

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
W side of Belair Road, 405 feet S from the c/l of Old Forge Road	*	DEPUTY ZONING
11 th Election District	*	COMMISSIONER
6 th Councilmanic District	*	FOR BALTIMORE COUNTY
(8420 Belair Road)	*	
St. Joseph's Fullerton, Roman Catholic Congregation, Inc.	*	
<i>Petitioner</i>	*	Case 2010-0176-X

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Special Exception filed by the legal owner of the subject property, St. Joseph's Fullerton Roman Catholic Congregation, Inc. Petitioner is requesting a Special Exception use pursuant to Section 1B02.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) for an existing and proposed accessory cemetery section as shown on the Plan to accompany this Petition; and to approve such additional relief as the nature of this case as presented at the time of the hearing on this Petition may require within the spirit and intent of the B.C.Z.R. and prior approvals for the subject property. The subject property and requested relief are more fully described on the redlined site plan which was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the requested special exception use was Joyce Thaler, Director of Cemetery Management for Petitioner St. Joseph's Fullerton Roman Catholic Congregation, Inc., Howard L. Alderman, Jr., Esquire, attorney for Petitioner, and Douglas L. Kennedy with KCW Engineering Technologies, Inc., the professional engineer who prepared the site plan. Also appearing on behalf of the church in support of Petitioner’s requested relief were John Berg, who prepares burial sites and maintains the cemetery grounds, and Msgr.

Kevin Schenning. There were no Protesants or other interested persons in attendance at the hearing.

Testimony and evidence offered revealed that the subject property is a large, irregularly shaped parcel consisting of approximately 41 acres, more or less, zoned primarily D.R.5.5, with a small area (approximately 0.6 acre) zoned B.L. The property is located in the Fullerton/White Marsh area of Baltimore County on the northwest side of Belair Road (Route 1) with ingress/egress from same. This entrance to the property is controlled by a traffic signal on Belair Road that primarily services access to and from the church property. As shown on the site plan, the subject property is currently improved with a church building containing a worship center with 980 seats and additional buildings that include a school, rectory, and administration and social buildings. There are also athletic fields for recreational activities, as well as parking and an existing cemetery. Susquehanna Transmission utility lines and Belmont Park border the subject property to the west and Ridgley's Choice, a residential development, borders the subject property to the northeast. Significant forest buffer exists between both the northeast and western borders of the subject property.

Mr. Alderman, Petitioner's attorney, proffered a historical description of the development of the subject property as background to the instant special exception request. This testimony revealed that the use of the property as a cemetery dates back to 1862, which is the date of the most antiquated headstone on the site. In 1869 the church itself was constructed and in 1879 the first St. Joseph's school was established. Over the years the church has gradually acquired parcels of land until the current 41 acres was accumulated. The deed numbers for these purchases and acquisitions are enumerated on the site plan.

Petitioner desires to legitimize the existing accessory use of the subject property as a cemetery and create a new cemetery section on the subject property via special exception relief.

Although Mr. Alderman suggested that the existing cemetery section is a valid non-conforming use, both the existing cemetery section and the proposed section are included in the request for special exception pursuant to Sections 1B02.1 and 502.1 of the B.C.Z.R. Further testimony revealed that the special exception area contains approximately 14.62 acres, more or less, with the existing section comprising 8 acres and the proposed section 6 acres, respectively. An aerial photograph of the special exception area was marked and accepted into evidence as Petitioner's Exhibit 2. The area where the new section of cemetery is proposed is currently wooded. Petitioner stated that even with the granting of the special exception, over a 60 foot wide wooded buffer would still exist between the subject property and the adjacent residential neighborhood. It was further noted that Petitioner reached out to the community and these efforts notwithstanding, the community has not requested any follow up or additional input from the church regarding the request for special exception relief. It was also noted that currently, there is approximately one burial per week on the existing cemetery site and with the implementation of the proposed cemetery area, that number is expected to increase only to two burials per week. Mr. Berg explained that gravesite are opened one to two days before interment to the depth of fifty inches and are secured until burial occurs. No digging is performed before 9 AM or during evening hours.

In further support of the requested relief, Mr. Alderman proffered additional testimony evidencing the compliance with the special exception criteria set forth in Section 502.1 of the B.C.Z.R. Mr. Alderman proffered that Douglas Kennedy, the engineer who drafted the site plan for the subject property and who was accepted as an expert in planning, zoning and land development, was familiar with the subject property and the B.C.Z.R., and if asked to testify, would state that the property's proposed use as a cemetery accessory use satisfies all the 502.1 criteria. In particular, Mr. Kennedy would testify that the proposed use would not be detrimental

to the health, safety or general welfare of the locality, would not create congestion in roads or streets, and would not create a potential hazard from fire, panic or other danger. Moreover, as a perpetual open space use, the use would not overcrowd the land nor interfere with the provision of public services or with adequate light and air. Further, it was proffered that granting of the requested relief would be consistent with the spirit and intent of the B.C.Z.R. and would not be detrimental to any other applicable special exception criteria.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments received from the Office of Planning dated June 8, 2010 indicate that there appears to be no adverse impacts on the health, safety and general welfare of the existing church or the locality surrounding the proposal. Comments were also received from the Department of Environmental Protection and Resource Management dated June 11, 2010 which indicate that development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains, and must comply with the Forest Conservation Regulations.

Considering the testimony and evidence presented, I am persuaded to grant the requested special exception to use the property for an accessory cemetery use, and to legitimize the existing accessory cemetery use. Section 1B02.1 of the B.C.Z.R. permits a cemetery in the D.R.5.5 Zone by special exception, provided the criteria set forth in Section 502.1 of the B.C.Z.R. are met. The uncontroverted testimony and evidence from Petitioner indicates that the proposed use would not have any detrimental impacts on the required 502.1 criteria. Moreover, Petitioner has met its burden that relief can be granted consistent with the spirit and intent of the Zoning Regulations. Therefore, I am convinced that the use proposed at the subject location would not have any adverse effects above and beyond those inherently associated with such a special exception use,

irrespective of its location within the Zone. *See, Schultz v. Pritts*, 291 Md. 1 (1981); *see also, People's Counsel v. Loyola College*, 406 Md. 54 (2008).

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered by Petitioner, I find that Petitioner's special exception request should be granted with conditions.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County, this 8th day of July, 2010 that Petitioner's request for a Special Exception use pursuant to Section 1B02.1 of the Baltimore County Zoning Regulations ("B.C.Z.R.") for the existing accessory cemetery section and the proposed new cemetery section as shown on the Plan to accompany this Petition be and is hereby **GRANTED**, subject to the following conditions:

1. Petitioners may apply for their necessary building or use permits, as applicable, and be granted same upon receipt this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 33-3-101 through 33-3-120 of the Baltimore County Code).
3. Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).

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