

**DISTRICT COUNCIL FOR PRINCE GEORGE'S COUNTY, MARYLAND
OFFICE OF THE ZONING HEARING EXAMINER**

**SPECIAL EXCEPTION
4795**

DECISION

Application: Funeral Home and Accessory Reception Hall
Applicant: Eric D. Strickland/ t/a Strickland Funeral Home
Opposition: Raycena Moyer and Samuel Moyer
Hearing Dates: February 19, 2020
Hearing Examiner: Maurene Epps McNeil
Disposition: Approval with Conditions

NATURE OF PROCEEDINGS

(1) Special Exception 4795 is a request to construct an 11,612-square-foot Funeral Home and a 9,184-square-foot "ancillary" Reception Hall on 7.39 acres of R-R (Rural Residential) zoned land located in the southwest quadrant of the intersection of Enterprise Road (MD 193) and Belvidere Road, and identified as 3800 Enterprise Road, Bowie, Maryland.

(2) The Technical Staff recommended approval with conditions. (Exhibit 21) The Planning Board chose not to schedule a hearing on the request and adopted the Technical Staff's recommendation as its own.

(3) Mr. and Mrs. Moyer appeared at the hearing in opposition to the request. The President of the Enterprise Estates Civic Association appeared in support of the Application.

(4) At the close of the hearing the record was left open to allow Applicant to submit additional documents. Those items were received on March 6, 2020 and the record was closed at that time.

FINDINGS OF FACT

Subject Property

(1) The subject property is one parcel, Parcel 57, located on Tax Map 53 in Grid E-3, and recorded in the Prince George's County Land Records in Liber 39411 at Folio 134.¹ A portion of the subject site (3.79 acres) is currently improved with a nursery and garden

¹ If the instant request is approved, a preliminary plan of subdivision will be required prior to the issuance of a building permit.

center, greenhouse, office trailer and retail sales pursuant to Special Exception 4481 ("SE-4481") approved in 2005. The remaining acres are improved with an early 20th century farmhouse and outbuildings. The boundaries of the instant request include all of Parcel 57. All structures will be razed if the Application is approved.

(2) The property is bounded on the north by Belvidere Road with vacant property beyond in the R-R Zone; on the south by single-family detached dwellings in the R-R Zone; on the west by single-family detached dwellings in the R-R Zone and Whittier Road beyond; and, on the east by MD 193 and beyond by single-family detached dwellings in the R-A Zone. The neighborhood is bounded by John Hanson Highway (US 50) to the north; Newton White Mansion/Enterprise Golf Course to the south; Enterprise Road (MD 193) to the east; and, Lottsford Branch to the west.

(3) The subject property has been issued a standard letter of exemption from the provisions of the Prince George's County Woodland and Wildlife Habitat Conservation Ordinance because it contains less than 10,000 square feet of woodland. (Exhibit 5) It has also been issued a Natural Resources Inventory Equivalency Letter which notes that the Site Plan indicates there are no regulated environmental features on the subject site or that no on-site regulated environmental features will be impacted. (Exhibit 6) The property is not within the Chesapeake Bay Critical Area Overlay Zones. The Tree Canopy Coverage Ordinance, found in Subtitle 25 of the Prince George's County Code, does apply to the Application and is further addressed below.

Master Plan/General Plan

(4) The 1990 Master Plan Amendment and Sectional Map Amendment for Largo-Lottsford, Planning Area 73 recommends low suburban land uses for the subject property. The 1990 Sectional Map Amendment retained the subject property in the R-R Zone.

(5) The 2014 General Plan (*Plan Prince George's 2035*) placed the subject property within the Established Communities Growth Policy Area. The General Plan notes that "Established Communities ... are most appropriate for context-sensitive infill and low-to medium-density development." (2014 General Plan, p. 20)

Applicant's Proposal

(6) Applicant requests permission to raze all structures on the approximately 7.4 acres and construct an 11,612-square-foot Funeral Home and 9,184-square-foot "ancillary" Reception Hall. The Funeral Home will have a legal limit of 504 occupants, and the Reception Hall will have a limit of 372. A total of 250 parking spaces is required for both uses and 250 spaces will be provided. The maximum lot coverage permitted is 193,110 square feet (60% of net lot). The Application indicates that there will only be 149,991 square feet of lot coverage (46.6%). The Special Exception Site Plan provides the

following Note in reference to the proposed Reception Hall:

36. Proposed Uses of the Ancillary Reception Hall:

- 1) Funeral Repasts – Families of Strickland Funeral Services ONLY.
Hours of Operation 12:00PM-5:00PM
- 2) Free Meeting Space for Community Non-Profit Groups – Civic Associations, Scouts of America, etc. Monday through Friday, 6:00PM - 8:00PM. No social events permitted.

