

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
SW side of Liberty Road, 621 feet E of		
c/1 Tiverton Road	*	DEPUTY ZONING
2 nd Election District		
4 th Councilmanic District	*	COMMISSIONER
(9705 Liberty Road)		
	*	FOR BALTIMORE COUNTY
Beth El Congregation of Baltimore, Inc.		
<i>Legal Owner</i>	*	
Enterprise Housing Corporation		
<i>Developer</i>	*	Case No. 2009-0168-SPH

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Special Hearing filed by the Beth El Congregation of Baltimore, Inc., the legal property owner, and Enterprise Housing Corporation, the Developer of the subject property. Special Hearing relief is requested pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to abandon the cemetery use approved by Special Exception in Case No. 2008-0205-SPHX for the area of the approved Senior Housing Planned Unit Development upon vesting of the Development Plan. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the requisite public hearing in support of the requested special hearing were Debbie A. Caplan and Steven D. Silverman on behalf of Petitioner Beth El Congregation of Baltimore, Inc., and Corey J. Powell on behalf of the Developer Enterprise Housing Corporation. Jason T. Vettori, Esquire appeared as attorney for Petitioners. Also appearing in support of the requested relief was Richard E. Matz with Colbert Matz Rosenfelt, Inc., the professional engineer who prepared the site plan.

Testimony and evidence revealed that the subject property is rectangular in shape and contains 7.19 acres, more or less, zoned D.R.3.5. The property is located on the south side of Liberty Road between Marriottsville Road to the west and Kings Oak Road to the east in the Randallstown area of Baltimore County. The property was previously part of Parcel 106 that is shown west of the subject property on the site plan and also owned by Beth El Congregation of Baltimore, Inc. and utilized for cemetery purposes. The site plan also shows that there are several parcels located between Parcel 106 and the subject property that are also utilized for cemetery purposes. The instant matter is brought before this Commission at the behest of the County's Zoning Review Office for a Special Hearing in order to approve and confirm the abandonment of a previously granted cemetery use by special exception upon the vesting of the Development Plan for the area of the approved Senior Housing Planned Unit Development ("PUD"). The special exception use was granted approximately one year ago and the PUD was granted in November 2008.

In order to give proper context to the instant request and by way of brief background, the property was part of a previous zoning request in 2008. In Case No. 2008-0205-SPHX, the Beth El Congregation of Baltimore, Inc. as well as the owners of similar adjacent properties requested Special Hearing relief to affirm the use of the entire properties for cemetery purposes as approved in Case No. 1251-S, and to remove any conditions therefrom; or in the alternative, to approve a Special Exception for the use of the properties for cemetery purposes, without conditions. This included the subject property, which was then part of Parcel 106.¹ The undersigned granted the

¹ The west side of Parcel 106 was already being used for cemetery purposes. The east side of Parcel 106 (the subject property) was at that time unimproved; however, Petitioners anticipated using the rear half of the east side of that Parcel in order to expand the cemetery use. They had not yet decided on the manner in which to utilize the front half of the Parcel -- whether to sell or develop that area or also utilize it for cemetery purposes. The petitions for special hearing relief, or in the alternative, special exception were to confirm the cemetery uses granted previously by Case No. 1251-S in 1948 and 1949, and to update gaps in the records pertaining to those uses of the property. Essentially, Petitioners wanted to have the entire parcels recognized for cemetery purposes in the event expansion of the cemetery uses was necessary in the future.

requested relief in an Order dated February 11, 2008. A copy of the Order was marked and accepted into evidence as Petitioners' Exhibit 2.

Thereafter, Beth El Congregation of Baltimore, Inc., with the Developer Enterprise Housing Corporation, requested approval of a Planned Unit Development for Affordable Senior Housing. The Developer proposed a 105 unit building featuring one and two bedroom residential units that would be appropriate for older or senior residents. This area is shown on the site plan as the subject property. In Case No. II-743, Zoning Commissioner William J. Wiseman, III, acting as Hearing Officer, issued an Order dated November, 2008 approving the PUD. A copy of the Order was marked and accepted into evidence as Petitioners' Exhibit 3. In his Order, Commissioner Wiseman discussed the issue involving the previously granted special exception use as a cemetery, and the intended abandonment of the cemetery use for the property, effectively, upon the vesting of the affordable senior housing facility. He even issued a specific Order stating that "the previously approved cemetery use for the PUD site shall be deemed to have been abandoned upon the vesting of the Senior Housing PUD." Nonetheless, the case is before this Commission to confirm the abandonment of the cemetery use.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Office of Planning dated December 31, 2008 which indicates that they do not oppose the Petitioners' request provided the special hearing relief does not compromise that which was granted under the recent planned unit development process nor development plan requirements imposed by respective County review agencies.

Based on the testimony and evidence presented, I am easily persuaded to grant the requested special hearing relief. I believe the instant request is involves more "form" than "substance" and is in my view a "housekeeping" measure to ensure proper compliance with the Regulations.

Commissioner Wiseman covered the issue in his previous approval of the PUD in his capacity as Hearing Officer and I shall do the same in my capacity as Deputy Zoning Commissioner.

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 by the Deputy Zoning Commissioner for Baltimore County, this 23rd day of February, 2009 that Petitioner's request for Special Hearing relief filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to abandon the cemetery use approved by Special Exception in Case No. 2008-0205-SPHX for the area of the approved Senior Housing Planned Unit Development upon vesting of the Development Plan be and is hereby GRANTED, subject to the following:

1. Petitioner may apply for permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at its own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioner would be required to return, and be responsible for returning, said property to its original condition.

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

____SIGNED____
THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz