

J13 6-28-18

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(5800-5806 Windsor Mill Road)		
1 st Election District	*	OFFICE OF
1 st Council District		
Lorraine-Windsor, LLC	*	ADMINISTRATIVE HEARINGS
Legal Owner		
Petitioner	*	FOR BALTIMORE COUNTY
	*	Case No. 2018-0289-SPH

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of a Petition for Special Hearing filed on behalf of Lorraine-Windsor, LLC, legal owner ("Petitioner"). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("BCZR") seeking confirmation of lawful nonconforming use status for a cemetery monument works, display and sales business on the subject property. A site plan was marked and admitted as Petitioner's Exhibit 1.

Walter Tegeler, III and Craig Rodgers (who prepared the site plan) appeared in support of the petition. Michael P. Tanczyn, Esq., represented the Petitioner. There were no protestants or interested citizens in attendance. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning ("DOP") and the Bureau of Development Plans Review ("DPR"). Neither agency opposed the request.

As noted above this special hearing case concerns the Tegeler Monument Company operated on Windsor Mill Road in the Woodlawn area of Baltimore County. Petitioner contends the business has been in operation at this location since 1897, which was of course long before the adoption of zoning regulations in Baltimore County. Generally speaking, a nonconforming use is

one that was operating lawfully as of the date zoning regulations were first adopted which rendered the use non-permitted. *Howard County v. Meyer*, 207 Md. 389 (1955). The BCZR defines a nonconforming use as “[a] legal use that does not conform to a use regulation for the zone in which it is located or to a special regulation applicable to such a use.” BCZR §101.1.

The subject property (approximately one acre in size) is split-zoned BL and DR 5.5, and Petitioner’s business cannot be operated lawfully in either of those zones under the current regulations. A “stone or monument works” business is permitted only in the BR zone. BCZR §236.1.C. Hence the need for a special hearing to determine whether the operation qualifies as a lawful nonconforming use. To the extent Petitioner can establish the monument company has been in operation since at least 1945 (the date zoning regulations were first adopted in Baltimore County) the Regulations permit the continuation of the business unless the use has been changed or discontinued for a period of one year or more. BCZR §104.1.

Petitioner presented an abundance of evidence in the form of testimony, affidavits, photographs, genealogy records and other documents which establish the Tegeler Monument Company has been in operation at this site since at least 1945. State tax records (Exhibit 2A) indicate the original commercial structure on the site was built in 1912. Census records from 1910 (Exhibit 7) show that William Borgmann (the Great-Great-Grandfather of Walter Tegeler, III, whose family now runs the business) owned a business at this location and was a “tombstone cutter.” A death certificate for that same individual (William Borgmann) dated November 29, 1940 listed his address at “Windsor Mill Road and Lorraine Avenue” (i.e., the subject property) and occupation as “memorial dealer.” (Exhibit 7). His son died in 1949, and Milton Borgmann, Sr.’s death certificate notes he resided on Lorraine Avenue in Woodlawn and was employed as a “monuments-stone cutter.”

In addition, an article published in the "Woodlawn Villager" newspaper dated June 1997 (Exhibit 9) recounts in some detail the "100-year history of the monument company" located at the subject property. The article included an historical photograph showing William Borgmann with his son Milton in front of the original commercial building with monuments displayed for sale immediately adjacent thereto, a practice which has continued to the present day.

This evidence (which is only a distillation of the voluminous exhibits and testimony presented at the hearing) establishes in a clear and convincing fashion that the monument business has been operated at this property since at least 1945, and it may continue to operate in this fashion subject to the conditions and restrictions set forth in B.C.Z.R. §104. There is no evidence in the record to suggest the nature of the business has been changed over the years or that such use has been abandoned or discontinued for one year or more. As such the petition for special hearing will be granted.

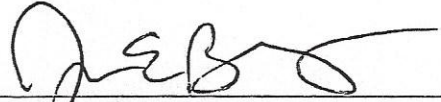
The DOP suggested that certain conditions be included in the final order and those appear below. The DPR suggested a landscape and lighting plan was required, although I respectfully disagree. As an initial matter, this special hearing in essence sought a declaration rather than a variance, special exception or other substantive zoning relief. As indicated above the business has been operated at this location for 100+ years, and Petitioner is not at the present time proposing any new structures or improvements to the site. Finally, as an aerial photograph of the site (Exhibit 3) reveals, the business is bordered on two sides by cemeteries, and Petitioner has erected stockade fencing on the other sides of the site to screen the view from adjacent homes. Thus I do not believe a landscape or lighting plan should be required.

THEREFORE, IT IS ORDERED this 29th day of June, 2018 by this Administrative Law Judge, that the Petition for Special Hearing to confirm that the cemetery monument works, display and sales operation conducted at the subject property qualifies as a lawful nonconforming use, be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon the following:

1. No used tires or damaged and/or disabled motor vehicles may be stored on the subject property.

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



JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:sln