

# Board of Zoning Adjustment Staff Report

April 16, 2018



<b>Case No.</b>	17CUP1114
<b>Project Name</b>	Calvary Cemetery
<b>Location</b>	1600 and 1740 Newburg Road
<b>Owner</b>	Roman Catholic Bishop of Louisville
<b>Applicant</b>	Catholic Cemeteries
<b>Representative</b>	Bardenwerper Talbott & Roberts PLLC
<b>Project Area</b>	206.96 acres
<b>Council District</b>	8 – Brandon Coan, 10 – Pat Mulvihill
<b>Case Manager</b>	Beth Jones, AICP, Planner II

## REQUEST

- Modification of Conditional Use Permit for Cemeteries and Mausoleums to expand the existing cemetery (LDC 4.2.13)
  - Variance to permit a fence located more than 5 ft from a public sidewalk to exceed the 48 inch maximum permitted total height by up to 8 ft. 10 in. (LDC 4.4.3.A.1.a.i.)
  - Waiver to permit a retaining wall to be located within the required Landscape Buffer Area (LBA) (LDC10.2.4.B.1.)

## CASE SUMMARY / BACKGROUND

The 206.96 acre project site consists of two parcels: the Calvary Cemetery (203.97 acres) and the Carmelite Convent (2.99 acres). The applicant proposes to incorporate the convent into the cemetery. A portion of the convent site at the rear of the parcel will be used for in-ground burial and the existing chapel will be used for burial services.

The site is located on the west side of Newburg Road between Eastern Parkway and Speed Avenue. It is zoned R-1 within a Neighborhood form district. The site is surrounded by single and multi-family residential and public/semi-public uses; a few adjacent small commercial uses are located on the opposite side of Newburg Road. The site is directly adjacent to

On the cemetery site, proposed development includes an interior two-way vehicular roadway that will connect an existing roundabout to the existing convent site and to 17 parking spaces to be located along the existing north boundary of the convent parcel. A significant area of existing trees will be cleared to develop the roadway and provide additional in-ground burial sites.

On the convent site, the applicant proposes to close two existing direct access points to Newburg Road and develop a vehicle circulation roadway within the site from the front to the rear for access to the new burial area. Eleven parking spaces will be added at the rear of the existing convent building, and 45 new parking spaces will be added at the front of the building. Significant fill will be required to create a surface for the parking area, resulting in a grade change, retaining wall and fence totaling up to 17 ft higher than the level of the sidewalk along the Newburg Road property boundary.

A CUP for Calvary Cemetery (B-8-74) was issued to permit construction of a mausoleum complex. Case No. 10268 permitted an 80 acre expansion and Case No. 17823 permitted a 4,000 sq ft expansion.

## **STAFF FINDING**

The use of the site is compatible with surrounding land uses and meets all CUP requirements. The proposed parking at the front of the existing convent building will require significant earth fill to create an appropriately level development site. The combination of the existing elevation change along the sidewalk, a retaining wall and a fence will create a barrier up to 17 ft high along the adjoining sidewalk along Newburg Road.

Based upon the information in the staff report, the testimony and evidence provided at the public hearing, the Board of Zoning Adjustment must determine if the proposal meets standards as established by the Land Development Code for modifying the existing Conditional Use Permit.

## **TECHNICAL REVIEW**

There are no outstanding technical items to be addressed.

## **INTERESTED PARTY COMMENTS**

A neighborhood meeting regarding the variance request was held on 11/17/2018. Staff has received no comments regarding the proposal.

## **STANDARD OF REVIEW AND STAFF ANALYSIS FOR CONDITIONAL USE PERMIT LDC 4.2.13**

### 1. Is the proposal consistent with applicable policies of the Comprehensive Plan?

STAFF: The proposal is consistent with Comprehensive Plan policies.

### 2. Is the proposal compatible with surrounding land uses and the general character of the area, including such factors as height, bulk, scale, intensity, traffic, noise, odor, drainage, dust, lighting and appearance?

STAFF: The use of the property is compatible with the surrounding area. The retaining wall and fence, which could reach a combined height of up to 18 ft from the grade of the existing sidewalk, may be excessive.

### 3. Are necessary on-site and off-site public facilities such as transportation, sanitation, water, sewer, drainage, emergency services, education and recreation adequate to serve the proposed use?

STAFF: The site is served by public facilities and the proposal is not expected to create significant additional service requirements.

### 4. Does the proposal comply with the following specific standards required to obtain the conditional use permit requested?

