

BOARD OF APPEALS
For
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Ave.
Rockville, Maryland 20850
(240) 777-6600

Case No. CBA-2117-A

MODIFICATION PETITION OF FRANCIS J. COLLINS FUNERAL HOME

RESOLUTION TO RE-OPEN THE RECORD AND ACCEPT MODIFIED EXHIBIT

(Resolution Adopted May 29, 2002)

(Effective Date of Resolution: June ____, 2002)

The Board of Appeals has received a letter from John J. Delaney, Esquire, on behalf of Collins Funeral Home. Mr. Delaney's May 24, 2002 letter encloses a letter, dated April 29, 2002, from Susan Mullineaux, the funeral home's architect. Ms. Mullineaux's letter and an attached July 19, 1966 plot plan, August 22, 1967 Site Grading and Improvement Plan, and April 13, 1967 Topographic Survey of the property clarify that the existing sidewalks surrounding the Property are all outside of the Collins Funeral Home property lines.

Mr. Delaney's letter also encloses a second revised lighting plan, dated May 22, 2002, which depicts the proposed new light standard near the corner of Dennis Avenue and University Boulevard within the property line of the subject property. The second revised lighting plan shows a foot candle rating of 9.02 within the property line and 0.23 and 0.24 along the sidewalk. Mr. Delaney's letter points out that the proposed light does not abut any improved residential properties, and that it is in a dark area which the funeral home desires to illuminate slightly for security reasons.

The subject property is Lot N571, Block 3, McDonald's Knolls Subdivision, located at 500 University Boulevard, West, Silver Spring, Maryland, in the R-150 Zone.

The Board of Appeals considered Mr. Delaney's correspondence, with attachments, at its Worksession on May 29, 2002. The Board finds that the submitted information resolves all questions regarding the location of the property lines. The Board further finds the location and present foot-candle ratings of the proposed light standard satisfactory. Therefore,

On a motion by Donna L. Barron, seconded by Louise L. Mayer, with Angelo M. Caputo, Allison Ishihara Fultz and Donald H. Spence, Jr., Chairman in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record in Case No. CBA-2117-A is re-opened to receive John J. Delaney,

Esquire's letter of May 24, 2002, with attachments, as Exhibit Nos. 39(a)-(e), with Exhibit 39(e) replacing Exhibit Nos. 36(c)-(e) as the special exception lighting plan; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that all terms and conditions of the special exception modification granted in the Board's Opinion of June ?, 2002, remain in effect, except as modified herein.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this day of , 2002.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

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Case No. CBA-2117-A

MODIFICATION PETITION OF FRANCIS J. COLLINS FUNERAL HOME

(Hearings Held October 17, 2001, and December 5, 2001)

OPINION OF THE BOARD

(Effective Date of Opinion: June 14, 2002)

Case No. CBA-2117-A is a Petition for modification of an existing special exception for a funeral home to increase the annual number of funeral processions originating from the facility; to change visiting hours and funeral service hours; to enhance security by means of an updated lighting plan; and to modify existing conditions of approval relating to operation of the facility, including authorization to conduct funerals on Sundays; security measures, and off-site parking. The Petition is filed pursuant to Sections 59-G-1.2.1, 59-G-1.21, 59-G-1.25, and 59-G-2.23 of the Zoning Ordinance of Montgomery County, Maryland, Montgomery County Code, 1994, as amended (the "Zoning Ordinance").

Decision of the Board: Special exception modification **GRANTED**,
subject to the conditions enumerated below.

A public hearing was held on October 17 and December 5, 2001, pursuant to Section 59-A-4.11(a) of the Zoning Ordinance.

John J. Delaney and Yum Yu Cheng of Linowes and Blocher LLP appeared on behalf of the Francis J. Collins Funeral Home (the "Petitioner"). They called five witnesses in support of the Petition: Maureen Collins McHugh, Executive Vice President and Treasurer of the Petitioner; Susan Young Mullineaux, an architect, Stephen Petersen, a traffic engineer and traffic planner, Frank Colleli, Manager of the Petitioner; and Jack Thompson, a lighting consultant. They also proffered the testimony of Ryland Mitchell, an appraiser, whose report is in the record (Exhibit No. 19(b) - Economic Impact Report).

Martin Klauber, the People's Counsel of Montgomery County, entered his appearance in the proceedings.

EVIDENCE PRESENTED

1. The Petitioner is located on a recorded lot at the northwest corner of University Boulevard and Dennis Avenue in the McDonald Knowles Subdivision of Silver Spring. It consists of approximately 1.5 acres (the "Property") and is developed with a two-level facility and 72 parking spaces. University Boulevard and Dennis Avenue provide access to the site (Exhibit No. 5 - Record Plat, Exhibit No. 25 - M-NCPPC Staff Recommendation).

2. The Property is zoned R-150. The Property was rezoned from R-60 to R-150 by the County Council in 1966 to better accommodate the then pending 1967 Kemp Mill-Four Corners Master Plan recommendation for public or semi-public uses, including funeral homes, at this location (Exhibit No. 36 - Opinion and Resolution of the County Council in Rezoning Case No. E-668; Exhibit No. 16 - Zoning Vicinity Map; Exhibit Nos. 13(a) and (b), 1967 Kemp Mill-Four Corners Master Plan Map and text). The 2001 Kemp Mill-Four Corners Master Plan recommends retaining the funeral home use on the property (Exhibit No. 25 - M-NCPPC Staff Recommendation, Exhibit No. 31 - Planning Board Report).
3. This special exception was originally granted on February 1, 1967 in Case No. 2117 (Exhibit No. 15(a) - Opinion and Resolution of the Board dated February 1, 1967). Three modifications were subsequently approved, on February 14, 1967 (Exhibit No. 15(b)); May 16, 1979 (Exhibit No. 15(c)); and on December 13, 1984 (Exhibit No. 15(d)).
4. In its original approval, the Board imposed three conditions which are relevant to this modification petition. Condition No. 2 stated that low-level mushroom lights shall be installed on the premises "which will not to shine or glare into the adjoining residential properties," and which "shall have an automatic clock timer to turn the lights off at 10:00 p.m." Condition No. 3 provided that "the Petitioner shall govern and direct the extent of his business not to exceed 150 funeral processions per year." Condition No. 6 prohibited parking on Gilmore Drive "for use by patrons of this funeral parlor" (Exhibit No. 15(a)).
5. This Petition was filed in response to a Notice of Violation ("Notice") issued by the Department of Permitting Services ("DPS") on July 23, 2000 (Exhibit No. 14). The Notice states that lighting other than low-level mushroom lights had been installed on the premises in violation of Condition No. 2 of the original Special Exception, and that during a site visit the DPS investigator found no record of the number of funeral processes originating from the premises each year. An earlier request by the Petitioner that the Board address these matters administratively was denied on January 31, 2001 (Exhibit No. 15(e)).
6. In responding to the Notice, Ms. McHugh testified that several years ago, three 15-foot light standards had been constructed in the rear parking lot in order to provide more security for patrons and neighbors in the evening hours, and that during the past 33 years of operations, the number of funeral processions originating from the premises had climbed to approximately 200 per year. Ms. McHugh requested approval of a modified Lighting Plan (Exhibit No. 36(c)), and an increase in the authorized number of funeral processions originating from the premises from 150 to 250 per year, as further described below.

Requested Operational Modifications

7. In further response to the Notice, the Petitioner filed an Updated Statement of Operations and requested the Board's approval thereof (Exhibit No. 21(b)). The Updated Statement of Operations and testimony of Ms. McHugh describe the requested operational modifications as follows:
 - (a) The proposed schedule of visiting hours will be: Daily: 2:00 p.m. to 4:00 p.m. when there is no afternoon funeral service; *from 3:00 p.m. to 5:00 pm* when there is an afternoon funeral service; and from 7:00 p.m. to 9:00 p.m.

- (b) Funeral services will occur between the hours of 9:00 a.m. and 2:00 p.m., Monday through Saturday, and between 10:00 a.m. and 11:00 a.m. on Sunday. There will be no funeral services on holidays when cemeteries are closed.
- (c) Funeral processions will be supervised by the police department, based upon the availability of officers.
- (d) There will be up to 250 funeral processions originating from the premises per year.

Requested Modifications to the Lighting Plan

- 8. In conjunction with its modified Lighting Plan to enhance security, the Petitioner, through the testimony of Ms. McHugh, Ms. Mullineaux and Mr. Thompson, presented a proposed lighting plan (Exhibit No. 36(c)), which indicates that the existing three 15-foot light standards in the rear of the Property will be removed and be replaced by a total of eleven 15-foot light standards to be constructed throughout the Property to supplement the existing low level mushroom lights. Eight of these would be located along the rear of the Property, two along Dennis Avenue, and one at the front by the University Boulevard entrance. Both Mr. Thompson and Ms. Mullineaux testified that Option 3 would strike the most appropriate balance between maintaining the traditional understated look of the funeral home in its residential setting, while providing adequate lighting for security of patrons and their neighbors. It would achieve a uniformity ratio of 8.02.
- 9. Evidence from the photometric study accompanying the lighting plan (Exhibit No. 39) indicates that the lights will not cause any spill-over glare onto adjacent properties. For security purposes, some lights will remain on throughout the night.
- 10. In response to Board questions about the exact location of the property line along Dennis Avenue, the Board received a letter from Mr. Delaney, dated May 24, 2002, which encloses a letter, dated April 29, 2002, from Susan Mullineaux, the funeral home's architect. Ms. Mullineaux's letter and an attached July 19, 1966 plot plan, August 22, 1967 Site Grading and Improvement Plan, and April 13, 1967 Topographic Survey of the property clarify that the existing sidewalks surrounding the Property are all outside of the Collins Funeral Home property lines.
- 11. Mr. Delaney's letter also encloses a second revised lighting plan, dated May 22, 2002, and entered into the record as Exhibit No. 39(e), which depicts the proposed new light standard near the corner of Dennis Avenue and University Boulevard within the property line of the subject property. The second revised lighting plan shows a foot candle rating of 9.02 within the property line and 0.23 and 0.24 along the sidewalk. Mr. Delaney's letter points out that the proposed light does not abut any improved residential properties, and that it is in a dark area which the funeral home desires to illuminate slightly for security reasons. At a Worksession on May 29, 2002, the Board adopted Exhibit 39(e) as the special exception Lighting Plan.

Funeral Processions Originating From the Property

12. The testimony of Stephen Petersen and his Traffic Assessment (Exhibit No. 8) and the Petitioner's Summary of Proof (Exhibit No. 4) indicate that the Funeral Home has the capacity to hold a maximum of three funeral services a day from Monday through Saturday, and one funeral service on Sunday. However, it seldom if ever has three services a day. The services are generally held either at 9:00 a.m., 11:00 a.m. or 1:00 p.m. from Monday through Saturday and 10:00 a.m. on Sunday. Most patrons prefer the 11:00 a.m. service; however when that time is not available, the 1:00 p.m. service time is preferred. Services at 9:00 a.m. are rare.
13. The Petitioner's Statement (Exhibit No. 3) and Summary of Proof (Exhibit No. 4) indicate that not all of the services conducted by the funeral home occur at the premises. As contemplated by the Petitioner in 1967, the majority of funerals take place in churches or other places of worship and from there proceed to a cemetery. Thus, they do not involve processions from the property.
14. The Petitioner's Statement (Exhibit No. 3) and Traffic Assessment (Exhibit No. 8), indicate that based on a survey of its funeral services in 2000, approximately 59% of funerals occurred at places of worship; another 17% were trans-shipments to other locations or memorial services not involving processions; and, that approximately 24% (197 funerals) took place on the Property and were followed by a procession to a cemetery. These exhibits and Petitioner's Summary of Proof (Exhibit No. 4) indicate that the data for 1999 were approximately the same, with 192 funerals conducted on site, followed by processions to a cemetery.
15. The Petitioner's Traffic Assessment (Exhibit No. 8) and the testimony of Ms. McHugh and Mr. Petersen indicate that, although a few funeral processions are lengthy, most are not, and the impact on traffic is minimal because all funeral processions occur between 10:00 a.m. and 2:00 p.m., which are non-peak traffic hours. Funeral processions occurred on only 141 days in the Year 2000. Three funeral processions on a single day occurred on only 10 days. No funeral processions took place on 224 days.
16. Ms. McHugh testified that the increase in the number of funeral processions originating at the Property over the past 30 years reflects the significant increase in the County's population during that time. She added that during this period, very few new funeral homes have opened in the County, while at least one (the Pumphrey Funeral Home in downtown Silver Spring) has closed. Ms. McHugh further stated that aside from the Funeral Home, only one other funeral home, the Hines Rinaldi Funeral Home on New Hampshire Avenue, exists as a special exception on residentially zoned land within County jurisdiction. Funeral processions emanating from the Property have increased at an average rate of approximately one percent per year for the 30-year period. She concluded that the County's population is aging and has increased at approximately double this rate over the same period (Exhibit No. 3, Petitioner's Statement; Exhibit No. 4, Petitioner's Summary of Proof, pg. 14).

17. The M-NCPPC Staff Recommendation (Exhibit No. 25, Attachment A-6, Page 6) states that although the current special exception requires all funeral processions to have police supervision, the practice of the Montgomery County Police Wheaton District is to provide police supervision only for funeral processions of fifty or more vehicles. M-NCPPC's Transportation Planning Staff and the County Police have determined that funeral processions composed of fewer than fifty vehicles without police supervision will not adversely impact the safety and efficiency of traffic along University Boulevard.
18. Ms. McHugh testified that the Petitioner's funeral processions are and will be conducted in accordance with a recent amendment to State law, requiring vehicles in the procession to have their headlights turned on and warning lamps flashing. According to the M-NCPPC Staff Recommendation (Exhibit No. 25, Attachment No. A-7), Section 21-207 of the State's Motor Vehicle Law authorizes a funeral procession to complete its passage through an intersection even after the green light phase has ended and the traffic signal turns red. Section 21-207 has recently been amended to further provide that the driver of a vehicle in a funeral procession does not have the privilege of continuing through a red signal – when the lead vehicle in the procession has already entered the intersection before the signal has changed from green to red – unless the trailing vehicle's headlights are turned on and its warning lamps are flashing.
19. The testimony of Ms. McHugh, as well as the Petitioner's Statement (Exhibit No. 3), Summary of Proof (Exhibit No. 4), and Economic Impact Report (Exhibit No. 19(b)), indicate that the Funeral Home is no longer occupied on a 24-hour basis by an official of the Petitioner, and as a consequence, a security system has been installed. The Funeral Home has had a positive impact upon its neighborhood and has caused no adverse economic impact on adjoining properties. Photographs (Exhibit Nos. 12(a) and (b)) confirm that the building is residential in character and that the grounds are well landscaped and carefully maintained. Ms. McHugh stated that the Funeral Home has enjoyed good relationships with its neighbors. Five neighbors including two residents of Gilmore Drive, which adjoins the Property to the west, Harry Gershenson and Gerald Cox wrote letters in support of the requested modifications (Exhibit Nos. 33.1 through 33.5).

Parking By Patrons of the Funeral Home on Nearby Streets

20. On October 12, 2001, shortly before the first public hearing session, the Board received a Petition of Opposition dated October 11, 2001 (Exhibit No. 26) from residents of several homes in the neighborhood: 4 on Justin Way; 3 each on Gilmore Drive and Dryden Street; 1 each on Kerwin Road and Calumet Drive. The Petition states in pertinent part:

“Collins is located in our residential neighborhood and sometimes does not have adequate parking for their customers. As a result, whenever there is a large funeral, customers that can't find parking in the Collins parking lot park on the street. Often, this is in front of our homes, most of which do not have off-street parking.

When we come home, we must park somewhere else down the street instead of in front of our homes. This is often in front of another neighbor's home, and so the problem proliferates. Therefore, we insist that Collins provide adequate parking for their customers before expanding any phase of their operation.”

