

**IN THE MATTER OF** \* **BEFORE THE**  
\* **HOWARD COUNTY**  
**CORRIDOR SQUARE, LLC** \* **ZONING BOARD**  
\* **ZB 1130M**

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**MEMORANDUM OF LAW OF PROTESTANT JOEL B. HUREWITZ**

Protestant Joel B. Hurewitz submits this Memorandum of Law in the above-captioned matter.

During the hearing, the Zoning Board Hearing Examiner raised the question of where to find legal authority for the Zoning Board to place conditions upon, for and regarding the Rosa Bonheur Memorial Park (“RBMP”). One of Protestant’s primary issues during the hearing was supporting, protecting and preserving the cemetery, but remains concerned about any legal impediments that may arise to fulfill this goal in Howard County’s land use laws and zoning regulations. First, it should be noted that Business Regulations Article § 5-804. *Pet remains; perpetual care* and the COMAR regulations adopted pursuant thereto appear to apply to the RBMP.

(b) A registered cemeterian, registered crematory operator, or permit holder that engages in the operation of a cemetery, crematory, or burial goods business who sells or offers to sell to the public cremation services, a burial lot, or a burial right in a cemetery for pet remains as to which perpetual care is stated or implied owes a duty of perpetual care for the cemetery in which the pet remains are interred.

Act 2023, Chapter 591.

During the hearing, Counsel for Petitioner cited the ability of the Zoning Board to place conditions on RBMP pursuant to Howard County Code Section 16.205H - *Map amendment approval*

Conditional Approval.

(1) When it approves a zoning map amendment other than piecemeal map amendment cases based on the change/mistake rule, the Zoning Board may impose reasonable requirements and safeguards (in the form of conditions) which the Zoning Board finds are necessary to either:

- (i) Protect surrounding properties from adverse effects which might accrue from the zoning map amendment; or
- (ii) Further enhance the coordinated, harmonious, and systematic development of Howard County.

While Protestant also would desire that this section gives the Zoning Board legal authority, unfortunately, by its plain language it does not. It only applies “[w]hen [the Zoning Board] approves a zoning map amendment **other than piecemeal map amendment cases based on the change/mistake rule.**” (emphasis added). This matter is of course a mistake case and not for example a floating zone or a Columbia Preliminary Development Plan amendment.

The testimony of Howard County Department of Planning and Zoning, Division Chief for Public Service and Zoning Administration, Julia Sauer (“Sauer”) stated that the Zoning Board has authority over the RBMP under Zoning Regulation 100.0.G.e. Additionally, Memorial LLC, as owner, is a party to the proceedings. Their property will be subdivided as part of the documented site plan. So any conditions are appurtenant to the properties of the rezoning petition.

In comparison, a recent example of the Zoning Board applying conditions for the benefit of a neighboring property is ZB 1122M Meadowood Maple Lawn. <https://cc.howardcountymd.gov/sites/default/files/2023-08/ZB%201122M%20Meadowood%20Maple%20Lawn%20DO%20signed.pdf> There, the Zoning Board found a mistake and granted rezoning from the RR-DEO to the R-SA-8. The Decision and Order states:

19. Testimony in support of the petition, including the site plan, was also given by Vincenzo Leone, the Director of Operations of the adjacent Grace Community Church, which is located south of the Property. Mr. Leone stated that he had discussed with the Petitioner the need for sound mitigation between the Church and the development. The

Petitioner agreed that such mitigation was warranted and stated that they would plant evergreens, as well as build a berm on the land. The Petitioner stated that he would landscape the area facing South Maple Lawn to mitigate sound in that direction as well. Mr. Leone discussed the Petitioner's agreement to allow fiber optic cables to be run through the Petitioner's property in order for the church to connect to high speed internet. The Petitioner agreed that he would allow for the fiber optic cable to be run through his property to the Church. Mr. Leone noted that the Grace Community Church sign will no longer be visible when the Petitioner's development is completed, accordingly, the Church will have to move its sign. The Petitioner agreed that he would contribute monetarily to the cost of moving the sign.