Prohibited Uses of the Ancillary Reception Hall:

- 1) Social Events-Parties, Dances, Cabarets, etc.
- 2) Wedding Receptions, Graduation Parties, etc.
- 3) Rental to Outside Groups or Entities.

(Exhibit 33 (a); T. 57-64)

(7) Morgan Walubita, accepted as an expert in the field of civil engineering, testified on Applicant's behalf. He explained that the proposed Funeral Home will be located on the southeast portion of the site and the proposed Reception Hall will be located on the northwestern portion. (T.18-19) There are 250 parking spaces provided, sufficient to meet the parking requirements set forth in Part 11 of the Zoning Ordinance. (T.19-20). The property will be accessed solely from Belvidere Road and this access was revised to address recommendations of the Technical Staff and the Enterprise Road Corridor Committee. Mr. Walubita discussed Applicant's Landscape Plan and its compliance with the Landscape Manual. (Exhibits 15(a) - (b) and 33 (a)-(b)) He noted that some trees on site will be removed and replanted, with the exception of those located on the southwestern portion of the site. (T. 30-35)

(8) Most of Staff's recommendations were addressed on the revised site plan. However, Applicant disagrees with Staff's recommendations as to the correct size of the sign located on the subject property since: Enterprise Road (MD 193) has a right-of-way in excess of 100 feet and is a divided road with a median at this location south of Belvidere Road; and, Section 27-614(c) of the Zoning Ordinance (discussed below) allows a larger sign under these circumstances. (Exhibit 21, Backup p.36; T. 23-25)

(9) Applicant Eric D. Strickland testified in support of the request. He is the contract purchaser of the subject property and the principal of Strickland Funeral Home. (T.37) He submitted architectural renderings of the Funeral Home and Reception Hall. The Funeral Home will have a white brick façade, and the Reception Hall will be white stone. (T.46-48)

(10) Mr. Strickland described the interior of the Funeral Home. It will include two chapels—one that seats 200 people and another that seats 300. The chapels can be combined for larger services. He designed these chapels to be a little larger due to his experience at another Funeral home operated by him:

I designed this one a little bit larger because when I went into business [on Allentown Road] ... 85 percent of my services were [in] a church. As it stands now...less... services [are held] at church ... because it's not easy to have a ... church [service] as it used to be....

(T.52) (See, Exhibit 21, Backup p. 35)

(11) Mr. Strickland believes the Reception Hall could also be of benefit to civic associations or similar groups in the community. (T.67)

(12) John Ferrante, accepted as an expert in land use planning, testified on Applicant's behalf. He addressed the Application's compliance with the Special Exception requirements set forth in the Zoning Ordinance:

The statement of justification ... does break down every individual purpose in [Section] 27-102 but they are generally to protect [the] health, safety and welfare of the public, promote compatibility ... between various land uses, to guide orderly development and to ensure adequate public facilities and services. The proposed funeral home will fulfill a specific business need for members of the [C]ounty and it will generate revenue for the [C]ounty as well....

[Section] 27-357(a) requires that setbacks be 50 feet minimum when adjoining ... residential land. And in this case we do adjoin ...residential land and as you can see at Exhibits 14 and 15(a) and (b), the side and rear yard setbacks ... conform with that requirement. In fact, the minimum setback for the reception hall is 93 feet and the minimum setback for the funeral home is 112 feet. So we're almost double that minimum requirement. In [Section] 27-357(a)(2) it requires that the site be a minimum of one and a half contiguous acres. This site contains contiguous site area of 7.39 acres. In [Section] 27-357 (a)(3), the use shall not depreciate the value of neighboring properties. In fact, I will address [Section] 27-357(a)(3) and (a)(4) at the same time, if that's all right. One is that [it] shall not depreciate the value of properties and the other is [it] shall not adversely affect the character of neighboring properties.... Item Number 10 that's in your exhibit list is a real estate appraisal that's prepared by Sapperstein and Associates, LLC in November of 2018. I have reviewed that and in pages 2 and 27 of that report, the certified general real estate appraiser who prepares it finds that the proposed facility will have no detrimental impact on the value of the properties of the neighborhood. Primarily due to the design and operational considerations that include the increased building setbacks, that are in excess of the County Code, the wide planting strips and buffer areas that are going to be provided around the perimeter of the property and that will

