain. When doing pharmacological research, he was looking to design drugs for therapeutic effects. Toxicology in contrast, studies the dosages of therapeutic agents that become toxic, such as lead or mercury in the environment. T. 260-261. Dr. Pleus qualified as an expert in the areas of toxicology and pharmacology and in the assessment of risks to human health from exposure to pharmaceuticals in drinking water. T. 265.

Dr. Pleus testified that PWPA's experts ignored the "dose response" concept critical to determining whether exposure to drugs is toxic. They failed to account for the exposure pathway of these drugs after excretion. In Dr. Pleus' opinion, the science behind the opposition's expert evidence and testimony was "was absolutely incorrect and poor." T. 270.

According to him, to measure potential toxicity, one needs to know the chemical, the dose, the exposure route, and the threshold. T. 270. According to Dr. Pleus, chemicals cannot be defined "cytotoxic" without knowing these factors. The term "cytotoxic" is a very general word that simply means that a chemical is affecting a cell. Every chemical has the potential to have a cytotoxic effect. A chemical is not toxic until it reaches a dose at which there is toxicity. None of the Applicant's witnesses used the term cytotoxic or genotoxic correctly. T. 272. Nor will exposure affect future generations. A teratogen is a chemical agent that affects the embryo in its development of the embryo. It does not affect future generations. T. 272.

Dose response is a fundamental principle in conducting a toxicology assessment. Mr. Mullowney correctly cited this for the proposition that everything has the potential to be a poison. What differentiates a pharmaceutical from a toxin, however, is the dose. Toxicologists worldwide understand that everything has a potential to cause toxicity. At what point it does so depends on the chemical agent and the dose given to a patient. T. 269. A simple example is ethanol. If someone consumes a quarter of a teaspoon of ethanol, it will probably go into the body, be absorbed, distributed, metabolized, and a little will be excreted without any effect. If a cup of ethanol were given to an individual, the response will begin to affect the person. With increasing amounts of alcohol, things like social behavior begins to change. Increasing the dose further will begin to impair thinking, actions of appendages, and walking. Further increases will land a person in the emergency room and ultimate, with increased dosages, the individual will die. T. 270.

Another important component of measuring potential toxicity is exposure. Using alcohol as an example, an unconsumed bottle will not cause harm because there has been no exposure. The exposure route is oral, meaning one drinks it. Only once the chemical gets into the body does it does have an effect. So, exposure becomes important when measuring potential toxicity.

Threshold is the level at below which there are no adverse effects to the human. The threshold must be determined whether it's a toxic end point or the most sensitive toxic end point. Again, using alcohol, feeling social comfortable might be a threshold; the ability to walk a straight line would be a different threshold. T. 271. Thresholds are determined by the desired effect of the drug. In toxicology, they look for the most sensitive known health effect and use that to determine effect of increased dosages. T. 271.

Dr. Pleus disagrees with Dr. O'Keefe and Mr. Mullowney that there are drugs with no threshold exposures. Government agencies around the world perform a toxicological risk assessment to determine the health impact of potential drugs. It is a well-known quantitive process that is completely missing in Dr. O'Keefe's and Mr. Mullowney's testimony. T. 273-274.

Dr. Pleus also stressed the importance of examining the exposure pathway, or ADME, the acronym for absorption, distribution, metabolism, and excretion, in determining toxicity. Using alcohol as an example, Dr. Pleus explained that, first, it must be introduced into the body. Absorption means that if it's introduced orally, it travels to the gut and small intestine, and then is absorbed into the body. That is a complex physiologic process because sometimes gastric juices and materials in the gut will metabolize the compound taken orally. The gut has a micro biome, which is an active source of bacteria that help the body metabolize materials. T. 274-275.

Once a chemical crosses into the bloodstream, it will go to the liver and the liver metabolizes the material, after which it is distributed throughout the body. The purpose of the liver then is to help chemicals be excreted from the body by making them more available to be excreted in urine. A bypass puts the chemical into the feces, although the liver may do that as well. T. 275.

Chemicals contained in necroleachate have different ADME and metabolism continues after death. ADME begins before death. The first barrier is that it must be absorbed into the body. The second thing the body does is metabolize it, which means the body will use the chemical or get rid of the chemical. Once it gets metabolized, at least for ingested chemicals, it gets distributed to tissues in the body. Depending on the chemical, it may concentrate more in some tissues than others. Then the chemical passes through the kidneys and excretes through urine or feces. T. 276. A small portion may be exhaled through the lungs or excreted through sweat, but those are minor routes. T. 276.

Metabolism of chemicals in necroleachate continue as death occurs and after death. As the body begins to die, the systems start to shut down. Shortly after, the blood, fluids and tissues are redistributed. Those continue to work until the pH changes in the body, temperature decreases in the body, or the energy sources stops. But that takes time for different tissues. It is not like a like a light switch going off but does continue for a short period of time. T. 277. According to Dr. Pleus, there are different varieties of estrogen compounds that are metabolized in the gut. T. 278. Upon death, the microbiome of the gut does not shut down immediately, but flourish. The decomposition of the body starts at that point. The same applies to the microbiome of the skin. *Id.* As the body begins to die, the systems start to shut down. Shortly after, the blood, fluids and tissues are redistributed. Those continue to work until the pH changes in the body, temperature decreases in the body, or the energy sources stops. But that takes time for different tissues. It is not like a like a light switch going off but does continue for a short period of time. T. 277.

In his opinion, the potential of *occupational* exposure, relied on by Dr. O'Keefe and Mr. Mullowney, is "vastly different" than potential exposure by other means and should not be relied on in this case. According to him, there "is no equivalent potential exposure or dose to a person drinking water from a reservoir." Exhibit 118, p. 7. Dr. Pleus stresses (Exhibit 119, p. 7):

By focusing solely on excretion of unmetabolized drugs and ommitting absorption, distribution, and metabolism, the reader understands only a portion of the picture of the pharmacokinetic profile of drugs. Evaluating exposures from drinking water, the full ADME must be considered. This includes knowing the administered dose, half-lives, specific metabolic pathways...and distribution of the agents (*e.g.*, preferentially located in the bone or liver for example). Many chemicals have short half-livest (*i.e.*, the measurments of the time it takes to reduce its concentration by 50%), low dosage regimes, inactive metabolites, and other factors that would substantially reduce any potential leachated from the deceased. If you have a concentration of chemicals in the drinking water,

Risk based on the toxicology of pharmaceuticals attempts to quantitatively determine whether there is going to be a potential adverse health risk. They look at scientific data to determine the most sensitive health end point that can be identified for a particular compound. T. 279. For this reason, there is a lot of information about the potential toxicity of pharmaceutical compounds. Starting with the most sensitive adverse effect, they apply "safety" or "uncertainty" factors. T. 280. Safety factors can range anywhere from a ten-fold difference to thousands-fold difference. They employ a conservative approach by comparing water concentrations to determine whether there is a health effect. The process is transparent so that individuals and government agencies can review the data to determine whether the drug is safe at certain levels. T. 280.

Part of the risk assessment examines the "exposure pathway" between the chemical and person. For a green burial cemetery, the "exposure pathway" starts with a release from the body to individual water taps or faucets. Unlike the Applicant's experts, he finds that the dose and exposure pathway is key to determining the potential toxicity of the chemical. T. 282.

In his opinion, the body after death will retain some level of the chemicals. Further degradation will occur with metabolism outside the body through the exposure pathway. There are studies that demonstrate that fungi and bacteria in soil will continue to decompose molecules emitted from the bodies because they look at these as a source of food. They get energy by metabolizing or breaking the chemical bonds apart. Other pharmaceutical molecules will "adsorb" to soil particles. They bind together to produce a new entity. If that's the case, the molecule must "go with the soil". If the soil is too big, it doesn't move. T. 283. Geologists and hydrogeologists study the movement of soil along the exposure pathway. T. 283.

Not all cancer patients will have chemotherapeutic drugs in their bodies at death. Many individuals stop chemotherapy at some point before death. Palliative care for then tends to be pain relief through opiates like methadone or morphine, as well as anti-anxiety agents. From a chemotherapeutic perspective, many (although not all) of the compounds have short half-lives, which measure how long a drug stays in the body, including absorption, distribution, metabolism, and excretion. Half-lives for most of the chemotherapeutic compounds range in the hours to day level. If an individual decides to stop chemotherapy, metabolism of those agents decreases dramatically during that time. T. 286.

Dr. Pleus acknowledged that some individuals in particular situations are more sensitive to or susceptible to a chemical agent than an average person. A pregnant woman is one of these sensitive individuals. When determining toxicity to those individuals, they look at the potential impact on a developing fetus and take that into account when determining, or a government determines, what is a safe level. T. 287.

In his opinion, a person taking a drug while living will excrete more of a chemical than one who is dead. The body upon death has all the chemicals it will ever have. Additional metabolism of that compound continues until death and shortly after death because the microbiome continues to interact with the medication that's left in the decomposing body. T. 287-288. A dead body will continue to leech what's in the body at the time of death, and less after the time because of decomposition. In comparison, someone taking a daily dose of estrogen excretes more into a wastewater treatment or septic system. T. 288. The wastewater treatment plant does the best they can to remove those compounds, but they still get into the environment. A septic system releases those compounds in the soil as well. T. 288. A septic system will have a greater impact than a green burial cemetery because an individual taking certain drugs is continually releasing them into the septic system. T. 289.

Dr. Pleus opined that other sources are likely to be larger contributors of pharmaceutical pollution than a green burial site. T. 289. He bases this on Dr. Dawson's hydrogeologic study, as his expertise ends once the drug is excreted into the waste system.

Dr. Pleus testified that he performed a literature review of published studies regarding comparative impact of pharmaceutical pollution in proximity to cemeteries. He stated that it's an area of increasing interest. Those studies demonstrated that the amount released from cemeteries was below what is called "background". Background means chemical levels that are already in the environment. T. 295. That means that the environment already has these chemicals in it. These studies do show that there was detection of compounds like ibuprofen, fluoxetine, "cerataline [sic]". While these are not chemotherapeutic agents, they are not causing adverse health effects. Simply because these are in the ground does not mean that they cause adverse health effects. T. 294.

The "single molecule" dosage of pharmaceuticals mentioned by Mr. Mullowney is conservative method federal agencies use to protect against health. The presence of a single molecule in a water supply does not demonstrate that a risk is present. T. 295. The fact that a chemical agent can be detected does not mean it will produce an adverse health effect. T. 195.

Dr. Pleus opined that the cemetery proposed will not produce levels of chemicals that would cause adverse health risks. Basing their testimony on the NIOSH approach for occupational hazards is scientifically inaccurate. NIOSH publishes its list of hazardous chemicals for occupational health risks—the impact on the workers using the compounds. That is not the exposure pathway useful in conducting a risk assessment here. He has looked at the metabolism or ADME of these compounds and metabolism in the microbiome and the bacteria and fungi in the soils. He has also considered the exposure pathway described in Dr. Dawson on the components between the earth beneath the grave to the tap. T. 296.

Dr. Pleus acknowledged that none of the studies included in his literature review involved green burial cemeteries and that chemotherapies may be used in palliative care. T. 299-300.

He estimates that metabolism would continue after death for minutes to hours. T. 301. He has been involved in some forensic cases involving the death of chemotherapy patients. The amount in the body after death has been in a "broad range" of 10 to 90 percent depending on the circumstances. T. 302-303.

He is comfortable as a scientist that the pharmaceutical compounds will undergo further degradation into areas after death. One is the decomposition process of the body. Just the gut microbiota and then the biome on the skin will start the degradation. Any of the liquid material that gets released from the bottom of the corpse will undergo further degradation depending on soil conditions. But they will have organisms that further decay. By degradation, he means that the potential for harm is reduced by interactions. There are some public drinking water supplies in Fairfax County, the District of Columbia, and Los Angeles where pharmaceuticals have already been detected. They are below levels that would cause harm. T. 308-309.

There are studies that have been conducted where the authors placed materials like pharmaceuticals into soils and tested it to see what the degradation is. T. 310. Even though there may be many graves, it is extremely rare that a person will receive a full therapeutic dose and then die. He is also certain that the decomposition and adsorption will occur. T. 314. By degradation, he means that bacteria and fungi will begin tearing a chemical apart until it becomes simpler and simpler in terms of structure. That makes it more available for continued degradation. T. 308. Pharmaceuticals have already been detected in water supplies in Fairfax County and other jurisdictions. In all jurisdictions that have been found to be below harmful levels. T. 308.

Dr. Pleus reports that far more studies have been done on the presence of pharmaceuticals in municipal wastewater treatment and septic systems. The amount discharged from those systems is a "key difference" when comparing the potential toxicity of necroleachates because the dosages excreted from septic systems and other household systems are far higher than those excreted from corpses. Corpses excrete only what is in the body at death. Excretions into water supplies and wastewater systems regularly with the potential for a greater volume of contamination. Exhibit 118, p. 18-19.

2. Dr. Helen Dawson

Dr. Dawson holds a bachelor's degree in science and geology from Stanford University, and a Master of Science and Geochemistry from the Colorado School of Mines. Exhibit 97, Dawson Expert Report, Exhibit A. She testified that geochemistry relates to the interaction of natural materials, like geologic materials with water that weathers rocks and then the chemistry releasing chemicals into that. Day 2, T. 319. She also has a PhD in environmental science and engineering from Stanford University. For her PhD, she focused on the transport of organic chemicals in porous media, soil, and sediments. After 10 years in academics, she worked for the EPA's Rocky Mountain Superfund region and was regional hydrogeologist for the Superfund program. Her responsibility was to ensure that EPA contactors or site principals were providing adequate and appropriate hydrogeologic investigations. Later, she returned to EPA headquarters to manage the Superfund science branch. Recently, she was asked to evaluate the contaminant fate and transport from a proposed cemetery in Stafford County, Virginia for the U.S. Department of Justice. *Id.*, T. 321.

Dr. Dawson qualified as an expert in hydrogeology and in the transport and fate of contaminants in soil and groundwater and exposure assessment related to contaminated solid and water. T. 322. According to Dr. Dawson, contaminant transport and fate refers "to the physical, chemical, and biological process that control the movement of contaminants in and through environmental media (such as soil, groundwater or surface water, and air) and how the

contaminants may be altered while they are transported." Exhibit 97, *Dawson, Helen, In the Matter of the Application of Reflection Park, Inc. for a Conditional use for a Cemetery (Case No. CU 21-06) at 16621 New Hampshire Avenue, Silver Spring, Maryland*, (March 12, 2022) (Dawson Expert Report).

