

PRE-HEARING STATEMENT

Al Toler d/b/a Toler Funeral Home Special Exception Petition for Funeral Parlor and Undertaking Establishment

Description of Relevant Property

The property which is the subject of the Petition for Special Exception contains 3.35 acres of land identified as tax Parcel 69 with a street address of 900 E. Randolph Road, Silver Spring, MD 20904. The property is zoned R-90 and is located in the northeast quadrant of the intersection of E. Randolph Road and Fairland Road in the Colesville area of Silver Spring, Maryland. The property is currently zoned R-90 and is recommended for that zoning designation in the 1997 White Oak Master Plan.

The subject site has extensive frontage along East Randolph Road which is a six lane highway as well as a extensive frontage along Fairland Road, a major arterial road (A-75) which is master planned for an 80 foot right-of-way, four lanes of traffic and sidewalk improvements. The intersection of E. Randolph Road and Fairland Road is controlled by an existing traffic signal. The property is roughly triangular in shape with a declining elevation from the front to the rear of the property wherein the rear portions are heavily wooded. The property is currently improved with a single family residential structure and driveway access from Fairland Road.

Description of Surrounding Area

To the west and south on both sides of E. Randolph Road the property is zoned R-90 containing single family residential subdivision development. Several of the properties fronting along E. Randolph Road adjacent to the subject intersection have home based businesses. To the west, northwest across Fairland Road the property is zoned RE-1 containing residential development up to the Colesville Shopping district surrounding Randolph Road and New Hampshire Avenue approximately 2000 feet east of this property. The subject property notwithstanding its R-90 zoning is one of the largest parcels of land in the surrounding neighborhood. The size of the brick residential structure on the property at 2630 square feet is consistent with the size of the structures in the surrounding community, the land area exceeding three acres in size is considerably larger than the lot sizes in the surrounding areas.

Proposed Use

Petitioner proposes to maintain upon the subject property a funeral home and undertaking establishment while retaining and converting the brick residential structure presently containing 2630 square feet of floor area on two levels. The exterior facia of the

existing building will be renovated and upgraded (See Elevation Drawings). The interior of the structure will be modified for this purpose with the only additions being the construction at the rear of the building of a five car attached garage (with a patio deck on the roof of the garage): the construction of porte co-chere at the front entrance and parking areas off the extended driveway. One parking area will face Fairland Road containing ten (10) spaces plus a handicapped space. A second parking area containing seventeen (17) spaces will face East Randolph Road. Modest signage and lighting is also proposed consistent with the nature of this use and its fairly limited operation. The interior main floor of the existing building will contain a lobby area off of the front entrance, two visitation rooms, a lounge with restrooms, a casket selection room, and an arrangements office for meetings with clients and an executive office. A small outdoor deck is proposed to be located on the roof of the new garage addition. The newly constructed garage will be approximately 50 feet by 32 feet in dimensions. The garage will have access to the lower floor of the existing building which will contain the receiving area, prep room, employee lounge, business office and storage facilities as noted on the submitted floor plan. An underground tank for embalming fluid will be located between the house and parking area facing E. Randolph Road. Improvements will be made to the exterior facade of the building in keeping with its existing residential appearance (See Elevation Drawings).

Access is provided by an existing driveway to be restricted as right turn in only and a new two way driveway from Fairland Road to the front and rear of the building as well as to the parking areas. The parking areas will be surrounded by landscape materials to screen viewing of the vehicles from adjacent properties. Signage will be a monument style sign located adjacent to the corner of the two (2) intersection roads. An additional portico will be added at the front of the entrance as an architectural amenity and as protection against the elements for employees and visitors. The five vehicles associated with this use would be stored within the proposed garage to be erected at the rear of the existing house.

Typical of the operational characteristics of the proposed use would be a family calling upon the funeral home to obtain basic information as to funeral arrangements. Funeral arrangements can be made at the home of the family or at the funeral home. The deceased is then moved to the funeral home and then prepared for the funeral service and burial or cremation. The family may return to the funeral home for viewing but the funeral services are conducted off-site at a church, chapel or grave side depending upon the specific instructions of the deceased family. Since the proposed facility will have no on-site chapel or other facility for formal funeral services, large numbers of people will not congregate on site nor would there be any traditional processions from this facility. The facility will operate from 9:30 a.m to 4:00 pm and 7:30 pm to 9:00 pm daily, Monday through Friday exclusive of the work of the funeral director, office manager and embalmer which may extend beyond these hours. During weekends the facility will operate 9:00 a.m. to 9:00 p.m. Consequently, the hours of operation as described previously will be outside of the peak am and pm traffic hours.