21. Counsel for the Petitioner stated at the outset of the hearing that the Petitioner had no prior notice of the Petition of Opposition. None of the persons who signed it appeared at the Board's hearing.
22. Condition No. 6 of the Board's original decision specifically prohibits parking by funeral home patrons on Gilmoure Avenue (Exhibit No. 15(a)). The Notice of Violation (Exhibit No. 14) does not charge any violation of this condition. However, the Petitioner and the Board agreed that it should be addressed in this proceeding. Prior to the second session of the hearing, the Petitioner reviewed the matter and submitted proposals to ameliorate street parking by funeral home patrons, to the extent that this was occurring (Exhibit No. 35(e)).
23. At the second session of the hearing, the Petitioner presented a Study it had conducted of parking conditions on Justin Way, Gilmoure Drive, Dryden Street, Kerwin Road, and Calumet Drive during evening visitation hours at the funeral home, over a 31-day period between October 18 and November 17, 2001 (Exhibit No. 35(b)). The Study examined parking space availability on each of the involved streets during this period, and found that a total of 150 spaces were available. On only five of the 31 evenings studied were any impacts noted, namely an average of seven additional cars parked on these streets. For purposes of the Study, it was assumed that all of these cars were attributable to visitors to the Funeral Home. On only one date, November 5, 2001, when the Funeral Home had an especially large group of visitors, was a significant number of additional cars – 48 – observed parking on these neighborhood streets, leaving over 100 parking spaces still available (Exhibit No. 35(b)). The Petition of Opposition (Exhibit No. 26) acknowledges and photographs of the Petitioner (Exhibit No. 35(d)) confirm that a significant number of residents must park their cars on these streets because their lots do not have off-street parking.
24. The Petitioner submitted the following proposals to ameliorate street parking on evenings when its parking lot is full:
 - (a) Funeral Directors will encourage families who expect a large visitation to hold such visitations off-site if possible. Churches and schools are the only places where this is likely to occur and then only for active constituents.
 - (b) Where feasible, when a large visitation is expected at the Funeral Home, visitation hour will be extended. Examples would be 1:30 to 4:00 and 7:00 to 9:30.
 - (c) When it is known that there will be a very large visitation, the Petitioner will try not to schedule other visitations during that evening.
 - (d) On especially busy evenings (such as November 5, 2001), a designated staff member will monitor the parking lot (Exhibit No. 35(e)).
25. The Petitioner also requested that Condition No. 6 of the Board's original Opinion and Resolution (Exhibit 15(a)) be modified to state:

“All parking on Gilmoure Drive, except that portion on the east side abutting Petitioner's property, shall specifically be prohibited for use by patrons of the funeral home.”

26. The M-NCPPC Staff reviewed the special exception modification request and recommended approval, subject to specific conditions (Exhibit No. 25).
27. The Planning Board reviewed the modification request and recommended approval, subject to specific conditions (Exhibit No. 31).

FINDINGS OF THE BOARD

Based upon the above listed Findings of Fact, the testimony and the evidence of record, the Board concludes that the special exception modification complies with the general conditions for granting special exceptions, as set forth in Section 59-G-1.2 of the Zoning Ordinance. Specifically, the Board finds by a preponderance of the evidence as follows:

Sec. 59-G-1.2. Conditions for granting.

59-G-1.2.1. Standard for evaluation. A special exception must not be granted absent the findings required by this Article. In making these findings, the Board of Appeals, Hearing Examiner, or District Council, as the case may be, must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with the inherent effects, are a sufficient basis to deny a special exception.

As noted by the M-NCPPC Staff and Planning Board (Exhibit Nos. 25 and 31), the inherent and non-inherent effects of the proposed modification can be established by the existence of the previously approved special exception. The Board finds that no non-inherent adverse effects will result from the proposed modifications and that the inherent adverse effects associated with funeral home operations, such as funeral processions, will not be exacerbated in any way by the requested modifications. The Board of Appeals finds that this use has operated at the existing site for more than 30 years without altering the residential character of the area, and similarly, the modifications requested by the Petitioner are limited in scope and will not adversely affect the residential neighborhood or alter its character. The Board also finds that the Petitioner's proposals to ameliorate street parking during visitation hours, as described in Paragraph 22 hereof, are acceptable, with the exception of Petitioner's second proposal to extend visitation hours.

59-G-1.21. General conditions.

- (a) *A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

1. *Is a permissible special exception in the zone.*

The Board of Appeals finds that the requested special exception modification is permissible in the R-150 zone (Evidence Presented, Paragraphs 26, 27).

2. *Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.*

The Board of Appeals finds that the requested modification complies with the standards and requirements for funeral parlors or undertaking establishments in Section 59-G-2.23.

3. *Will be consistent with the general plan for the physical development of the District, including any master plan thereof adopted by the Commission. Any decision to grant or deny special exception must be consistent with an recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or Board's technical staff in its report on a special exception concludes that the granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

The Board of Appeals finds that the requested modification is consistent with the Kemp Mill Master Plan (Evidence Presented, Paragraphs 2, 26, 27).

4. *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions and number of similar uses.*

The Board of Appeals finds that the requested modification will be in harmony with the general neighborhood (Evidence Presented, Paragraphs 7, 8, 9, 15, 19, 23, 26).

