

IN THE MATTER OF : BEFORE THE
CRESTLAWN MEMORIAL GARDENS, : HOWARD COUNTY
INC. : BOARD OF APPEALS
Petitioner : HEARING EXAMINER
: BA Case No. 13-007C

.....
DECISION AND ORDER

On May 20, 2013 the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the conditional use petition of Crestlawn Memorial Gardens, Inc. (Petitioner) to expand a existing cemetery in an RR-DEO (Rural Residential: Density Exchange Option) Zoning District, pursuant to Section 131.N.11 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner certified to compliance with the advertising and posting requirements of the Howard County Code. The Hearing Examiner viewed the subject property as required by the Hearing Examiner Rules of Procedure.

Petitioner was not represented by counsel. Tim Russell and Steve Gorski testified on behalf of the Petitioner. Dori Bedsaul also testified but not in opposition or support of the petition.

FINDINGS OF FACT

Based upon the preponderance of evidence, I find the following facts:

1. Property Identification. The subject property is located in the 3rd Election District at the southwest quadrant of the intersection of Mount View and San Hill Roads. It is referenced

as Tax Map 16, Grid 1, as Parcels 155 & 377 and is also known as 2150 and 2190 Mount View Road (the Property).

2. Property Description. The 100+-acre Property is the site of an existing cemetery. The primary access is located at the center of the Mount View Road frontage. To the north of this entrance is a two-story office building and parking lot. One-way internal driveways loop through the Property, starting from a circular drive in the front portion of the Site. On the hill in the Property's center is a mausoleum area with two large and three smaller mausoleums. About 700 feet to the southwest of this mausoleum area is a metal maintenance building and outdoor storage area. A single-family detached dwelling is located on a hill in the southeastern area. A second, one-story single-family detached dwelling lies about 700 feet east of the mausoleum area. The hilly Property is mostly lawn with a wooded area near the maintenance building.

3. Vicinal Properties. Adjacent properties are also zoned RC-DO. The northwest Parcel 173 is the site of the Mount View Cemetery. Parcel 105 to the west is a farm with an Agricultural Preservation Easement and agricultural fields next to the Property. The properties to the north, across Mount view Road, are predominately improved with single-family detached dwellings. The eastern Properties are also predominately improved with single-family detached dwellings. I-70 borders the southern lot lines.

4. Roads. Mount View Road has about 20 feet of paving within a 30-foot right-of-way (ROW) and a 30 MPH speed limit. Sand Hill Road has about 22 feet of paving within a 30-foot ROW and a 30 MPH speed limit. According to Department of Public Works data, the traffic

volume on Mount View Road west of Sand Hill Road was 465 average daily trips as of April 1998.

5. Water and Sewer Service. The Property is served by private well and septic facilities.

6. General Plan. PlanHOWARD 2030 identifies the Property as Low Density Development on the Designated Place Types Map. The PlanHOWARD2030 Functional Road Classification Map identifies Sand Hill Road as a Minor Collector and Mount View Road as a local road.

7. Zoning History. In BA Case No. 00-056E, the Board of Appeals granted Crestlawn Memorial Gardens, Inc a special exception for a new mausoleum at an existing cemetery. In 1958, a special permit for a cemetery was granted (245-C).

8. The Proposed Conditional Use. Petitioner proposes to construct three mausoleum buildings, five future, smaller, garden mausoleums, and two private driveway extensions. The major buildings include a 26' high chapel mausoleum, and two 2,500-sq. ft. columbarium buildings, in the Property's northwest area. These buildings would be constructed over five years. The Conditional Use Plan also depicts two future garden mausoleums in the northwest section of the property adjacent to Mount View Road and three future garden mausoleums in the northwest section. Each garden mausoleums is about 45'x85' in size. These structures would be constructed after the major buildings, as needed.

The gravesites will have permanent markers less than three feet high and sited at least 20 feet from lot lines adjoining residentially used properties. All structures will be at least 50

feet from property lines. A Type C landscape buffer and berm is proposed along a portion of Mount View Road.

9. Tim Russell testified that the berm along the proposed landscaped area would help screen the view from Mount View Road. In response to Ms. Bedsaul's testimonial request to move the structures back to make them less visible, he explained they are already located as far back as possible. A setback from the gravesites also effects the location of the structures. He agreed to add additional evergreen plantings to the landscaping across from the Bedsaul properties as additional screening.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:

I. General Criteria for Conditional Uses (Section 131.B)

I. General Criteria for Conditional Uses (Section 131.B)

1. Harmony with the General Plan. Section 131.B.1 requires me to evaluate whether the proposed conditional use plan will be in harmony with the land uses and policies indicated in the Howard County General Plan for the district based on in which it is located. In making this evaluation, I am required to consider:

a. The nature and intensity of the use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the site; and

b. If a conditional use is combined with other conditional uses or permitted uses on a site, whether the overall intensity and scale of uses on the site is appropriate given the adequacy of proposed buffers and setbacks.