Based on the examination of the eco-geologic data for the site and modeling of contaminant fate and transport, Dr. Dawson opined that (1) the proposed cemetery would not pose a health and safety risk to adjacent properties, to nearby wells, to the streams, to the Ednor tributaries or to the Rocky Gorge Reservoir, and (2) that septic systems have a greater impact than will the cemetery. T. 324.

Dr. Dawson, who wrote an outline for the EPA on appropriate methods for hydrologic investigations, first explained the general process for hydrogeologic studies. Starting from the surface where the sources are, one must characterize the source and understand the potential contaminates that could be leached from the source. One also needs to understand the physical setting of the source, including the topography, whether forest is present, and types of soils. It is important to know the depth to groundwater and the material between the groundwater and base of the source. One must analyze the direction of the groundwater flow and the distance between the source materials and any areas or discharge points that may be available. Interactions between surface water and ground water should also be analyzed. T. 325; Exhibit 97, Dawson Expert Report, p. 4. Applying these methods to determine various ways that a contaminant may migrate from this site, she performed a site-specific review of existing conditions on the subject property. A Site Location Map from her Expert Report (Exhibit 97, Dawson Expert Report, Exhibit D) shows the physical setting of the subject property, including the boundaries of the Ednor

Watershed (in yellow), the streams on the property (in blue), and the subject property (in red). Id.,

on the next page.

a. Surface Water Runoff

In her Expert Report, Dr. Dawson opined that no direct surface runoff is expected to occur

because gentle slopes prevent erosion except near streams (where erosion is expected), the bodies



Physical Setting of Watershed Exhibit 97, Dawson Expert Report, Exhibit D

will be buried at least 3.5 feet below the surface, and the burial areas are outside flood zones. Exhibit 97, Dawson Expert Report p. 6.

Upon physical inspection of the site, Dr. Dawson testified that she observed water is flowing in both tributaries. The Ednor tributaries intersect immediately east of the western boundary of the site and flow approximately 1.5 miles downstream from the reservoir. The northern branch is shown on the USGS map as a perennial stream where water runs year-round. The southern branch is an ephemeral stream above where it intersects with the single branch. T. 330. The reservoir has a maximum catchment of 5.5 billion gallons and spans 600 acres in Montgomery and Prince George's Counties. The Ednor tributaries constitute about 1% of the catchment area. The combined flow of the tributaries is less than 2% of the annual water discharge in the Patuxent River Watershed. Dawson Expert Report, pp. 6-7.

Dr. Dawson investigated whether water was flowing in the streams because shallow groundwater typically discharges into streams in the Piedmont regions. That is occurring here without erosion except near the stream bed, where one would expect it. T. 330.

The site is characterized by gentle slopes changing to moderate slopes closer to the streams. The gentle to moderate slopes help ensure that infiltration of surface water occurs rather than runoff leading to erosion. T. 333. The topography map in her report (Exhibit 97, Dawson Expert Report, Exhibit E, below), shows the topographic contours:



Dr. Dawson testified that a ridge runs east-west through the wider portion of the site. The slope from the ridge runs downward to the each of the stream branches. The pinkish shaded areas are the planned burial areas. These are located on the gentler slopes away from the streams, at least 100 feet from the streams. Slopes range from gentle slopes to more moderate slopes as one gets closer to the streams beyond the burial grounds. T. 332.The burial areas (shown in pink) are in gently sloping areas and are outside the floodplain (*Id.*, T. 334, on the next page).

Dr. Dawson also presented evidence that none of the burial areas were within the 100-year floodplain (T. 334, shown in blue on Exhibit 97, Dawson Expert Report, Exhibit F, below):



According to Dr. Dawson, no decomposition products will rise to the surface because the bodies are buried at a depth that animals cannot excavate them. T. 335-336. Most of the surface

runoff that occurs will infiltrate into the soil because the slopes are gentle and there is no erosion, although there may be some surface runoff if there is a "large rain" that could reach the streams. T. 335-336.

Nor will surface runoff impact the water quality of adjacent properties or nearby properties. The properties near the "handle" of the site (the narrow strip on the western side of the subject property) do not have wells immediately adjacent to the subject property. The properties a little further away from those immediately adjacent are uphill of the subject property. T. 336. Since there is no impact on to the streams or other tributaries, there is not impact from surface water on the Rocky Gorge Reservoir. T. 337/

b. Groundwater Impacts on Private Wells and Reservoir

i. Groundwater Mapping

Dr. Dawson opined that groundwater from the area of the proposed cemetery would not create a health or safety impact to nearby wells, streams, or the Rocky Gorge Reservoir. T. 326-327. To formulate her opinion, she used the data obtained from test pits and soil borings to determine groundwater levels and directional flow on the subject property. There are 8 borings and 31 test pits taken for the property. Soil borings are conducted by using a drill rig with a core barrel to drill down and extract a sample of the soil to whatever depth is chosen. The rig brings the sample to the surface, where a geologist logs it and identifies the soil type present. Any indication of moisture or presence of wet soil means that you have intercepted groundwater. T. 338-339. Any historic evidence of a water table is determined by examining changes in oxidation levels. Red to black transitions in soil, can give an indication of a high-water table. T. 339.

The test pits are dug with a backhoe or shovel. The test pits on the subject property were 10 feet deep. Geologists evaluate the soil taken from the pit as well as the pit itself for any signs

of a high-water table. T. 339.

Dr. Dawson opined that, in her experience, the number of test pits and soil borings performed on this site were "pretty robust." T. 340. Because of the density of the pits and borings, she is more confident that the ground water levels are correct because they have actual soil descriptions at each location. In addition, Reflection Park had infiltration tests conducted to understand the rate the soils allow water infiltration. That varied between 2 to 17 inches per hour, which is a rate that they look for. T. 340. For cemeteries, one wants to have soil that has enough infiltration to avoid surface runoff, but not so fast that it doesn't give time for the soil to address contaminants released from the burial site. T. 343. The presence of shallow ground water generally mirrors the surface water. So, one can use groundwater topography to inform how to draw the potentiometric surface. They took the actual measured levels where groundwater was found, considered where the high groundwater table occurred and whether the streams were running, signaling the discharge of groundwater. T. 341-342. The stream elevation is a very firm point of the groundwater level. T. 342.

The map below, from her Expert Report, shows the results of the groundwater mapping (Exhibit 97, Dawson Expert Report, Exhibit G, on the next page). The test pits (in yellow), soil borings (in darker brown), and groundwater elevations and flows on the subject property (in blue lines).

The mapping demonstrates that the groundwater is flowing east across the property; it flows slightly more to the northeast on the north side and slightly more directly east on the south



Groundwater Flow Dawson Expert Report, Exhibit G

side of the central ridges. T. 342. Generally, the groundwater is flowing toward the streams, so the streams serve as a "sink" to the shallow groundwater in the area. T. 342.

ii. Depth of Groundwater

Dr. Dawson disagrees with Mr. Mullowney's testimony that the groundwater was 2-4 feet below the surface. The test pits and borings were between 8.5 to 20 feet from the surface. The test pits and borings show that there were only seven locations out of 39 with any evidence of the presence of a historical water table. T. 343. The shallowest water table depths were at TP-6, at a level of 7 feet below ground surface, TP-8, that showed a depth of 8 feet, and TP-14. At a depth of 4.7 feet. The latter is because TP-14 was in a swale. T. 344. Groundwater was not encountered in the remainder of the 37 borings or pits.

The borings showed that soils upper layer (about 5 feet) of soil is silty, sandy clay. It's finer grained in the upper 5 feet and is less permeable than the deeper material until you get to bedrock, which is approximately 18 to 25 feet below the surface in some areas. In ridge areas, it's a little deeper. T. 344. One of the hydrogeologic reports conducted for the site opined that the groundwater level measured at TP-14 could be "perched" water. That means it may not be a real reflection of the depth of the groundwater; it might have been that some water sat there for a while because that soil tends to be a little less permeable. T. 344-345. To be conservative and protective of health, she used the 4.5 depth at that location when creating the contours of the groundwater levels.. T. 345.

Dr. Dawson testified that all the test sites that show groundwater shallower than 10 feet below the surface are outside of the areas planned for burials. This means that there are at least 6 feet of sandy silt between the base of burial (at 4 feet) and the water table. T. 346. The planned burial areas were purposfully sited outside the shallower groundwater areas. T. 346.

iii. Impact of Groundwater on Private Wells

The key factor in determining whether wells would be impacted is where the wells are relative to the direction of flow. T. 348. A graphic from her Expert Report (Exhibit 97, Exhibit I, on the next page) shows the location of septic tanks (in red) and wells (in blue).

In addition to the flow, most drinking water wells in the Piedmont draw their water from deep groundwater located in a layer of "crystalline" rock, which is deeper than the groundwater table. Groundwater can occur in the "saprolite" bedrock lying above the crystalline bedrock. Maryland regulations require that wells be screened through the saprolite layer to avoid contamination from shallow groundwater. T. 351; Exhibit 97, Dawson Expert Report, p. 8. Maryland requires a protective casing be placed along the well through the saprolite layer to avoid



contamination from shallow groundwater. Shallow groundwater may be contaminated from either nearby septic tanks, which is the greatest danger to private wells. T. 351.

Some older wells that are grandfathered under current regulations (mostly from the 1970's and 1980's) do not have the protective casing. Where this happens, one must calculate the "capture zone" of shallow groundwater entering the well. T. 351.

The capture zone for a well has a certain width and extends upgradient for some distance towards the direction from which groundwater is flowing. The distance depends on how quickly the well is pumping. These wells she identified service a single home, which Montgomery County data states use about 177 gallons per day. She can use this information to calculate the width of the capture zone. In this case, the total width is approximately 30 feet, or 15 feet on either side. The capture zone distance upstream is generally 50 to 100 feet. Soil types also provide information on the rate of water flow through the soil. She cross-checks her site-specific results with information on soils from the USDA. When two sources of data give you the same information, that adds confidence to the overall evaluation. T. 354.

The capture zone for this area is approximately 15 feet on either side of the well perpendicular to the water flow. T. 355. She estimated that the closest wells are to the south of the property and are approximately 750 from the southern property boundary. That distance is far greater than the width of the capture zone and would not be intersecting any water from the site. The general regional groundwater flow in the crystalline layer is from west to east. For that reason, the three closest wells are simply not intersecting in any way groundwater from underneath the subject property. T. 356.

Dr. Dawson testified that Mr. Willingmyer's well towards the western side of the property is at least 750 feet away from the property. Because the groundwater is flowing from west to east on the property none of the groundwater underneath the site could reach those private wells to the south. Any contaminants migrating from the cemetery would be in the shallow groundwater that discharges into the streams. It would not intersect with any of the wells that are further downstream. T. 350.

iv. Impact of Groundwater on the Rocky Gorge Reservoir

Dr. Dawson opined that groundwater from the proposed cemetery will not adversely impact the Rocky Gorge Cemetery. Several factors influence potential contaminant fate and transport, including factors that influence the concentration of the contaminant leaving a source and factors that influence transport as it moves away from the sources. T. 360.

According to Dr. Dawson, one important factor is the rate of infiltration, as the contaminant cannot travel faster than the groundwater carrying it. Other factors may slow the rate or decrease the concentration of the contaminant. One of these is adsorption. The solid particles of soil glom

on to the contaminant as its migrating. The chemical properties of the contaminant are what dictate whether it adsorbs. Two factors in the soil lead to adsorption. One is the amount of organic matter in the soil because it acts like a sponge. The organic matter grabs to organic contaminants, which adsorb to the organic materials. T. 360.

Soil types are an important factor as well. Clays absorb metals and some organic chemicals if they have a molecular charge. Both slow the motion of the contaminant through the soil. The last factor considered is degradation. Some compounds break down (tearing apart of molecules), changing them into something that is different, or in some cases precipitating that chemical. T. 360.

To assess the potential fate and transport of contaminants from this site, Dr. Dawson used a computer program called "SEVIEW" that models contaminant transport vertically through soil and laterally in groundwater. Exhibit 97, Dawson Expert Report, p. 10. She testified that the SEVIEW model combines another model called SESOIL, developed by the EPA in 1981, and a model called AT123D that predicts groundwater concentrations at distances from the soil leachate source. She used this combination when working as a Superfund Hydrogeologist for the EPA. Many states also use this model. T. 361. The models use many of the factors that control contaminant transport and is the basis for EPA soil cleanup levels. T. 361.

Modeling is used to assess the potential risk of groundwater contamination because regulators and others do not want to wait until contamination has occurred to examiner its impact. The EPA requires modeling for the clean-up of Superfund sites. In those cases, even when they know there is contamination, they model the migration of the contaminant over time to determine potential risk. EPA must assess a risk level before remediation, which requires them to compare concentrations of contaminants to risk-based (potentially unsafe) concentrations. T. 367. There are several factors that must be considered when modeling the transport and fate of any chemical. These include the source concentration, the timeframe over which the source will exist, the "loading", or the concentration over time, and the rate of groundwater flow. If one spreads the source mass over a longer time is concentration is lower. For her modeling, she used conservative estimates of these factors. T. 368. Dr. Dawson testified that her model assumes that contaminants release over the shortest time that was reasonable and considered all the burials, instead of just one burial site. T. 371. Her model assumed that all burials would take place in each phase over the planned time frames.

They also use conservative estimates of factors affecting the "fate" of chemicals. These include adsorption and degradation. They use the lower end of adsorption because the less adsorption the faster the chemicals may migrate. They also use the lower end of the degradation range that is published for a chemical or a zero. In her model, she assumed zero or no degradation for two of the three contaminants she considered. She did factor in adsorption for one of the chemicals. T. 369.

Dr. Dawson input into the model relevant site-specific information, including soils, the rate of both vertical and lateral infiltration, data on the depth of the body from the surface of the ground and the distance between the body and the water table that serves as a filtration medium. For her model, she required input that was a conservative "worst case" scenario. For instance, she they assumed that there was approximately 6 feet of soil between the bottom of the grave and the water table or a minimum of 6 to 16 feet, although in some parts of the property, the groundwater is more than 20 feet below. T. 361-364.

Dr. Dawson modeled three chemicals. The first was nitrate. The reason she chose nitrate is that bodies are composed of a considerable amount of nitrogen that occurs in bones, muscles, and connective tissues. T. 370. As the body decomposes, nitrate produces ammonia, which can emit gas. She estimated that very little of the ammonia was gassed. The majority becomes a nitrate. This is the source that is most typically used to understand contaminate transport from organic matter because it acts as a "tracer." T. 372. Soil that is not in groundwater is porous and contains oxygen. This produces nitrate, which is a small molecule that moves at approximately at the same rate as groundwater. It is subject to what is called "denitrification" if it gets into an anaerobic environment. T. 372. Anaerobic environments occur in areas such as tree roots that have experienced the flow of groundwater for some time. T. 373. They model assumes that the release of the contaminant occurs in the first few years after death, although Dr. Abia is correct that it can occur for 20 years. T. 374.