#### **4.2.13 Cemeteries and Mausoleums**

Cemeteries, Mausoleums, and Crematories may be allowed in any district upon the granting of a Conditional Use Permit and compliance with the following requirements:

#### A. Fences - A fence, with a minimum height of 6 feet, shall be erected around the premises with openings only for ingress and egress to a public way.

STAFF: The proposal meets this requirement.

B. Required Yards - No required yard shall be occupied by graves. There shall be a 30 foot landscaped or open space buffer between the property line and any building, structure, or gravesite. No gravesites shall be placed closer than 30 feet from any property line and at least 30 feet from the right-of-way line for existing and planned public streets. This shall not apply to roads designed for internal circulation within the cemetery, mausoleum or crematory property.

STAFF: The proposal meets these requirements.

C. All roads used solely for internal circulation shall have a minimum pavement width of 16 feet and a minimum shoulder width of 6 feet on each side of the pavement. Roads providing access to chapels or offices shall have minimum pavement width of 20 feet.

STAFF: The proposal meets these requirements.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE FROM LDC 4.4.3.A.1.a.i.**

(a) The requested variance will not adversely affect the public health, safety or welfare.

STAFF: The requested variance does not create a public health or welfare issue.

(b) The requested variance will not alter the essential character of the general vicinity.

STAFF: The vicinity is a walkable environment used extensively by pedestrians. The requested variance will create a significant physical streetscape element that does not exist on that scale elsewhere in the vicinity and might affect its visual character. A similar retaining wall directly adjacent to the sidewalk on the opposite side of the street is approximately 4 ft high.

(c) The requested variance will not cause a hazard or nuisance to the public.

STAFF: The proposed construction will meet current building codes and requirements and will not cause a public hazard or nuisance through excessive noise, vibration, odor or light.

(d) The requested variance will not allow an unreasonable circumvention of zoning regulations.

STAFF: The proposal will create a barrier of up to 17 ft in height, which includes the grade elevation, the 6 ft. fence required by the CUP and a retaining wall with a maximum height of up to 11 ft. above the adjoining sidewalk grade.

**ADDITIONAL CONSIDERATIONS:**

1. The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone.

STAFF: The variance request is based on the topography of the site.

2. The strict application of the provisions of the regulation would deprive the applicant of reasonable use of the land or create an unnecessary hardship on the applicant.

STAFF: The strict application of the regulation would not deprive the applicant of reasonable use of the land as most or all of the parking that is creating the need for the wall could be located near the proposed parking on the adjoining cemetery site.

3. The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

STAFF: The topography of the site is an existing condition.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER (LDC10.2.4.B.1.)**

(a) The waiver will not adversely affect adjacent property owners; and

STAFF: The waiver may adversely affect adjacent property owners by creating a disproportionately high hardscape element that overwhelms the adjacent sidewalk and is within direct view of the adjacent residential properties to the east. In addition, headlights from vehicles using the parking lot, especially the row nearest the street, may shine directly onto these residential properties.

(b) The waiver will not violate specific guidelines of Cornerstone 2020; and

STAFF: The waiver will not violate Cornerstone 2020 guidelines in that the proposed development is consistent with the permitted use of the property. The Cornerstone 2020 description of the Neighborhood Community Form, however, specifically states that it is “characterized by predominantly residential uses” and that non-residential uses should be “at a scale appropriate for nearby neighborhoods”. In addition, it emphasizes the importance of accommodating pedestrians.

(c) The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant; and

STAFF: If one row of the parking lot at the front of the site were to be relocated, the retaining wall could be moved further from the front property line and a waiver would not be required.

(d) Either:

(i) The applicant has incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived (net beneficial effect); OR

(ii) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant.

STAFF: The applicant has not incorporated design measures beyond minimum requirements. Strict application of the provisions of the regulation would not create an unnecessary hardship on the applicant as some of the proposed parking could be moved to another location already proposed for parking along the side wall of the site.