The combined square footage of the proposed structures would add only a limited amount of improvement square footage on the 100+-acre site. The proposed expansions are located at least 50 feet from the closest property lines. The proposed uses are low intensity and the structures closest to the residences across the Mount View Road will be screened by landscaping and a berm. Petitioner has also agreed to plant additional evergreens to screen the structures further.

2. Adverse Effect. Unlike Section 131.B.1, which concerns the proposed use's harmony or compatibility with the General Plan, compatibility with the neighborhood is measured under Section 131.B.2's four "adverse effect" criteria: (a) physical conditions; (b) structures and landscaping; (c) parking areas and loading, and; (d) access.

When assessing a proposed conditional use under these criteria, we must first recognize that virtually every human activity has the potential for adverse impact. Zoning recognizes this fact and, when concerned with conditional uses, accepts some level of such impact in light of the beneficial purposes the zoning body has determined to be inherent in the use. Thus, the question in the matter before me is not whether the proposed use would have adverse effects in an RC District. The proper question is whether there are facts and circumstances showing that the particular use proposed at the particular location would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone. *People's Counsel for Baltimore County v. Loyola College* in

Maryland, 406 Md. 54, 956 A.2d 166 (2008); Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981); Mossburg v. Montgomery County, 107 Md. App. 1, 666 A.2d 1253 (1995).

For the reasons stated below, I conclude the Petitioner has met its burden of presenting sufficient evidence under Section 131.B.2 of the Zoning Regulations to establish this proposed use will not have adverse effects on vicinal properties beyond those ordinarily associated with a cemetery in a RC district.

a. Physical Conditions. Whether the impact of adverse effects such as noise, dust, fumes, odors, lighting, vibrations, hazards or other physical conditions will be greater at the subject site than it would generally be elsewhere in the zone or applicable other zones.

The proposed use will not generate anything out of the ordinary for the use. I therefore conclude that any inherent operational adverse effects resulting from the proposed conditional use will not be greater at the subject site than elsewhere in the zone or applicable other zones.

b. Structures and Landscaping. The location, nature and height of structures, walls and fences, and the nature and extent of the landscaping on the site are such that the use will not hinder or discourage the development and use of adjacent land and structures more at the subject site than it would generally in the zone or applicable other zones.

The proposed structures will be located at least 50 feet from residentially used properties. The proposed landscaping will meet or exceed minimum requirements. I therefore conclude the location, nature and height of structures and the nature and extent of the landscaping on the site are such that the use will not hinder or discourage the development and use of adjacent land and structures more at the subject site than it would generally in the zone or applicable other zones.

c. Parking and Loading. Parking areas will be of adequate size for the particular use. Parking areas, loading areas, driveways and refuse areas will be properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties.

Parking for the expansion will be provided along the new internal driveways, which are some distance from public roads and residential uses, such that any adverse impacts will be minimal.

d. Access. The ingress and egress drives will provide safe access with adequate sight distance, based on actual conditions, and with adequate acceleration and deceleration lanes where appropriate.

The existing ingress/egress will likely continue to provide safe access with adequate sight distance, based on actual conditions.

II. Specific Criteria for Cemeteries and Mausoleums (Section 131.N.11).

a. Graves with headstones or permanent markers greater than 3 feet in height shall not be located within 20 feet from the property lines of adjacent residentially zoned lots in residential use.

No graves with headstones or permanent markers greater than three feet in height will be located within 20 feet from the property lines of adjacent residentially zoned lots in residential use, in accordance with Section 131.N.11.a.

b. Walls, fences and/or planting of shrubbery, trees or vines as may be reasonable and proper to afford adequate screening may be required.

The cemetery expansion will be adequately screened by distance, existing and proposed landscaping and a berm. No additional walls, fences or planting of shrubbery, trees or vines to afford adequate screening is required pursuant to Section 131.N.11.b.

c. When approving a cemetery, the Hearing Authority may authorize future construction of accessory structures not requiring further Hearing Authority approval, such as mausoleums, vaults, columbaria, and sheds. The area within which the future changes are authorized must be delineated on the conditional use plan and located at least 50 feet from all property lines.

Petitioner is proposing to construct five future garden mausoleums as accessory structures after completion of the major structures as needed. These will be located at least 50 feet from all property lines. The petition accords with Section 131.N.11.c.

ORDER

Based upon the foregoing, it is this 23rd day of May 2013, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

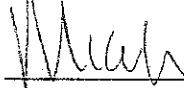
That the Petition of Crestlawn Memorial Gardens, Inc. to expand a existing cemetery in an RR-DEO (Rural Residential: Density Exchange Option) Zoning District is hereby **GRANTED**;

Provided, however, that;

1. The conditional use shall be conducted in conformance with, shall apply only to the Conditional Use Plan and petition submitted on March 21, 2013 and not to any other activities, uses, or structures on the Property.

2. Petitioner shall install additional evergreen plantings across from the two Bedsaul properties (Parcel 309, Lot 4 and Parcel 261), as depicted on the Conditional Use Plan.

HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER



Michele L. LeFaivre

Date Mailed

5/23/13

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.