



## MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION8787 Georgia Avenue  
Silver Spring, Maryland 20910-3760MCPB  
Item # 5  
10/11/2001**MEMORANDUM**

**DATE:** October 5, 2001  
**TO:** Montgomery County Board of Appeals  
**VIA:** John Carter, Chief, Community-Based Planning JAC  
Bill Barron, Team Leader, Eastern County

**FROM:** N. Nkosi Yearwood, Community-Based Planning

**REVIEW TYPE:** Special Exception Modification  
**APPLYING FOR:** Funeral Home  
**APPLICANT:** Francis J. Collins Funeral Home  
**CASE NUMBER:** CBA-2117-A

**REVIEW BASIS:** Chapter 59, Zoning Ordinance  
**ZONE:** R-150  
**LOCATION:** 500 University Boulevard, West  
**MASTER PLAN:** Kemp Mill Master Plan  
**FILING DATE:** May 15, 2001  
**PLANNING BOARD:** October 11, 2001  
**PUBLIC HEARING:** October 17, 2001 at the Board of Appeals

**STAFF RECOMMENDATION: APPROVAL** with the following conditions:

1. The applicant is bound by all submitted statement and plans.
2. All terms of the existing special exception remain in effect, except as modified by this application.
3. The schedule of visitation hours, as requested by the applicant, 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 service, and from 7:00 p.m. to 9:00 p.m.
4. Funeral services, as requested by the applicant, 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 annual number of funeral processions from the funeral parlor is limited to 250.
6. The applicant must request Montgomery County Police to supervise all funeral processions that have more than 50 cars. The applicant must supervise all processions with less than 50 cars.
7. The premises will be protected by a security system when the building is not occupied.
8. The applicant must submit an annual report detailing the number of funeral processions to the Board of Appeals. Further, the applicant must maintain an internal record keeping system that records all processions.

### **Issues**

- A) The impact of the increase number of funeral processions on the transportation system.
- B) The effect of existing and proposed lighting on the surrounding neighborhood.
- C) The Department of Permitting Service (DPS) has cited the applicant for violating the conditions of the existing special exception.
- D) Staff has received no comments from the neighboring community on the proposed petition.

### **PROPOSAL DESCRIPTION**

The applicant, Francis J. Collins Funeral Home, is requesting a modification to its existing special exception and to rectify a violation of the approved special exception. The modification seeks to increase the number of funeral processions, change visiting hours and funeral service hours, install a security system, limit police supervision of funeral processions, elimination of the residential living provision and provide lighting in the parking area. These modifications reflect changes of the approved special exception granted by the Board of Appeals (BOA) in 1967.

### **Site Description**

Francis J. Collins Funeral Home is located at northwest corner of University Boulevard and Dennis Avenue in the McDonald Knolls subdivision of Silver Spring. The property is approximately 1.5 acres in size and is developed with a two-level facility and 70 parking spaces. University Boulevard and Dennis Avenue provide access to the site. Trees and hedges surround the building along University Boulevard. The main door facing University Boulevard is used for public access and the side entrance is available for handicapped persons. The Board of Appeals granted the Special Exception for this use in 1967.

### **Neighborhood Description**

Land uses surrounding the funeral parlor are primarily residential. Properties to the north, south, east and west are in the R-60 Zone and are primarily single-family dwellings. The subject site is the only R-150 zoned property in the existing neighborhood. There are several approved special exceptions ranging from home occupations to a private educational institution within proximity to the funeral home. A service organization in the 400 block of University Boulevard (S-763); an accessory apartment at 416 Kerwin Road (S-2036); (BA-1908) at 512 Royalton Road for a non-resident medical practitioner's office; and Four Corners Medical Center at 344 University Boulevard (BA-1544, BA-1897, BA-2113, and BA-2528). Other approved special exceptions in the area include: a private education institution (SE-270, BA-2874); (S-15, BA-1146, BA-2395) for a telephone dial center and (SE-261, BA-2267, BA-2268) for a children's nursery. Most of these special exceptions were approved after the funeral parlor was developed.

### **Building**

The existing funeral home is a two-level building, including a basement, with a residential appearance. The front-yard building setback from University Boulevard is approximately 85 feet; from Dennis Avenue the side yard setback is approximately 118 feet; and from Gilmoure Drive the rear yard setback is approximately 75 feet.

The interior of the existing building is approximately 13,000 square feet in size. There are several visitation areas on the first and second floors, three arrangement offices, a library and a casket selection room. Also on the first floor, near the garage entrance, is a private embalming facility and preparation area. There are hearses, two limousines and a car housed in the garage. Further, the building's basement has administrative offices, storage areas for caskets and office supplies, and an employee lounge.

### **Elements of Proposal**

The applicant proposes to modify the following conditions and findings of fact of the existing special exception:

#### **Visitation Hours**

Proposed: The proposed schedule hours of visitation 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 service, and from 7:00 p.m. to 9:00 p.m.

Existing: The current approval for visiting hours is Sunday through Friday, 2:00 p.m. to 4:00 p.m., and 7:00 p.m. to 9:00 p.m., and on Saturdays, 9:00 a.m. to 11:00 a.m.

### Funeral Hours

- Proposed: The proposed new hours for funeral services will be at 9: 00 a.m., 11:00 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.
- Existing: Funeral services will be at 2:00 p.m., as required, and there will no Sunday or holiday services.

### Residential Living

- Proposed: The premises will be protected by a security system when the building is not occupied.
- Existing: The premises will be occupied at all times by at least one official or licensed employee of the establishment who will reside in the living quarters of the proposed building.

### Police Supervision

- Proposed: Funeral processions will be supervised by the police department, based upon availability of officers.
- Existing: The police department will supervise all funeral processions.

### Number of Funeral Processions

- Proposed: Anticipated funeral processions emanating from the premises will be up to 250 per year.
- Existing: The petitioner shall govern and direct the extent of his business not to exceed 150 funeral processions per year; any excess use of this Special Exception shall be grounds for revocation of this privilege.

The applicant is also requesting approval of three 15-foot light fixtures currently in the rear parking lot, a 20-foot light pole at the University Boulevard entrance, and the removal of the lights with an automatic timer. The proposed petition will not change the general office hours, which is Monday to Saturday from 8:30 a.m. to 5:00 p.m., or 23 staff members of the facility.

### ANALYSIS

A funeral parlor is a permitted special exception in the R-150 zone. The applicant is seeking to modify findings of fact 11, 12, 16, 18 and 20 and condition two and three of the special exception (*See attachment for original BOA opinion*). In 1966, Montgomery County Council rezoned the property from R-60 to R-150 to permit the operation of the funeral parlor. A funeral parlor is not defined in the Zoning Ordinance. However, the

existing facility service fits within what is commonly associated with a funeral parlor: preparation, visitation and memorial of the deceased.

The Department of Permitting Services (DPS) has cited the applicant for violating the existing special exception; therefore, the proposed modification seeks to address the violation. The DPS notice of violation states that additional lighting other than "low level mushroom" lights are on the property and no record of the amount of funeral processions per year was available during inspection (*See attachment for DPS notice*). Furthermore, the applicant is seeking approval of a proposed 20-foot light fixture at the University Boulevard entrance, three 15-foot light standards in the rear parking lot, and the elimination of automatic lights with a timer. Staff is of the position that the existing and proposed lights are sufficient and compatible with the neighborhood since the location of the trees buffer the lights from adjacent dwellings and the cut-off features of the lights also limit any spill-over effect. Additionally, the lights improve safety in the neighborhood, especially along Gilmore Drive.