Proposed Witnesses

Mr. James Crawford - Land Planning Consultant and Engineer - will describe the features depicted on the site plan and will testify that the application meets all the general and special zoning requirements for the establishment of a funeral parlor or undertaking establishment. This witness will further testify that the use is compatible and harmonious with the surrounding area, and will not be detrimental to the use and enjoyment of adjacent properties and is in conformance with the area master plan principles and will not produce any nuisance type effects on adjacent properties. Further, this witness will testify as to the availability of all utilities and public safety facilities and certain aspects of need.

Cynthia A. Tobin - Professional Architect will testify as to the futures of the site plan, elevation drawings, interior floor plans, signage, lighting, and other building and site features. This witness will testify that the application conforms to all development standards in the R-90 zone and that the use is architecturally compatible with existing and planned development in the surrounding communities. This witness will also testify that the use will not produce any nuisance type effects on adjacent properties.

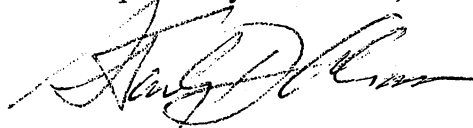
Mr. Lee Cunningham - Traffic engineer – will testify as the traffic impact from the petitioned use, describe the surrounding road system and the effects of the subject development upon that road system. This witness will further testify as to matters of on-site and off-site circulation and safety with respect to the movement of traffic.

Mr. Al Toler – Representing the applicant will testify as to the intended use and operational characteristics of the use and the lack of any adverse effect upon adjacent property, as well as need for the facility.

Estimated Time for Presentation

The Petitioner estimates that approximately three hours will be required to present its case, exclusive of cross-examination.

Respectfully submitted,



Stanley D. Abrams
Counsel for Petitioner
4550 Montgomery Avenue, #760N
Bethesda, Maryland 20814

OPERATIONAL CHARACTERISTICS

Proposed Funeral Home Use
900 E. Randolph Road
Silver Spring, Maryland 20904

- PETITIONER:** Al Toler d/b/a Toler Funeral Home
626 Riverside Drive
New York, NY 10031
- OWNER:** Bernard S. Hull
900 E. Randolph Road
Silver Spring, MD 20904
- LOCATION OF PROPERTY:** Northeast corner of E. Randolph Road and Fairland Road, Silver Spring, Maryland with a street address of 900 E. Randolph Road, Silver Spring, Maryland, 20904
- DESCRIPTION OF PROPERTY:** The subject property zoned R-90 contains 3.35 acres of land which slopes downward from the road frontage to the rear of the property which is wooded. The property is improved with a single family residential dwelling of brick construction. Access is via a driveway from Fairland Road.
- ZONING AND PLANNING:** The property is zoned R-90, which is the land use and zoning recommendation in the Approved and Adopted 1997 White Oak Master Plan. The subject application complies with the recommendations as to special exception considerations in the text of the Master Plan. (P. 24).
- PROPOSED USE:** Funeral home with no on-site chapel. The existing single family dwelling will be retained and converted into the funeral home. The facade of the existing building will be renovated and upgraded (See Elevation Drawings). Added to the existing building shell will be a porte co-chere at the front entrance and an attached garage at the rear of the structure for five vehicles above which will be a walk out patio/deck from the existing structure. Parking will be provided

for 28 vehicles off an extended driveway around the funeral home facing E. Randolph Road and Fairland Road. Lighting will be residential in appearance and signage will consist of a single sign facing both E. Randolph Road and Fairland Road (see elevations). Additional landscaping will be provided including screening around the off-street parking areas. The above described elements are more fully depicted on the site plan, floor plan and elevation drawings submitted with the application.

TYPICAL OPERATIONAL CHARACTERISTICS:

A family would call the funeral home and basic information obtained. Funeral arrangements can be made at the home of the family or at the funeral home. The deceased is then moved to the funeral home and prepared for the funeral service and burial or cremation. The family returns to the funeral home for a viewing and based on specific arrangements with the family, the deceased is taken to a church or other facility off-site for a funeral service with burial or cremation to follow. The proposed facility will have no on-site chapel and any repast following the off-site funeral service is also conducted off-site, usually at the families church.