Conservatively, the modeling assumes no degradation of nitrate other than where the groundwater discharges to the stream. She based that on a report prepared by the U.S. Geologic Survey that shows that nitrate concentration decreased through denitrification, largely because it passes through tree roots and vegetation. T. 375.

Dr. Dawson also looked at some heavy metals that are released from the body after death, including zinc, cadmium, lead and some chromium. These are ingested through drinking water, supplements, and food. T. 374.

Another contaminant she studied is mercury. Mercury is not found in septic systems but is found in corpses. T. 374. Mercury leaches from fillings in the teeth, which can take a long time. T. 374-375. For their model, they conservatively assumed that all the mercury is leached at once. T. 375. That is very conservative, but with modeling they assume the most conservative data, and if there are no impacts, there is no need to redo the model. T. 375. Finally, Dr. Dawson also modeled a non-reactive "tracer" in her Report to provide a conservative estimate of bloodborne constituents such as pathogens or pharmaceuticals. She included that because there is very little published research about the characteristics of these drugs that are relevant to the modeling, for instance, how likely it is to adsorb. Some of these chemicals degrade and some degrade at different rates. Some might adsorb to organic matter at different rates. To address this, she assumed that everything in the body from whatever source in whatever concentration is present at the time of death. She then projected transport and fate assuming there was no adsorption or degradation. It's like putting food coloring in the water and measuring how strong the color is downstream. T. 376.

Dr. Dawson opined that there will be no impact to public health or water quality from migration of contaminants through groundwater to the reservoir. T. 378. A table from her Export Report (Exhibit 97, Dawson Expert Report, p. 12, below) shows the results of the modeling.¹¹

Constituent	US EPA Drinking Water Standard (mg/L)	Maximum Concentration in Groundwater Discharging to Ednor Tributary (mg/L or %)	Maximum Concentration in Surface Water Discharge to Rocky Gorge Reservoir (mg/L or %)	Travel Time (first arrival to Ednor Tributary) (years)
Nitrate	45	38.3	1.5	3
Mercury	0.002	0.0015	0.000052	4
Tracer	n/a	4%	0.17%	2

¹¹ At the public hearing, Dr. Dawson corrected the results shown for mercury, stating that the maximum concentration in groundwater discharging to the Ednor Tributary should be 0.0013 mg/L rather than 0.0015.
She explained that the table does not show the heavy metals she modeled (zinc, cadmium, lead and chromium) because they did not reach the groundwater through four feet of soil. There was just a concentration in the groundwater directly under the body. T. 379.

Even with the very conservative assumptions of a high source concentration, short time release, no degradation other than at the very end, and minimal volatization, levels of both nitrate and mercury are well below the drinking water standards when it discharges to the on-site streams, well before it reaches the reservoir. For nitrate, there is an immediate dilution to 1.5 kg per liter once it enters the stream, well below the nitrate standard and within the background levels for nitrate. Nitrate occurs naturally in the soil when fungi decompose organic matter. Typical background concentrations of nitrate in stream waters are somewhere between 1 and 3 mg per liter. Here, the worst-case scenario of nitrate released from all bodies buried results in nothing above background by the time it reaches the Rocky Gorge reservoir. T. 380. After it enters the reservoir, it would be further diluted by the amount of water in the reservoir and the influx of water from the Patuxent River upstream. T. 380-381. The reservoir has a volume of 5.5 billion gallons of water. The reservoir's rate of flow is about 100 times greater than the flow rate of the Ednor tributaries, which causes dilution below background levels. T. 381.

The modeling for mercury produces the same result. The drinking standard is .002 mg per liter with the very conservative assumptions in the model. The modeled results of mercury levels when reaching the reservoir are .0013 mg per liter, under the drinking water. T. 381.

Any bloodborne chemicals would be reduced by a factor of at least 500 at the discharge point into the Rocky Gorge Reservoir and by thousands within the reservoir if any tracers actually made it through. That is not counting any adsorption, degradation, filtration, or dilution that would occur. The amount in the reservoir would be almost "homeopathic", which means there might be a molecule or two. This does not account for treatment by WSSC before entering the water supply. T. 383.

For these reasons, she opined that the contaminate released from burial sites at the proposed cemetery will not pose a health and safety risk to any adjacent properties, nearby streams, or the Rocky Gorge Reservoir. T. 383.

c. Comparative Impact of Septic Systems

Dr. Dawson opined that potential impacts from the cemetery will be less than the impact from the nearby septic tanks in the watershed. T. 324. In her opinion, the comparison is important because the contaminants associated with dead bodies are very similar to contaminants discharged in septic systems. It is instructive because potential contamination from septic systems has been extensively investigated and there is a lot of literature on the subject. T. 386.

A comparison of potential contamination from septic systems is also important because many of the studies performed that did find some migration of chemicals were located in "karst", which means there were open tunnels in limestone or very coarse gravel. T. 385. Even those studies acknowledged that the contaminant migration could have been due to septic systems in the area. T. 385.

Dr. Dawson testified that every State and local jurisdiction that she's looked at identifies private septic systems as significant sources of groundwater contamination, especially contamination caused by nitrates. Even properly functioning septic systems are designed to release nitrate into the environment. Septic systems ensure that there is some vadose zone that can degrade, filter, or dilute the nitrates so it doesn't pose a problem for downgradient wells. T. 386. Montgomery County's 2018 Comprehensive Water Supply and Sewerage System Plan reports that one primary cause of contamination in rural areas stems is bacterial leakage from failing septic systems. Day 2, T. 386; Exhibit 97, Dawson Expert Report, p. 15. Dr. Dawson estimated nitrate leaching from septic systems in the Ednor tributary watershed amounts to 860 kg per year. Since the Ednor watershed is only 1% of the reservoir's catchment area, nitrogen contaminants could be 100% higher, or 860,000 kg per year, assuming that all wells are properly functioning. Exhibit 97, Dawson Expert Report, p. 16. In comparison, the amount of nitrate loading from bodies buried at the scheduled proposed (300 bodies per year) is 90 kg per year, a "vanishingly small" amount when compared to the impact of septic systems. *Id*.

C. Applicant Testimony

Dr. Haroon Mokhtarzada testified on behalf of the Applicant. He stated that he was saddened by the insinuation that they might cut 25 acres of trees because this is an environmental project. It is a non-profit project because both principals have full-time jobs. Of the 48-acre parcel, they are proposing 18 acres of burial land that will take 36 years to fill. By the time they complete the project, the trees will have grown back into the burial areas. The purpose of the project is in part to create a park where people can walk. They proposed to have wooded trails where people can walk. Day 2, p. 415-416. They discussed with Planning Staff the possibility that trees existing now may not even exist 36 years from now. Most of the trees there now are Poplar and they plan to introduce other native hardwood trees after completing each section of burial grounds, which will improve the quality of the forest. While Dr. Matrusada acknowledged that the Preliminary Forest Conservation Plan states that they will be clearing 25 acres for the burial sites, it does not mention that they plan to replant those areas with native hardwoods. T. 420.

IV. AGENCY COMMENTS

A. WSSC Analysis

In response to questions posed by the Hearing Examiner (in black), the WSSC filed the

following responses (in blue). Exhibits 146, 149):

Gentleman, I am writing to request your recommendation and analysis on whether the green burial ground proposed in CU 21-06 will render the drinking water in the Rocky Gorge reservoir unsafe for human consumption both immediately and over time in the future.

WSSC Water does not expect that the green burial ground proposed in CU 21-06 will render the Rocky Gorge reservoir unsafe as a drinking water supply, now or in the future. The concerns expressed were pharmaceutical and microbial contamination from necroleachate. Our conclusion is based on the following:

- All information provided indicates that the site's soil type is suitable for septic systems and green burials. The depth to groundwater in areas planned for burial sites provides adequate separation between bodies and groundwater. Migration through soil and/or groundwater provides attenuation over time and distance. If any chemicals make it to the surface water, the reservoirs provide a large amount of dilution.
- A 1997 study estimated that there were ~6,600 septic systems in the entire Patuxent Reservoir watershed (both the Triadelphia and Duckett Reservoirs). Despite routine pharmaceutical and other organic chemical discharges to groundwater from these septic systems, occasional screening for pharmaceuticals and hormones has shown only extremely low levels of any pharmaceuticals or hormones, with most results below analytical detection limits:
 - The hormones listed below were included in the Third Round of the US EPA Unregulated Contaminant Monitoring Rule (UCMR 3) and were monitored from 2013-2017. None were detected in the Patuxent Water Filtration Plant (WFP) treated water in 18 sampling events.
 - $17-\beta$ -estradiol
 - 17-α-ethynylestradiol
 - Estriol (16-α-hydroxyestradiol)
 - equilin
 - estrone

- testosterone
- 4-androstene-3,17-dione
- WSSC Water participated in a 2002 study with NASA/United States Geological Survey that screened for 29 selected pharmaceuticals and 35 other common prescription and nonprescription drugs. Only three of the 64 compounds were detected, at levels just above the laboratory method detection limits, but below laboratory reporting limits. Results are shown below noted as estimates ("E") because the results were below the laboratory reporting limits:
 - Carbamazepine E 0.0033 parts per billion (ppb)
 - Caffeine E 0.0027 ppb
 - Cotinine E 0.0023 ppb
- For perspective, the daily therapeutic dose of carbamazepine (anti-epileptic) is 200-1,600 milligrams. At the level detected, a person who drank two liters of water a day for 70 years would consume less than 0.2 milligrams of carbamazepine, less than 0.1% of a single daily minimum therapeutic dose of 200 milligrams. At the level of caffeine detected, a person who drank two liters of water a day for 70 years would consume about 0.14 milligrams of caffeine, about 0.14% of the caffeine in a single cup of coffee (about 100 milligrams).
- WSSC Water does not expect that the green burial site will result in microbial contamination of the Duckett Reservoir. Please see additional information below in response to Question 3.

I am also asking for your analysis and recommendation on (1) whether, if approved, any additional conditions should be imposed on the conditional use that would ensure that the drinking water supply remains safe, or (2) whether, if approved, concentrations of certain chemicals should be regularly monitored beyond WSSC's existing monitoring programs.

WSSC Water does not recommend any additional conditions or monitoring requirements.

I also have the following specific questions:

1. Please clarify the difference (if any) between the Duckett Reservoir and the Rocky Gorge Reservoir. Are they the same body of water? Are they connected?

Officially WSSC Water refers to the reservoir into which the Ednor tributaries discharge as the T. Howard Duckett Reservoir. Before about 1967 it was called the Rocky Gorge Reservoir. Some maps and many people use the names Duckett Reservoir and Rocky Gorge Reservoir for the same water body.

2. Does WSSC regularly monitor the drinking water for the presence of drugs listed on the NIOSH hazardous drug list and specifically those identified in the expert reports of Dr. O'Keefe (Exhibits 106, 106(a) and 106(b)) and Mr. Mullowney (Exhibit 100)? Does it monitor regularly for nitrogen and estrogen levels?

WSSC Water has not monitored for drugs on the NIOSH hazardous drug list and in the expert reports of Dr. O'Keefe (Exhibits 106, 106(a) and 106(b)) and Mr. Mullowney (Exhibit 100). We have monitored for some common drugs and hormones as described above, with few detections. We regularly monitor for nitrogen in the forms of nitrite and nitrate, which are regulated under the Safe Drinking Water Act. Nitrite is limited to 1 mg/L as N, and nitrate is limited to 10 mg/L as N. Patuxent WFP raw and treated water nitrite levels have not exceeded 0.1 mg/L as N in the last five years, and raw and treated nitrate has not exceeded 2.5 mg/L as N for the last five years.

3. Does the WSSC regularly monitor the drinking water for microbial contamination (described in Dr. Akebe's expert report (Exhibit 102))?

WSSC Water monitors Patuxent WFP raw and treated water for total coliforms and Escherichia coli as indicators of microbial contamination. Compared to WSSC Water's Potomac River source, Patuxent WFP raw water total coliforms and Escherichia coli levels are very low, despite septic system discharges and domestic and wild animals in the watershed. The Patuxent WFP treatment process provides disinfection with both chlorine and ultraviolet light. The treated water is tested about 10 times per week and total coliforms and Escherichia coli are always absent in the treated water.

4. Does the WSSC have safe drinking water standards for the presence of the above-described drugs and anti-microbial contaminants? If so, what drugs/contaminants does WSSC have standards for?

None of the chemicals in Dr. O'Keefe's list (106b) are regulated under the Safe Drinking Water Act (SDWA). WSSC Water does not have any voluntary standards for pharmaceuticals or other chemicals. WSSC Water has never exceeded a SDWA standard for any regulated contaminant. As described above, some pharmaceuticals and hormones have been included in the UCMR monitoring list, but there has been no federal determination to regulate those compounds.

5. What steps does the WSSC take if the drugs and other contaminants near the minimum safe water drinking standards? If the chemicals reach peaks years in the future, how do you determine when to take remediative steps?

If levels of pharmaceuticals in the water supply increased in the future, and were shown to have toxicological significance, the primary strategy would be to advocate for and work towards source prevention, i.e. reducing the circulation and use of such chemicals. If found, these chemicals tend to be at extremely low concentrations, and the other constituents in water (natural organic matter, metals, particles) interfere with their removal. This makes monitoring, pretreatment and removal processes inefficient and costly. The Patuxent WFP was designed to allow upgrade to ozonation if needed for any reason. Ozone can break down many organic chemicals.

 Do you have any independent verification of the number of bodies buried with chemotherapy drugs? No.

I've also been asked by those in opposition to posit the following question:

Please confirm (or correct) that you will not be (a) providing well owners in the vicinity of the cemetery any remediation assistance, financial or otherwise, in the event of well contamination from the cemetery or (b) conducting any groundwater monitoring for contaminants in the vicinity of the cemetery."

WSSC Water does not have jurisdiction over private wells or groundwater

I am unaware of any authority that would permit you to install wells on property's near the cemetery, but if you wish to confirm that, you may. I am also unaware of any legal requirement whereby the WSSC would be required to remediate damage to wells caused by a private property owner. As this question includes legal issues that may arise in litigation, I am not mandating an answer, although you may respond as you deem appropriate.