5. *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site irrespective of any adverse effects the use might have if established elsewhere in the zone.*

The Board of Appeals finds that the requested modification is limited in scope and will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site irrespective of any adverse effects the use might have if established elsewhere in the zone (Evidence Presented, Paragraphs 8, 9, 15, 19, 23, 26, 27).

6. *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

The Board of Appeals finds that the requested modification is limited in scope and will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone (Evidence Presented, Paragraphs 7, 9, 11-16, 19, 23, 25, 26, 27).

7. *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential area of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.*

The Board of Appeals finds that the requested modification is consistent with the recommendations of the Kemp Mill-Four Corners Master Plan and will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential area of the area (Evidence Presented, Paragraphs 2, 19, 26, 27).

8. *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

The Board of Appeals finds that the requested modification is limited in scope and will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone (Evidence Presented, Paragraphs 13, 14, 15, 26, 27).

9. *Will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.*

Public water and sewer serve the subject site. There will be no significant impacts upon public roads. (Evidence Presented, Paragraphs 13-17, 23, 26, 27).

- (i) *If the special exception use requires approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of the special exception.*

The Property is a recorded lot and does not require approval of a preliminary plan of subdivision (Evidence Presented, Paragraphs 1, 26, 27).

- (ii) *With regard to findings relating to public roads, the Board, the Hearing Examiner or the District Council, as the case may be, must further determine that the proposal will have no detrimental effect on the safety of vehicular or pedestrian traffic.*

The Board of Appeals finds that the requested modification, including allowing patron parking on the east side of Gilmoure Drive abutting the Petitioner's property, will not have a detrimental effect on the safety of vehicular or pedestrian traffic (Evidence Presented, Paragraphs 15-19, 23, 25, 26, 27).

59-G-1.25. County need

In addition to the findings required in Section 59-G-1.21 and Division 59-G-2, the following special exceptions may only be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that, for the public convenience and service, a need exists for the proposed use due to an insufficient number of similar uses presently available to serve existing population concentrations in the County, and that the uses at the location proposed will not result in a multiplicity or saturation of similar uses in the same general neighborhood of the proposed use:

(3) Funeral parlors and undertaking establishments

The Board of Appeals finds that the need for the facility has been established by its existence and continuous use for more than 30 years; and, that given the changing demographic profile of the County with an increasingly elderly population, the need for the services of the facility is likely to increase.

59-G-2.23. Funeral parlors or undertaking establishments.

The use of a tract or parcel of land or buildings for a funeral parlor or undertaking establishment may be allowed, upon a finding by the board that:

- (a) *The use will not constitute a nuisance because of traffic, noise or type of physical activity. The use must be devoted to services typical to funeral parlor or undertaking establishment operations; provided, that the cremation of remains is expressly prohibited. A funeral parlor may include a dwelling or sleeping facilities either as a separate building or a portion of the main building to be occupied by the owner or an employee of the establishment.*

The Board of Appeals finds that the requested modification is limited in scope and will not constitute a nuisance because of traffic, noise or physical activity. The building is no longer occupied by a resident but is and will be protected by a security system.

The property and building shall conform to the following:

1. *The percentage of lot covered by buildings shall not exceed 15 percent.*

Building coverage for the facility is approximately 9 percent. (Findings (b) 1 through 8 are based upon the Evidence Presented in Paragraphs 24, 25.)

2. *Minimum lot area, 1-1/2 acre.*

The lot area is 1.5 acres.

3. *Minimum front yard setback, 75 feet.*

From University Boulevard, the front yard setback is 85 feet.

4. *Minimum side yard setback, 50 feet each side.*

The side yard setback is 41 feet. However, when the special exception was granted in 1967, the side and rear yard standards were 25 feet.

5. *Minimum rear yard setback, 50 feet.*

The rear yard setback of the facility is more than 75 feet.

6. *Building height limit, same as specified in the applicable zone.*

The building height is approximately 30 feet.

7. *Minimum frontage at the building line, 100 feet.*

Along University Boulevard, the building frontage is approximately 175 feet.

8. *Public water and sewer are available and shall be used for the operation of the facilities.*

Public water and sewer serve the facility.