A study of services conducted by the applicant in 2000 revealed the following information regarding funeral processions:

Funeral Processions in 2000	
Starting Time	Number
9: 00 a.m.	22
11:00 a.m.	115
1:00 p.m.	49
Other times	11
Subtotal	197 (24%)
Off-site ceremonies with no processions from the site	637 (76%)
Total	834 (100%)

Information from the applicant indicated that 136 funeral processions have occurred from the site from January 2001 to September 30, 2001. Additional information gathered from 1999 revealed that approximately 192 funerals were conducted on-site followed by a procession. The applicant estimates that 5 percent of funerals in 1999 were large enough to require police supervision. Additionally, approximately 10 percent of the funerals had less than three cars and a hearse, and the majority of funerals involved more than five vehicles and all occurred during off-peak hours.

Staff has spoken with other funeral home operators in the County to understand what type of arrangement they may have with the County's police regarding funeral processions. For example, Hines-Rinaldi in White Oak has an informal arrangement, according to its manager, to call for police supervision when a procession has 30 or more cars. Police supervision is called between three and four times a month. Other funeral parlors, such as Robert A. Pumphrey Funeral Home on Wisconsin Avenue, have experienced difficulty in receiving police supervision of funeral processions since police officers are not always available.

The use of Montgomery County Police to supervise funeral processions is done at the district level. The Wheaton district, which serves the area where Collins Funeral Home is located, has a general policy of only supervising funeral processions with more than 50 cars. Police officers from the Wheaton district have informed staff that the number of man hours, availability of officers, and other critical transportation needs prevents the district from providing officers to manage traffic during funeral processions. In some districts within the county, for example in Bethesda, no County police officers provide supervision of processions because of similar reasons.

Staff supports the applicant's requests to increase the number of processions. The requested increase would average less than one procession per day on an annual and monthly basis. The applicant's transportation assessment noted that the monthly average for processions in the year 2000 averaged approximately 16. If the maximum number of 250 processions is achieved, the monthly average will increase to approximately 20 processions per month, which remains less than one procession per day. Based on the off-peak hours when funeral processions occur, the proposed increase in processions would have minimal impact on the surrounding neighborhood and existing traffic. Staff also recommends that the applicant provide the Board of Appeals an annual account of the number of processions as well as instituting an internal record keeping system for all processions.

### **Background**

The Board of Appeals approved the operation of the existing facility in 1967. The special exception was granted with 20 findings of facts and several approved conditions, including the supervision of funeral processions by local police. The applicant is seeking to modify some of the original conditions and findings of facts, including the number of funeral processions allowed per year, and to adhere to a notice of violation from the Department of Permitting Service (DPS). The notice of violation from DPS noted that the applicant has additional lighting other than the approved low-level mushroom lights and no record was available for the number of processions held per year.

The applicant's statement of operations acknowledges the violation but states that the additional lighting is needed to enhance security. The statement of operations notes that:

*As the County's population has increased over the past three decades, the conditions in the neighborhood also have changed. Cars parked in the previously dimly lit parking lot on the property were broken into and some visitors of the property were nervous about walking through the parking lot in the evening. The President of the Funeral Home was once robbed at gun point by an intruder while residing on the Property. These conditions called for measures to ensure the safety of those who use the Property. Consequently, a security system and additional lights were installed (albeit without Board approval). These lights not only helped the patrons*

*of the establishment, some of whom were elderly, handicapped, and visually impaired, but neighbors as well who expressed appreciation for the additional lights because they enhance night visibility and promote safety and security in the neighborhood.*

The applicant petitioned the Board of Appeals for an administrative modification to address the notice of violation from DPS and to increase the number of processions. In October, 2000 this request was denied by the Board. The Board found that "the proposed light changes will result in the alteration of the appearance of the special exception." It also found that "the proposed increase in the number of funeral processions will intensify the impact on traffic and on the immediate neighborhood, and that a public hearing is required."

### **Master Plan**

The proposed special exception modification is consistent with the 1967 Kemp Mill Master Plan and the Planning Board Draft 2001 Master Plan for Kemp Mill. The 1967 Master Plan identified a 2.5-acre parcel at the northwest corner of University Boulevard and Dennis Avenue for an institutional use, which later became the funeral parlor. The 1967 Plan recommended as a general policy that institutional uses be permitted by "special exception in the present R-60 zone, a trend that has already been initiated with the construction of nursing homes, doctors' offices, and churches" (p. 17).

The Planning Board Draft 2001 Master Plan recommends maintaining the existing land use for the funeral parlor. Further, the Draft Master Plan is silent on special exceptions in the Planning area. Instead, the Draft 2001 Plan recognizes the "established and stable nature of the neighborhoods that make up" Kemp Mill and it "reinforces the ordering of residential, commercial and instructional and public uses in ways that continue to create neighborhoods in which people can live, play and sleep." (p.12) The proposed modification would not alter the existing single-family nature of neighborhood. Further, the funeral parlor has existed at its current location for more than 30 years within the residential setting of the neighborhood.

### **Transportation**

The proposed application will not overburden the existing transportation system. Transportation Planning staff has reviewed the subject modification petition and recommends approval of the special exception. In accordance with the *Four Corners Master Plan, Kemp Mill Master Plan and Kensington-Wheaton Master Plan*, University Boulevard is designated as a six-lane divided major highway, M-19, with a 120-foot right-of-way, an existing sidewalk, and a Class III, PB-7, planned bikeway; Dennis Avenue is designated as a two-lane arterial road with a 80 foot right-of-way, existing sidewalks and a Class III bikeway; and Gilmore Drive is a secondary residential street with a 60 foot right-of-way and sidewalks. (See *Transportation Memo for more details*)

### Site Access

The proposed vehicular and pedestrian system is safe and efficient. The subject facility is located in the northwest quadrant of intersection of University Boulevard (MD193) and Dennis Avenue. Vehicular access to the site is from both roads and pedestrian access is also from the surrounding roads. A lead-in sidewalk connects University Boulevard and the funeral home.

### Police Area Review/Staging Ceiling Condition

The application is within the remaining capacity of jobs. The Kensington/Wheaton Policy Area has a remaining capacity of 2, 711 jobs under the *FY 02 Annual Growth Policy* transportation staging ceiling as of July 31, 2001.

### Parking Standard

The application meets the parking requirements for a mortuary or funeral parlor, Section 59-E-3.7 of the Zoning Ordinance.

### Funeral Processions

Funeral processions for the existing facility either utilize Dennis Avenue or University Boulevard. Dennis Avenue leading to University Boulevard is the normal route for processions to Gate of Heaven Cemetery in Aspen Hill and Parklawn Cemetery in Rockville. The access point on University Boulevard, heading south, is the normal path for cemeteries in other locations. A recently passed Maryland state law for funeral processions has added the provision that a vehicle in a funeral procession can proceed through a red traffic signal with warning lights on, which is new, as well as headlights on the vehicle. (*See attachment for new state law*).

### Environment

The subject application has been granted an exemption from forest conservation law since no trees or forest will be impacted by the proposal. Further, stormwater management concept and sediment/erosion control plans are not required since less than 5000 square feet of area will be disturbed.

### Community Concern

As of the date of this report, staff has received no letters or telephone calls on the proposed modification from the community.



### **Conclusion**

Staff finds that the proposed special exception modification meets all of the specific and general standards for a funeral parlor. Subsequently, staff recommends the approval of the modification with the conditions listed at the beginning of this report.

## Montgomery County Zoning Ordinance

### 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 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 created 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.

*The inherent and non-inherent effects of the proposed modification have been established by the existence of the previously approved special exception. Furthermore, this use has operated at the existing site for more than 30 years and the proposed modification will not alter residential character of the area.*

#### **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 proposed special exception modification is permissible in the R-150 zone.*

- (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 proposed 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 the 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 proposed modification is consistent with the Kemp Mill Master Plan.*

- (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 proposed modification will be in harmony with the general neighborhood.*

- (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 proposed modification will not have a detrimental effect for any of these reasons.*

- (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 proposed modification will not cause any adverse effects with respect to the reasons above. Physical activity will only increase at the site during large processions and visitations.*

- (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 nature 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 requested modification will not increase the number, intensity and scope of approved special exceptions in the area.*

- (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 on any adverse effects the use might have if established elsewhere in the zone.