Hours of Operation:

On-site: 9:30 am - 4:00 pm and 7:00 pm - 9:00 pm
Monday through Friday exclusive of work of funeral director, office manager and embalmer which may extend beyond the hours listed. Saturday and Sunday hours will be from 9:00 a.m. - 9:00 p.m.

Employees:

Owner/Funeral Director
Office Manager/Receptionist
Contract employees - Four
 Embalmer working
 Three Drivers working

Vehicles:

(1) Hearse
(2) Limousines
(1) Lead Car
(1) Removal Vehicle

Inventory & Machinery:

Caskets and urns displayed in showroom
Remembrance items
Prep room materials
Two (2) fluid injection machines
Landscaping equipment

**SEWER AND WATER
AVAILABILITY:**

The property is presently served by public water and sewer and is within categories W-1 & S-1, respectively in the Montgomery County Comprehensive Ten Year Water & Sewer Systems Plan.

**POLICE AND FIRE
SERVICE:**

The property is served by the Wheaton-Glenmont Police and Fire Stations located on Randolph Road near Georgia Avenue in Wheaton, Maryland.

**COMPLIANCE WITH
ZONING ORDINANCE
STANDARDS:**

The Petitioner intends to proffer at the public hearing through exhibits:

1. That the funeral home use is a permissible special exception in the R-90 Zone.
2. That the use will conform to the requirements for a funeral parlor or undertaking establishment set forth in section 59-G-2.23 of the Zoning Ordinance in that:
 - A. The use is devoted to services typically associated with a funeral parlor and undertaking establishment. The services to be provided are described in the "typical operational characteristics" described herein above. These include consultations and making preparations with the deceased family for funeral arrangements, transporting the deceased to and from the funeral home, preparation of the deceased for burial or cremation, having samples of caskets, urns, etc. on display and assisting the family of the deceased with all specific arrangements associated with funerals. There would be no cremation of the remains on-site.
 - B. The subject property containing 3.35 acres of land exceeds the minimum two (2) acre lot size requirement.
 - C. The existing residential building will be retained and modified for a funeral parlor use. The building and proposed rear garage will be setback considerably in

excess of the 50 foot side yard and rear yard setbacks required for this use as depicted on the special exception site plan.

D. The proposed use will be served by existing public water and sewer facilities which are both available and adequate for the proposed operation. The property is located within water category W-1 and sewer category S-1 as noted in the Montgomery County Ten Year Water and Sewer Systems Plan.

E. The building will retain its existing residential appearance with the modified renovations as reflected in the elevation drawings attached to this application. The grounds and the additional parking area contemplated will be landscaped and screened with materials consistent with the residential character of the neighborhood. The rear of the property is heavily wooded and will be retained in its natural state. Other landscaping throughout the site will be retained and supplemented to reinforce the residential appearance of the property in character with the neighborhood.

F. The property has frontage upon E. Randolph Road classified as a major highway (M-75) which currently is a six-lane divided roadway within a 120 foot right-of-way. The property also has frontage on Fairland Road designated as an arterial roadway (A-75) in the White Oak Master Plan with a minimum right-of-way of 80 feet and recommended to be four lanes between E. Randolph Road to Paint Branch according to the master plan. The proposed access will continue to be to Fairland Road which in turn accesses to E. Randolph Road at a signalized intersection. The existing driveway on Fairland Road closest to the intersection will be designated for right turn only and a new driveway will be constructed for full turning movements on Fairland Road a considerable distance from the intersection.

3. That the use will conform to the general conditions for granting special exceptions set forth in section 59-G-1.21 of the Zoning Ordinance in that:

(1) The use is a permissible special exception in the R-90 Zone.

(2) The use complies with the standards and requirements set forth in section 59-G-2.23 of the Zoning Ordinance as explained above.

(3) The use is consistent with the general plan for physical development as set forth in the 1997 White Oak Master Plan. The property is recommended in the Master Plan for residential, R-90, Zoning and that zoning will be retained on this property. The existing residential structure will be retained and converted to the proposed use with the only exterior additions being a portico in front of the entrance, an attached garage addition to the rear of the house, a twenty-five space parking area which would be screened by landscaping, and modest, conservative signage. Cosmetic upgrades to the exterior shell of the existing

house are also contemplated. Overall, the visual character of the buildings will remain residential and the existing and proposed landscaping will enhance that residential character. The Master Plan objectives for special exceptions in the White Oak Master Plan (p.24) will also be achieved in that:

- * The subject special exception will be located along two major transportation corridors (E. Randolph Road and Fairland Road) and will be compatible with the surrounding residential communities in terms of continued residential appearance of the building and yard areas low, density character of the use and hours of operation at off peak traffic periods.