WSSC Water respectfully declines to answer or comment.

B. MCDEP Comments

MCDEP submitted the following comments (Exhibit 147):

DEP has reviewed the documentation provided. The issue of whether or not any additional conditions should be imposed on the conditional use that would ensure that the public drinking water supply remains safe, is a determination best left to WSSC Water as they are responsible for providing safe public drinking water. DEP also defers to WSSC Water on the issue of whether or not concentration of certain chemicals should be regularly monitored beyond WSSC's existing monitoring programs with regards to the drinking water reservoirs.

The information provided by those in opposition was very general in nature and not specific to the site. The information provided by the applicant used sound engineering and scientific principles to draw their conclusions that were site specific. Based on the soil testing, test pits, and perc test results, DEP does not anticipate any offsite impacts to surface water quality or groundwater quality (private drinking water wells) from the cemetery, and thus do not think any additional conditions be imposed on the conditional use. We also do not see the need for additional monitoring of surface water or ground water in the area in proximity to the cemetery.

C. Opposition Response to Agency Comments

Both parties were offered the opportunity to comment on WSSC's and MCDEP's recommendations. The Applicant chose not to submit follow-up comments. Exhibit 149. The opposition took issue with many of the agencies' findings, arguing that (Exhibit 148, paraphrased by the Hearing Examiner):

PWPA argues that their expert evidence is site-specific due to the property's location in a watershed that supplies drinking water, that non-degradable pharmaceuticals will existing in "a certain percentage" of the bodies buried, that multiple bodies will be buried in close proximity, that PWPA's experts expressly considered site topography and soil conditions, and that "the law of gravity" dictates that leachate from dead bodies will percolate through the ground or surface waters and eventually reach the reservoir. *Id.*, p. 2.

Impact on Reservoir

1. WSSC's reliance on migration through soil or groundwater, and dilution in the reservoir to adequately attenuate any contaminants reaching the reservoir is misplaced. PWPA agrees that this may be true for some bioorganisms, it does not

apply to chemotherapy drugs and hormones, microscopic amounts of which may harm fetuses, pregnant mothers.

- 2. Reliance on modeling is misplaced. An example is weather forecasting. These models are "big, complex" and frequently wrong.
- 3. The 1997 study is too old to be probative of current amounts of chemotherapy agents and hormones in the reservoir given that usage may have increased since then. WSSC does not detail how often it monitors for this.
- 4. The 2002 study cited by the WSSC doesn't identify the pharmaceuticals and hormones tested. New pharmaceuticals may have been developed since that time.

Hearing Examiner's Specific Questions:

- Question No. 2: PWPA believes that failure to monitor for the chemicals listed on the NIOSH Hazardous Drug list is a "violation of its charter to protect the public drinking supply." Exhibit 148, p. 6. They base this on the testimony of Dr. O'Keefe and Mr. Mullowney on the potential harm from minute dosages on sensitive individuals and fetuses.
- Question No.3: PWPA argues that monitoring for total coliforms and E. coli are not "a proxy" for monitoring the microbial contamination described in Dr. Abia's report. Dr. Abia submitted the following written comments:
 - a. Even when bacteria die, their DNA remains in the environment and the water. This DNA is called Environmental DNA (eDNA).
 - b. With the well-recognized and growing antimicrobial resistance problem, eDNA could transfer resistance genes to human pathogens.
 - c. Water treatment plants are not designed to remove DNA, and eDNA can easily be carried farther than live bacterial.
 - d. Testing for molecular materials is done through molecular techniques, and not standard culture techniques used to detect E. coli and coliforms.
 - e. Although E. coli and coliforms can be absent or filtered, this may not be the case with DNA carrying resistant genes.

PWPA argues that federal standards for nitrogen are "below more modern safety limits." *Id.*, p. 7. PWPA concludes that each body will excrete 6 lbs. of nitrogen which, when multiplied by 8,700 bodies, "presents a significant risk of the exceeding the federal nitrogen pollution standards. *Id.*, pp. 7-8.

WSSC's comments do not address the possibility of the formation of a biofilm "mat" that allows DNA to travel in surface water.

- Question No. 4: WSSC's position that it will not monitor for drugs on NIOSH's Hazardous Drug List violates it duty to protect the safety of drinking water supplies.
- Question No. 5: PWPA characterizes the WSSC's response as "internally conflicted" because it does not test for NIOSH-listed drugs but asserts that its primary prevention policy is to work toward source prevention. According to PWPA, "[b]y the time their non-testing somehow invokes their 'primary strategy', it would be way too late for the remedy." *Id.*, p. 9.

PWPA also argues that there are limits on the amount of chlorine that can be added to the drinking water because of two carcinogenic biproducts. Adding ozone will neutralize cell-based organisms but is ineffective in neutralizing chemotherapy or hormone therapy pharmeuticals. *Id.*

Question No. 6: PWPA understands that WSSC does not have the number of bodies buried with chemotherapy drugs but asserts that the record contains the "extensive spreadsheet submitted by PWPA (scepura studies biblio.xlsx) listing without subsequent interpretation the conclusions of 97 peer-reviewed studies, a large number of which were US-based, by reputable institutions and scientists regarding very early mortality in patients after receiving chemotherapies.

V. COMMUNITY TESTIMONY

PWPA urges that the Hearing Examiner follow the precedent set by the Baltimore County Zoning Ordinance regulating natural burial cemeteries the RC (Resource Conservation) Zones. The regulations, adopted in 2021, permit natural burial grounds by approval of a special exception only in the RC-6 and RC-8 Zones.¹² According to Mr. Chamberlin in the RC-6 Zone, natural burial cemeteries are permitted only within an area of the Patapsco/Granite community plan. That area is at least 5 miles or more from the Liberty Reservoir. The ground and surface water in that

¹² The 2014 Montgomery County Zoning Ordinance changed the term "special exception" to "conditional use." *Montgomery County Zoning Ordinance*, §59.1.4.2 ("Conditional Use").

area flow into the Patapsco River into the Chesapeake Bay and is not a source of drinking water. T. 97. In RC-8 (Environmental Enhancement) Zones they are permitted by special exception. Exhibit 136. PWPA submitted a chart from Baltimore County's website listing the zones in which natural burial cemeteries are permitted (Exhibit 136, on the next page).

		Cemeteries Allowed?		
			By Special	
RC Zone	Title	By Right	Exception	Remarks
RC-2	Agricultural Protection	NO	NO	Cemeteries deleted by Bill 178-1979
RC-3	Deferral of Planning and Development	NO	YES	RC-3 is large not yet planned or developed agricultural land.
RC-4	Watershed Protection	NO	NO	
RC-5	Rural Residential	NO	YES	
RC-6	Rural Conservation and Residential	NO	YES	certain exempt cemeteries only, as amended by Bill 76-2021
RC-7	Resource Preservation	NO	NO	
RC-8	Environmental Enhancement	NO	YES	Conservation and Natural Burial Grounds only, as amended by Bill 76-2021
RC-20	Critical Area	NO	NO	
RC-50	Critical Area Agricultural	NO	NO	
RCC	Resource Conservation Commercial	NO	NO	

According to Mr. Chamberlin, the Baltimore County special exception standards for natural burial cemeteries are more stringent than Montgomery County's standards for the same use. The Baltimore County regulations require more land area for natural burial cemeteries as well as an actual hydrogeologic study, including underground water flows, rather than a studybased simulations and modeling. T. 99.

The maximum density is minimum acreage is 150 acres and overall grave density is 500-600 graves per acre. Regulations also require the applicant to place a permanent environmental trust to ensure long-term maintenance. T. 97. PWPA also submitted the requirements for approval of a special exception (*i.e.*, conditional use) for a green burial cemetery, which they believe are more stringent.

Despite searching diligently, Mr. Putman testified that he could find no commercial cemetery located within a watershed that supplied drinking water. T, 65. The Baltimore County White Paper from 2015 mentions that there is a scarcity of information on the impact of green burial cemeteries. T. 66. The paper recommends that no burial grounds be approved until regulations governing the operation and location were adopted by the Baltimore County DEP. T. 67. Even after that agency adopted regulations, Baltimore County adopted zoning regulations that prohibited cemeteries in the zones surrounding three reservoirs. T. 67.

He disagrees with Dr. Eldadah's testimony at the previous hearing that there is no documentation of harm from green burial cemeteries.¹³ Immediately afterwards, Mr. Putman searched the internet and discovered a significant amount of information.

Mr. George Willingmyer lives on Parrs Ridge Drive in Spencerville, Maryland. He believes that the comments submitted by MCDEP before remand are not persuasive because they do not mention a 1998 WHO report on the impact of cemeteries on the environment and public health. T. 234. That took him less than 10 minutes of internet browsing time. Day 2, T. 234.

According to the WHO study, human or animal remains must not be buried within 25 meters of any well, borehole, or stream on which a potable water supply is drawn. Twenty-five meters equals 820 feet.¹⁴ He believes that his well is within this distance at the closest point to the property line of the subject property. The potability of his well could be adversely affected if burials were made to the property line of the cemetery. T. 244

¹³ Dr. Basil Eldadah is a principal of the Applicant. His testimony is summarized in the Hearing Examiner's Report on pp. 12-13 and 34-35.

¹⁴ The transcript cites Mr. Willingmyre's testimony as 25 meters. T. 244. He may have meant 250 meters, as 25 meters is 82 feet.

He believes that there are better alternatives for citing cemeteries. Montgomery County should have a requirement that any burials at the cemetery must be 250 meters from the property line of the cemetery. A second alternative would be for Montgomery County to require that a survey be done to establish that no wells were within 250 meters of the burial sites. He believes that many wells fall into this category if the location of burials was chosen to be the property line. T. 244. The cemetery burial sites would have to be limited to certain locations. No wells will be allowed in this zone thereafter. This would be an absolute requirement that would apply to any wells planned and portrayed on a map. T. 245.

A third scenario would be to require cemetery burials to be more than 850 feet away, or 1,000 feet. Again, an additional survey would have to be completed to determine the nearest wells where proposed burials would be limited. T. 245.

Mr. Quinton Remein is President of the Cloverly Civic Association. He testified that the Association became aware of the application when invited by Mr. Kline to a presentation in October 2020. They had mixed reactions, but there some were enthusiastic. However, the Association never passed a resolution supporting the project. T. 248. Later, as more information became available, they reviewed the project again and discussed at an Association meeting. The Association decided to oppose it based on the potential harm to environmental resources. T. 248.

There are two factors leading to that position. The Cloverly Civic Association has been involved with a contamination of their wells by a gasoline leak at Cloverly Shell station in 2002. They were apprised by informants, and it took "a while" for the State to become involved. When the State finally determined the severity of the leak, they did become involved. T. 248.

Several wells were contaminated with MTBEs, a gasoline additive that was banned in 2006 because it was carcinogenic. These wells were closed. As part of an enforcement action by

Maryland Department of the Environment, Shell finally agreed to reimburse the neighbors who had been damaged. The MTBEs percolated to the ground water and began to surface at various points. Remediation of the spill has been very difficult. When MDE first met with Shell Oil, it was stated that the leak would be cleaned up in seven years. T. 249.

After more than seven years, Shell came to the Association to give a report on the remediation. They said they were still removing a large plume that covered about three quarters of a square mile on Branch Nursery Road. Shell determined that it would take another 2 to 4 years to complete the removal of MTBEs to a safe level, which is 20 ppb. Any well contaminated above that level was unusable. T. 249–250.

Shell issued another report in May 2022. Leakage from the spill is still polluting wells. It's not very comforting to know that you are showering in water that contains 20 ppb of MTBEs. Many of their neighbors are still "on the brink." T. 250.

Cloverly does not want to reintroduce another potentially toxic contaminant source into the community. They want to the Applicant to give 100% assurance that something like this will not happen. No one has offered to put up a bond that would dig up the entire burial area to ensure that, if something did happen, it could be removed. As a civic association, they don't feel safe.

He also testified that he participated in the development of the Cloverly Master Plan. They created the first special protection area in Montgomery County in the Paint Branch area to protect the watershed. They also identified the reservoir as a protection area. The primary reason was to protect the water supply that serves the Washington metropolitan area including about half of the Cloverly Master Plan area. T. 252.

At the time the Master Plan was adopted, the reservoir had no contamination. Now, WSSC recommends that if you encounter the water, rinse it off right away. They also recommend that

dogs should not swim or drink the water, humans should not eat fish livers or digestive organs from fish caught in the river. The reservoir is not safe. T. 252.

While they can purify the water to bring it to drinking standards, he believes that we will be in deep trouble if more pollutants come in. Once in the ground, they will be leached for years they are still aggressively campaigning to remove the MTBEs from the Cloverly Branch Nursery Road. T. 252.

VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A conditional use is a zoning device that authorizes certain uses provided that pre-set legislative standards are met. Pre-set legislative standards are both specific to a use (in Article 59.3 of the Zoning Ordinance) and general (*i.e.*, applicable to all conditional uses, in Division 59.7.3 of the Zoning Ordinance). The specific standards applied in this case are those for a cemetery, contained in §59.3.5.4.A of the Zoning Ordinance.

Weighing all the testimony and evidence of record under a "preponderance of the evidence" standard (*Zoning Ordinance*, §7.1.1.), the Hearing Examiner concludes that the conditional use proposed in this application, with the conditions imposed in Part IV of this Report and Decision, satisfies all the specific and general requirements for the use.

A. Baltimore County Zoning Ordinance and Executive Regulations

To understand the parties' arguments and the Hearing Examiner's findings in this case, the Hearing Examiner includes a description of the Baltimore County Zoning Regulations governing "Conservation Burial Grounds."

On July 6, 2021, Baltimore County adopted Council Bill 76-21, which added a "Natural Burial Ground" as a permitted use in several zones. Exhibit 130. Among the County's Resource Conservation Zones, the use is permitted in the RC-6 (Rural Conservation and Residential Zone)

and RC-8 Zones (Environmental Enhancement Zone) by special exception, 15 although in the RC-

6 Zone, it is limited to the area within the "Patapsco Granite Community Plan." Exhibit 130.

Mr. Putman testified that the land surrounding the three Baltimore County "watersheds" is

zoned RC-4, watershed protection, and no cemetery is allowed. Standards to rezone a parcel to

the RC-4 Zone include the following (Baltimore County Zoning Regulations, §:

- A. The parcel of land under petition lies at least 200 feet from the property line of any public water reservoir;
- B. The parcel lies at least 300 feet from any first or second order or greater stream that flows directly into a public water reservoir;
- C. That the parcel lies at least 300 feet from any third order or greater stream that flows directly or indirectly into a public water reservoir;
- D. No more than 30 percent of the parcel has a slope of more than 20 percent;
- E. The parcel does not lie within a 100-year floodplain; and
- F. As shown by an environmental impact statement, the manner in which proposed reclassification will affect water quality in the watershed or any public water reservoir.