*The proposed modification will not cause any of these effects.*

- (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.*

- (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 site is recorded and it does not require any of the provisions above.*

- (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 proposed modification will not have a detrimental effect on pedestrian safety and vehicular traffic.*

#### **Section 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 need for the facility has been established by its existence and continuous use for more than 30 years. Furthermore, 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.*

**Section 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 and 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 proposed modification will not constitute a nuisance because of traffic, noise or physical activity since the existing use is a funeral parlor with minimal traffic, except during processions, and the building is not occupied by any resident.*

- (b) 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.*

- (2) Minimum lot area, 1 ½ 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's 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 existing site has significant landscaping along its property lines and the site is well maintained and conforms to the residential neighborhood.*

- (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 BOA opinion in 1967 required several lighting, landscaping and other requirements for the funeral parlor, which buffer the use from residential properties. The proposed modification seeks to confirm changes made to the lighting fixtures as approved by the BOA in 1967. Staff is of the position that the existing and proposed lights are sufficient for the existing use.*

- (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.*

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

*The existing building is residential in character and is compatible with the residential neighborhood.*

- (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.

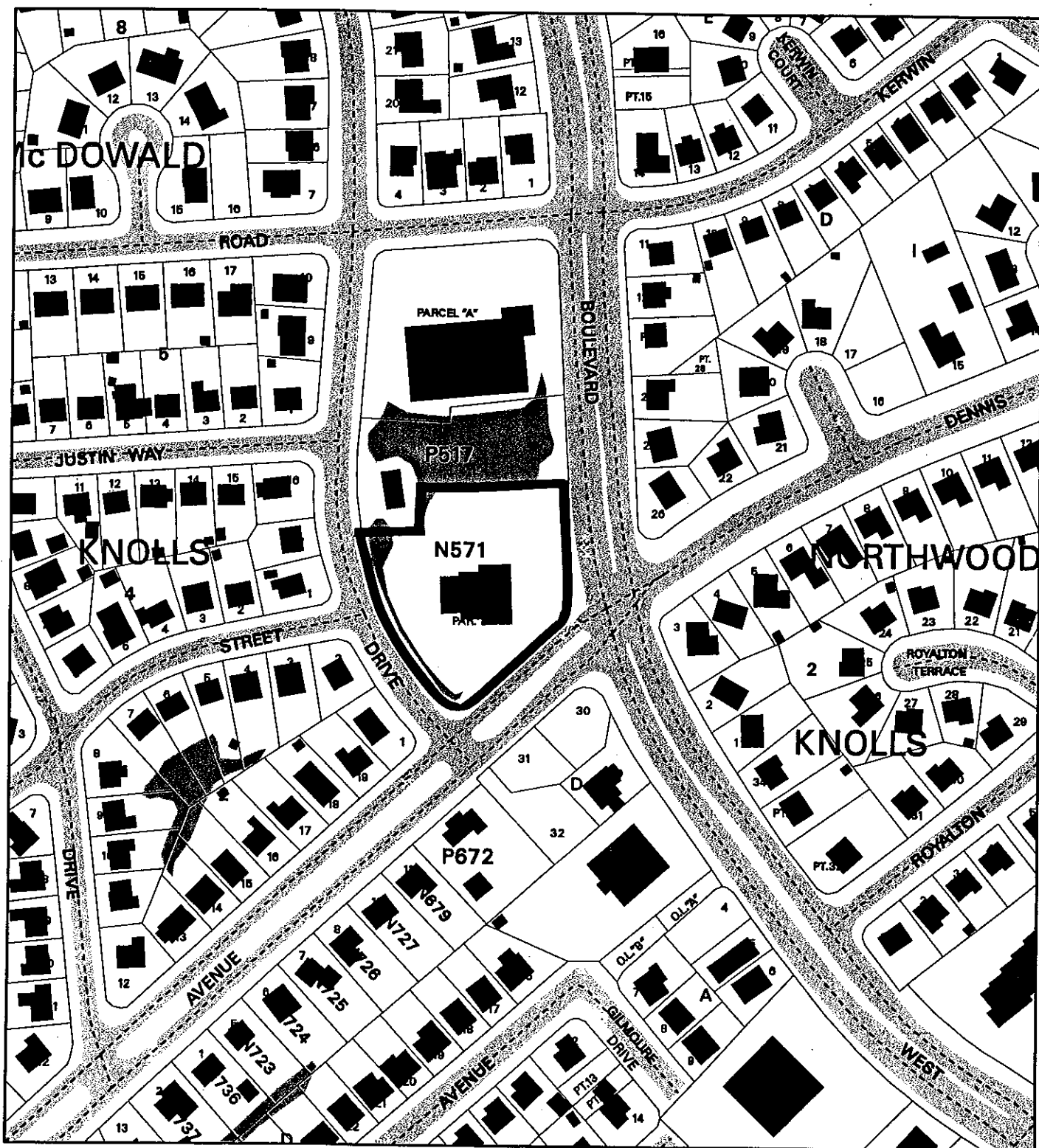
*The existing funeral parlor has existed since 1967; hence, it can be modified by special exception.*

**Attachments**

Vicinity Map	A-1
Zoning Map	A-2
Site Plan	A-3
Previous Board of Appeals Opinion	A-4
Department of Permitting Services (DPS) Violation Notice	A-5
Transportation Memo	A-6
New State Law on Funeral Processions	A-7



VICINITY MAP FOR  
**COLLINS FUNERAL HOME**



Map compiled on August 27, 2001 at 12:00 PM | Site located on base sheet no - 213NW01

**NOTICE**

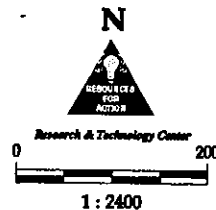
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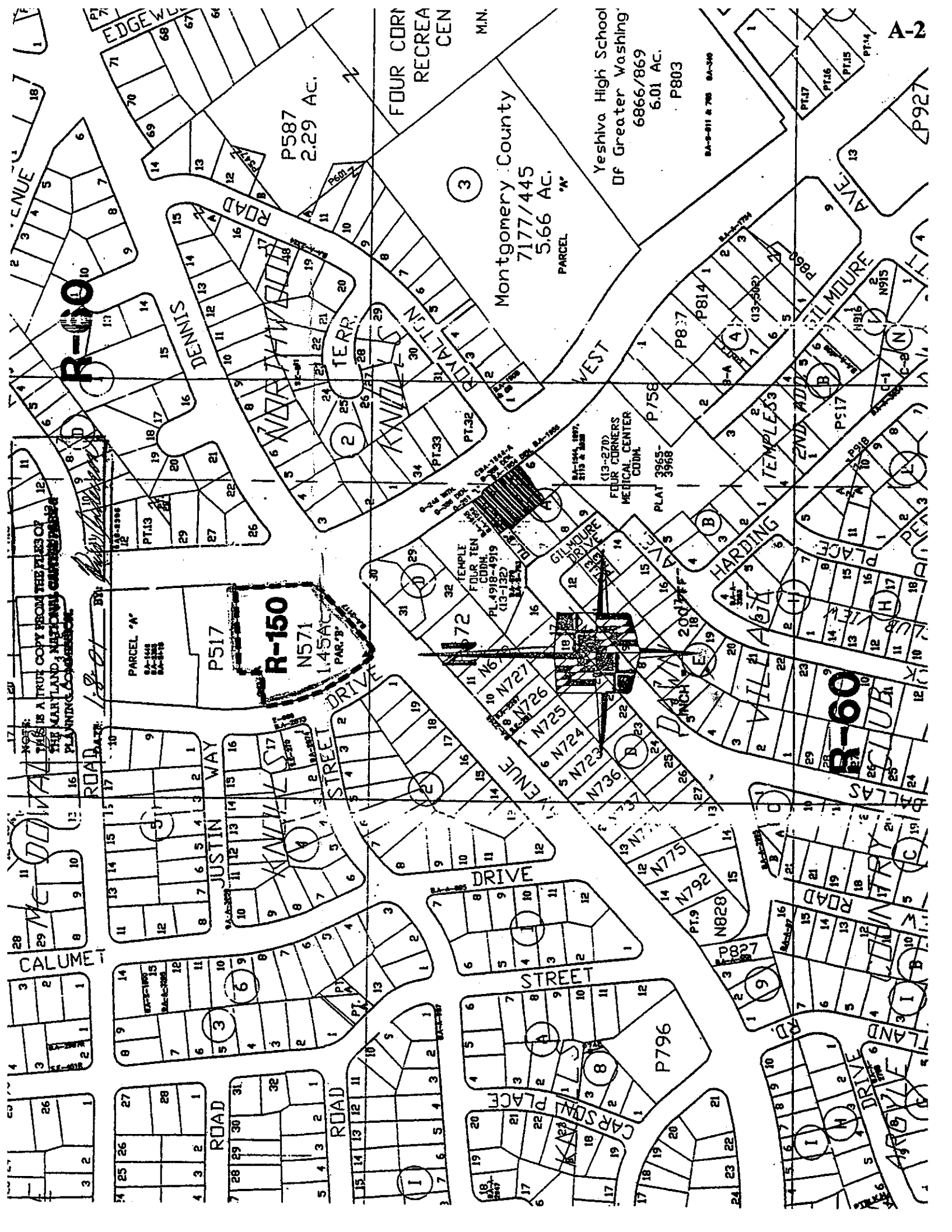
Property lines are compiled by adjusting the property lines to topography created from aerial photography and should not be interpreted as actual field surveys. Planimetric features were compiled from 1:14400 scale aerial photography using stereo photogrammetric methods.