- * The small twenty-five space parking area will be screened from view of surrounding neighborhoods.

- * Retention of the existing residential building and the modifications and additions proposed will continue to be compatible with the character and scale of adjoining neighborhoods.

- * The proposed off street parking and driveway areas and the limited proposed garage addition will add only modest impervious areas to the overall 3.35 acre site retaining much of the property in its existing state including the wooded areas to the rear of the property.

(4) The use 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 subject property is located along a major highway along the edge of established residential communities. The existing building will be retained and the garage structure proposed to be attached to the rear of the building will blend in visually with the existing building and is blocked from view from the public roadways and is a considerable distance from any adjacent residential homes. The existing residential building is of a design scale and bulk consistent with other residential structures within the adjacent communities. The fact that there will be no chapel on-site and that traditional funeral services will be conducted off-site at churches, other facilities or at grave site will significantly lessen the intensity, character and scope of activity, traffic and parking conditions. Consequently, no long funeral processions will be generated from this operation. There are no similar uses within the immediate vicinity of this property with the nearest such use as being to the south on Lockwood Drive and New Hampshire Avenue.

(5) The use will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood. Most of the activity on the site will be related to counseling or making funeral arrangements with

the families of the deceased, selection of caskets, urns, etc., preparation of the deceased for burial or cremation, limited family viewing of the deceased and transportation of the deceased to off-site churches and other locations for traditional funeral services. The property is one of the largest lots in this community and is heavily wooded and therefore respects the privacy and activities of adjacent residential properties. Most physical activity is oriented within the building and toward the front of the subject site away from adjacent homes and any adverse effects.

(6) The proposed use will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity with the exception of limited vehicular activity to the site at off peak hours, the activity is basically contained to the interior of the premises.

(7) Approval of the subject special exception will not increase the number, intensity or scope of special exception uses sufficiently to adversely effect the area or its predominantly residential nature.

(8) The proposed use will not adversely affect the health, safety, morals, security, or general welfare of residents, visitors or workers of the area. The site is located along a major highway and the activities do not involve access or other involvement with adjacent residential areas. The nearest residences are a considerable distance from this property and those to the rear are also buffered by a heavy stand of trees

(9) The proposed use will be served by adequate public services and facilities which will be reviewed in detail since the property will be required to submit to preliminary subdivision plan approvals by the county planning board. Further, the off-peak hours of operation will ensure minimal peak hour traffic impact on adjoining road ways and intersections. Also, formal funeral services will be conducted off-site, negating a need for formal funeral processions and therefore not affecting safety or circulation of vehicular or pedestrian traffic

(10) The traditional inherent affects of this use generally are two-fold: (a) Large size buildings and (b) traffic and physical activity involving large funeral services and processions. Neither inherent factor applies in this case. The use and conversion of the existing residential structure with the limited additions of the garage attached to the rear of the structure, a portico in front and small parking area do not visually affect the residential character of this property or the surrounding neighborhood. Further, the lack of facilities for traditional funeral services and the use of off-site churches, chapels, etc. do not necessitate large congregations of people to this property more in gender of the traditional funeral procession with its intended traffic impacts. Additionally, activities on-site will be located outside of the peak traffic hours to further reduce any impact of this operation.

ABRAMS, WEST & STORM, P.C.

ATTORNEYS AT LAW
SUITE 760N
4550 MONTGOMERY AVENUE
BETHESDA, MARYLAND 20814-3304
(301) 951-1550
FAX: (301) 951-1543

M. GREGG DIAMOND
OF COUNSEL

KENNETH R. WEST
STANLEY D. ABRAMS
HARRY C. STORM
CATHY G. BORTEN
JAMES L. PARSONS, JR.

PRACTICING IN MARYLAND AND
THE DISTRICT OF COLUMBIA

WRITER'S DIRECT DIAL NUMBER
(301) 951-1540
EMAIL "sabrams@awsdlaw.com"

May 19, 2003

Mr. Joel Gallihue, Zoning Analyst
Community Based Planning Division
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, MD 20910

**RE: Special Exception S-2577
Petition of Al Toler
Funeral Home Petition**

Dear Mr. Gallihue:

This letter will state the petitioners position with respect to your question of compliance with the following special conditions provision in §59-G-2.23 of the Zoning Ordinance relating to funeral home requirement:

“(b)(6) Frontage upon and access to a street or roadway having more than one through travel lane in each direction of travel.”