block the visibility of the adjacent residential properties. The residential like building design that's been implemented for the design of the buildings.... The vehicle access only being from the north where there is no residential development in that immediate vicinity. Funeral services that only occur during midday so as not to disrupt rush hour traffic. And no use of the facility outside of the funeral services and no use of the facility after 8:00 p.m.

That report further found that in the design of the proposed use of the facility, the applicant has been careful to mitigate the negative impacts on the neighboring properties... and, will implement design and operational measures so the use will be in harmony with the surrounding development without depreciating the neighboring property values.

In Finding 5, the use shall not create undue traffic congestion. The applicant has submitted a traffic impact analysis that was dated October 10, 2019, and was prepared by O.R. George and Associates. The traffic impact study does consider the proposal and its impact on the road network in the vicinity of the site. The [MNCPPC] transportation planning section found the findings and conclusions in the study and the onsite circulation to be acceptable if the application is approved with conditions.

Should the subject application obtain approval of the Special Exception, the Preliminary Plan of Subdivision will also be required prior to the approval of any building permits. A revised traffic study will be submitted at that time and further reviewed to ensure transportation adequacy.

(T. 79-83)

(13) Applicant submitted the real estate appraisal report prepared by Sapperstein & Associates, LLC., discussed above. (Exhibit 10) The report concluded that the prospective market value of the property would be over Six Million Dollars, if certain "limiting conditions" were addressed (which primarily dealt with hours of operation and other mitigation of possible adverse impacts on the local residential properties, conformance to all applicable laws, adequate construction materials, and development in a timely and professional manner).

(14) The real estate report included the following analysis pertinent to the instant request:

The subject property is a small "farmette" proposed to be developed as a funeral home facility. It is located in Mitchellville, a close-in suburb in Prince George's County to the east of Washington DC. Mitchellville is a middle- to upper- middle income bedroom community to the east of Washington DC.... The median family income in the census track of the subject [property]... is about \$128,470.... The local area is lightly to moderately populated, with about 4,608 +/- residents within one mile of the subject [property] and 54,457 +/- within three miles. The average

home sales price since January 1, 2017 within one-half mile of the subject [property] was about \$348,344, above average for Prince George's County.

Overall, the subject property is in a desirable area, has good visibility and is in an area with a well developed road system providing easy access. The local headcount is not dense, but more than 53,000 residents live within three miles. The underlying land is large enough for substantial development.

The subject neighborhood is a geographically well-defined area with homogenous and harmonious land uses. The demographics of the area are conducive to residential uses supported by commercial uses along the major corridors. The population is stable and provides both a labor supply and a market for businesses within the larger area. The residential market is relatively healthy in view of the general economy and the forces specific to the neighborhood. Governmental factors present no impediment to commercial use or development. Public services such as fire, police and medical services are adequate. Public utilities are available in adequate quantities and priced competitively with other jurisdictions. There are no nuisances or hazards to our knowledge which threaten continued commercial or residential use or development within the subject neighborhood....

Commercial development can potentially have a negative effect on single-family home prices for various reasons, including if it creates increases in vehicular traffic, if it creates light pollution, or if it is not in keeping/changes the character of the neighborhood. These impacts can be mitigated through thoughtful facility design and certain limits on the ongoing operation of the facility....[A] commercial property can make positive contributions to a community by generating taxes in excess of the resources absorbed. Also, a well designed facility can provide "polish" to an area....