This map is created from a variety of data sources, and may not reflect the most current conditions in any one location and may not be completely accurate or up to date. All map features are approximately within five feet of their true location. This map may not be the same as a map of the same area plotted at an earlier time as the data is continuously updated. Use of this map, other than for general planning purposes is not recommended. - Copyright 1998

**MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING**  
 THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION  
 6787 Georgia Avenue - Silver Spring, Maryland 20910-3760

Key Map





## PARKING REQUIREMENTS

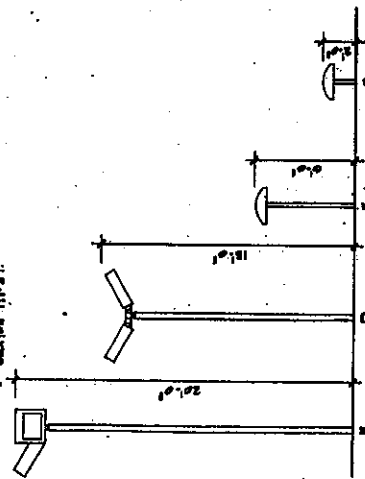
REQUIRED	PROVIDED
25 SPACES PER LEASE UNIT REQUIREMENT	25 SPACES PER LEASE UNIT
10 MIN. MINOR	10 MIN. MINOR
1 SPACE PER EACH EMPLOYEE ON MAJOR	10 SPACES
SUBT	10 SPACES
1 SPACE PER LEASE COMPANY VEHICLE	10 SPACES
TOTAL	25 SPACES

\* NOTE - 4 SPACES IN GARAGE

## SETBACK REQUIREMENTS

REQUIRED	PROVIDED
MIN. FRONT YARD SETBACK	75 FEET
MIN. SIDE YARD SETBACK	40 FEET
MIN. SIDE YARD SETBACK	40 FEET
MIN. REAR YARD SETBACK	30 FEET

\*\* NOTE - THE FOLLOWING STANDARDS APPLIED IF NOT AT THE TIME OF PERMITS APPROVAL:  
 1. MIN. LOT AREA 10,000 SQ. FT.  
 2. MIN. REAR YARD SETBACK 40 FT.  
 3. MIN. SIDE YARD SETBACK 40 FT.  
 4. MIN. FRONT YARD SETBACK 75 FT.  
 SEE HANDBOOK COUNTY CODE PLUS AS APPLICABLE  
 SECTION 111-21



LIGHT FIXTURE ELEVATIONS

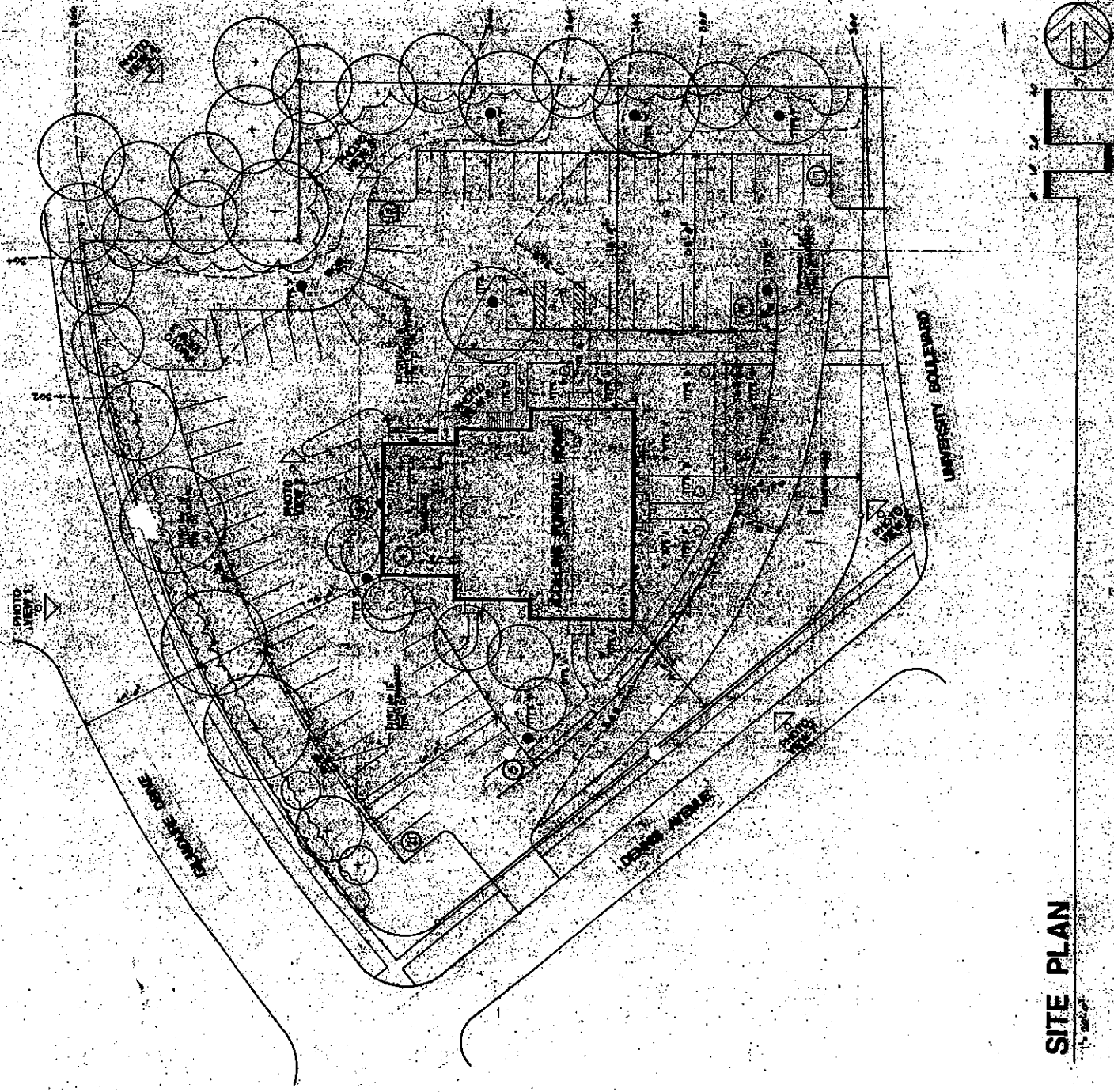
1/2" = 1'-0"

