

<b>IN RE: PETITIONS FOR SPECIAL HEARING,</b>	*	BEFORE THE
<b>SPECIAL EXCEPTION &amp; VARIANCE</b>		
<b>(1835 Frederick Road)</b>	*	OFFICE OF
1 <sup>st</sup> Election District		
1 <sup>st</sup> Councilmanic District	*	ADMINISTRATIVE HEARINGS
Candlelight Realty, LLC, <i>Legal Owner</i>		
Witzke Properties	*	FOR BALTIMORE COUNTY
<i>Contract Purchaser</i>		
Petitioners	*	<b>Case No. 2014-0059-SPHXA</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County for consideration of Petitions for Special Hearing, Special Exception and Variance filed by Lawrence E. Schmidt, Esquire from Smith, Gildea & Schmidt, LLC on behalf of Candlelight Realty LLC, the legal owner, and Witzke Properties, contract purchaser (“Petitioners”). The Petition for Special Hearing was filed pursuant to §500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to determine the applicability of the residential transition area (RTA) to an existing structure undergoing a change in use. A Petition for Special Exception was filed pursuant to B.C.Z.R. § 1B01.1.C.9 to permit a funeral establishment in a D.R. (residential) zone.

Finally, a Petition for Variance was filed pursuant to the B.C.Z.R. as follows: **(1)** to permit a residential transition area of 22 feet in lieu of the required 100 feet pursuant to § 1B01.1.B.1.a; **(2)** to permit an RTA buffer of 33 feet to a parking structure (garage) in lieu of the required 50 feet pursuant to § 1B01.1.B.1.e(5); **(3)** to permit a setback of 33 feet for a parking structure (garage) in lieu of the required 75 feet pursuant to § 1B01.1.B.1.e(5); and **(4)** to permit an RTA setback of 50 feet for a parking lot in lieu of the required 75 feet pursuant to § 1B01.1.B.1.e(5).

The subject property and requested relief is more fully depicted on the redlined site plan

that was marked and accepted into evidence as Petitioners' Exhibit 1. Appearing in support of the requests was Craig Witzke, Mitch Kellman and John Mellema, Jr. Lawrence E. Schmidt, Esquire with Smith, Gildea & Schmidt, LLC, appeared as counsel and represented the Petitioners. Several members of the community attended the hearing, and their names are listed in the case file. The file reveals that the Petition was advertised and posted as required by the Baltimore County Zoning Regulations.

The only substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP), and the State Highway Administration (SHA).

The subject property is approximately 6.63± acres in size and is zoned D.R. 5.5 and D.R. 2. For many years the Candlelight Inn restaurant was operated on the premises, and as many residents indicated, it was a beloved Catonsville institution that hosted many celebratory dinners and other special occasion gatherings. The restaurant has closed, and the Petitioners propose to convert the use to a funeral establishment, which requires zoning relief.

### SPECIAL HEARING

The Petition for Special Hearing seeks a determination as to whether the Residential Transition Area (RTA) regulations apply in this case. As noted above, the zoning is residential (primarily D.R. 5.5), and as shown on the aerial photo (Exhibit 2) the site is surrounded (for the most part) by single family dwellings. In these circumstances, I believe the RTA regulations are applicable.

Petitioners' counsel notes that the Candlelight Inn was constructed long before the adoption of the B.C.Z.R., and is thus a legal nonconforming use and building that with the construction of the proposed garage would be enlarged by not more than 25% of the floor area. As such, under B.C.Z.R. § 104 it would arguably enjoy a "grandfathered" status and not be

subject to the RTA regulations, and the garage (which would be connected to the main building by a breezeway) would enjoy the same exemption. Even so, I believe this site possesses the requisite uniqueness (discussed below) and will therefore resolve the matter by way of the variance petition.

