

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(200 E. Padonia Road)		
8th Election District	*	OFFICE OF
3rd Council District		
Dulaney Valley Memorial Gardens, Inc.	*	ADMINISTRATIVE HEARINGS
<i>Legal Owner</i>	*	FOR BALTIMORE COUNTY
Petitioner	*	Case No. 2020-0252-SPH

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) as a Petition for Special Hearing filed by Dulaney Valley Memorial Gardens, Inc. (the “Petitioner”) for property located at 200 East Padonia Rd. (the “Property”). The Special Hearing was filed pursuant to the Baltimore County Zoning Regulations (“BCZR”) §500.7 to modify the approvals granted for crematoriums in Case Nos. 2014-176-SPH and 2018-112-SPH to permit a total of four (4) retorts. Due to the COVID-19 pandemic, a public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petition was properly advertised and posted. Amy Shimp, John O. Mitchell, III, and John O. Mitchell, IV appeared on behalf of the Petitioner along with Robert G. Bathhurst, PE of Century Engineering who prepared a Site Plan to Accompany a Building Permit for Human and Pet Crematoriums (the “Site Plan”). (Pet. Ex. 3). Jennifer R. Busse Esquire and Whiteford, Taylor and Preston represented the Petitioner. There were no protestants or interested parties at the hearing.

Zoning Advisory Committee (“ZAC”) comments were received from the Department of Environmental Protection and Sustainability (“DEPS”) dated October 20, 2020 and from the Department of Planning (“DOP”) dated January 11, 2021. Those agencies did not oppose the requested relief subject to proposed conditions.

FACTS AND EVIDENCE

The case proceeded by way of modified proffer from Ms. Busse along with testimony from Robert G. Bathhurst, PE who was accepted as an expert professional engineer. (Pet. Ex. 1). The Property is approximately 70.496 acres and is zoned (density-residential) DR 3.5/DR 5.5. The surrounding area is detailed on an aerial photo showing the Property surrounded by single-family homes on the north, east and south sides and Fox Hollow Golf Course on the west. (Pet. Ex. 2). Directly across East Padonia Rd. from the Property is Pot Spring Elementary School. To the north across East Padonia Rd. is Dulaney Valley High School.

Ms. Busse explained that Dulaney Valley Memorial Gardens was approved in the 1956 by special exception for a cemetery (Case No.: 1956-3826-X). It was expanded in the 1960s (Case Nos.: 66-40-X and 62-5614-A). In 2014, OAH approved a pet cemetery and pet crematorium (Case No.: 2014-176-SPH). In 2018, a human crematorium was approved as an accessory use to the underlying cemetery (Case No.: 2018-0112-SPH).

Ms. Busse further explained that the instant case was filed at the request of the Maryland Department of the Environment (“MDE”) which regulates air quality around crematoriums. Before issuing a permit to begin construction for the human and pet crematoriums on the Property, MDE requested an Order confirming the number of retorts (equipment) used by these crematoriums. The Site Plan depicts in detail the proposed buildings which shows the human crematorium on the northern side and the pet crematorium on the southern side. (Dev. Ex. 3). The location of the crematoriums on the Property is in the same place as originally planned. A Floor Plan shows the two separate crematoriums connected by a covered walkway. (Dev. Ex. 5). The building elevations and architectural details were submitted and explained by Mr. Bathhurst. (Dev. Ex. 4).

The human crematorium will measure 2,990 sf (increased from 2,000 sf granted in Case No.: 2018-0112-SPH) and will have two (2) retorts. (Dev. Ex. 5). The pet crematorium will measure 2,360 sf (reduced in size from 2,400 sf granted in Case No.: 2014-176-SPH) and will have two (2) retorts. (*Id.*). Mr. Bathhurst described the existing landscaping as depicted on the Site Plan which serves as a buffer between this commercial operation and the residences along East Padonia Rd. (Dev. Ex. 3).

Amy Shimp testified that the decision was made to have 2 retorts for each crematorium because there has been an increase in the number of cremations. (Dev. Ex. 5). Additionally, in the event of a mechanical failure of one retort, the other could be operating. Lastly, she explained that, because each retort needs to cool down for a certain period after it operates, the remaining one could be used.

DECISION

A hearing to request special zoning relief is proper under BCZR, §500.7 as follows:

The said Zoning Commissioner shall have the power to conduct such other hearings and pass such orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations, subject to the right of appeal to the County Board of Appeals as hereinafter provided. The power given hereunder shall include the right of any interested person to petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of any purported nonconforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these regulations.

"A request for special hearing is, in legal effect, a request for a declaratory judgment." *Antwerpen v. Baltimore County*, 163 Md. App. 194, 877 A.2d 1166, 1175 (2005). After considering the testimony and evidence, I am persuaded that the requested Special Hearing Petition is appropriate relief under BCZR, §500.7 and should be granted. The file reflects that the human

crematorium was previously granted in Case No.: 2018-0112-SPH as an accessory use to the existing human cemetery, and the pet crematorium and pet cemetery was previously granted in Case No.: 2014-176-SPH, both. Indeed, the previously designated locations of the crematoriums on the Property have not changed. As a result, I find that the existing landscaping serves as buffer with the neighboring single-family homes along East Padonia Rd., and will need to be continuously maintained while this use operates at the Property, including replacement of trees/vegetation if necessary. The human and pet crematoriums are separate operations; there is no comingling. The two buildings are joined only by a covered walkway. (Dev. Ex. 3). In this case, at the request of MDE, the Petitioner sought clarification that each crematorium will have 2 retorts which Ms. Shimp testified are necessary for efficient operations. (Dev. Ex. 5). Accordingly, I find that the requested Special Hearing relief is necessary for the proper enforcement of the BCZR pursuant to which the prior relief was granted.

Pursuant to the advertisement, posting of the Property, and public hearing on this Petition held, and after considering the testimony and evidence offered by the parties, I find that Petitioner's request for special hearing should be granted.

THEREFORE, IT IS ORDERED this 9th day of **February, 2021** by this Administrative Law Judge, that the Petition for Special Hearing seeking relief from the BCZR § 500.7 to modify the approvals is **GRANTED** for crematoriums in Case Nos. 2018-0112-SPH and 2014-0175-SPH as follows:

1. The size of the pet crematorium granted in Case No.: 2014-0175-SPH will be reduced from 2,400 sf to 2,360 sf and will have a total of two (2) retorts.
2. The size of the human crematorium granted in Case No.: 2018-0112-SPH will be increased from 2,000 sf to 2,990 sf and will have a total of two (2) retorts.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioners would be required to return the subject property to its original condition.
2. Petitioners must comply with the DOP and DEPS ZAC comments, copies of which are attached hereto and make a part thereof.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

Signed
MAUREEN E. MURPHY
Managing Administrative Law Judge
for Baltimore County

MEM/dlm