## LEGEND

etc.	
A	ACCENT LIGHTING - HALL WASH
B	LOW LEVEL PEDESTRIAN LIGHTING 2'-0"
C	FLOODLIGHT
D	PARKING LOT LIGHT STANDARD 15'-0"
E	PARKING LOT LIGHT STANDARD 20'-0"
F	LOW LEVEL PEDESTRIAN LIGHTING 0'-0"

## SITE PLAN

1/4" = 1'-0"



COUNTY BOARD OF APPEALS  
For  
MONTGOMERY COUNTY

Case No. 2117

PETITION OF FRANCIS J. COLLINS  
(Hearing held December 8, 1967)

OPINION OF THE BOARD

This is a proceeding on a Petition for a Special Exception under Section 104-29. m-2. of the Zoning Ordinance (Chap. 104, Mont. Co. Code 1960, as amended) to permit the use for a funeral parlor or undertaking establishment. The subject property consists of 1.5 acres of ground, part of proposed Block 3, McDonald's Knolls Sub-division, at the northwest corner of University Boulevard and Dennis Avenue, Silver Spring, Maryland, in an R-150 Zone.

From the testimony and evidence adduced at the time of the public hearing and upon consideration thereof, including the testimony, documents and exhibits, the Board makes the following findings of fact and conclusion:

1. Building coverage will be 9.2% of the tract; 15% is permitted by the Zoning Ordinance.
2. The lot area is 1.5 acres; 1.0 is permitted by the Zoning Ordinance.
3. The front yard setback from University Boulevard is 85 feet.
4. The side yard setback is 41 feet from Dennis Avenue and 118 feet from the north property line.
5. The rear yard setback is 71 feet to Gilmore Avenue.
6. Proposed building height is two stories and is not to exceed 30 feet.
7. The lot frontage on University Boulevard is 179 feet.
8. Public water and sewer are available.
9. The proposed building is compatible with the contiguous neighborhood.
10. The grounds and exterior of the proposed building conforms with the prevailing standards of the community.

11. Proposed schedule of visiting hours will be:  
Daily, Sundays through Fridays, 2:00 P.M. to 4:00 P.M., and 7:00 P.M. to 9:00 P.M., and on Saturdays, 9:00 A.M. to 11:00 A.M.
12. Funeral services will be at 2:00 P.M., as required, and there will be no Sunday or holiday services.
13. Property was rezoned from the R-60 to the R-150 zone by Resolution No. 5-3025 by the Montgomery County Council September 6, 1966, with the specified intent, by testimony, to erect a funeral parlor.
14. There will specifically be no access onto Gilmore Avenue to the west.
15. Off-street parking for 72 vehicles has been provided.
16. The premises will be occupied at all times by at least one official or licensed employee of the establishment who will reside in the living quarters of the proposed building.
17. There will be no cremation of human remains on the premises. Delivery of human remains will occur within the garage of the building out of sight of all neighborhood properties.
18. All funeral processions will be supervised by the police department.
19. All funeral processions will form on site.
20. Anticipated funerals will be 150 cases per year.

In addition to the foregoing findings, the Board also finds that the proposed use would not adversely affect the General Plan for the physical development of the District as embodied in the Zoning Ordinance; and

The proposed use will not affect adversely the health and safety of residents or workers in the area, and will not be detrimental to the use or development of adjacent properties or the general neighborhood; and

The petitioner sustained the burden of proof with respect to a clear and present need existing in the general neighborhood for the proposed funeral parlor.

By virtue of the foregoing findings of facts, and in accordance with the exhibits and testimony of record, the Petition for a Special Exception is hereby granted subject to the following conditions:

1. The petitioner shall install a suitable site storm drainage system and connect into the existing storm drainage system on University Boulevard.
2. The petitioner shall install and maintain low level mushroom lights on the premises which will not shine or glare into the adjoining residential properties; aforesaid lights shall have an automatic clock timer to turn the lights off at 10:00 P.M.
3. The petitioner shall govern and direct the extent of his business not to exceed 150 funeral processions per year; any excess use of this Special Exception shall be grounds for revocation of this privilege.
4. The petitioner shall, prior to the time of occupancy of the building, augment the existing natural 25 foot wide area of trees and shrubs contiguous to Gilmore Avenue with a living hedge, staggered plantings not less than 4 feet in height at the time of planting such as will provide a dense, compact light screening shield for those residential properties to the west of Gilmore Avenue.
5. All funeral processions shall form and be fully contained on the premises of subject property.
6. All parking on Gilmore Avenue shall specifically be prohibited for use by patrons of this funeral parlor.
7. The parking lots shall be chained each night by the resident custodian.  
*This condition was eliminated by resolution adopted on Dec. 13, 1984*

8. A non-revolving sign not to exceed 12 square feet shall be permitted on the premises. Illumination, if any, shall be a non-glare internally lit sign compatible with the proposed brick structure.

The Board adopted the following Resolution:

"Be it Resolved by the County Board of Appeals for Montgomery County, Maryland, that the opinion stated above be adopted as the Resolution required by law as its decision on the above-entitled petition."

The foregoing Resolution was proposed by Mr. Kenneth E. denOuter and concurred in by Mrs. Helen H. Burkart. Mr. Bernard D. Gladhill read the record in this case and concurred with this decision. Mr. Calvin R. Sanders, Vice Chairman, dissented. Mr. Charles R. Richey, Chairman, dissented and will file a separate opinion.

I do hereby certify that the foregoing Minutes were officially entered upon the Minute Book of the County Board of Appeals this 1st day of February, 1967.

Sollie H. Kite  
Clerk to the Board

NOTE: Please see Section 104-24. c. of the Ordinance regarding the 12-months' period within which the right granted by the Board must be exercised.

This opinion mailed to all persons who received notice of the hearing.

Dissenting opinion by Mr. Charles R. Richey:

I respectfully dissent from the approval of the Special Exception in the instant case upon the grounds that the evidence showed that the proposed use would have an adverse effect upon adjacent properties and the general neighborhood. The evidence also shows, in my opinion, that the proposed use would and will create a traffic hazard in the immediate vicinity of the subject property. I do not believe that the petitioner sustained the required burden of proof regarding the essential element of need regarding a commercial use.



## NOTICE OF VIOLATION

LOCATION: 500 UNIVERSITY BLVD. W. CASE NO.: 2117  
SILVER SPRING, MD  
DEFENDANT NAME: FRANCIS S. COWINS  
ADDRESS: SEE ABOVE

DATE OF VIOLATION: 7/23/00

CODE SECTION: TONING ORDINANCE 59-G-1.3.(c)(1)

VIOLATION: ADDITIONAL LIGHTING OTHER THAN LOW LEVEL MUSHROOM LIGHTS, ARE  
INSTALLED ON THE LOT IN VIOLATION OF CONDITION #2 OF THE  
SPECIAL EXCEPTION. SITE VISIT MADE BY THE DEPARTMENT FOUND NO RECORD  
OF THE AMOUNT OF FUNERAL PROCESSIONS PER YEAR.

CORRECTIVE ACTION TO ELIMINATE VIOLATION: REMOVE ALL LIGHTING OTHER THAN THE APPROVED  
MUSHROOM LIGHTING OR, MODIFY THE SPECIAL EXCEPTION FOR ADDITIONAL  
LIGHTING IN THE PARKING LOT AND LIGHTING OF THE BUILDING. PROVIDE  
THE DEPARTMENT WITH A RECORD OF FUNERAL PROCESSIONS PER  
YEAR TO DETERMIN COMPLIANCE WITH CONDITION #3.

☐ A RE-INSPECTION AMOUNT OF \$ \_\_\_\_\_ IS REQUIRED IN ADDITION TO THE APPLICATION FEE(S).

