

IN RE: PETITIONS FOR SPECIAL HEARING *		BEFORE THE
AND SPECIAL EXCEPTION		
(1400 Frederick Road)	*	OFFICE OF ADMINISTRATIVE
1 st Election District		
1st Council District	*	HEARINGS FOR
Catonsville Presbyterian Church		
<i>Legal Owner</i>	*	BALTIMORE COUNTY
Petitioner	*	Case No. 2020-0160-SPHX
* * * * *		

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for consideration of Petitions for Special Hearing and Special Exception filed on behalf of Catonsville Presbyterian Church, legal owner (“Petitioner”) for the property located at 1400 Frederick Rd. in Catonsville (the “Property”). The Special Hearing was filed under Baltimore County Zoning Regulations (“BCZR”) §500.7 to permit an outdoor columbarium within church grounds as a permitted accessory use to a church. The Special Exception under BCZR, §502.1 was filed to permit a columbarium in the DR 2 zone.

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. David Hutton and Jeanne Mueller appeared on behalf of the Petitioner along with Zacharia Y. Fish, P.E. of FSH Associates, LLC (Pet. Ex. 1) who prepared and sealed the site plan (the “Site Plan”). (Pet. Exs.2A and 2B). Jennifer Busse, Esquire and Whiteford, Taylor and Preston represented the Petitioner. There were no Protestants in attendance.

Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”) and from the Department of Environmental Protection and Sustainability

Development Coordination (“DEPS”) which comments did not oppose the requested relief, subject to proposed conditions.

FACTS AND EVIDENCE

Evidence was provided by way of proffer and witness testimony. The Property is approximately 5.740 acres (250,049 sf) and zoned in DR 2. It is improved with a 15,600 sf +/- Church, a 2,300 sf +/- 2-story office building, a 580 sf +/- shed, a 215 sf +/- shed, 2 access driveways and 2 parking lots.

Petitioner proposes to construct an outdoor columbarium consisting of a brick wall with 4 brick architectural columns designed to mirror the columns on the Church. Within the confines of the wall is a patio area measuring 340 sf upon which 45-55 people can gather. The columbarium will be 25-26 ft. in length and 5 ft. 3 inches to the top of the wall (6 ft. 1 inch to the top of the architectural columns).

The columbarium will be constructed on the east side of the Property facing Beechwood Road as shown on the Site Plan. (Pet. Exs.2A and 2B). Mr. Fische testified that it will be 19 ft. from the sidewalk of Beechwood Rd. and 2 ½ ft. from the Property line. Mr. Fisch opined that this proposed spot is handicap accessible for wheel chairs and walkers. Additionally, while there is adequate parking on the Property, this location has proximity to parking along Beechwood Rd. in front of the columbarium.

As shown on the Site Plan, the side of the columbarium fronting Beechwood Rd. will be screened with 4 - 3 ft. evergreen trees. On the side facing the Church will be 6 - 5 ft. evergreen trees. Additional deciduous seasonal shrubs measuring 3-4 ft. in height will be planted between/among the evergreens. There are 3 existing trees in front of the columbarium along Beechwood Rd. which will remain. One ash tree measuring 15 inches will be removed. (Pet. Exs.

2A and 2B). Neighboring property owners wrote letters in support of the Petition. (Pet. Ex. 4).

SPECIAL HEARING

Based on the testimony and exhibits adduced at the hearing, I find that the requested Special Hearing relief should be granted as the proposed columbarium meets the definition of ‘accessory structure’ in BCZR, §101.1:

As applied here, the columbarium is customarily incident to and serves the Church. It measures 340 sf which is subordinate in area and extent to the 15,600 sf Church, and it is contained within the Church grounds. It will not only be located on the same Property, it will also be incorporated within the walkways and landscaping of the Church. Finally, it contributes to the comfort and convenience of the Church members who wish to pay their respects to members who have died. Accordingly, the Special Hearing relief will be granted.

SPECIAL EXCEPTION

Under Maryland law, a special exception use enjoys a presumption that it is in the interest of the general welfare, and therefore, valid. *Schultz v. Pritts*, 291 Md. 1 (1981). The *Schultz* standard was revisited in *Attar v. DMS Tollgate, LLC*, 451 Md. 272, (2017), where the Court of

Appeals discussed the nature of the evidentiary presumption in special exception cases. The Court again emphasized a special exception is properly denied only when there are facts and circumstances showing that the adverse impacts of the use at the particular location in question would be above and beyond those inherently associated with the special exception use.

Based on the evidence presented and specifically the lack of opposition, I find that the proposed columbarium will not be detrimental to the health safety or general welfare of the Catonsville area. There was no evidence presented that there were any adverse impacts associated with this benign structure located on Church grounds for the use of Church members, their families and friends. This columbarium will not create congestion in the roadways, will not create a hazard from fire, panic or other danger, will not overcrowd the land, will not interfere with public improvements, will not interfere with light or air and will not adversely impact environmental resources. While a columbarium is not specifically listed in the BCZR as a use permitted by Special Exception, it is similar to a funeral establishment, and is therefore consistent with DR 2 zoning classification. Accordingly, the Petition for Special Exception will be granted.

THEREFORE, IT IS ORDERED this **12th** day of **January, 2021**, by this Administrative Law Judge, that the Petition for Special Hearing filed under BCZR § 500.7 to permit an outdoor columbarium within church grounds as a permitted accessory use to a church is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Special Exception seeking relief to permit a columbarium in the DR-2 Zone is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at its 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, Petitioner would be required to return the subject property to its original condition.

2. Prior to issuance of Permits, Petitioners must comply with ZAC comments submitted by DOP, a copy of which is attached hereto and made a part hereof.

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

Signed
MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM:dlm