#### 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). In fact, as noted by counsel, the Schultz case also involved a funeral home in a residential zone, and the court noted that such a use is appropriate even though “there can be no doubt that an undertaking business has an inherent depressing and disturbing psychological effect which may adversely affect persons residing in the immediate neighborhood.” Id. at 13. The Schultz standard was revisited in People’s Counsel v. Loyola College, 406 Md. 54 (2008), where the court emphasized that 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. Such evidence was not presented here, and thus the petition will be granted.

#### VARIANCES

Based upon the testimony and evidence presented, I will also grant the petition for variance. To obtain variance relief requires a showing that:

- (1) The property is unique; and
- (2) If variance relief is denied, petitioner will experience a practical difficulty or hardship.

*Trinity Assembly of God v. People’s Counsel*, 407 Md. 53, 80 (2008).

The Petitioners have met this test. The site is nearly seven acres in size (6.63 acres ±) and is of irregular shape. In addition, it is improved with a structure that is over 150 years old. As such, the property is unique.

If the B.C.Z.R. were strictly interpreted, the Petitioners would indeed suffer a practical difficulty, since they would be unable to operate the new business at this location or would need to raze the existing structure and construct a new building that complied with zoning setbacks, which is an unpalatable alternative. Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare.

#### The Garage

At the outset, Petitioners noted that only interior modifications are being proposed, with the exception of a garage to be constructed behind the existing restaurant and covered pavilion area. The garage will be connected to the main building (as recommended by the DOP) and will be used to store funeral vehicles, supplies and for intake and transfer of human remains. The Petitioners explained the garage was proposed for this location (instead of elsewhere on the lot) since it was “tucked away” in a “notch” behind the main building and would provide privacy so as to shield these operations from public view.

Although there was little opposition to its proposed placement, several neighbors objected to a prefabricated metal building being used for the garage. As one neighbor put it, “there is no such thing as an attractive metal building.” I would tend to agree, especially given the iconic nature of the Candlelight Inn. I do not however believe that my role is to decide upon the design and/or aesthetic treatment of proposed structures. This is a matter best left to the DOP and Petitioners; they can agree upon a design that will function as needed and enhance the

appearance of the site. Mr. Witzke indicated he was amenable to working with the DOP in this fashion.

Pursuant to the advertisement, posting of the property and public hearing on this Petition, and for the reasons set forth above, the petitions for special hearing, special exception and variance shall be granted.

THEREFORE, IT IS ORDERED this 25<sup>th</sup> day of November, 2013, by this Administrative Law Judge, that the Petition for Special Hearing filed pursuant to §500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), be and is hereby GRANTED, and it is determined the RTA regulations apply in this case.

IT IS FURTHER ORDERED that the Petition for Special Exception filed pursuant to the B.C.Z.R., to permit a funeral establishment in a D.R. zone, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance relief as follows: **(1)** to permit a residential transition area of 22 feet in lieu of the required 100 feet pursuant to § 1B01.1.B.1.a; **(2)** to permit an RTA buffer of 33 feet to a parking structure (garage) in lieu of the required 50 feet pursuant to § 1B01.1.B.1.e(5); **(3)** to permit a setback of 33 feet for a parking structure (garage) in lieu of the required 75 feet pursuant to § 1B01.1.B.1.e(5); and **(4)** to permit an RTA setback of 50 feet for a parking lot in lieu of the required 75 feet pursuant to § 1B01.1.B.1.e(5), be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for appropriate permits and be granted same upon receipt of 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. Petitioners must comply with the ZAC comment of the SHA.

3. The Petitioners shall not operate a crematory on the subject premises.
4. The Special Exception granted herein must be utilized within two (2) years of the date hereof, unless extended by subsequent Order.
5. The Special Exception area in which all funeral establishment operations must take place shall be the 3.69 acre  $\pm$  parcel delineated on the redlined site plan marked as Exhibit 1.
6. The Petitioners must submit for approval by the DOP building elevations of the proposed garage, to ensure that it is compatible with the neighborhood and existing improvements on site.

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

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Signed \_\_\_\_\_  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County

JEB:sln