COMPLIANCE TIME: FIFTEEN DAYS

YOU MAY APPEAL THIS NOTICE OF VIOLATION TO THE COUNTY BOARD OF APPEALS WITHIN 30 DAYS OF RECEIPT OF THIS NOTICE. THE BOARD OF APPEALS IS LOCATED IN THE COUNCIL OFFICE BUILDING, ROOM 217, 100 MARYLAND AVENUE, ROCKVILLE, MARYLAND 20850, (240) 777-6600.

REMARKS: SHOULD THE BOARD APPROVE THE ADDITIONAL LIGHTING, AN ELECTRICAL  
PERMIT WILL BE REQUIRED BY THE DEPARTMENT.

FAILURE TO COMPLY WITH THIS NOTICE WILL RESULT IN A \$ 500.00 CIVIL CITATION AND/OR A COURT ORDER TO INSURE COMPLIANCE.

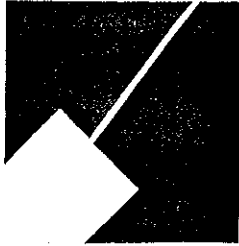
ISSUED BY: Stan Balser DATE: 7/24/00 PHONE NO.: 301-370-3656  
signature

PRINT NAME: STAN BALSER

RECEIVED BY: \_\_\_\_\_ DATE: \_\_\_\_\_ PHONE NO.: \_\_\_\_\_

SENT BY CERTIFIED MAIL ON: 7/26/00 LEFT AT RESIDENCE ON: \_\_\_\_\_





A-6

October 5, 2001

**MEMORANDUM**

TO: Nkosi Yearwood, Planner  
Community-Based Planning Division

VIA: Daniel K. Hardy, Supervisor *EA for DH*  
Transportation Planning

FROM: Ed Axler, Coordinator/Planner *EA*  
Transportation Planning

SUBJECT: Special Exception Case No. CBA-2117-A  
Francis J. Collins Funeral Home  
Kensington/Wheaton Policy Area

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This memorandum is Transportation Planning staff's adequate public facilities (APF) review of the subject special exception case amendment.

**RECOMMENDATIONS**

Transportation Planning staff recommends the following conditions as part of the APF test for transportation requirements related to approval of this special exception case amendment. Limit the special exception case amendment to reflect the *Updated Statement of Operations* dated August 31, 2001, by incorporating the following transportation-related conditions:

1. Increase the maximum number of funeral processions from 150 to 250 per year.
2. Delete the visiting hours on Saturday.
3. Expand the funeral service hours on Saturday from between 9:00 a.m. and 11:00 a.m. to between 9:00 a.m. and 2:00 p.m.
4. Add funeral service hours on Sunday between 10:00 a.m. and 11:00 a.m.

5. Change the requirement for Police Department supervision of all funeral processions to the following:
  - a. Provide Police Department supervision of funeral processions with 50 or more vehicles.
  - b. Provide on-site supervision of funeral processions with 11 to 49 vehicles.
  - c. For funeral processions anticipated to have ten or more vehicles, contact, in advance, the Montgomery County Department of Public Works and Transportation's (DPWT) Transportation Management Center (e.g., computerized traffic signal control system) to modify the traffic signal timing en-route in order to minimize delay to other motorists.

## DISCUSSION

### Site Location and Accesses

The site is located in the northwest quadrant of the intersection of University Boulevard (MD 193) and Dennis Avenue. The site vehicular accesses are from University Boulevard and Dennis Avenue. Separate staging areas are available on the site to form the queue of vehicles for funeral processions. The site pedestrian accesses are the existing sidewalks along University Boulevard, Dennis Avenue, and Gilmore Drive. A lead-in sidewalk connects University Boulevard with the funeral home door.

### Master Plan Roadways and Bikeways

In accordance with the *1967 Master Plan for Kemp Mill - Four Corners and Vicinity*, the adjacent roadways are classified as follows:

1. University Boulevard is designated as a six-lane divided major highway, M-19, with a 120-foot right-of-way. Sidewalks exist along University Boulevard. The *Staff Draft Kemp Mill Master Plan* and the *1996 Approved and Adopted Four Corners Master Plan* further designate University Boulevard with a Class III planned bikeway, PB-6 and PB-7, respectively.
2. Dennis Avenue is designated as an arterial roadway, A-59, with an 80-to-100-foot right-of-way. Sidewalks exist along University Boulevard. The *Staff Draft Kemp Mill Master Plan* and the *1996 Approved and Adopted Four Corners Master Plan* further designate Dennis Avenue as a two-lane arterial with an 80-foot right-of-way and a Class III planned bikeway, PB-10.
3. Gilmore Drive is not listed in the master plan but is a secondary residential roadway with a 60-foot right-of-way and existing sidewalks.

### On-Site Parking

The number of on-site parking spaces is 70 with staging areas that can store an estimated 80 vehicles for funeral processions.

### Site-Generated Traffic by Employees and Visitors

1. The general operating hours are from 8:30 a.m. to 5:00 p.m. with employee work hours as follows:
  - a. Fifteen of the 23 employees work from 8:30 a.m. to 5:30 p.m.
  - b. One property maintenance employee works from 7:00 a.m. to 4:00 p.m.
  - c. Seven other employee work hours were not specified.

The 15 employees arrive and leave during the weekday morning peak period (7:00 to 9:00 a.m.) and the evening peak period (4:00 to 6:00 p.m.).

2. Funerals are proposed to be scheduled as follows:
  - a. Mondays through Saturdays at 9:00 a.m., 11:00 a.m., and 1:00 p.m.
  - b. Sundays at 10:00 a.m.
3. Families and friends are proposed to visit the funeral home between 2:00 p.m. and 4:00 p.m. and between 7:00 p.m. and 9:00 p.m. on weekdays only. The first visitation period (from 2:00 p.m. to 4:00 p.m.) ends at the beginning of the evening peak period (e.g., 4:00 p.m.) where motorists would be leaving during the evening peak period.

Unless there are 35 or more trips by family and friends added to the 15 employees, the site-generated traffic would be less than 50 peak-hour trips during the evening peak period. Trip-generation rates are not available from the Institute of Transportation Engineer's *Trip Generation Manual*. Thus, the submission of a traffic study would not be required to satisfy Local Area Transportation Review, if reviewed as a preliminary plan of subdivision.

### Site-Generated Traffic by Funeral Processions

According to the applicant, the number of funeral processions that occurred in 2000 was as follows:

<b>Funerals in 2000</b>	
<b>Funeral Processions</b>	
<b>Starting Time</b>	<b>Number</b>
9:00 a.m.	22
11:00 a.m.	115
1:00 p.m.	49
Others Times	11
Subtotal	197 (24%)
Off-Site ceremonies with no processions from the site	637 (76%)
<b>Total</b>	<b>834 (100%)</b>

A traffic statement was submitted dated May 7, 2001, which summarized the number of funerals with processions in 2000 as follows:

<b>Time Period of Funeral Processions</b>	<b>Range</b>	<b>Median</b>	<b>Average</b>
Per Month (All Weeks and Times)	7 to 27	16	16.4
Per Week (All Days and Times)	0 to 8	4 or 5	3.8

<b>Day and Starting Time of Funeral Processions</b>	<b>Number</b>
Weekdays Total Number - Starting at 9:00 a.m.	15
Weekdays Total Number - Starting at 11:00 a.m.	95
Weekdays Total Number - Starting at 1:00 p.m.	45
Weekdays Total Number - Starting at Other Times	5
<b>Weekdays Total Number - Sum of All Starting Times</b>	<b>160</b>
Saturdays Total Number - Starting at 9:00 a.m.	7
Saturdays Total Number - Starting at 11:00 a.m.	19
Saturdays Total Number - Starting at 1:00 p.m.	4
Saturdays Total Number - Starting at Other Times	4
<b>Saturdays Total Number - Sum of All Starting Times</b>	<b>34</b>
Sundays Total Number - All Starting Times	4

The increase in the number of funeral processions from 150 to 250 per year would not create a nuisance or have an adversely impact on the adjacent roadway network. The Increase to 250 processions would still result in an average of less than one funeral procession per day.