The proposed funeral home facility improvements will consist of a reception hall containing 9,184 \pm square feet, a funeral home containing 11,612 \pm square feet, paved parking for 250 \pm vehicles and other associated site improvements. Based on input from the prospective owner/developer, the market area of the subject [property] (within three miles) is underserved by funeral home facilities. Assuming the proposed facility is built to a contemporary design and constructed using modern materials and techniques, the subject [property] could be expected to perform above its fair share in its competitive market. In the design and proposed use of the proposed facility, the developer has been careful to mitigate negative impacts on the local residential properties. This includes improvement setbacks in excess of that required by code; a wide plant and tree buffer around the perimeter of the property blocking visibility; residential-like building design; vehicle access only from Belvidere Road, where there is no residential development; funeral services only mid-day so as not disrupt rush hour traffic; no use of the facility after 8:00 P.M.; and no commercial use of the facility outside of funeral services....

(Exhibit 10, pp 9-10,22,34,40)

Opposition's Concerns:

(15) Reverend Raycena Moyer and Samuel Moyer appeared at the hearing, in opposition to the request. Reverend Moyer expressed concerns with the number of trees that would be removed to accommodate the Application. (T.32-33) She also questioned whether the repast center would "be used for social use and parties as well." (T.70)

(16) Reverend Moyer was "very pleased" by the Applicant's presentation at the hearing. Nonetheless she expressed concern about the traffic delay experienced by drivers, many of whom are elderly, when turning from Belvidere Road onto Enterprise Road. (T. 93)

Agency and Other Comment

(17) The Staff's Transportation Planning Section reviewed a transportation impact analysis prepared on Applicant's behalf by O.R. George & Associates, and opined that the request may impact Belvidere Road and Enterprise Road if background and future traffic "at both critical intersections during Saturdays, as well as weekday middays" is taken into consideration. However, the site will be accessed from Belvidere Road, and subdivision approval will be required which ensures that traffic impact will be fully addressed and mitigated. The Transportation Planning Section ultimately recommended that certain traffic conditions be imposed if the request is approved. (Exhibit 21, pp. 12-13)

(18) The Transportation Planning Section also noted that most of MD 193 in the vicinity of the subject property has minimal sidewalks and no shoulders, and "where other frontage improvements and intersection improvements have occurred" in the area "wide sidewalks and designated bike lanes have been provided." (Exhibit 21, Backup p. 201) Accordingly, staff suggested that a wide sidewalk be provided along MD 193 and a standard one be provided along Belvidere Road.

(19) The Staff's Community Planning Division opined that the request "will not substantially impair the integrity of the 1990 ... *Largo -Lottsford Master Plan....*" (Exhibit 21, Backup p. 186)

(20) The Staff's Environmental Planning Section noted that the Applicant's Woodland and Wildlife Habitat Conservation Letter of Exemption has expired and a new one would be required to be submitted with any permit application, and that the stormwater management concept plan and approval letter show the use of micro-bioretention/submerged gravel wetlands on the site. (Exhibit 21, Backup p. 190)

(21) The Staff's Historic Preservation Section offered the following comment:

The subject application proposes the demolition of all the existing buildings on the property. The applicant submitted a completed Maryland Inventory of Historic Property... form to Historic Preservation Section staff documenting the structures on the property. The existing buildings were documented by ... a ... qualified architectural historian and the submitted documentation included a chain of title, floor plans, and representative interior and exterior photos of the buildings. Due to the disturbed nature of the site and the completion of the Maryland Inventory of Historic Property form, a Phase I archeology survey is not recommended. Historic Preservation staff recommends approval of SE-4795 Strickland Funeral Home, with no conditions.

(Exhibit 21, Backup p. 199)

(22) The Staff's Urban Design Section opined that the request satisfied all applicable provisions of the Landscape Manual. It also noted that the Application is subject to the Tree Canopy Coverage Ordinance found in Subtitle 25 of the Prince George's County Code. Applicant provided a Tree Canopy Coverage ("TCC") schedule on the Special Exception Site Plan that indicates that the required 15% TCC will be provided on site. (Exhibit 21, p. 14)

(23) The Technical Staff Report included a discussion of the proposed sign for the use:

The special exception site plan labels an eight-foot-tall, 50- square-foot sign... along the eastern property which abuts MD 193. Detailed elevations of the signage have been provided with this application. The location of the sign shown on the site plan should be revised to be removed from the master-planned right-of-way of MD 193, which is delineated on the site plan, unless authorization is obtained from the Prince George's County District Council, in accordance with Section 27-259 of the Zoning Ordinance. The height and area of a sign in the R-R Zone for a nonresidential use is regulated in accordance with Section 27-615 of the Zoning Ordinance. In this instance, a funeral parlor is allowed by special exception in the Commercial Office (C-O) Zone and, therefore, sign regulations which are applicable to the C-O Zone shall set the standard for this development. The maximum signage height allowed is eight feet and the maximum area is 25 square feet. The site plan should be revised to reflect the maximum sign area to be 25 square feet...

