

IN RE: **PETITION FOR SPECIAL EXCEPTION** *
S/S Sulphur Spring Road, 1,300' N of c/line of *
Selford Road *
(1101 Sulphur Spring Road) *
13th Election District *
1st Council District *

SCI Maryland Funeral Services, Inc. *
Petitioner *

BEFORE THE
ZONING COMMISSIONER
OF
BALTIMORE COUNTY

Case No. 2010-0320-X
(Changed to 2010-0320-SPH)

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Exception filed by Petitioner, SCI Maryland Funeral Services, Inc. (SCI), through its Vice President, J. Michael Bennett, and its attorney, Todd K. Pounds, Esquire with Alexander & Cleaver, P.A. As filed, SCI requests a special exception to approve the use of the subject property as a cemetery and the construction of an additional mausoleum on the site.¹ The subject property and requested relief are more particularly described on the four-page redlined site plan submitted which was accepted into evidence and marked as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the request were J. Michael Bennett, on behalf of the property owner, Robert H. Vogel, P.E. of Vogel Engineering, Inc., the engineering firm that prepared the site plan, and Todd K. Pounds, Esquire, attorney for SCI. There were no Protestants or other interested persons present. It is further noted that Councilman Samuel Moxley, adjacent property owners and community leaders were advised of the nature of the proceedings and the desired improvements on the property and none voiced any objections. Dean Kasian, Esquire, President of the Huntsmoor Park Community Organization also reviewed the site plan prior to the hearing and had no concerns.

¹ At the outset of the public hearing, SCI’s attorney amended the Petition to read as a request for the approval of a Petition for Special Hearing in order to amend the site plan previously approved in Zoning Case No. 93-463-SPHXA that was placed into evidence as Petitioner’s Exhibit 3. The amendment was permitted and the hearing proceeded as scheduled.

Testimony and evidence offered revealed that the property has been used as a cemetery since approximately 1936 and is known as the Arbutus Memorial Park. As shown on the site plan, the 64.94 acre cemetery is irregularly shaped and split-zoned D.R.5.5 and D.R.10.5 (most of the site is zoned D.R.5.5, however, a small rectangular shaped parcel is zoned D.R.10.5). The property is positioned on the southeast side of Sulphur Spring Road just north of Interstate 95 in Halethorpe. The cemetery is improved with office buildings and seven (7) existing mausoleums that are clustered on the western portion of the site just north of the Huntsmoor Park. The mausoleums form a rectangular court yard. The proposed mausoleum (47' long x 23' wide x 19' high) will be built in a grassy area between the existing mausoleums and is needed as the other structures are beginning to be filled and there is a substantial need for this addition. Sediment control and storm water management will be maintained on site with landscaping and other features to be constructed. There will be no restroom facilities so water and sanitary sewers will not be affected.

In order to give context and some important background information to this request, it is necessary to briefly review the prior zoning history of the property. The property has been used as a cemetery since the 1930's. In those times, segregation between the races was a fact of life and the cemetery was established, a special permit approved (in 1941) and the Arbutus Memorial Park served thereafter as a prestigious final resting place for members of the African-American community. Zoning Case No. 1952-2351-R was next heard on September 8, 1952. This was a request to have the property reclassified for a public colored cemetery for Katie R. Williams. While granted, unfortunately a file was not established and the boundaries of the reclassification cannot be determined. However, Case No. 1978-0209-A is well documented and on March 30, 1978, setback variances were granted for proposed mausoleums. A zoning comment in the case file indicated that a special exception would be required for any future proposals. Thereafter, on

August 10, 1993, William J. Callis, President of the Arbutus Memorial Park, Inc., applied for and received special exception approval from then Zoning Commissioner, Lawrence E. Schmidt in Case No. 1993-0463-SPHXA to use the D.R.5.5 portion of the property as a cemetery and also obtained a validation of the nonconforming cemetery use pertaining to the D.R.10.5 portion of the site² as well as variance relief from B.C.Z.R. Sections 1B01.2.C.1.a and 1B02.2 to permit minimum setbacks of 10 feet between non-residential buildings in lieu of the required 70 feet. A copy of the Order in Case No. 93-463-SPHXA and the site plan relating to it were marked and accepted into evidence as Petitioner's Exhibit 3. Lastly, in Case No. 2008-0502-SPHX, SCI and T. Mobile received special exception approval from B.C.Z.R. Section 426.5 to allow a telecommunications facility to be located on the southwestern portion of the property zoned D.R.5.5 by Deputy Zoning Commissioner Thomas H. Bostwick on August 1, 2008. A copy of that Order is marked as Petitioner's Exhibit 4.

The above historical overview clearly establishes and validates the lawful operation of the subject property as a cemetery in both the D.R.5.5 and D.R.10.5 portion(s) of the site and these prior rulings remain unchanged, effective and continue. The cemetery was established in 1936. The original owners of the property held significant acreage in this locale above and beyond what SCI presently owns. It is clear that the cemetery's owners originally held an adjoining parcel now owned by Baltimore County and shown on the site plan as the Huntsmoor Park located on the east side of Sulphur Spring Road at the northeast corner of Selford Road. That property is now being developed as the Arbutus Library, senior center, and community recreation center. *See* Case No. XIII-214. Further, property to the south, which has been developed with townhouses in the subdivision known as Arbor Manor, was also owned by the cemetery.

² Unlike a D.R.5.5 zone, a cemetery is not permitted either by right or special exception in a D.R.10.5 zone. Thus, in order for the cemetery use to be permitted in this rectangular parcel, the nonconforming nature of same had to be established.

In the instant matter, SCI is requesting an amendment of the previously approved site plan in Case No. 93-463-SPHXA in order to gain approval of the plan before me that includes a new mausoleum facility. I will grant an amendment of the previously approved plan to reflect this latest change in the use on the property. As is the case with all cemeteries, grave sites and mausoleums, are prepared based upon demand. Full utilization of the property for burial can take many years. Although room remains at this property for additional grave sites, it is pointed out that the unutilized land does not constitute any type of abandonment of the special exception relief that was granted in Case No. 93-463-SPHXA.

Pursuant to the advertisement, posting of the property and public hearing on this Petition held, and for the reasons and history given above, the relief requested should be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 19th day of July 2010 that the Petition for Special Hearing, as amended, to allow a proposed mausoleum and to approve an amendment to prior Case No. 93-463-SPHXA, pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED.

- Petitioner may apply for its building permit and be granted same upon receipt of this Order; however, the Petitioner is made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of 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 taken in accordance with Section 32-3-401 of the Baltimore County Code.

WJW:dlw

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