It is the petitioners position that we comply with this requirement because we have frontage upon E. Randolph Road (a road that has more than one travel lane in each direction) and we have access to that road via Fairland Road to a signalized intersection with E. Randolph at the corner of the property. The term “access” is defined in the Zoning Ordinance (§59-A-2.1) as “a means of approach or admission”. The above stated requirement for “access” does not similarly require that the access be “direct”, “immediate”, “abutting” or any other qualifying language which required the access from a property to cut directly into a roadway of that size and configuration. Case law in Maryland is clear that a court or administrative agency cannot impute or infer language into a statute which is not written in the statute: Abington Ctr. Association Ltd. v. Baltimore County, 115 Md. App. 580, 603, 694 A2d 165 (1997), Harford County v. McDonough, 74 Md. App. 119, 526 A2d 724, 726 (1988). In the recent decision of Harford County v. Bel Air Realty Associates, 148 Md. App. 244, 811 A2d 828 (2002), the Maryland Court of Special Appeals interpreted a phrase used in the county zoning ordinance in terms of a locational requirement for a certain type of project. The requirement was for such projects to be “directly accessible” from one

or more existing or planned arterial or collector roads and found that the requirement meant immediate or abutting access to that type of roadway and not access through local residential streets. The court found that:

“In short, we conclude that the adverb “directly” qualifies the adjective “accessible” to some extent and does so in a manner that effectuates the interpretation set forth by the Board of Appeals and the Department of Planning & Zoning” (881 A2d 839).

In the subject application we have no similar adverb which qualifies the adjective “access” nor can staff legally impute such a requirement particularly when a similar requirement in the C-3 Zone has not similarly been interpreted this way in previous C-3 Zone cases.

By way a precedent an almost identical provision found in the Purpose Clause of the C-3 Zone (§59-C-4.360) has been interpreted and applied consistent with petitioners position. The C-3 Zone Purpose Clause states in relevant part:

“It is the intent of this zone to provide a method for the orderly grouping and spacing of commercial development on properties which abut or front on, and have access to, heavily traveled major highways with a planned or existing pavement of at least six (6) lanes” (§59-C-4.360)

Please note that again the above quoted provision of the C-3 Zone has a requirement for access to a certain size and type of road but again without a modifier or adverb that the access be “direct”, “immediate” or “abutting” that road. This language has historically been part of and applied in various C-3 Zone applications. Two recent C-3 Zone cases are cases in point and were reviewed by technical staff, the planning board, the hearing examiner and decided affirmatively by the District Council.

In LMA No. G-788 which involved reclassification in 2002 to the C-3 Zone of property for an auto filling station at the intersection of MD Rt. 118 and Bowman Mill Drive where access to the required six (6) lane highway was via Bowman Mill Drive to MD Rt. 118 because SHA denied access from the property directly onto MD Rt. 118 (see attached District Council Opinion and approved Schematic Development Plan).

In LMA No. G-799 which involved reclassification, again in 2002 to the C-3 Zone fronting on MD Rt. 118 between Wisteria Drive and Middlebrook Road for a car wash, the

Mr. Joe Gallihue
May 19, 2003
Page 3

approved access was to Walter Johnson Road, to Wisteria Drive to MD Rt. 118. Again this was due to denied access onto MD Rt. 118 similar to the subject situation where access would not be permitted directly onto E. Randolph Road (see attached District Council Opinion and Schematic Development Plan).

Both of the above described cases and I'm certain others in the C-3 Zone cases did not require immediate, abutting or direct access. To now apply a substantially similar requirement for access in a different fashion is both arbitrary and capricious.

We would also point out that the access requirement for funeral homes was to prevent funeral home processions from navigating through residential neighborhood streets. We are neither going to have funeral processions from this site (see Statement of Operations and Prehearing Statement filed with the Application), nor does our location and proximity to E. Randolph Road require the use of neighborhood streets. It also seems incongruous to require only direct immediate access to four (4) lane roads where the flow from funeral processions (if we were to have such processions) would obstruct the flow of traffic on those roads.

In conclusion, this is not and should not be an issue in this case, just as it is not an issue in previous cases involving the C-3 Zone.

Very truly yours,



Stanley D. Abrams

SDA:dw

cc: Al Toler
James Crawford
Lee Cunningham
Montgomery County Board of Appeals