

IN THE MATTER OF : HOWARD COUNTY  
ST. ANDREWS EPISCOPAL CHURCH : BOARD OF APPEALS  
Petitioner : HEARING EXAMINER  
: BA Case No. 15- 046C

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**DECISION AND ORDER**

On May 16, 2016, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of St. Andrews Episcopal Church for a Cemetery and Mausoleum Conditional Use, specifically four columbaria and a patio, in an RC-DEO (Rural Conservation-Density Exchange Option Overlay) Zoning District, filed pursuant to § 131.0.N.11 of the Howard County Zoning Regulations (HCZR).

Petitioner certified to compliance with the notice, posting, and advertising requirements of the Howard County Code. The Hearing Examiner viewed the property as required by the Hearing Examiner Rules of Procedure.

Petitioner was not represented by counsel. Frank Manalansan and Andrew Sebastian testified in support of the petition. No one testified in opposition to the petition.

**A Preliminary Matter**

At the outset of the hearing, Petitioner amended the Conditional Use Plan (CUP) to eliminate the "future Church and Sunday School building additions" in response to the Technical Staff Report (TSR) note that the Board of Appeals Case 99-048E approvals for these

additions have expired (the second phase addition was to have been constructed within 10 years of approval and the third phase, within 15 years of the January 4, 2000 approval date). Additionally, Petitioner added a general location for the existing shed and for its potential enlargement or alternatively, a second shed. The Hearing Examiner permitted this general location to be included in the CUP because Petitioner was unsure of the shed's actual square footage, subject to the condition of approval that Petitioner provide precise information about the shed/s on the red-lined site development plan. This amended CUP was introduced in evidence as Petitioner Exhibit 1, the Amended CUP.

#### **FINDINGS OF FACT**

Based upon the evidence of record, the Hearing Examiner finds as follows:

1. Property Identification. The subject property is on the west side of MD 97 (Roxbury Mills Road) about 600 feet south of Union Chapel Road. It is located in the 4<sup>th</sup> Election District, identified as Tax Map 0014, Grid 0016, Parcel 216, Lot 1 and known as 2829 Roxbury Mills Road (the Property). The Property is Lot 1 of the Woodside Estates subdivision.

2. Property Description. The 10.41-acre Property is the site of the St. Andrews Episcopal Church (the Church), approved in Board of Appeals Case No. 99-48E. The irregular, L-shaped Property has about 361 frontage feet on MD 97. A portion of the Property's northwesterly lot line runs along Union Chapel Road; there is no driveway access to this road. The Property is improved with a Church located 286 feet from MD 97, 108 feet from the north lot line and 148 feet from the south lot line. A driveway located about 199 feet from the

southeast corner of the Property provides access and leads to a semi-circular drop-off/pick up loop on the south side of the Church. From here the driveway continues to a 112-space parking lot to the rear of the Church. The western section of the Property is wooded. There is a stormwater management facility in the northeast corner. There is a shed and storage trailer on the north side of the Church. Petitioner is removing the storage trailer. The eastern portion is generally level.

3. Vicinal Properties. All vicinal properties are zoned RC-DEO and are generally each improved with a single-family detached dwelling. To the north are Lots 1 and 2 of the Mew Woods subdivision (Record Plat 17167, January 6, 2005). Lot 1 is approximately 2.7 acres and contains a dwelling located approximately 165 feet from its south property line and approximately 267 feet from the existing Church. A wooded border runs along Lot 1's west and the majority of its south property lines. Lot 2 is approximately 3.8 acres and contains a dwelling located approximately 185 feet from the south property line and 245 feet from the proposed Conditional Use patio. Lot 2 in its eastern section by MD 97 is wooded with a stream, wetlands and associated buffers.

