

IN RE: PETITIONS FOR SPECIAL HEARING *	BEFORE THE
AND VARIANCE	
(Belair Road) *	OFFICE OF
14 th Election District	
6 th Council District *	ADMINISTRATIVE HEARINGS
Carol & Edgar Lassahn and 7401 Belair Road, LLC.	
<i>Legal Owners</i> *	FOR BALTIMORE COUNTY
Petitioners *	Case No. 2014-0247-SPHA
* * * * *	

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Variance filed by John B. Gontrum, Esquire, on behalf of Carol & Edgar Lassahn and 7401 Belair Road, LLC, the legal owners (“Petitioners”). The Special Hearing was filed pursuant to §500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”): (1) seeking to establish that the funeral home existed at the site since at least 1970; and (2) to allow a crematorium as an accessory use to a funeral establishment. The variance petition seeks relief from B.C.Z.R. §§ 450 & 232: (1) to allow 2 freestanding signs on a premises in lieu of permitted 1 sign; (2) to allow a side yard setback of 4.8 ft. in lieu of requiring 10 ft. from the residential zone; and (3) to allow a rear yard setback of 1 ft. in lieu of requiring 20 ft. from the residential zone.

The subject property and requested relief is more fully depicted on the revised site plan that was marked and accepted into evidence as Petitioners’ Exhibit 1. Appearing at the public hearing in support of the requests was Heather, Ed and Carol Lassahn. John B. Gontrum, Esquire, from Whiteford, Taylor & Preston appeared and represented the Petitioners. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. There were no Protestants or interested citizens in attendance and the file does not contain any letters of protest.

A substantive Zoning Advisory Committee (ZAC) comment was submitted by the Department of Planning (DOP) dated June 9, 2014. That agency expressed support for the requests.

The subject property is approximately 2.43 acres and is zoned BL. The Petitioners have operated a funeral establishment at this location for over 150 years (5 generations of the Lassahn family). Given the growing popularity of cremation, the Petitioners would like to establish a crematory on site, so they will no longer have to “outsource” this function.

The side and rear yard setback requests concern long existing site conditions. The sign variance seeks to replace the two existing enterprise signs with more attractive new signs of roughly the same size.

According to the Zoning Commissioner’s Policy Manual (ZCPM), crematories are not permitted as a principal use (by right or special exception) in Baltimore County. ZCPM, p.2-36. They are, however, permitted by special hearing as an accessory use to a funeral establishment principal use. Id. No new construction would be required for the crematory, and the Overlea Community Association expressed support for the proposal.

The second aspect of special hearing relief concerns BCZR § 230.3. In pertinent part, that regulation allows funeral establishments by special exception in the B.L. zone. But the regulation also states that any funeral establishment “which was a legal use immediately prior to ... [April 9, 1970] and which has since remained continuously in operation is a conforming use, permitted as of right.” Id. As noted above, Petitioners testified (via proffer) that the Lassahn funeral home has been in continuous operation since long before 1970, and that the owners are state-licensed funeral directors.

As such, I will grant the petition for special hearing allowing the crematory as an accessory use to the funeral establishment. The special hearing will also be granted with respect to BCZR § 230.3, and the Lassahn funeral home will be deemed a lawful, conforming use under that regulation.

Based upon the testimony and evidence presented, I will also grant the petition for variance. To obtain variance relief a petitioner must show:

- (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 property is irregularly shaped and is therefore unique.

I also find that strict compliance with the B.C.Z.R. would result in practical difficulty, given that Petitioners would be compelled to move or raze certain structures on site. 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. This is demonstrated by the absence of Baltimore County and/or community opposition.

THEREFORE, IT IS ORDERED this 16th day of July, 2014, 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): (1) to establish that a funeral home has existed at this location (a BL zone) prior to 1970, and is therefore a lawful, conforming use; and (2) to allow a crematorium as an accessory use to a funeral establishment, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance pursuant to B.C.Z.R. §§ 450 & 232: (1) to allow 2 freestanding signs on a premises in lieu of permitted 1 sign; (2) to allow a side yard setback of 4.8 ft. in lieu of the required 10 ft. from the residential zone; and (3) to allow a rear yard setback of 1 ft. in lieu of the required 20 ft. from the residential zone, 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.

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

JEB/sln

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County