The special exception standards for "natural burial grounds" in the Baltimore County

Zoning Regulations are (Exhibit 134, Baltimore County Zoning Ordinance, §401.1.2):

A natural burial ground is permitted subject to the following conditions:

A. A natural burial ground shall be designed, operated, and maintained in a manner that produces a natural appearance, by using plants and materials native to the region and landscape patterns derived from and compatible with regional ecosystems.

B. A natural burial ground shall be located on a minimum tract of 150 acres in single ownership.

C. Memorial grave markers may not be raised above the ground. Markers shall consist of natural and native materials that will not impede the natural landscape.

¹⁵ Under the 2014 Montgomery County Zoning Ordinance, a special exception is now referred to as a conditional use. *2014 Montgomery County Zoning Ordinance*, §59.1.4.2."Special Exception."

D. The maximum overall density shall be 500 burials per acre. In certain areas where burial may not occur due to sensitive area analysis, burial density may be transferred to a less restricted area in which burial density shall not exceed 600 burials per acre.

E. A natural burial ground shall comply with all requirements of state law, including the registration requirements of Title 5, Subtitle 3 of the Business Regulation Article of the Annotated Code of Maryland.

F. The owner of a natural burial ground shall record in the land records of Baltimore County a record plat of the boundaries of the areas to be used for burial as approved by the Department of Permits, Approvals and Inspections and the Department of Environmental Protection and Sustainability.

G. The owner of land on which a conservation burial ground is to be located shall, at the time of application for the special exception, submit to the Department of Environmental Protection and Sustainability a hydrogeologic study completed by a hydrogeologist, or similarly qualified consultant, that includes the following:

1. A scaled site plan showing the proposed location of the areas to be used for burial, property boundaries, topography, water bodies, USDA soil type, existing and proposed wells and septic systems on and within 200 feet of the property line, and existing and proposed structures on and within 200 feet of the property line; and

2. A determination of the depth to bedrock and depth and flow direction of groundwater beneath the area proposed as a burial ground; and

3. An assessment of proposed burial practices and the potential impacts of burial remains on groundwater quality, surface water quality, and domestic water supplies in relation to human health and the environment; and

4. Recommendations as to the appropriate number, and the location and placement, of burial sites on the land based on the findings in Paragraphs G.1, 2 and 3.

H. The Director of the Department of Environmental Protection and Sustainability shall adopt regulations to administer and enforce the provisions of this section, including but not limited to consideration of potential impacts to human health and the environment related to a conservation burial ground.

As required by the Zoning Ordinance, the Baltimore County Department of Environmental

Protection has adopted standards for the hydrogeologic studies required by the Zoning Ordinance.

Exhibit 135; COBAR 01.03.04. Among other items, these require submission of a scaled plan

showing well and septic systems within 200 feet of the subject property, a determination of soil

type, depth to bedrock, and groundwater flow direction. These may be based on available scientific literature and county records but must be verified by soil borings and test pits. *Id.* The study must also include (*Id.*:

An assessment of the proposed burial practices, density of burial pits and potential impacts of the buried remains on groundwater quality, surface water quality and domestic water supplies as it relates to human health and the environment. This assessment should include consideration of the site specific findings for soil type, slope, depth to groundwater, bedrock, and groundwater flow direction...

The Baltimore County regulations also mandate that burial pits be a minimum of 6 feet above the seasonal high water table or bedrock, and at least 3 feet of cover. *Id.* In the Piedmont area, burial areas must be setback 100 feet from upgradient wells and 300 feet from downgradient wells. *Id.*

B. Findings and Opinion

1. Compatibility and Potential Harm

Colloquially, the key standards to approving a conditional use are whether the proposed development will be compatible with the surrounding area or whether will it cause harm. This is reflected in the "Necessary Findings" for approval of a conditional use in Section 59.7.3.1.E.1 and

2. of the Zoning Ordinance:

Section 7.3.1.E.1. To approve a conditional use application, the Hearing Examiner must find that the proposed development:

* * *

d. is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the plan;

g. will not cause undue harm to the neighborhood as a result of a noninherent adverse effect alone or the combination of an inherent and a non-inherent adverse effect in any of the following categories:

i. the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood; or

iii.

* * *

Any structure to be constructed, reconstructed, or Section 59.7.3.1.E.2. altered under a conditional use in a Residential Detached zone must be compatible with the character of the residential neighborhood.

Limited use standards for a cemetery (Section 59.3.5.4.A) likewise require analysis of

compatibility with the surrounding neighborhood:

Section 3.5.4.A.2. Use Standards

Where a Cemetery is allowed as a conditional use, it may be permitted by the Hearing Examiner under Section 7.3.1, Conditional Use, and the following standards:

a. The proposed location must be compatible with adjacent land uses, and will not adversely affect the public health, safety, and welfare of the inhabitants of the area.

* * *

c. Where the subject property is located in an area not served by public water and sewer, water table tests must be conducted to assure that there is adequate filtration of drainage between burial depth and the level of high-water table.

a. Scope of Review

Under the limited purview of the Board of Appeals' remand, the above standards require the Hearing Examiner to determine whether the proposed cemetery will adversely affect surface water runoff, private wells in the surrounding area, and the drinking water supply at the Rocky Gorge reservoir. The Hearing Examiner applies the above standards from the Zoning Ordinance to determine whether to approve this use.

The analysis of potential harm in a conditional use case must focus on adverse impacts caused by the specific use at the specific location proposed. The "Necessary Findings" for approval of a conditional use require the Hearing Examiner to review the impact of the "proposed development" on the "surrounding neighborhood." This is reinforced by the Court of Appeals holding in Montgomery Cty. v. Butler, 417 Md. 271, 304-06 (2010). In Butler, the Court found

Montgomery County's Ordinance to be consistent with prior case law defining the scope of review

in a conditional use:

... in allowing the board to consider any "adverse effects created by the unusual characteristics of the site" is entirely consistent with *Schultz* and its progeny. We explain.

In *Schultz*, the Court wrote that an applicant for a special exception "does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that the proposed use would be conducted *without real detriment to the neighborhood*... he has met his burden." *Schultz*, 291 Md. at 11, 432 A.2d at 1325. The phrase "detriment to the neighborhood" implies necessarily that the Board's task is to determine if there is or likely will be a detriment to the surrounding properties. The Court did not mean that the Board, hypothetically, must measure and assess what the adverse effects of a proposed use would be on an idealized or even *average* neighborhood or property in the zone. Rather, as Judge Rita Davidson explained for the Court, it is for the zoning board to ascertain in each case the adverse effects that the proposed use would have on the *specific, actual* surrounding area... (emphasis in original).

Butler, supra. The site- and use-specific inquiry that must be made is reinforced in Montgomery

County's mandate to determine "inherent" or "non-inherent" physical or operational characteristics of the use in the proposed location. The following passage from the Hearing Examiner's Report and Decision in CU 20-08, Application of Martha B. Gudelsky Child Development Center, p. 36 (November 24, 2021) is an example of standard language applying

§59.7.3.1.E.1.g included many times is OZAH decisions:

This standard requires consideration of the inherent and non-inherent adverse effects of the proposed use, at the proposed location, on nearby properties and the general neighborhood. Inherent adverse effects are "adverse effects created by physical or operational characteristics of a conditional use necessarily associated with a particular use, regardless of its physical size or scale of operations." Zoning Ordinance, §59.1.4.2. Non-inherent adverse effects are "adverse effects created by physical or operational characteristics of a conditional use not necessarily associated with the particular use or created by an unusual characteristic of the site." Id. The Hearing Examiner may deny a conditional use where the combination of inherent and non-inherent impacts causes undue adverse impact on the surrounding area.

Analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with a child Day Care Center for more than 30 children. Characteristics of the proposed use that are consistent with the characteristics thus identified will be considered inherent adverse effects. Physical and operational characteristics of the proposed use that are not consistent with the characteristics identified *or* adverse effects created by unusual site conditions, will be considered non-inherent adverse effects. (Emphasis in original).¹⁶

In this case, the Hearing Examiner is faced with competing expert reports and testimony on the potential risk of locating this cemetery in a watershed that drains to a public drinking supply. She finds that the probative weight of the Applicant's expert testimony far outweighs that of PWPA's, because PWPA's relies on virtually no factual or operational characteristics of the use proposed and the subject property. In contrast, Dr. Dawson's expert testimony and evidence provides the *only* analysis estimating the actual impact of the fate and transport of contaminants from corpses buried at the proposed cemetery.

While the Hearing Examiner is not required to accept expert testimony merely because it is the only directly probative evidence in the record, her conclusions are by far the most factually supported and well-reasoned that use accepted scientific methods for analysis. ¹⁷ They also that directly relate to the factual issues the Hearing Examiner must resolve.

b. Surface Water Runoff

To support her opinion that surface runoff would not contaminate the streams on the site, Dr. Dawson supplied factual data (from personal observation) on whether the Ednor tributaries were flowing and whether erosion was occurring outside of the riparian areas where this would be

¹⁶ In the original case, the Hearing Examiner concluded that the only non-inherent physical characteristic of this use was the flag-pole shape of the lot. HE Report, pp. 29-30. There is no testimony or evidence in this hearing identifying another non-inherent physical or operational characteristic of the site. Because the Hearing Examiner finds that the proposed cemetery will not results in undue harm at this location, she does not need to revisit the issue.

¹⁷ *CSX Transp., Inc. v. Miller*, 159 Md. App. 123, 203 (2004), citing, Beatty v. Trailmaster Prods., Inc., 330 Md. 726, 741, (1993), quoting, Surkovich v. Doub, 258 Md. 263, 272 (1970)("Our cases hold that " 'an expert's opinion is of no greater probative value than the soundness of his reasons given therefor will warrant.""). y

expected. Other site-specific data included the topographic contours of the site and the burial depths of the proposed graves, and location of the graves outside floodplains. She also identified the location of wells in the vicinity and determined the nearest wells were upgradient of the site. With these facts she considered operational details specific to this use, such as the proposed depths of the graves and locations of burial grounds. Dr. Dawson then combined this factual and operational bedrock with her expert knowledge that shallow groundwater typically discharged into streams in the geographic region. All these physical and operational characteristics directly support her conclusion that no contaminants will not rise to the surface either through scavengers, erosion, or inundation.

c. Impact on Private Wells

The same combination of site-specific factual and operational data, expert knowledge, and accepted methodology (mathematical calculations of a well's capture zone) supports Dr. Dawson's conclusion that private wells will not be impacted. The site-specific factual data is impressive and includes mapping of wells within the Ednor tributary watershed. It also includes groundwater mapping based on the results of a "robust" number test pits and soil borings, infiltration tests, topography, and stream levels on the site to determine the depth and direction of groundwater flow. The results demonstrate that none of the groundwater from the subject property will flow toward nearby private wells. Even if the well is older and not capsulated, as currently required by Maryland regulations, the wells do not fall into the "capture zone" of any of the wells identified, including Mr. Willingmyre's.

d. Impact on Reservoir

The same analysis applies to Dr. Dawson's conclusion, supported by WSSC and MCDEP, that there will be no adverse impact on the Rocky Gorge Reservoir. While those in opposition dismiss the use of "modeling" to analyze future impacts, the Hearing Examiner agrees with Dr. Dawson's statement that modeling must be used to predict potential harm from contaminants in the soil. Otherwise, we must wait until the harm occurs to gain insight into its causes. The record demonstrates that the models used by Dr. Dawson are a scientifically accepted method of analyzing the risks from contaminant fate and transport. They are applied by the EPA at Superfund sites, situations where potential harm is as serious (if not more) as the risk of harm posed here. Certainly, there is nothing in the record to demonstrate that the combination of models she used are inaccurate. The Hearing Examiner finds from the weight of testimony and evidence that the model used by Dr. Dawson is an accepted means of forecasting migration of contaminants.

This modeling, combined with factual data obtained from the site and operational aspects of the use (phasing, depth of graves, and total number of graves) were all considered and input into the model. The Hearing Examiner found credible Dr. Dawson's testimony that her modeling assumptions were extremely conservative based on her uncontroverted testimony explaining exactly why this was the case. In addition, Dr. Dawson modeled the results of the total number of burials at the phases described by the Applicant in the prior hearing. The resulting conclusions are that the amount of any modeled contaminants entering the reservoir will be below safe levels or, like the heavy metals she traced, will not be statistically present at all. Dr. Dawson acknowledged that there is much to be learned about the ADME in the soil of pharmaceuticals and hormones used in chemotherapy treatments. However, she addressed this concern by including a "tracer" of bloodborne pathogens in her study. The study assumes that the "tracer" did not biodegrade. The resulting conclusion was that the amount in the reservoir would be almost "homeopathic" or as low as a one or two molecules One method used by both WSSC and Dr. Dawson to assess potential risk is to compare potential contamination from the cemetery to existing contamination produced by discharges from septic systems. Dr. Dawson estimates that leaching from septic systems in the Ednor tributary watershed currently amounts to 860 kg per year, which, by the time it reaches the reservoir could be as much as 860,000 kg per year. WSSC advises that, even with 6,600 septic systems in the watershed that regularly discharge pharmaceuticals and hormones into the reservoir, these chemicals are present at "extremely low levels of any pharmaceuticals or hormones, with most results below analytical detection limits..."

Both these conclusions are consistent with Dr. Pleus' testimony that dosage, exposure pathway and threshold are key to determining potential risk from contaminants. The WSSC's example of the intake needed to reach a single therapeutic dose of carbamazepine (*i.e.*, it would not reach a therapeutic [as opposed to a toxic)] dose in 70 years of drinking two liters of water a day) reinforces Dr. Pleus' testimony. The Hearing Examiner finds that the amount of dosage and the exposure pathway *does* matter when assessing the toxilogical risk of exposure in the reservoir and that Dr. Dawson's report is the best evidence of the level of this risk.

e. Opposition's Expert Testimony

In contrast, PWPA's expert evidence can be characterized as general proposition that it is a "bad idea" to locate any cemetery in a watershed that drains to a drinking water supply.¹⁸ This type of argument has been rejected by Maryland Courts as a basis for denying a conditional use. *Anderson v. Sawyer*, 23 Md. App. 612, 618 (1974)(expert testimony that it is undesirable to increase traffic on a 30-foot-wide road in a residential neighborhood in which parking is permitted

¹⁸ The Hearing Examiner does not intend to denigrate the expertise of those testifying, which was at a very high level on both sides. She merely weighs the probative value of the competing evidence on the issue of potential for harm to streams, wells, and the reservoir from the proposed cemetery at the proposed location.

on both sides of the street, without specific factual data, was insufficient to support denial of special exception).