To the south is Lot 2 of the Woodside Estates subdivision (Record Plat 3976; March 22, 1978). The approximately 5.4 acre Lot is improved with a dwelling located about 150 feet from the northwest property line. Across MD 97 is Parcel 225, a 30-acre parcel with an open field and trees along the perimeter adjacent to MD 97. The property is identified as Ellerslie, HO-6 on the Howard County Historic Sites Inventory. The historic dwelling is located approximately 700 feet

from MD 97. A Special Exception for an antique shop and greenhouse farm/garden store at Ellerslie was granted in Board of Appeals Case 87-037E on March 10, 1988. The 3.0-acre western Parcel 240 is improved with a single-family detached dwelling located approximately 165 feet from its eastern common lot line with the Property,

4. Roads. MD 97 is a Minor Arterial with two travel lanes and shoulders and approximately 44 feet of paving within an 80-foot right-of-way. There is a deceleration lane along a portion of the Property frontage on southbound MD 97. The posted speed limit is 40 miles per hour. The estimated sight distance from the existing driveway entrance is approximately 800 feet to the north and approximately 675 feet to the south to a point where the road curves downhill. According to data from the Department of Public Works, the traffic volume on MD 97 south of MD 144 was 5,371 AADT (average annual daily trips) as of 2011.

5. Water and Sewer Service. The Property is served by private well and septic.

6. General Plan. PlanHOWARD 2030 depicts the Property as Rural West on the Designated Place Types Map. MD 97 is depicted as a Minor Arterial on the PlanHOWARD 2030 Functional Road Classification Map.

7. Zoning History. Board of Appeals Case No. 99-048E (decided January 4, 2000) granted St. Andrews Episcopal Church a special exception for a religious facility.

8. TSR Comments. The TSR recommends approval with conditions. DPZ notes that a Type "A" landscape buffer was required along the north and south sides per approval condition No. 3 of Board of Appeals Case No. 99-048E. The Petitioner submitted a Certification of

Landscape Installation that the required landscaping was installed. The TSR further comments that while there are mature evergreen trees clustered along a portion of the north property line around the crest of the stormwater management facility, the view to the adjacent residence on Lot 2 to the north remains fairly open in the area of the proposed use. DPZ therefore recommends the installation of similar evergreen trees along the north property line in order to screen the view.

9. The Requested Conditional Use. Petitioner proposes to construct four columbaria and an octagonal patio in the front portion of the Property. Each columbarium is a 5'1" (h) x 7'6" (w) granite vault. These structures would lie about 60 feet from the northeast corner of the Church, 248 feet from the MD 97 right-of -way (ROW) and 59 feet from the north property line. The four columbaria would sit within a perimeter patio, which would feature a raised, centered landscape planter. Trees would be planted along the patio's perimeter. A new 5.0' flagstone sidewalk would extend from the Church's north side to the patio. The area will be accessible from dawn to dusk.

#### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact, the petition, plan and the TSR, the Hearing Examiner concludes as follows:

##### **I. General Criteria for Conditional Uses (§ 131.0.B)**

HCZR §§ 131.0.B.1-3 HCZR §§ 131.0.B.1-3 require the Hearing Authority to evaluate whether petitioners have met their burden of proof that the proposed Conditional Use meets

three general standards: harmony with the General Plan, overall intensity and scale of use relative to the Site and streets proposed to give access to the Site and adverse impacts.

A. Harmony and Intensity of Use (§§ 131.0.B.1 & .2)

**1. The proposed Conditional Use plan will be in harmony with the land uses and policies in the Howard County General Plan which can be related to the proposed use.**

There are no policies in the Howard County General Plan specifically addressing the proposed use.

**2. The nature and intensity of the use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the site are such that the overall intensity and scale of the use(s) are appropriate for the site.**

The proposed columbaria and patio is a low intensity, customary accessory use to a religious facility. Pedestrians, already likely to be on-site for religious activities, will generate few, if any additional vehicular trips. The overall intensity and scale of use is appropriate for the Property and the location on MD 97, a Minor Arterial.

B. Adverse Impacts

Unlike HCZR §§ 131.0.B.1 and B.2, which concern the proposed use's harmony or compatibility with the General Plan and the on-site characteristics of the proposed use, compatibility with the neighborhood is measured under § 131.0.B.3's six, off-site "adverse effect" criteria: (a) physical conditions; (b) structures and landscaping; (c) parking areas and loading, (d) access, (e) impact on environmentally sensitive area; and (f) impact on the character and significance of historic sites. These six adverse impact tests gauge the off-site effects of the proposed conditional use.