#### Weekday Hourly Traffic Volume Trends along University Boulevard

The applicant's transportation consultant collected hourly directional traffic volumes along University Boulevard at Dennis Avenue for a Monday through Saturday in March 2001. These volumes were compared with the hourly directional traffic volumes on University Boulevard west of Colesville Road which were obtained from the Maryland State Highway Administration (SHA) for two weekdays in June 2001. SHA data is compared below to the applicant's consultant data:

Roadway/ Direction	Time Period	Range in Hourly Traffic Volume (in Average Weekday Vehicles per Hour)		
		Trend	Consultant's Data	SHA Data
University Boulevard/ Westbound	5:00 a.m. to 8:00 a.m.	Increasing	200 to 1,000	600 to 1,200
	8:00 a.m. to 3:00 p.m.	Increasing	1,200 to 1,600	1,200 to 1,500
	3:00 p.m. to 7:00 p.m.	Increasing	Exceeding 1,850	Exceeding 1,600
	7:00 p.m. to 10:00 p.m.	Decreasing	1,400 to 500	1,600 to 1,000
	10:00 p.m. to 5:00 a.m.	Decreasing	500 to 10	600 to 50
University Boulevard/ Eastbound	5:00 a.m. to 7:00 a.m.	Increasing	350 to 1,000	500 to 1,300
	7:00 a.m. to 4:00 p.m.	Varies	1,050 to 1,475	1,300 to 1,500
	4:00 p.m. to 8:00 p.m.	Increasing	1,400 and 1,750	1,500 and 1700
	8:00 p.m. to 10:00 p.m.	Decreasing	1,000 to 900	1,200 to 1,000
	10:00 p.m. to 5:00 a.m.	Decreasing	600 to 50	700 to 50

The volume levels do vary as all traffic counts which are collected on different days in different seasons of the year (e.g., Spring versus Summer). However, the variation is not significant and trends are consistent between the consultant's spring count and SHA's summer count.

For both directions of travel on University Boulevard, the highest volumes occur during the weekday evening peak period. The evening-peak-period volumes are more than 100 vehicles per hour higher than the volumes observed during the midday periods when funeral processions occur.

#### Saturday Hourly Traffic Volume Trends along University Boulevard

Below are the trends of the hourly directional traffic volumes collected on Saturday in March 2001 by the applicant's transportation consultant along University Boulevard:

Roadway/ Direction	Time Period	Range in Hourly Traffic Volume (in Average Weekday Vehicles per Hour)	
		Trend	Consultant's Data
University Boulevard/ Westbound	6:00 a.m. to 9:00 a.m.	Increasing	350 to 1,000
	9:00 a.m. to 11:00 a.m.	Increasing	1,275 to 1,300
	11:00 a.m. to 8:00 p.m.	Varies	1,400 and 1,500
	8:00 p.m. to 2:00 a.m.	Decreasing	1,000 to 250
	2:00 a.m. to 6:00 a.m.	Decreasing	300 to 100
University Boulevard/ Eastbound	7:00 a.m. to 11:00 a.m.	Increasing	525 to 1,200
	11:00 a.m. to 7:00 p.m.	Varies	1,500 to 1,850
	7:00 p.m. to 10:00 p.m.	Decreasing	1,300 and 1,100
	10:00 p.m. to 5:00 a.m.	Decreasing	750 to 25
	5:00 a.m. to 7:00 a.m.	Increasing	100 to 250

#### Hourly Traffic Volume Trends along Dennis Avenue

Below are the trends from the hourly directional traffic counts along Dennis Avenue between Gilmore Drive and Calument Drive in March 2001, collected by the applicant's transportation consultant:

Roadway/ Direction	Average Weekday or Saturday	Time Period	Range in Hourly Traffic Volume (in Vehicles per Hour)	
			Trend	Consultant's Data
Dennis Avenue/ Southbound	Average Weekday	Midnight to 6:00 p.m.	Increasing	5 to 275
	Saturday	Midnight to 2:00 p.m.	Increasing	10 to 230
Dennis Avenue/ Northbound	Average Weekday	Midnight to 5:30 p.m.	Increasing	5 to 440
	Saturday	Midnight to Midday	Increasing	10 to 280

The hourly directional volumes along Dennis Avenue are considered low for an arterial roadway.

### Supervision of Funeral Processions

1. Processions of 50 or More Vehicles: The current special exception requires all funeral processions to have police supervision. The practice of the Montgomery County Police Wheaton District is to provide supervision for funeral processions of 50 or more vehicles. Transportation Planning staff concurs with the county police determination that funeral processions composed of fewer than 50 vehicles without police supervision will not adversely impact the safety and efficiency of traffic along University Boulevard.
2. Processions between 11 and 49 Vehicles: Section 21-207 of Maryland Vehicle Law provides the right-of-way to a funeral procession to complete the passage through an intersection even after the green phase has ended and the traffic signal turns red. The applicant's practice is to provide on-site supervision to ensure safe staging and departure of the procession from the site. Transportation Planning staff recommends that the applicant continue providing on-site supervision of the departure for funeral processions of ten or more vehicles. In addition, the applicant should notify DPWT's Transportation Management Center in advance of such anticipated processions so that DPWT can modify the signal timing en-route to minimize traffic delays both for the funeral procession and for other motorists on the road.
3. Processions up to Ten Vehicles: Transportation Planning staff estimates that processions of fewer than ten vehicles can turn onto University Boulevard from the signalized intersection with Dennis Avenue during a single green phase. The traffic signal timing information was obtained from DPWT to determine the maximum green phase/time allocated to the Dennis Avenue approaches during non-peak periods. The maximum green time is long enough to permit a ten-vehicle procession and the expected demand of non-funeral vehicles to turn from Dennis Avenue onto University Boulevard during one single green phase.

### Accident History

SHA collected accident data between 1998 and 2000 at the intersection of University Boulevard and Dennis Avenue. Only six accidents occurred within the three-year period between 9:00 a.m. and 1:00 p.m. when funeral processions are scheduled.

### Levels of Congestion at Nearby Intersections

The congestion levels at nearby intersections were not analyzed in the submitted traffic statement. However, the intersection congestion at the intersection of University Boulevard and Dennis Avenue can be determined using recent traffic count collected by SHA on Wednesday, July 31, 2001. The calculated critical lane volume (CLV) values are shown:

Time Period	Calculated CLV
Morning Peak Period	850
Midday Period	840
Evening Peak Period	1,285

The congestion/critical lane volumes (CLV) standard is 1,650 for intersections in the Kensington/Wheaton Policy Area. Although the traffic count was collected after schools closed for summer vacation and traffic volumes tend to be lower, the calculated CLV values are between 50% and 75% below the congestion standard of 1,650.

### Policy Area Review/Staging Ceiling Condition

The Kensington/Wheaton Policy Area has a remaining capacity of 2,711 jobs under the *FY 02 Annual Growth Policy* transportation staging ceiling as of July 31, 2001.

EA:kcw

cc: Maj Shakib  
Steve Petersen  
Emil Wolanin

mmo to yearwood re CBA 2117-A.DOC

A-7

**Effective October 1, 2001**  
**It's the Law!**



## House Bill 328 – Funeral Processions – Vehicle Laws

This Bill amends the vehicle laws with respect to funeral processions. It requires, in order for the driver of a vehicle in a funeral procession to have the privilege of proceeding through a red traffic signal, that the warning lamps of the vehicle are flashing, in addition to the headlights of the vehicle being on. The Bill passed both the House and Senate and has been signed into law by the Governor.