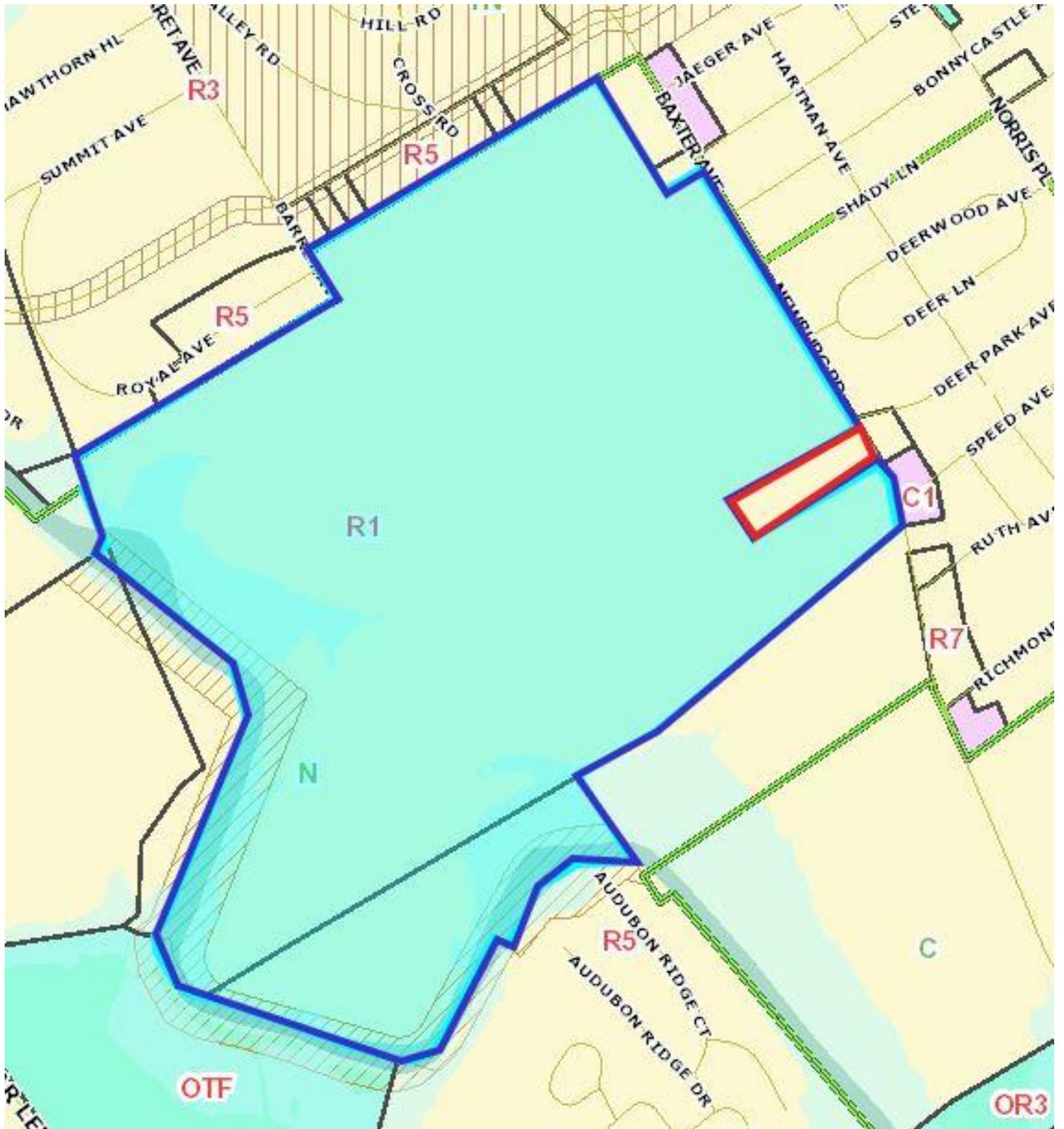
**NOTIFICATION**

<b>Date</b>	<b>Purpose of Notice</b>	<b>Recipients</b>
11/17/2018	Hearing before BOZA (Variance request)	1st and 2nd tier adjoining property owners Registered Neighborhood Groups for Council Districts 8 and 10
3/30/2018	Hearing before BOZA (CUP modification request)	1st and 2nd tier adjoining property owners Registered Neighborhood Groups for Council Districts 8 and 10 Sign Posting

## **ATTACHMENTS**

1. Zoning Map
2. Aerial Photographs
3. Conditions of Approval

1. Zoning Map



2. Aerial Photographs





### **3. Conditions of Approval**

1. The site shall be developed in strict compliance with the approved development plan, including all notes thereon. No further development shall occur on the site without prior review by and approval of the Board.
2. The Modified Conditional Use Permit shall be exercised as described in KRS 100.237 within two years of the Board's vote on this case. If the Conditional Use Permit is not so exercised, the site shall not be used for Cemeteries and Mausoleums without further review by and approval of the Board.