Inherent in the assessment of a proposed conditional use under these criteria is the recognition that virtually every human activity has the potential for adverse impact. The assessment therefore accepts some level of such impact in light of the beneficial purposes the zoning body has determined to be inherent in the use. Thus, the question in the matter before the Hearing Examiner is not whether the proposed use would have adverse effects in an RC-DEO district. The proper question is whether there are facts and circumstances showing the particular use proposed at the particular location would have any adverse effects above and beyond those inherently associated with such a special exception [conditional] use irrespective of its location within the zones. *People's Counsel for Baltimore County v. Loyola College in Maryland*, 406 Md. 54, 956 A.2d 166 (2008); *Schultz v. Pritts*, 291 Md. 1, 432 A.2d 1319 (1981); *Mossburg v. Montgomery County*, 107 Md. App. 1, 666 A.2d 1253 (1995).

For the reasons stated below, and as conditioned, Petitioner has met its burden of presenting sufficient evidence under HCZR § 131.0.B.3 to establish the proposed use will not have adverse effects on vicinal properties beyond those ordinarily associated with a columbarium/patio, cemetery/mausoleum land use in the RC-DEO zoning district.

**a. The impact of adverse effects such as, but not limited to, noise, dust, fumes, odors, intensity of lighting, vibrations, hazards or other physical conditions will be greater at the proposed site than it would generally be elsewhere in the same zoning district or other similar zoning districts.**

There is no evidence that visits to the proposed land use by pedestrians would generate any atypical impact from noise, dust, fumes, odors, intensity of lighting, vibrations, hazards or other physical condition.

**b. The location, nature and height of structures, walls or fences, and the nature and extent of the existing and/or proposed landscaping on the site are such that the use will not hinder or discourage the development and/or use of adjacent land and structures more at the subject site than it would generally elsewhere in the same zoning district or other similar zoning districts.**

The four 5'1"-high vaults would be located 245 feet from the closest residence and 248 feet from MD 97. The proposed use would be well separated from the road and neighboring properties by distance, existing landscaping and new landscaping. As a condition of approval, Petitioner shall install evergreen trees similar to the existing ones along the north property line where the view to the adjacent residence on Lot 2 to the north remains fairly open. Subject to this approval condition, the proposed structures and use will not hinder or discourage the development and/or use of adjacent land and structures more at the subject site than it would generally elsewhere in the same zoning district or other similar zoning districts.

**c. The number of parking spaces will be appropriate to serve the particular use. Parking areas, loading areas, driveways and refuse areas will be appropriately located and buffered or screened from public roads and residential uses to minimize adverse impacts on adjacent properties.**

The parking regulations contained in HCZR § 133.0 do not specify parking requirements for the proposed use. Visitors would use the existing parking lot which contains 12 spaces more than required for the religious facility use and visitation will most likely occur during or after Church hours. The number of parking spaces will be appropriate to serve the particular use. The current parking lot is adequately screened, having been landscaped in accordance per approval condition No. 3 of Board of Appeals Case No. 99-048E. No new loading or refuse areas are proposed.



d. The ingress and egress drives will provide safe access with adequate sight distance, based on actual conditions, and with adequate acceleration and deceleration lanes where appropriate. For proposed Conditional Use sites which have driveway access that is shared with other residential properties, the proposed Conditional Use will not adversely impact the convenience or safety of shared use of the driveway.

Visibility from the existing driveway is about 800 feet to the north and approximately 675 feet to the south to a point where the road curves downhill. Based on existing conditions, the access point on MD 97 is approximately 520 feet from the intersection with Union Chapel Road to the north. According to the American Association of State Highway and Transportation Official (AASHTO) guidelines, based on estimated stopping sight distance of 305 feet for a car going 40 miles per hour, the existing access point on MD 97 appears to provide safe access with adequate stopping sight distance. The estimated sight distance in both directions on MD 97 greatly exceeds this. Vehicle trips to and from the use are anticipated to be low. The ingress and egress drive will provide safe access with adequate sight distance, based on actual conditions.

