



HERITAGE

MEMORIAL CEMETERY, LLC

May 7, 2023

Written Testimony of Eric W. Lundy, Managing Member, Heritage Memorial Cemetery LLC

Senators:

Thank you for your attention to my testimony regarding SB 543 by Senators Ellis and Guzzone

When legislation is passed, most of the time it serves the public and private interests well. Unfortunately, on occasion, legislation does not always account for the unique characteristics of a particular business. For most unique businesses, Maryland legislation crafts exceptions that are appropriate to those businesses. On reviewing the legislation affected by the three proposals in this bill, it is apparent that three additional exceptions need to be added to account for the unique characteristics of a cemetery operations.

The first section allows an exception from the sediment control provisions because the provisions governing the limitation that permits be required for disturbance of greater than 5000 square feet require a permit. The 5,000 square foot limitation is cumulative. In the digging of a grave, approximately 14 square feet of earth are disturbed. Therefore when about 357 graves have been opened, the limitation is met and because the statute is read to make the limitation cumulative, each and every grave opened after the 357th grave is in violation of the statute. Those government organizations charged with enforcing the provisions have no discretion in the statute to waive that requirement. The options for government are to either ignore the statute contrary to their mandate or enforce the statute by issuing a stop work order and charging the cemetery with a fine.

A cemetery is unique in that after the burial, the site is restored and vegetation is again established on the grounds. It is not at all like a housing development or even a single house on a one acre lot. Charles County asserts this limitation repeatedly on Heritage Memorial Cemetery LLC (Heritage). To force the governmental unit to ignore the statute would be wrong, Just as it is wrong to prevent cemetery from continuing to bury those who seek its services to bury their loved ones. After all, the cemetery I represent in Charles County has been granted a special exception by the Charles County Commissioners beginning in 1977 to operate as such and therefore should be able to operate without the constant threat of stop work orders and being fined for doing their operational services. This legislation seeks to correct that legislative oversight that is a unique characteristic of a cemetery and places an exception in the law to reflect that reality.

The second provision of the legislation also seeks an exception because the entire parcel of land of the cemetery is permitted to have burials, then should a tree need to be removed to allow a burial, it is untenable that trees not be removed for that purpose. After all, in the case of a gravel

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pit for example, the idea that gravel could be removed without removing a tree is laughable. The statutes governing gravel pits for example, recognize that obvious fact therefore legislative accommodations have been made. We believe that it is appropriate to exempt cemeteries for the forestry restrictions as well. After all, if a cemetery were developed on open farmland, there would never be an issue of tree removal. There is in fact a cemetery that has been developed in Charles county on farmland that does not have that forestry limitation present.

This legislation has been narrowly drafted to exempt only unique operations of cemeteries. It is not a blanket allowance for every kind and description of activity of cemeteries in general.

When asked to meet by video call on Monday May, 5th with the Maryland department of the Environment at 5:30 PM there were four persons from the department on the video call as well as a representative of Senator Ellis's office. The meeting was apparently called to find out what my position was on the bill as I was instrumental in requesting its submission. I learned many disturbing things in the meeting.

First, to my point at the beginning of this testimony, the idea that the statute that requires a permit when disturbing greater than 5,000 square feet was of no concern to the panel. The panel appeared completely indifferent that for each additional burial was the disturbance of 5,000 Square Feet was of no concern to them. It did not seem to matter to any of them that for each additional burial I was violating the statute. They seemed so unconcerned that they proposed that they and Senator Ellis should meet to work out some kind of arrangement with county officials. Clearly, any arrangement would be contrary to the statute in question and therefore for a government agency to basically state with a wink and a nod that the statutory language can be circumvented simply by some kind of "agreement" is clearly outside of their own mandate and statutory authority. That would leave me in the uncertain position that any agreement would never be in writing (it of necessity would not be in writing because it violates the statute) and it would be changeable at the whim of any county official not a party to the meeting. That would leave me no certainty of the decision.

Second, a member of the group stated that they were unaware of ANY OTHER CEMETERY in Maryland that had its operations stopped with multiple "Stop Work Orders" on issues revolving around burials or cemetery operations. What that means to me is that Charles County had singled out Heritage Memorial Cemetery LLC for constant review. Why is as yet unclear to me. It also means that the Maryland Department of the Environment has neglected the limitations of the statute STATEWIDE. It is charged with enforcement and apparently has not known nor acted through any investigation of the operations of any cemetery OTHER THAN Heritage Memorial Cemetery LLC in the state.

Then it appeared to me the most senior member of the group and others also affirmed that they were opposed to the legislation on the grounds that if an exception were granted, then possibly other groups with unique characteristics adversely affected by the lack of a particular exemption would then seek to also have remedial legislation passed. It seems to me that the function of the administrative agency in government is not to opine on POLICY. It is the province of the legislature to define policy, not the agency that may be tasked to enforce yet another exception.

You will note that there are 14 listed exceptions in the statute already. So apparently, other groups have already been recognized as worthy of statutory exceptions. Maryland Department of the Environment just does not want it for Charles County and now specifically for Heritage Memorial Cemetery.

I am always available to discuss this issue and perhaps lend more clarification to any issues herein presented. Thank you for your attention to this written testimony.

Sincerely,



Eric W. Lundy
Managing Member
Heritage Memorial Cemetery LLC