While PWPA argues that its expert evidence is site-specific, the only truly site-specific information it presents is the property's location in a watershed that drains to the Rocky Gorge Reservoir. This blanket assertion is not significantly probative of the issue the Hearing Examiner needs to resolve, because it merely opens the *possibility* that harm may occur but fails to address *probability* that this will happen. Given the detailed factual and scientific evidence that harm will *not* occur, this is an insufficient bases on which to deny this conditional use. *Miller v. Kiwanis Club of Loch Raven, Inc., 29 Md. App. 285, 296,* (1975)(possibility as opposed to probability that wells would run dry cannot be deemed substantial or probative evidence to support denial of a conditional use).

Neither Dr. O'Keefe or Mr. Mullowney addressed the dosage, exposure pathway or threshold of the NIOSH-listed. Mr. Mullowney asserts that a "single molecule" can be harmful but fails to show how, when, where, or in what form the drug would reach, as Dr. Pleus called it, the "tap." As Dr. Pleus. Dr. Dawson, and the WSSC point out, Mr. Mullowney ignores the various process by which contaminants in corpses may be filtered, degraded, absorbed, dilution or any other process that might mitigate toxic effects. The more concrete testimony and evidence and the credibility (in terms of being more reasoned and precise) of Dr. Dawson and Dr. Pleus persuade the Hearing Examiner that the dosage and exposure pathway for drugs in an occupational setting are very different than that of bodies buried in this. As Dr. Dawson points out, "Mr. Mullowney appears to rely entirely on his stated specialization regarding chemotherapy drug excretion–a subject that is relevant to wastewater and septic system discharges but not to buried corpses, which no longer consume and excrete." Exhibit 118, pp. 4-5.

The Hearing Examiner finds this distinction important, as the evidence and testimony demonstrate that septic systems contain far more contaminants than corpses because contaminants may be discharged daily. Dr. Dawson estimated nitrogen loads from human remains buried on the subject property over 6 years to be 90 kg per year.¹⁹ She estimated that nitrates discharged from all septic systems in the Patuxent River watershed would be approximately 860 kg per year. Exhibit 97, Dawson Expert Report, p. 16. With the disparate loads, the Mr. Mullowney's conclusion of harm are less persuasive.

Aside from dosage, Dr. O'Keefe and Mr. Mullowney provide no details on the exposure pathway. Dr. O'Keefe opined that contaminants would enter the groundwater simply because they travel downward and must end up somewhere. Mr. Mullowney addressed the actual transport and fate of contaminants only by stating "the water drains so quickly and breaks down into the water." There is a plethora of credible expert testimony in this case that the "law of gravity" does not warrant a conclusion that harm will occur. While Dr. Abia did address transport and fate of contaminants from some cemeteries, he did not look at the contaminant load, soils, and exposure pathway of this one. Dr. Dawson correctly points out that even Dr. Abia's conclusion of potential harm depends on site specific factors. Dr. Abia's written testimony quotes from an article identifying the risk of harm from cemeteries, "especially if poorly located or incorrectly managed." Exhibit 106. While Dr. Abia uses the cemetery's location upstream from a reservoir to opine that the proposed cemetery is in a "poor location", Dr. Dawson notes that he fails to include other key factors listed in the article he cited (Exhibit 118):

... which specifically refers to critical parameters that should be considered when evaluating the pollution potential of a cemetery (i.e., to ascertain whether it is poorly located), including: "inhumation depth, geological formation, depth of the water table, density of inhumations, soil type and climate." Evaluation of these

¹⁹ That annual amount will likely be smaller, as Dr. Dawson conservatively assumed that all nitrates would be loaded within 6 years. Both Dr. Abia and Dr. Dawson testified that it can take as much as 20 years for nitrate leave a corpse.

parameters is also recommended by other sources (e.g., Dent, 2002; WHO, 1998), which I relied upon in preparing my Expert Report. I considered each of these sitespecific parameters in my hydrogeologic evaluation and demonstrated that contaminant release from burial sites at the proposed Reflection Park cemetery will not pose a health and safety risk to adjacent private properties, nearby streams, or to the Rocky Gorge Reservoir. Dr. Abia considered none of these parameters.

Dr. Pleus blanketly contradicted some of Mr. Mullowney's stronger conclusions, clarifying that the danger of exposure to NIOSH listed drugs is to the mother and does not transmit to the mother's grandchildren. While she understands that Mr. Mullowney is passionate about his subject , she found some aspects of Mr. Mullowney's testimony somewhat hyperbolic and unsupported.

Both Dr. O'Keefe and Mr. Mullowney worry about cumulative effects of these contaminants over time but are not specific to the setting. Dr. O'Keefe points to the overall need to handle pharmaceuticals used in cancer treatment conservatively, a proposition with which few could disagree, but does not answer specifically why this use could cause harm. However, Dr. Dawson conservatively modeled full long-term impact of this use; her model assumed the full occupation of all graves at the phases proposed. She also assumed that all corpses would be adults, each with a nitrogen-loading level with adults,

PWPA relies heavily on recent Baltimore County Zoning Regulations that prohibit natural burial cemeteries from uses permitted in its RC-4 (watershed protection) zone. While they recognize that these regulations are not controlling in this case, they argue that it, "[I]n the end, the Hearing Examiner should ask why, if a green burial cemetery is as risk-free as the Applicant would like to believe, Baltimore County concluded that green burial cemeteries so proximate to a a major public drinking water supply would never get in the ground." T. 467.

The answer to PWPA's question is that there is nothing in this record that tells us explicitly why Baltimore County chose a blanket prohibition of cemeteries near water supplies if they even did so. Council Bill 76-21 sets up only the criteria to petition for the Zone. There is nothing in the record to show which properties, if any, have been rezoned to the RC-4 Zone or whether there remain properties close to reservoirs that are zoned RC-8. If properties near cemeteries were permitted to remain in the RC-8 Zone until the owner requests the RC-4 Zone, a much different connotation ensues.

Even assuming, without deciding, that the burial areas in the Baltimore County bill meet the requirements for RC-4 Zoning, the Hearing Examiner simply cannot apply a policy that hasn't been adopted in Montgomery County. There is virtually no evidence in this case that harm from the cemetery at this location will occur. PWPA's testimony focuses primarily on harm that can occur in other settings, such as contamination from septic systems, occupational exposure, and water treatment systems. The Hearing Examiner cannot adopt a policy that she must divine from a single bill adopted by another jurisdiction to overule the very strong evidence here that the cemetery will not have an adverse impact on the surrounding area.

Moreover, even though the Montgomery County Zoning Regulations don't have as detailed requirements for a hydrogeologic study as the Baltimore County regulations, a review of the latter demonstrates that the study performed by Dr. Dawson either meets or exceeds or exceeds the Baltimore County requirements. Baltimore County requires an analysis of wells within 200 feet of the property boundary; Dr. Dawson assess the impact on wells at least 750 feet of the property. The components required by the Baltimore County regulations have been included in Dr. Dawson's report. Whether or not Baltimore County would absolutely prohibit a green cemetery on this property is not clear from the evidence; the evidence is clear that the cemetery proposed here will not cause harm to streams, wells, or the reservoir.

The Hearing Examiner does not rely heavily on many of the comments submitted by PWPA in response to the analysis of WSSC and MCDEP because they are not supported by the record in this case. This includes references to the "not-yet-updated federal safety standards" and the "more modern safety standards", which the PWPA fails to identify Exhibit 148, p. 10. It also contains comments from its expert witnesses that were not under oath, subject to cross-examination, or presented to the WSSC for response. Those in opposition had the opportunity to present rebuttal evidence but chose not to do so. Day 2, T. 422-423.

The Hearing Examiner understands entirely the concerns of the Cloverly Association of about any additional contamination in this area. However, nothing in this record supports a finding that the same scenario will occur. There is nothing to demonstrate similarity in release of contaminants, similarity in contaminants, or similarity in the exposure pathway.

The Hearing Examiner understands the concerns of the Cloverly Civic Associations. There is nothing in this record, however, that the dose, contaminants, transport, and fate of the Shell leakage of MTBE's that occurred in their neighbor will occur on this site.

2. Requested Conditions

Finally, PWPA asks for several conditions if the Hearing Examiner approves this case. According to PWPA, the "scope of devastation" in tree removal (over 25 acres), should be minimized. T. 467. To mitigate for that, there recommend the following condition:

(1) Removal and replanting of trees in the actual burial areas should be closely regulated for the foreseeable future to continually maximize forest cover. Once forest cover is removed, it should be reforested with diverse hardwoods at a scale comparable to the Applicant's original submission to the Planning Board. T. 467.

To assure that Dr. Dawson's findings remain valid, PWPA also recommends there should be an ongoing "reality check" and that monitoring wells should be placed and operated within and around the cemetery to provide continuous evidence of the presence or absence of biocontamination. T. 468.

As Dr. Matrusada testified in this hearing, the record for the hearing before remand documents the Applicant's intent to replant each burial section with a mix of reforestation (with native hardwoods) and other vegetation. Exhibit 47. Reflections introduced a "Master Plan for Burial and Reforestation that included "Cemetery Section Development and Field to Forest Sequencing Strategies." *Id.* WSSC recommended "It is preferred that the site be cleared progressively in smaller areas or phases and re-planted (limited clearing if possible), that erosion/sediment control measures be implemented during all land clearing, and small streams on the property be protected from disturbance with a forested riparian buffer." Exhibit 66(b). The Hearing Examiner found that the Applicant's testimony credible (and still does) and that the burial section phasing plan met WSSC's concerns. HE Report, pp. 42-43. However, to make this more concrete, the Hearing Examiner will add following the following conditions to those in the original report:

The Applicant shall clear no more than one burial section (shown on the Applicant's Master Plan for Burial and Reforestation) at a time.

The Applicant shall replant all burial sections utilizing the Cemetery Section Development and Field to Forest Sequencing Strategies shown in Exhibit 47.

All reforested areas shall be consistent with the Reforestation Planting Concept shown on p. 12 of Exhibit 47.

Those in opposition supply no detailed reasons why the site needs continuous monitoring, a condition also deemed not necessary by the WSSC. Dr. Dawson's report modeled the entire load of the cemetery with all burials completed. Without more evidence of why continuous monitoring is needed and where and how monitoring should occur, the Hearing Examiner does not impose this condition.

VIII. CONCLUSION AND DECISION

As set forth above, the application meets the Zoning Ordinance standards for approval pertinent to this approval. Based on the foregoing findings and conclusions, the Hearing Examiner hereby *GRANTS* the Applicant's the application for a conditional use under Section 59.3.5.4.A. of the Zoning Ordinance to build and operate a cemetery at 16621 New Hampshire Avenue, Silver Spring, Maryland, subject to the same conditions stated in her Report dated October 11, 2021 and the following additional conditions:

- 1. The Applicant may clear no more than one burial section (shown on the Applicant's Master Plan for Burial and Reforestation) at a time.
- 2. The Applicant shall replant each burial section utilizing the Applicants Cemetery Section Development and Field to Forest Sequencing Strategies (Exhibit 47).
- 3. All reforested areas shall be consistent with the Reforestation Planting Concept shown on p. 12 of Exhibit 47.

Issued this 15th day of June 2022.

Lynn A. Robeson Hearing Examiner

RIGHT TO APPEAL

Any party of record may file a written request to appeal the Hearing Examiner's Decision by requesting oral argument before the Board of Appeals, within 10 days issuance of the Hearing Examiner's Report and Decision. Any party of record may, no later than 5 days after a request for oral argument is filed, file a written opposition to it or request to participate in oral argument. If the Board of Appeals grants a request for oral argument, the argument must be limited to matters contained in the record compiled by the Hearing Examiner. A person requesting an appeal, or opposing it, must send a copy of that request or opposition to the Hearing Examiner, the Board of Appeals, and all parties of record before the Hearing Examiner.

Additional procedures are specified in Zoning Ordinance §59.7.3.1.f.1. Contact information for the Board of Appeals is:

Montgomery County Board of Appeals 100 Maryland Avenue, Room 217 Rockville, MD 20850 (240) 777-6600 http://www.montgomerycountymd.gov/boa/

PLEASE NOTE THE FOLLOWING BOARD OF APPEALS FILING REQUIREMENTS DURING THE COVID-19 PANDEMIC:

Persons submitted requests for reconsideration, requests for a public hearing, or requests for oral argument/appeal regarding a conditional use decision by OZAH are also required to dual file their request, and should email a scanned copy (or photograph, if a scanner is not available) of their submission to BOA@montgomerycountymd.gov and then either mail the signed hard copy, via U.S Mail, to the following address: Montgomery County Board of Appeals, 100 Maryland Avenue, Room 217, Rockville, MD 20850 or make an appoint to hand-deliver the request between the hours of 10:00 a.m. and 4:00 p.m. on Tuesday and Thursday.

If you have questions about how to file a request for oral argument, please contact Staff of the Board of Appeals.

The Board of Appeals will consider your request for oral argument at a work session. Agendas for the Board's work sessions can be found on the Board's website and in the Board's office. You can also call the Board's office to see when the Board will consider your request. If your request for oral argument is granted, you will be notified by the Board of Appeals regarding the time and place for oral argument. Because decisions made by the Board are confined to the evidence of record before the Hearing Examiner, no new or additional evidence or witnesses will be considered. If your request for oral argument is denied, your case will likely be decided by the Board that same day, at the work session.

Parties requesting or opposing an appeal must not attempt to discuss this case with individual Board members because such *ex parte* communications are prohibited by law. If you have any questions regarding this procedure, please contact the Board of Appeals by calling 240-777-6600 or visiting its website: <u>http://www.montgomerycountymd.gov/boa/</u>.