The TSR notes that MD 97 being a Minor Arterial, AASHTO recommends an intersection sight distance analysis be conducted in addition to a stopping sight distance analysis. A professional sight distance analysis would need to be conducted in order to conclusively evaluate sight distance at the proposed location. A professional sight distance analysis is typically conducted when the Site Development Plan is submitted. Approval of the Site Development Plan would be contingent upon compliance with all Howard County design criteria, including sight distance.

However, DPZ's Division of Land Development commented in its April 4, 2016 agency recommendation that the owner may process a red-line revision to the site development plan (comment #2) and the State Highway Administration's May 16, 2016 issued the comment that the existing access is acceptable for the proposed addition. The Hearing Examiner therefore concludes no sight distance analysis is required at this conditional use hearing phase.

There is no shared driveway.

**e. The proposed use will not have a greater potential for adversely impacting environmentally sensitive areas in the vicinity than elsewhere.**

There is a stream on Lot 2 of Mew Woods, estimated to be approximately 150 feet to the northeast. The TSR reasons the proposed land use would not have a greater potential for adversely impacting environmentally sensitive areas in the vicinity than elsewhere.

**f. The proposed use will not have a greater potential for diminishing the character and significance of historic sites in the vicinity than elsewhere.**

Across MD 97 is Parcel 225, identified as Ellerslie, HO-6 on the Howard County Historic Sites Inventory. The historic dwelling is located approximately 700 feet from MD 97. The small scale of the proposed use, together with the distance from the historic site, would not have greater potential for diminishing the character and significance of historic sites in the vicinity than elsewhere.

## **II. Specific Criteria for Cemeteries and Mausoleums (§ 131.0.N.11)**

A Conditional Use may be granted in the RC and RR Districts, on properties that are not ALPP purchased or dedicated easement properties, and in the R-ED, R-20, R-12, R-SC, R-SA-8, R-

H-ED, R-A-15, R-APT, R-MH R-SI, I, R-VH, HO, HC, POR, CCT, B-1, B-2, SC, M-1 or M-2 Districts for cemeteries and mausoleums provided that:

**a. Graves with headstones or permanent markers greater than 3 feet in height shall not be located within 30 feet of the property lines of adjacent residentially zoned lots in residential use.**

The vaults will be 5'-1" in height and located 59 feet from the adjoining property line of Lot 2 to the north, the closest adjacent residentially zoned lot in residential use, in compliance with § 131.0.N.11.a.

**b. The Hearing Authority may require walls, fences and/or planting of shrubbery, trees or vines as may be reasonable and proper to afford adequate screening.**

Subject to the condition of approval Petitioner install evergreen trees similar to the existing ones along the north property line where the view to the adjacent residence on Lot 2 to the north remains fairly open, the petition complies with § 131.0.N.11.b.

**c. When approving a cemetery, the Hearing Authority may authorize future construction of accessory structures not requiring further Hearing Authority approval, such as mausoleums, vaults, columbaria, and sheds. The area boundary within which the future changes are authorized must be delineated on the Conditional Use plan and located at least 50 feet from all property lines.**

This section is inapplicable, as no cemetery is proposed.

**ORDER**

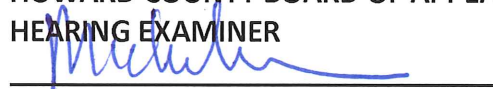
Based upon the foregoing, it is this **3<sup>rd</sup> of June 2016**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the petition of St. Andrews Episcopal Church for a Cemetery and Mausoleum Conditional Use, specifically four columbaria and a patio, in an RC-DEO (Rural Conservation-Density Exchange Option Overlay) Zoning District is **GRANTED**.

**Provided**, however, that:

1. The Conditional Use shall be conducted in conformance with and shall apply only to the Conditional Use as described in the petition and as depicted on the May 16, 2016 Amended Conditional Use (Exhibit 1) and not to any other activities, uses or structures on the Property.
2. Petitioner shall install evergreen trees similar to the existing ones along the north property line where the view to the adjacent residence on Lot 2 to the north remains fairly open.
3. Petitioner shall provide precise information about the existing and any proposed shed on the red-lined site development plan.
4. Petitioner shall obtain all permits.
5. Petitioner shall comply with all federal, state and county laws and regulations.

**HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER**



Date Mailed: \_\_\_\_\_

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within calendar 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.