9. *The grounds and exterior of all buildings shall be kept and maintained in conformity with the prevailing standards of the community.*

The Board of Appeals finds that the Property has significant landscaping along its property lines, is well maintained, and conforms to the residential neighborhood (Evidence Presented, Paragraphs 17, 24, 25).

10. *The following additional requirements shall also be met: Special conditions such as provisions for additional fencing or planting or other landscaping, additional setback from property lines, location and arrangement of lighting and other reasonable requirements deemed necessary to safeguard the general community interest and welfare, as may be invoked by the board as requisites to the grant of special exception.*

The Board of Appeals finds that the proposed modification to the lighting plan will not cause spillover glare onto adjoining properties and is appropriate for this institutional use in its residential setting (Evidence Presented, Paragraphs 8, 9).

11. *Frontage upon an access to a street or other roadway having a right-of way of 80 feet or more.*

Access to the site is from University Boulevard, which has a right-of-way of 120 feet and from Dennis Avenue, which has a right-of-way of 80 feet (Evidence Presented, Paragraphs 24, 25).

12. *The architectural treatment and scale of the proposed buildings shall be compatible with residential structures in the surrounding neighborhood.*

The Board of Appeals finds that no change is proposed to the existing building which is residential in character and is compatible with the residential neighborhood (Evidence Presented, Paragraphs 17, 24, 25).

- (c) *Any funeral parlor or undertaking establishment lawfully existing prior to March 13, 1989, is not a nonconforming use and may be extended, enlarged, or modified by special exception subject to the provisions set forth in this section.*

The Board of Appeals finds that the existing funeral parlor has existed since 1967; hence, it can be modified by special exception (Evidence Presented, Paragraphs 3, 24, 25).

Therefore, based upon the foregoing, the Board grants the Petition for Modification of the Existing Special Exception for a Funeral Home, subject to the following conditions:

1. The Petitioner is bound by its testimony and exhibits of record, the testimony of its witnesses and representations of its attorneys, to the extent that such evidence and representations are identified in this Opinion.
2. All terms of the existing special exception shall remain in effect, except as modified by this Opinion.
3. The schedule of visitation hours, as requested by the Petitioner, will be: Daily, 2:00 p.m. to 4:00 p.m. when there is no afternoon funeral service; from 3:00 p.m. to 5:00 p.m. when there is an afternoon funeral service; and in the evening from 7:00 p.m. to 9:00 p.m.
4. Funeral services will be at 9:00 a.m., 11:00 a.m. and 1:00 p.m., Monday through Saturday, and between 10:00 a.m. and 11:00 a.m. on Sunday. There will be no funeral services on holidays when cemeteries are closed.
5. The petitioner must comply with the approved lighting plan (Exhibit 39(e)).
6. The annual number of funeral processions from the funeral home is limited to 250.
7. The Petitioner must request Montgomery County Police to supervise all funeral processions that have more than 50 cars. The Petitioner must supervise all processions with less than 50 cars.

8. The premises will be protected by a security system when the building is not occupied.
9. The Petitioner must submit an annual report detailing the number of funeral processions to the Board of Appeals. Further, the Petitioner must maintain an internal record keeping system that records all processions.
10. Condition No. 6 as set forth in the original Opinion and Resolution of the Board dated February 1, 1967, is hereby amended as follows:

“All parking on Gilmoure Drive, except that portion on the east side abutting the Petitioner’s property, shall specifically be prohibited for use by patrons of the funeral home.”
11. In approximately one year from the date of adoption of this Opinion and Resolution, the Board shall conduct a hearing to review the amount of parking on adjacent residential streets during evening visitation hours at the funeral home.
12. The Petitioner must encourage families who expect a large visitation to hold such visitations off-site if possible.
13. When it is known that there will be a very large visitation, the Petitioner must try not to schedule other visitations on the evenings in question.
14. Petitioner must designate a member of its staff to monitor the parking lot on evenings that are expected to be especially busy.

On a motion by Alison Ishihara Fultz, seconded by Donna L. Barron, with Angelo M. Caputo, Louise L. Mayer and Donald H. Spence, Jr. Chairman, in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision in the above-entitled case.

Donald H. Spence, Jr., Chairman
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
This 14th day of June, 2002

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and any party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the Zoning Ordinance). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four (24) months' period within which the special exception granted by the Board must be exercised.

See Section 59-A-3.2 of the Zoning Ordinance regarding Use and Occupancy Permit for a Special Exception.