(Exhibit 21, pp. 14-15)

(24) The Technical Staff recommended approval of the Application, with conditions, reasoning as follows:

The architecture for the front façade of the funeral home and reception hall was submitted

to the Planning Department and ... has been appropriately characterized in the applicant's [statement of justification]. It is recommended that the side and rear façade elevations also be submitted to ensure that consistent building materials and design features are used on those facades as well. The applicant also included a real estate appraisal report for the proposed use with the submittal of this special exception application ... and prepared by Sapperstein & Associates, LLC. The report opines that, given the design and operational considerations of the proposal, the proposed use will have no detrimental impact on the value of properties in the neighborhood. The report cites the following design and operational considerations in its conclusion including: setbacks in excess of that required by code; a wide plant and tree buffer proposed around the perimeter of the property; residential-like building design; vehicle access to the facility only from the north, where there is no residential development nearby; funeral services only mid-day so as not to disrupt rush hour traffic; no use of the facility after 8:00 p.m.; and no commercial use of the facility outside of funeral services.

The special exception site plan notes that the reception hall will be used for funeral repasts between the hours of 12:00 p.m. and 5:00 p.m. and may be used by non-profit groups between the hours of 6:00 p.m. and 8:00 p.m., Monday through Friday (no social events). The hours of funeral services should also be noted on the site plan, in accordance with the traffic study provided by the applicant, which indicates usage between the hours of 10:00 a.m. and 3:00 p.m. Staff finds that the proposed use will not depreciate the value of neighboring properties. The proposed use will be contained entirely within the subject property, provide buffering from surrounding properties and, as presented in the applicant's [statement of justification] and associated real estate report, will implement design and operational measures so that the use will be in harmony with the surrounding development without depreciating neighboring property values....

Based on the applicant's revised statement of justification, the analysis contained in the technical staff report, associated referrals, and materials in the record, the applicant has demonstrated conformance with the required special exception findings as set forth in Section 27-317 ... and Section 27-357, for a funeral parlor or undertaking establishment.... Therefore, staff recommends approval of Special Exception SE-4795 ... subject to ... conditions of approval....

(Exhibit 21, pp. 9 and 16)

(25) The Department of Permitting, Inspections and Enforcement noted that the Application "is consistent with the approved Stormwater Management Concept Plan No. 59998-2016." (Exhibit 21, Backup p. 188)

(26) The Enterprise Road Corridor Development Review District recommended approval of the request and provided the following comments:

- Given current traffic concerns along Enterprise Road during the day, efforts to minimize traffic making a left turn onto Belvidere Road should be considered.

- The proposed plan includes one entrance/exit to the site on Belvidere with minimal wayfinding on the corner of Belvidere and Enterprise. The Commission recommends additional wayfinding signs directing traffic to the funeral home on the corner of Belvidere and Enterprise to mitigate missed turns. Further, if the site allows, an additional entrance/exit should be considered to prevent bottlenecking during processions.
- Measures to enhance green initiatives on the site should be considered including use of sustainably sourced materials and potential Green Infrastructure Plan [c]onformance.
- Buffering along the residential border of the site should consider noise and construction staging impacts for the neighboring community....

(Exhibit 21, Backup p. 183-184)

LAW APPLICABLE

(1) The request for a Funeral Home and accessory Reception Hall must meet the requirements of Sections 27-317 and 27-357 of the Zoning Ordinance.