*C. William Lee, III*  
C. William Lee, III, CFSP  
President



**Maryland State Funeral  
Directors Association, Inc.**  
7347 Old Alexandria Ferry Road  
Clinton, Maryland 20735

1120 P83517870  
0340 \$00.34 SEP 21 2001  
3801 MAILED FROM ZIP CODE 20735

Mr. Andrew J. Cole  
Francis J. Collins Funeral Home, Inc.  
500 University Boulevard, West  
Silver Spring, Maryland 20901



3. If there is no crosswalk, before entering the intersection; and  
 (iii) Except as provided in subsections (i), (j), and (k) of this section, shall remain stopped until a signal permitting the movement is shown.

(i) *Same — Entering intersection for right turn or for left turn from one-way street onto one-way street.* — Unless a sign prohibiting a turn is in place, vehicular traffic facing a steady red signal, after stopping as required by subsection (h) of this section, cautiously may enter the intersection and make:

(1) A right turn; or

(2) A left turn from a one-way street onto a one-way street.

(j) *Same — Entering intersection to make turn indicated by sign.* — If a sign permitting any other turn is in place, vehicular traffic facing a steady red signal, after stopping as required by subsection (h) of this section, cautiously may enter the intersection and make the turn indicated by the sign.

(k) *Same — Yielding right-of-way to certain pedestrians.* — In each instance, vehicular traffic described in subsections (i) and (j) of this section shall yield the right-of-way to any pedestrian lawfully within an adjacent crosswalk and to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard.

(l) *Same — Pedestrians prohibited from entering roadway.* — Unless otherwise directed by a pedestrian control signal as provided in § 21-203 of this subtitle, pedestrians facing a steady red signal alone may not enter the roadway.

(m) *Applicability of section.* — Except for those provisions of this section that by their very nature cannot apply, this section applies to a traffic control signal placed at a location other than an intersection. Each stop required by the signal shall be made at a sign or marking on the pavement indicating where the stop shall be made or, if there is no sign or marking, at the signal. (An. Code 1957, art. 66½, § 11-202; 1977, ch. 14, § 2; ch. 447; 1986, ch. 410; ch. 472, § 1; 1993, ch. 278; 1997, chs. 45, 315; 1998, ch. 360; 1999, ch. 401, § 2.)

**Effect of amendments.**

Chapter 401, Acts 1999, effective Oct. 1.

1999, reenacted (h), (l), (j) and (m) without change.

### § 21-202.1. Traffic control signal monitoring systems.

**Federal court not proper forum for challenge.** — Plaintiff was precluded from challenging in federal court the State court's determination that he violated Maryland traffic law and he lacked standing to assert a general challenge to the State statute that permits

placement of red lights at intersections to catch violators. The proper forum for plaintiff's challenge to the statute is an appeal in State court from the district court's ruling. *Dajani v. Governor & Gen. Assembly*, — F. Supp. 2d — (D. Md. Jan. 24, 2001).

### § 21-207. Funeral processions.

(a) *Procession may proceed through red light.* — Notwithstanding any other provision of this title, a funeral procession facing a red signal may continue through or make a turn at an intersection if the first vehicle in the procession already entered the intersection before the signal changed from green to red.

(b) *Other vehicles prohibited from entering intersection.* — While a funeral

procession is proceeding through a red signal as permitted by this section, a vehicle that is not in the procession may not enter the intersection, even if it is facing a green signal, unless it can do so without crossing the path of the procession. When the red signal changes to green while the funeral procession is still within the intersection, a vehicle facing a green signal may proceed, but the funeral procession has the right-of-way.

(c) *Headlights to be on.* — The driver of a vehicle in a funeral procession does not have any privilege granted in this section unless:

(1) The headlights of the vehicle are turned on; and

(2) Subject to § 22-221 (g) of this article, the warning lamps of the vehicle are flashing. (An. Code 1957, art. 66½, § 11-202.1; 1977, ch. 14, § 2; 2001, ch. 212.)

*Effect of amendments.* — Chapter 212, Acts 2001, effective Oct. 1, 2001, substituted "a vehicle" for "any vehicle" in the second sentence

in (b); divided the former language of (c) into introductory language and (c) (1); and added (c) (2).

*Subtitle 3. Driving on Right Side of Roadway; Overtaking and Passing; Use of Roadway.*

**§ 21-304. When passing on right is permitted.**

*Cited in* McQuay v. Schertle, 128 Md. App. 556, 730 A.2d 714 (1999), cert. denied, 356 Md. 18, 736 A.2d 1065 (1999).

**§ 21-307. No-passing zones.**

*Stated in* United States v. Beckman, 3 F. Supp. 2d 654 (D. Md. 1998).

**§ 21-309. Driving on laned roadways.**

*No violation of this section to warrant stop.* — Denial of defendant's motion to suppress and his conviction for possession of marijuana with intent to deliver were reversed where defendant's momentary crossing of the edge line of the roadway and later touching of

that line did not amount to a traffic violation under this section and did not give probable cause for the traffic stop. *Rowe v. State*, — Md. —, — A.2d — (Apr. 4, 2001).

*Quoted in* Poteat v. Sauter, 136 Md. App. 383, 766 A.2d 150 (2001).

**§ 21-313. Restrictions on use of controlled access highways.**

(a) *State Highway Administration and local authorities may prohibit certain uses.* — The State Highway Administration, by order, or any local authority, by ordinance, may prohibit the use of any controlled access highway in its jurisdiction by parades, funeral processions, bicycles, or other nonmotorized traffic or by any person operating a motorcycle.

(b) *Soliciting funds, rides, employment or business in Charles County.* — The County Commissioners of Charles County, by ordinance, may prohibit the

(h) *Incorporation in other lamps of vehicle.* — Turn signal lamps may, but need not, be incorporated in other lamps on the vehicle. (An. Code 1957, art. 66½, § 12-219; 1977, ch. 14, § 2; 1986, ch. 472, § 1.)

§ 22-220.

Reserved.

§ 22-221. Additional lighting equipment.

(a) *Side cowl or fender lamps.* — Any motor vehicle may be equipped with not more than two side cowl or fender lamps that:

- (1) Emit an amber or white light without glare; and
- (2) Are located at or near the front of the vehicle.

(b) *Running-board courtesy lamps.* — Any motor vehicle may be equipped on each side of the vehicle with not more than one running-board courtesy lamp that emits a white or amber light without glare.

(c) *Backup lamps.* — Any motor vehicle may be equipped with one or more backup lamps, either separately or in combination with other lamps, but any such backup lamp may not be lighted when the motor vehicle is in forward motion.

(d) *Warning lamps — Permitted.* — Any vehicle may be equipped with lamps used for the purpose of warning the drivers of other vehicles of the presence of a vehicular traffic hazard requiring the exercise of unusual care in approaching, overtaking, or passing, and, when so equipped, may display the warning in addition to any other warning signals required by the Maryland Vehicle Law.

(e) *Same — Mounting.* — The lamps used to display this warning to the front shall be mounted at the same level and as widely spaced laterally as practicable and shall display simultaneously flashing white or amber lights, or any shade of color between white and amber. The lamps used to display this warning to the rear shall be mounted at the same level and as widely spaced laterally as practicable and shall display simultaneously flashing amber or red lights, or any shade of color between amber and red.

(f) *Same — Visibility.* — These warning lights shall be visible from a distance of not less than 1,500 feet under normal atmospheric conditions at night.

(g) *Models required to have warning lights.* — Every motor vehicle that is registered in this State and that was manufactured or assembled after June 30, 1967, and designated as a 1968 or subsequent year model shall be equipped either with these lamps or with some other device approved by the Administrator, by means of which the driver may cause both front and both rear turn signals to flash simultaneously as a vehicular traffic hazard warning.

(h) *Identification lamps — Vehicle 80 inches or more wide.* — Any vehicle 80 inches or more in overall width, if not otherwise required by § 22-208 of this subtitle, may be equipped with not more than three identification lamps showing to the front, which emit an amber light without glare, and not more than three identification lamps showing to the rear, which emit a red light without glare.