Notifications sent to:

Jody S. Kline, Esq. Timothy Sullivan, Esq. Attorneys for the Applicant David Brown, Esq. Attorney for the Patuxent River Watershed Association CU 21-06, Reflections Park Inc. Hearing Examiner's Report and Decision (Remand)

James Putman Donald Chamberlin Quentin Remein George Willingmyre Linda Moore, PhD Robert Buglass, WSSC Steve Shofar, MCDEP Cliff Royalty, Esquire Barbara Jay, Executive Director Board of Appeals Patrick Butler, Planning Department

OZAH Case No. CU 21-06

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

https://www.montgomerycountymd.gov/ozah

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

Before: Lynn Robeson Hannan, Hearing Examiner

ORDER APPROVING A MINOR AMENDMENT

I. BACKGROUND

On October 21, 2021, the Hearing Examiner approved a conditional use and associated variances filed by the Applicant, Reflection Park, Inc. (Applicant or Reflection), to operate a cemetery under §59.3.5.4.A. of the Zoning Ordinance. The subject property is located at 16621 New Hampshire Avenue, Silver Spring, Maryland. The Hearing Examiner imposed 17 conditions of approval on the application. *Hearing Examiner's Report and Decision* (Report I), CU 21-06, Application of Reflections Park, Inc., pp. 51-53.

After an appeal of the October 21, 2021 decision, the Board of Appeals remanded the case back to the Hearing Examiner for additional testimony and evidence on the "potential impact of necroleachate on groundwater, the Rocky Gorge Reservoir, and the Patuxent watershed..." Exhibit 88. Public hearings on the remand took place on April 12, 13, and 14, 2022. After considering the scientific evidence presented, the Hearing Examiner granted the conditional use (on June 15, 2022) without changes to the conditional use plan, but with three additional conditions (*Hearing Examiner's Report and Decision*, CU 21-06 on remand, June 15, 2022 (Report II), p. 77):

- 1. The Applicant may clear no more than one burial section (shown on the Applicant's Master Plan for Burial and Reforestation) at a time.
- 2. The Applicant shall replant each burial section utilizing the Applicants Cemetery Section Development and Field to Forest Sequencing Strategies (Exhibit 47).
- 3. All reforested areas shall be consistent with the Reforestation Planting Concept shown on p. 12 of Exhibit 47.

The Hearing Examiner's decision on remand was not appealed.

Page 2

On September 8, 2022, Reflection Park requested a minor amendment to the approved conditional use plan. Reflection states (Exhibit 152):

Since that date [the date of the original approval on October 21, 2021], Reflection Park, Inc. has worked diligently to prepare the property for development and use as a cemetery. Unfortunately, due to delays associated with a remand of the case by the Board of Appeals to OZAH for more hearings, culminating in publication of a Report and Decision on Remand on June 15, 2022, the Applicant is eight (8) months behind its original schedule in initiating work on the property and components of the program. Because of those extensive delays, the Applicant has sought ways to accelerate its efforts to ready the property for use as a cemetery and to provide facilities for marketing and storage/protection of equipment to be employed in the land development process.

...there were to be three structures including '...a pagoda (open-air), ...a small administrative office, and a storage maintenance shed.' [Report II, p. 16]. The small office building and the utility shed cannot be constructed until a plat of subdivision for the property has been recorded. Preliminary Plan of Subdivision No. 1-20210150 for the subject property is tentatively scheduled for review by the Planning board on Thursday, October 6 and recordation of a plat should then occur three to four months later.

Reflection Park, Inc. cannot wait until another four to five months before it begins marketing and construction activities on the property...

In order to expedite implementing the conditional use, Reflection Park proposes to install a temporary office and utility structures on the site so that marketing and land preparation may proceed before the platting process is complete. It also seeks to alter the landscaping along the entrance. Reflection states that (Exhibit 152):

The proposed temporary buildings are smaller than the ultimate buildings that will be constructed on the property when the building permits can be issued, but their functions will remain the same as described in the Hearing Examiner's report and decision in 2021. The changes to the fence are both functional and aesthetic and do not in any way alter the impact of the proposal on the surrounding community. Accordingly, these changes can be granted as a 'minor amendment' with the understanding that the small temporary office building and the temporary storage and utility building will ultimately be replaced by structures already reviewed and approved by the Hearing Examiner.

The temporary changes to the conditional use plan are shown on the following pages.




Revised Landscaping for Entrance Gate



36' x 10' OFFICE TRAILER



In addition to your office solution, we can provide additional products and services that complete your space- creating a more productive, comfortable, and safe work environment.



CUSTOMIZATION

Steps & Ramps Formiture & Appliances Technology Site Services Loss Protection



Exhibit 161 Temporary Storage Container

The Hearing Examiner referred the above amendments to Staff for their review and recommendation on whether the proposed changes were a "major" or "minor" amendment to the conditional use plan. Staff determined that the temporary structures would be a "minor" amendment for several reasons. Staff concluded that (Exhibit 168):

...the closest temporary structure is about 120' from the road as well as it is down grade from the road by 6'-8' difference. The structure maybe viewed a little from the road because of the distance from the road as well as the elevation difference but if the fencing and landscaping were to be installed it would be totally hidden."

Staff also noted that the temporary office is permitted in most contexts as a limited use (not needing a conditional use) and that temporary use of the office and trailer did not affect the character of the underlying (permanent) conditional use. Exhibit 167.

The Applicant's landscape architect confirms Staff's determination that the structures will be adequately screened from adjoining properties, stating that the landscaping in the original conditional use was designed to be "generous enough" to screen both the temporary and permanent structures from New Hampshire Avenue and adjoining properties. Reflection also confirms that the landscaping will be installed either contemporaneously or before installation of the temporary structures.

II. OPINION AND ANALYSIS

A. Governing Law

Amendments to previously approved conditional uses are governed by Section 59.7.3.1.K of the Zoning Ordinance. A minor amendment is "one that does not change the nature, character, or intensity of the conditional use to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected, when considered in combination with the underlying conditional use." *Zoning Ordinance*, Section 59.7.3.1.K.2.a. A "major amendment" is "one that changes the nature, character, or intensity of the conditional use to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected, when considered in combination with the underlying conditional use to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected, when considered in combination with the underlying conditional use." *Id.*, Section 59.7.3.1.K.1.a.

B. Opinion

Based on this record, the Hearing Examiner finds that the changes requested are a minor amendment to the originally approved conditional use plan. As Staff points out, the proposed uses are temporary and will not be "in combination with the underlying conditional use" but will be replaced with the permanent structures already approved. Thus, there is no change in the intensity or operations of the use; the temporary structures will simply avoid further delays in implementing the use originally approved.

The Hearing Examiner finds that installation of temporary structures will not alter the visual impact of the conditional use. Both the temporary office trailer and the temporary storage shed are smaller than the permanent buildings approved. Staff determined that the temporary structures will be hidden from New Hampshire Avenue due to the grade and with the landscaping installed.

The Applicant confirms that (1) installation of the temporary structures will not interfere with installation of the approved landscaping, (2) that the landscaping will be installed contemporaneously with or prior to installation of the structures, and that (3) the approved landscaping already generously screened the larger permanent buildings.

As the proposed amendment does not change the intensity in operations approved in 2021 and will have no additional impact on views and screening of the use, the Hearing Examiner finds that the amendment is minor and may be approved administratively.

III. ORDER

Based on the foregoing, it is this 24th day of October 2022, hereby

ORDERED, the amendments proposed to CU 21-06, Application of Reflection Park, Inc., by and hereby are, APPROVED, and it is further

ORDERED, that all development on the subject property shall conform to the amended conditional use plan (Exhibit 153) until the removal of the temporary office and storage unit, and it is further

ORDERED, that all development after removal of the temporary structures shall conform to the conditional use plan approved on October 21, 2022 (Exhibits 38(a) through (g)), and it is further

ORDERED, that development of the subject property must conform to the approved Landscape Plan showing revisions to the entrance gate (Exhibits 157-159), and it is further

ORDERED, that all conditions of approval set forth in the Hearing Examiner's Reports dated October 21, 2021, and June 15, 2022, remain in full force and effect.

Lynn Robeson Hannan Hearing Examiner

NOTICE

Under §59.7.3.1.K.2.b of the Zoning Ordinance, any party may request a public hearing on the Hearing Examiner's action within 15 days after this decision is issued. The request for public hearing must be in writing and must specify the reason for the request and the nature of the objection or relief desired. If a request for a hearing is received, the Hearing Examiner must suspend her administrative approval and conduct a public hearing to consider whether the amendment is a major amendment or a minor amendment under the Zoning Ordinance. A minor amendment is one that does not "substantially changes the nature, character, or intensity of the conditional use or its effect on the immediate neighborhood." A major amendment is one that does substantially change the nature, character, or intensity of the conditional use on the immediate neighborhood. If the Hearing Examiner determines, after an objection, that the impact will be major, then the application must be treated as a major amendment. A decision of the Hearing Examiner may be appealed based on the Hearing Examiner's record to the Board of Appeals.

COPIES TO:

Jody S. Kline, Esq. Attorney for the Applicant Barbara Jay, Executive Director, Board of Appeals Victor Salazar, Dept. of Permitting Services Mark Beall, Planning Department Michael Coveyou, Dir. Of Finance Cliff Royalty, Esq., Office of the County Attorney Current abutting and confronting property owners David and Rachel Hickson Michelle Albornoz Andy Bartley Patricia Thomas David Bachenheimer Parties to CU 21-06 All parties entitled to notice at the time of the original filing: Abutting and Confronting Property Owners (or a condominium's council of unit owners or renters if applicable) Civic, Renters and Homeowners' Associations within a half mile of the site

Any municipality within a half mile of the site.

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS Stella B. Werner Council Office Building Rockville, Maryland 20850 (240) 777-6660 https://www.montgomerycountymd.gov/ozah

IN THE MATTER OF: REFLECTION PARK, INC.		* *
Applicant		* *
- T F		*
* * * * * * * * * * * * * * * * * * * *	* * *	*

OZAH Case No. CU 21-06

Before: Lynn Robeson Hannan, Hearing Examiner

ERRATA TO ORDER APPROVING A MINOR AMENDMENT

On October 24, 2022, the Hearing Examiner issued an Order Approving a Minor Amendment to the above-captioned conditional use. The conditional use permits Reflection Park to operate a cemetery under §59.3.5.4.A. of the Zoning Ordinance at 16621 New Hampshire Avenue, Silver Spring, Maryland. The Hearing Examiner's initial decision approving the application was issued on October 11, 2021.

Pages 1, 2, and 8 of the Order Approving the Minor Amendment incorrectly refers to the date the Hearing Examiner initially issued the decision approving the conditional use as "October 21, 2021."

All these references should be, and hereby are, corrected to "October 11, 2021." This correction does not alter the substance of the Hearing Examiner's October 24, 2022, Order Approving the Minor Amendment.

Issued this 15th day of November, 2022.

the-

Lynn Robeson Hannan Hearing Examiner

COPIES TO:

Jody S. Kline, Esq. Attorney for the Applicant Barbara Jay, Executive Director, Board of Appeals Victor Salazar, Dept. of Permitting Services Mark Beall, Planning Department Jonathan Casey, Planning Department Michael Coveyou, Dir. Of Finance Cliff Royalty, Esq., Office of the County Attorney Current abutting and confronting property owners David and Rachel Hickson Michelle Albornoz Andy Bartley Patricia Thomas David Bachenheimer Parties to CU 21-06 All parties entitled to notice at the time of the original filing: Abutting and Confronting Property Owners (or a condominium's council of unit owners or renters if applicable) Civic, Renters and Homeowners' Associations within a half mile of the site Any municipality within a half mile of the

RESERVED FOR APPROVAL

DEVELOPMENT S	STANDARDS / ZC	ONING DATA TA	BLE	
RURAL CLUSTER (RC), STANDARD METHOD DEVELOPMENT	REQUIRED	PERMITTED	PROVIDED	APPROVED UNDER CU 21-06
LOT				
LOT AREA (MINIMUM)	5 ACRES		40.22 ACRES	40.22 ACRES
LOT WIDTH AT FRONT BUILDING LINE (MINIMUM)	300 FEET		214.0 FEET ⁽¹⁾	214.0 FEET ⁽¹⁾
LOT WIDTH AT FRONT LOT LINE (MINIMUM)	300 FEET		205.8 FEET ⁽¹⁾	205.8 FEET ⁽¹⁾
DENSITY				
DENSITY (UNITS /ACRE) (MAXIMUM)		1 UNIT / 5 ACRES OR 8 UNITS	1 UNIT	
COVERAGE (MAXIMUM)	10% 0R 175,198 SQUARE FEET		11,263 SQUARE FEET OR 0.6%	11,263 SQUARE FEET OR 0.6%
PLACEMENT				
PRINCIPAL BUILDING SETBACKS				
FRONT SETBACK (MINIMUM)	50 FEET		50 FEET	N/A ⁽²⁾
SIDE STREET SETBACK (MINIMUM)	N/A		N/A	N/A
SIDE SETBACK (MINIMUM)	20 FEET		20 FEET	N/A ⁽²⁾
REAR SETBACK (MINIMUM)	35 FEET		35 FEET	N/A ⁽²⁾
ACCESSORY STRUCTURE SETBACKS				
FRONT SETBACK (MINIMUM)	80 FEET		80 FEET	92.1 FEET
SIDE STREET SETBACK (MINIMUM)	N/A		N/A	N/A
SIDE SETBACK (MINIMUM)	15 FEET		15 FEET	34.9 FEET
REAR SETBACK (MINIMUM)	15 FEET		15 FEET	907.9 FEET
HEIGHT				
PRINCIPAL BUILDING (MAXIMUM)		50 FEET	N/A	N/A
ACCESSORY STRUCTURE (MAXIMUM)		50 FEET	50 FEET	50 FEET
TOTAL BUILDING SQUARE FOOTAGE			9,018 S.F.	9,018 S.F.

(1) VARIANCE APPROVED FOR MINIMUM LOT WIDTH AT BUILDING SETBACK LINE AND FRONT LOT LINE, BOARD OF APPEALS CASE No.: CU 21-06

(2) THE ZONING ORDINANCE DEFINES ACCESSORY STRUCTURES AS "... a structure subordinate to and located on the same lot as a principal building, the use of which is incidental to the use of the principal building or to the use of the land." THE PRINCIPAL USE OF THE SUBJECT PROPERTY IS A CEMETERY, THEREFORE ALL STRUCTURES ARE SUBORDINATE TO THE PRINCIPAL USE AND ARE CONSIDERED ACCESSORY STRUCTURES.

SITE AREA TABULATION

CEMETERY BURIAL SITES:

AREA DEDICATED TO PUBLIC USE:

MAINTENANCE BUILDING, SMALL:

MAINTENANCE BUILDING, LARGE:

COMMUNITY BUILDING:

OFFICE BUILDING:

REAR PAVILION:

GROSS TRACT AREA:

NET LOT AREA:

NEW BUILDINGS:

ENTRY PAVILION:

40.38950 ACRES OR 1,759,367 SQUARE REET 0.16506 ACRES OR \/7,190 SQUARE FEET 40.22444 ACRES OR 1,752,177 SQUARE FEET 14.57 ACRES OR / 643,669 SQUARE FEET 441 SQUARE FEET (GFA) 747 SQUARE FEET (COVERAGE) 528 SQUARE FEET (GFA) 572 SQUARE FEET (COVERAGE)

1,024 SQUARE FEET/(GFA) 1,024 SQUARE FEET (COVERAGE) 5,960 SQUARE FEET (GFA)

7,549 SQUARE FEĘ∜ (COVERAGĘ)

624 SQUARE FEET (GFA) 624 SQUARE FEET (COVERAGE) PÀRCELC

_PLAT No. 17575

ZONE:\RC

USE:\RELIGIOUS\ASS

441 SQUARE FEE∜ (GFA) 747 SQUARE FEETXCOWERAGE)

120 FEET (SHI

A LOSA

HAMPSHIRE GREENS

~ PLAT NO. 20762___

COUNTX REVENUE AUTHORITY ZONE: RE -2C) USE: GOLF COURSE

MONTGOMERY



FOR UTILITY LOCATIONS CONTACT "ONE CALL" AT 811 AT LEAST 48 HOURS PRIOR TO CONSTRUCTION







Casey, Jonathan

From:	Donald Chamberlin <dechamb@verizon.net></dechamb@verizon.net>
Sent:	Friday, July 29, 2022 8:44 PM
То:	Casey, Jonathan
Cc:	Putman Jim Cell; Moore Linda; Faustini Lou; Hughes Susan
Subject:	Re: Subdivision Plan Meeting for Reflection Plark?
Follow Up Flag: Flag Status:	Follow up Completed

[EXTERNAL EMAIL] Exercise caution when opening attachments, clicking links, or responding.

Jonathan,

OK Thanks. Please keep me informed regarding any document submissions and meetings involving this project.

Don Chamberlin, Representative Patuxent Watershed Protective Association

Sent from my iPhone

On Jul 28, 2022, at 3:22 PM, Casey, Jonathan < Jonathan.Casey@montgomeryplanning.org> wrote:

Hi Mr. Chamberlin,

I'm the lead review for the Reflection Park Preliminary Plan. A Planning Board date has not be set yet. The applicant's attorney just reached out to me about the application, since the Condition Use was recently approved. I expect they will be submitting a revised preliminary plan in the very near future, consistent with plans the Hearing Examiner approved.

Thank you,

<image00

	Jonathan Casey Senior Planner Upcounty Division
1.png>	Montgomery County Planning Department 2425 Reedie Drive, 13 th Floor, Wheaton, MD 20902 <u>jonathan.casey@montgomeryplanning.org</u> o: 301-495-2162
	<image002.png></image002.png>
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	<image004.png></image004.png>
	<image005.png></image005.png>

From: Pereira, Sandra <sandra.pereira@montgomeryplanning.org>
Sent: Thursday, July 28, 2022 3:07 PM
To: Casey, Jonathan <Jonathan.Casey@montgomeryplanning.org>
Subject: FW: Subdivision Plan Meeting for Reflection Plark?

Hi Jonathan,

The email below is referring to application #<u>120210150</u> Remembrance Park. Can you please follow up on it?

Sandra

From: Donald E. Chamberlin <<u>dechamb@verizon.net</u>>
Sent: Wednesday, July 27, 2022 5:34 PM
To: Butler, Patrick <<u>patrick.butler@montgomeryplanning.org</u>>
Subject: Subdivision Plan Meeting for Reflection Plark?

[EXTERNAL EMAIL] Exercise caution when opening attachments, clicking links, or responding.

Patrick,

Has the Subdivision Plan meeting for Reflection Park Inc at 16621 New Hampshire Avenue been scheduled yet?

We and many local residents are very interested in finding out when it might be scheduled.

Thanks,

Don Chamberlin, Representative Patuxent Watershed Protective Association



Department of Permitting Services Fire Department Access and Water Supply Comments

DATE:	03-May-21
TO:	Stephen Crum - scrum@mhgpa.com Macris, Hendricks & Glascock
FROM:	Marie LaBaw
RE:	Reflection Park 16621 New Hampshire Ave

PLAN APPROVED

- 1. Review based only upon information contained on the plan submitted **03-May-21**. Review and approval does not cover unsatisfactory installation resulting from errors, omissions, or failure to clearly indicate conditions on this plan.
- 2. Correction of unsatisfactory installation will be required upon inspection and service of notice of violation to a party responsible for the property.

*** See Statement of Performance Based Design ***

Macris, Hendricks	and Glascock, P.A. 9220 Wightman Road, Suite 120
Engineers - Planners - S	Surveyors - Landscape Architects Montgomery Village, Maryland 20886-1279
	FIRE CODE ENFORCEMENTPhone 301.670.0840
➡ MHG	Fax 301.948.0693 Fire Department Access Review www.mhgpa.com
May 3, Dr. Marie LaBaw, PhD, P.E. Montgomery County Department of Permitting Service Zoning, Well & Septic, and Code Compliance 2425 Reedie Drive, 7th Floor Wheaton, MD 20902	Review based only upon information contained on this plan. Does not cover unsatisfactory layout resulting from ommisions, errors or failure to clearly indicate conditions on this plan. Correction of such unsatisfactory layout to afford required access will be required if found upon inspection after installation BY: <u>SMC</u> FM: <u>43</u> DATE: <u>5/3/2021</u>
Re:	Fire Department Apparatus Access Plan Statement of Performance Based Design Reflection Park, 16621 New Hampshire Avenue, Sandy Spring, MD 20905 MHG Project No. 1998.360.16

Dear Dr. LaBaw:

On behalf of our Client, Reflection Park, Inc. we hereby propose the use of performance based means to provide Fire Department Access to two (2) maintenance buildings and two (2) pavilions proposed for the above referenced project site.

Both maintenance buildings are relatively small (572 square feet and 1024 square feet of gross floor area respectively) and will be used principally for the storage of maintenance equipment associated with cemetery maintenance. According to the project architect's code analysis, neither building is required to have an automatic fire sprinkler system installed.

Due to environmental constraints; primarily the location of soils suitable to accommodate on-site sewage disposal (septic) systems and to a lesser extent space for providing stormwater management facilities these maintenance buildings are located as indicated on the Fire Department Apparatus Access Plan, attached. While the location of the main exterior side hinged doors are not within 50 feet of a compliant vehicular fire department apparatus access point, the most remote interior portion of each of these buildings is within 150 feet of the compliant vehicular fire department apparatus access point apparatus access point. Fire Department apparatus access point are buildings are attached for your review.

All points on the exterior of all buildings without automatic fire sprinkler systems are within 150 feet, 300 feet total, of a compliant fire department vehicular access, measured as the firefighter walks.

Given the items outlined above, we request your approval of the attached Fire Department Apparatus Access Plan for the above referenced project.

If any additional information is required or questions arise, please contact me at your convenience.



Sincerely,

Stephen E. Crum, P.E.

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. 16905, Expiration Date: 04/21/2020









DEPARTMENT OF PERMITTING SERVICES

Marc Elrich County Executive Mitra Pedoeem Director

MEMORANDUM

December 2, 2022

TO:	Jonathan Casey, Lead Reviewer Development Review Maryland National Capital Park and Planning Commissior	ı
FROM:	Jason L. Flemming, Senior Permitting Specialist JLF Well and Septic Section Department of Permitting Services	
SUBJECT:	Preliminary Plan : Reflection Park 120210150	

This is to notify you that the Well & Septic Section of MCDPS **conditionally approved** the preliminary plan received by this office. The site evaluation (water table and percolation testing) has been completed and the proposed septic reserve areas will support the proposed use of an office and a 168 seat community building.

Approved with the following reservations:

1. A Septic Permit Plan that meets COMCOR 27A.00.01 and COMAR 26.04.02 must be approved by this office.

If you have any questions, please contact Jason L. Flemming (240) 777-6334.



DEPARTMENT OF PERMITTING SERVICES

Marc Elrich County Executive Mitra Pedoeem Director

June 3, 2021

Ms. Amanda Junge Macreis, Hendricks & Glascock, P.A. 9220 Wightman Road, Suite 120 Montgomery Village, MD 20886-1279

> Re: COMBINED STORMWATER MANAGEMENT CONCEPT/SITE DEVELOPMENT STORMWATER MANAGEMENT PLAN for Snowden's Manor/Remembrance Park Preliminary Plan #: 120210150 SM File #: 286490 Tract Size/Zone: 40.83 Ac / RC Total Concept Area: 24.73 Ac / 1,077,296 SF Parcel(s): 911 Watershed: Lower Patuxent River

Dear Ms. Junge:

Based on a review by the Department of Permitting Services Review Staff, the stormwater management concept for the above-mentioned site is **acceptable**. The stormwater management concept proposes to meet required stormwater management goals via microbioretention, enhanced microbioretention and bioswales.

The following items will need to be addressed during the detailed sediment control/stormwater management plan stage:

- 1. A detailed review of the stormwater management computations will occur at the time of detailed plan review.
- 2. A detailed review of culverts and discharge points will occur at the time of detailed plan review.
- 3. The limit of disturbance cannot overlap the Forest Conservation Area. Please coordinate this work with MNCPPC.
- 4. An engineered sediment control plan must be submitted for this development.

This list may not be all-inclusive and may change based on available information at the time.

This letter must appear on the sediment control/stormwater management plan at its initial submittal. The concept approval is based on all stormwater management structures being located outside of the Public Utility Easement, the Public Improvement Easement, and the Public Right of Way unless specifically approved on the concept plan. Any divergence from the information provided to this office; or additional information received during the development process; or a change in an applicable



2425 Reedie Drive, 7th Floor, Wheaton, Maryland 20902 | 240-777-0311 www.montgomerycountymd.gov/permittingservices Ms. Junge June 3 , 2021 Page **2** of **2**

Executive Regulation may constitute grounds to rescind or amend any approval actions taken, and to reevaluate the site for additional or amended stormwater management requirements. If there are subsequent additions or modifications to the development, a separate concept request shall be required.

If you have any questions regarding these actions, please feel free to contact Jean Kapusnick at jean.kapusnick@montgomerycountymd.gov at 240-777-6345.

Sincerely,

Mark Cheridge Mark C. Etheridge, Manager

Mark C. Etheridge, Mánager Water Resources Section Division of Land Development Services

MCE: jak

cc: N. Braunstein SM File # 286982

ESD: Required/Provided 17,414 cf / 18,001 cf PE: Target/Achieved: 1.00"/1.03" STRUCTURAL: 0.0 cf WAIVED: 0.0 ac.



DEPARTMENT OF TRANSPORTATION

Marc Elrich County Executive Christopher R. Conklin Director

September 01, 2022

Mr. Jonathan Casey, Senior Planner Up-County Planning Division The Maryland-National Capital Park & Planning Commission (M-NCPPC) 2425 Reedie Drive Wheaton, Maryland 20902

> RE: Preliminary Plan No. 120210150 Remembrance Park Preliminary Plan Letter

Dear Mr. Casey:

We have completed our review of the preliminary plan uploaded on eplans dated August 24, 2022. A previous plan was reviewed by the Development Review Committee at its April 13, 2021, meeting. We recommend approval of the plan subject to the following recommendations:

Plan Review Comments

- The public street fronting the subject property is maintained by Maryland State Highway Administration (MDSHA). Therefore, MCDOT does not have any jurisdiction other than the maintenance and operation of the traffic signal, sidewalk, bus stop, bus shelter, or sidepath. Per Montgomery County Code Chapter 50 Section 4.2, MCDOT shall provide recommendation about the subject property for the attention of the concerned agencies.
- All Planning Board Opinions relating to this plan or any subsequent revision, project plans or site plans should be submitted to the Montgomery County Department of Permitting Services (MCDPS) in the package for record plats, storm drain, grading or paving plans, or application for access permit. Include this letter and all other correspondence from this department.
- 3. We recommend the applicant provide a sidewalk along the site frontage. In accordance with Section 50-4.3(E.5.b.) of the Montgomery County Code, we recommend the Montgomery County Planning Board require the applicant to construct an off-site sidewalk along New Hampshire

Office of the Director

Mr. Jonathan Casey Preliminary Plan No. 120210150 September 01, 2022 Page 2

Avenue (MD-650) to connect with an existing bus stop south of Millgrove Road. At or before the permit stage, please coordinate with Mr. Wayne Miller of our Division of Transit Services to coordinate improvements to the RideOn bus facilities in the vicinity of this project. Mr. Miller may be contacted at Wayne.Miller2@montgomerycountymd.gov or at 240 777-5836.

- 4. <u>Storm Drain Analysis:</u> The subject site drains to the east towards an existing stream within the Lower Patuxent Watershed. There is no existing storm drain system within the close vicinity of the site, therefore, we accept the storm drain report submitted via eplans. We defer to MDSHA for the portion of the site draining to New Hampshire Avenue (MD-650).
- 5. <u>Sight Distance:</u> We defer to MDSHA for sight distance approval since all the vehicular access points are from New Hampshire Avenue (MD-650).
- 6. Relocation of utilities along existing roads to accommodate the required roadway improvements shall be the responsibility of the applicant.
- 7. Record a covenant for the operation and maintenance of private streets, storm drainage systems, and/or open space areas.
- 8. Design all access points and alleys to be at-grade with the sidewalk, dropping down to street level between the sidewalk and roadway.

Thank you for the opportunity to review this preliminary plan. If you have any questions or comments regarding this letter, please contact Mr. Deepak Somarajan, our Development Review Engineer for this project at <u>deepak.somarajan@montgomerycountymd.gov</u> or at (240) 777-7170.

Sincerely,

Despak Somarajan

Deepak Somarajan, Engineer III Development Review Team Office to Transportation Policy

SharePoint\teams\DOT\Director's Office\Development Review\Deepak\Preliminary Plan\ 120210150-Remembrance Park\Letter\ 120210150-Remembrance Park-DOT Preliminary Plan Letter

cc: SharePoint correspondence Folder FY-23

Mr. Jonathan Casey Preliminary Plan No. 120210150 September 01, 2022 Page 3

cc-e:	Jody S. Kline	Miller, Miller & Canby
	David A. Crowe	Macris, Hendricks, & Glascock
	Atiq Panjshiri	MCDPS RWPR
	Sam Farhadi	MCDPS RWPR
	Mark Etheridge	MCDPS WRS
	Mark Terry	MCDOT DTEO
	Wayne Miller	MCDOT DTS
	Rebecca Torma	MCDOT OTP