(2) Section 27-317 states:

- (a) A Special Exception may be approved if:
 - (1) The proposed use and site plan are in harmony with the purpose of this Subtitle;
 - (2) The proposed use is in conformance with all the applicable requirements and regulations of this Subtitle;
 - (3) The proposed use will not substantially impair the integrity of any validly approved Master Plan or Functional Master Plan, or, in the absence of a Master Plan or Functional Master Plan, the General Plan;
 - (4) The proposed use will not adversely affect the health, safety, or welfare of residents or workers in the area;
 - (5) The proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood; and
 - (6) The proposed site plan is in conformance with an approved Type 2 Tree Conservation Plan; and
 - (7) The proposed site plan demonstrates the preservation and/or restoration of the regulated environmental features in a natural state to the fullest extent possible in accordance with the requirement of Subtitle 24-130(b)(5).

(b) In addition to the above required findings, in a Chesapeake Bay Critical Area Overlay Zone, a Special Exception shall not be granted:

- (1) where the existing lot coverage in the CBCA exceeds that allowed by this Subtitle, or
- (2) where granting the Special Exception would result in a net increase in the existing lot coverage in the CBCA.

(3) Section 27-357 (a) of the Zoning Ordinance provides as follows:

(a) A funeral parlor or undertaking establishment may be permitted subject to the following:

- (1) The minimum side and rear yard setbacks shall be at least fifty (50) feet each, when adjoining land in any Residential Zone, or land proposed to be used for residential purposes on an approved Basic Plan for a Comprehensive Design Zone, approved Official Plan for an R-P-C Zone, or any approved Conceptual or Detailed Site Plan;
- (2) If the subject property is located in a Residential Zone, it shall contain at least one and one-half (1 1/2) contiguous acres;
- (3) The use shall not depreciate the value of neighboring properties;
- (4) The use shall not adversely affect the character of neighboring properties; and
- (5) The use shall not create undue traffic congestion.

(4) The Application must also satisfy the purposes of the R-R Zone found in Section 27-428 (a) of the Zoning Ordinance. This Section provides as follows:

(a) **Purposes.**

- (1) The purposes of the R-R Zone are:
 - (A) To provide for and encourage variation in the size, shape, and width of one-family detached residential subdivision lots, in order to better utilize the natural terrain;
 - (B) To facilitate the planning of one-family residential developments with moderately large lots and dwellings of various sizes and styles;
 - (C) To encourage the preservation of trees and open spaces; and
 - (D) To prevent soil erosion and stream valley flooding.

(5) The Technical Staff believes that the proposed sign must satisfy Section 27-615 of the Zoning Ordinance (concerning funeral parlors and all nonresidential uses permitted by right or by special exception in the C-O Zone). This Section requires the proposed sign to satisfy the provisions applicable to on-site signs in the C-O Zone set forth in Section 27-614.

(6) Section 27-614 provides, in pertinent part, as follows:

Sec. 27-614. - Freestanding signs.

(a) **Location.**

- (1) In all Commercial and Industrial Zones (except the I-3 and U-L-I Zones), signs shall only be located on property where the main building associated with the sign is located at least forty (40) feet behind the front street line. This shall not apply to integrated shopping centers, other commercial centers with three (3) or more businesses served by common and immediate off-street parking and loading facilities, industrial centers, or office building complexes.
- (2) In the C-O Zone, signs shall not be located within fifty (50) feet of any land in any Residential Zone, or land proposed to be used for residential purposes on an approved Basic Plan for a Comprehensive Design Zone, approved Official Plan for an R-P-C Zone, or any approved Conceptual or Detailed Site Plan.
- (3) In the I-3 Zone, signs may be located anywhere that the Planning Board deems appropriate, subject to the height limitations below.
- (4) Notwithstanding any other provisions of this Subtitle addressing setbacks and yards, in all Commercial and Industrial Zones (except the I-3 Zone), signs need only be located ten (10) feet behind the street line. Where the street line is situated behind the actual existing street right-of-way line, freestanding on-site signs may be temporarily located within the area between the street line and the existing street right-of-way line (the area of proposed future widening of an existing street), provided that:
 - (A) The land area involved has not been, and is not in the process of being, acquired for street purposes;
 - (B) The sign is located at least ten (10) feet behind the existing street right-of-way line; and
 - (C) A written agreement between the owner and the Department of Permitting, Inspections, and Enforcement assures that the sign will be removed, at the owner's expense, at the time of acquisition of that area for street purposes. . . .

