

IN RE: PETITION FOR SPECIAL EXCEPTION *	BEFORE THE
E/S Annapolis Road, 84' N of	
Michigan Avenue	*
(4021-4023 Annapolis Road)	ZONING COMMISSIONER
13 th Election District	*
1 st Council District	FOR
	*
Demy Investment Group, LLC	BALTIMORE COUNTY
<i>Petitioner</i>	*
	Case No. 2009-0250-X
* * * * *	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Exception filed by Mark E. Bailey, managing member of the legal owner of the subject property, Demy Investment Group, LLC. Petitioner is requesting a special exception pursuant to Sections 1B01.1.C.9 and 230.3 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a funeral home on the B.L. portion of property that is split-zoned B.L. and D.R.5.5. The subject property and requested relief are more fully described on the amended site plan, which was marked and accepted into evidence as Petitioner’s Exhibit 1.¹

Appearing at the requisite public hearing in support of the requested special exception were Mark E. Bailey, managing member of Demy Investment Group, LLC, and Thomas Church, the professional engineer with Development Engineering Consultants, Inc., who prepared the site plan for the Petitioner. Douglas L. Burgess, Esquire, of Nolan, Plumhoff & Williams, Chtd., appeared and represented the Petitioner. There were no Protestants or other interested persons in attendance at the hearing.

Testimony and evidence revealed that the subject property is rectangular shaped and contains approximately 19,823 square feet, or .46 acres, of land zoned primarily B.L. with a thin

¹ The site plan was amended to comply with comments received from the State Highway Administration regarding access to the property from Annapolis Road.

strip of D.R.5.5 on the eastern edge of the property. The property is located on the 4000 block of Annapolis Road between Pennsylvania and Michigan Avenues in the Baltimore Highlands area of Baltimore County. Petitioner submitted several photographs of the subject property and surrounding area, which were collectively marked and accepted into evidence as Petitioner's Exhibit 2. The photographs reveal that the property is improved with an existing two-story structure that was previously used as a local bank by Baltimore Savings and Loan Association, Incorporated. The property lies in a commercial strip of small local businesses on Annapolis Road, and is located between a bar/tavern to the north and an electrical contractor facility to the south of the property.

Evidence presented at the public hearing demonstrated that the prior business that occupied the subject property is no longer in operation, and the Petitioner purchased the property and is requesting a special exception to use the existing structure as a funeral home. Petitioner is not requesting any variance relief, as there will not be any additional construction and the property already contains the requisite parking required by the B.C.Z.R. The entire facility, including parking, is located in the B.L. portion of the subject property and there will be no parking on the residential side of the property. As indicated on the amended site plan, the facility will be accessed through one-way access points from Pennsylvania Avenue to the north and from Annapolis Road to the south of the existing building. There will be two-way traffic to the north of the building where parking is shared with customers of the bar/tavern.

Further testimony and evidence revealed that Mr. Bailey, a retired State Police Officer, is now a full time employee involved in the funeral home industry. After operating the Rendon-Bailey funeral home on East Baltimore Street in Baltimore City for several years, Mr. Bailey has become familiar with the industry and is now requesting zoning relief to operate a funeral home

on the subject property. Testimony revealed that the property will be used to host small gatherings on site, and Mr. Bailey fully understands that the property is limited in size and cannot support large funerals with numerous people and cars on site. Accordingly, Mr. Bailey testified that he has worked with local churches and organizations and will use off-site facilities to accommodate any larger events. Additionally, Mr. Bailey has actively attended and participated in meetings with the Baltimore Highlands Community Association, who provided a letter in support of the requested special exception. The letter was marked and accepted into evidence as Petitioner's Exhibit 3.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. The comments received from the Office of Planning and Department of Environmental Protection and Resource Management (DEPRM) indicate no opposition or other recommendations concerning the requested relief. Comment was also received from the State Highway Administration (SHA) on April 13, 2009, which indicated that the Petitioner must obtain an access permit from the State.

After considering all of the customary special exception criteria outlined in B.C.Z.R. Section 502.1, I am persuaded that the requested relief should be granted. The proposed facility will be located in a fully developed area that is already served by public utilities and additional construction will not be necessary. Additionally, the Petitioner is not proposing to construct any additional parking as the site already contains adequate parking in the B.L. portion of the property and this use is not located in a traffic deficient area. There is no evidence that the proposed facility will create any adverse impacts greater than or above and beyond those inherent with such a use regardless of its location in the B.L. zone. *See Schultz v. Pritts*, 432 A.2d 1319 (1981); *People's Counsel for Baltimore County v. Loyola College*, 406 Md. 54

(2008). In fact, the proposed use will not have any negative impact on the surrounding locale, as testimony revealed that the Petitioner has a friendly relationship with the bar/tavern located immediately north of the property and will share parking due to the fact that the funeral home will primarily operate during the day time and the bar/tavern operates more typically at night. The proposed business will provide a service and employment opportunity to local residents without any additional construction in an already developed commercial area. I therefore find that Petitioner's special exception request can be granted in strict harmony with the spirit and intent of the regulations, and in such manner as to grant relief without injury to the public health, safety or general welfare of the locality.

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 Petitioner, I find that Petitioner's special exception request should be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County, this 10th day of June, 2009 that Petitioner's request for Special Exception pursuant to Sections 1B01.1.C.9 and 230.3 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a funeral home on the B.L. portion of property that is split-zoned B.L. and D.R.5.5. is hereby GRANTED, subject to the following conditions:

- 1) The Petitioner is hereby made aware that proceeding at this time is at their own risk until the thirty (30) day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.
- 2) Petitioner must obtain an access permit from the State Highway Administration (SHA) as requested in their April 13, 2009 comment.

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

WJW:dlw

____SIGNED_____
WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County