Page 7. The Decision and Order further stated, as part of the plan for

5. Petitioner agrees that it will:

- Plant landscape materials between the church and the development, as well as in the direction facing South Maple Lawn to mitigate the noise coming from the Church
- Contribute financially to moving the sign for the Church
- Allow the fiber optic cable to extend through the Petitioner's property to the church to provide high speed internet connectivity to the Church building

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As an analogous example in a matter from the Board of Appeals, the conditional use (special exception) for the Jessup quarry made conditions for neighboring properties:

10. Prior to the commencement of quarry operations, the Petitioner shall donate approximately 7 acres of land on Mission Road, as shown on the Land Use Plan, to the Ridgely's Run Community Association for use as a community center. The Petitioner will construct on the 7 acres, at its own expense, (i) a community center building of approximately 5,000 square feet with parking, (ii) an exterior all-purpose basketball court, (iii) two tennis courts with nets and fencing, and (iv) grading for a little league baseball diamond and provide a little league baseball backstop. Construction will begin prior to commencement of quarry operations, and the Petitioner will diligently pursue completion of construction.

11. During each year of quarry operation, the Petitioner shall donate to the Ridgely's Run Community Association five cents (5<sup>^</sup>) per ton of marketable stone product shipped from the project operations, with a minimum donation of \$50,000.00 per year to be used for the programs of the community center for the betterment and welfare of the community.

Chase Limited Partnership, BA Case No. 95-58E, p. 44. Additionally, by legislation in the Downtown Columbia Plan, A General Plan Amendment

[https://www.howardcountymd.gov/sites/default/files/media/2016-01/downtown\\_columbia\\_plan\\_amended.pdf](https://www.howardcountymd.gov/sites/default/files/media/2016-01/downtown_columbia_plan_amended.pdf) the Community Enhancements, Programs and Public Amenities (CEPPAS) include conditions for improvements and payments regarding properties and programs which are not part of the Downtown development area. Page. 76-80.

Additionally, during the hearing, Sauer confirmed that the cemetery is a nonconforming use in the TOD District. Protestant continues to have concerns that improvements to the RBMP, including but not limited to the mausoleum, might be considered an enlargement of the nonconforming use as provided in Zoning Regulation 129.0:

For the purposes of these Regulations, "enlargement" shall mean the increase in size of any structure containing a nonconforming use, **the construction of an additional structure on the same lot**, or an increase in the land area occupied by a nonconforming use.

Zoning Regulation 129.A. (emphasis added). Therefore, as a condition, Petitioner should agree that they will get all necessary approvals for the RBMP improvements, including but not limited to, petitioning for and receiving a zoning regulation amendment to permit the existing cemetery in the TOD District, rezoning the property in the anticipated upcoming comprehensive zoning, or rezoning the RBMP via an additional map amendment matter.

Regarding the Motor Vehicle Fueling Facility, Zoning Regulation 100.0.G.2.g. states in part:

A site plan zoning petition approved by the Zoning Board may include a use allowed as a Conditional Use in the zoning district to which the property is rezoned and a use or structure which would otherwise require a variance to the bulk regulations. If this occurs, the Conditional Use shall be permitted as a matter of right and the use or structure shall be permitted in the approved location, in accordance with the site plan approved by the Zoning Board, and shall not require approval by the Hearing Authority.

This provision means that the Petitioner as part of the Zoning Board process need not go through the conditional use process with the Hearing Authority for the Motor Vehicle Fueling Facility

under Section 131.0.O.2. However, this does prohibit the Zoning Board from considering the conditional use requirements of a Motor Vehicle Fueling Facility as part of its process under Zoning Regulation 100.0.G.2.d:

The Zoning Board shall consider the following factors in reviewing the site plan(s);

- (1) The compatibility of the proposed development with the existing and potential land uses of the surrounding areas;
- (2) Protection of the environmental integrity of the subject property and adjoining areas in the location and design of site improvements;
- (3) The availability of safe road access for the proposed development; and
- (4) Compatibility of the proposed development with the policies and objectives of the Howard County General Plan.

Furthermore, the Zoning Board can consider such issues regarding the Motor Vehicle Fueling Facility as they chose as part of Zoning Regulation 100.0.G.2.e.:

If the site plan zoning petition is granted:

- (1) The Zoning Board may modify or apply additional requirements to the site plan(s), stating the reasons for such action. The Board, in its discretion, may hold such additional hearings on any modifications or additional requirements to the site plan as it deems appropriate.
- (2) The site plan(s), subject to modifications or additional requirements imposed by the Zoning Board, shall be made part of the Decision and Order of the Zoning Board;

Respectfully submitted,



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