(b) Height.

- (1) The maximum height of signs shall be as shown in the following table. Measurements are from the finished grade at the base of the sign to the top of the sign. (See Figure 65.)

ZONE	MAXIMUM HEIGHT (IN FEET)
C-O	8
Commercial Zones (except C-O)	25
Industrial Zones (except I-3)	25
I-3 Zone	Not greater than the lowest point of the roof of any building in the employment park

- (2) In the R-10 and R-H Zones, where general business and professional offices are allowed by Special Exception, the height of the sign shall be approved as a part of the Special Exception approval (Section 27-386).

(c) Area. (See Figure 66.)

- (1) The area of freestanding on-site signs is in addition to that allowed for any other signs on a specific property.
- (2) In the C-O Zone, the area of a freestanding sign shall be not more than one (1) square foot for each eight (8) lineal feet of street frontage of the property occupied by the use associated with the

sign. The area of the sign shall generally be not more than twenty-five (25) square feet. On a lot having frontage on a divided highway with an existing right-of-way of at least one hundred (100) feet, the maximum size of the sign shall be fifty (50) square feet.

(7) Staff only considered the provision in Section 27-614(b) and, therefore, opined that the on-site sign for the Application may only be a maximum of 25 square feet. Applicant believes the sign is governed by Section 27-614 (c)(2) and may be increased to a maximum of 50 square feet.

(8) The Court of Appeals provided the standard to be applied in the review of a special exception application in Schultz v. Pritts, 291 Md 1, 432 A2d 1319, 1325 (1981):

Whereas, the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the [administrative body] that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. . . . But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal.

CONCLUSIONS OF LAW

(1) The “Ancillary Reception Hall” proposed by Applicant raises concern. First, an “ancillary” use is not a term used in the Zoning Ordinance – instead the Zoning Ordinance refers to “accessory” uses. Section 27-107.01(a) defines “Accessory Use”, in relevant part, as follows:

The “Use” of a “Building,” “Structure,” or land which: ... (A) [i]s subordinate to, customarily incidental to, and ordinarily found in association with, a principal “Use,” which it serves.(When a specific “Use” is allowed in the Tables of Uses accessory to a principal “Use”, the “Accessory Use” need not be customarily incidental to, or ordinarily found in association with, the principal “Use”); (B) [i]s subordinate in purpose, area ..., floor area, intensity, and extent to, and located on the same “Lot” with, the principal “Use”...; and(C) [d]oes not change the character of the principal “Use.”

(2) Accessory uses are permitted by right in the R-R Zone, but “Reception Hall” is not listed separately in the Table of Uses as an accessory use. Accordingly, the proposed Reception Hall must satisfy the criteria in Section 27-107.01 (a), above. The record supports a finding that the Reception Hall satisfies the criteria for an accessory use, at least as to its use for a repast or other celebration of life in conjunction with a funeral held

at the Funeral Home. Such events have become common where the Funeral Home has the space available to hold them, and where these events are incidental to the funeral. The Reception Hall proposed is smaller in size than the Funeral Home and will only be available for a limited number of hours.

(3) It does not follow, however, that allowing community meetings to be held in the Reception Hall is also an accessory use to the primary use which is the Funeral Home. Moreover, Applicant has not provided any support for such a finding other than a wish to provide such a service. I therefore cannot find the use by community groups to be a permitted use of the subject property.

(4) The Funeral Home, and Reception Hall are in harmony with the applicable purposes of the Zoning Ordinance found in Section 27-102(a) of the Zoning Ordinance. The uses will allow full-service funeral assistance to the general public, negating the need to utilize other funeral homes. As such, they promote the comfort, convenience and welfare of present and future inhabitants of the County. The uses do not conflict with the Master Plan's recommendation of low suburban land uses for the site since it will be developed in accordance with the character of the neighborhood, and are permitted uses in the zone. Further, the uses are in harmony with the goal of the 2014 General Plan that development within the Established Communities be context-sensitive infill and low-to-medium-density since the buildings will use materials that complement the neighboring properties and the site will not be overdeveloped. If approved, lot coverage will be approximately 46%, far less than the 60% permitted in the zone, and both uses 'setbacks' far exceed that required in the R-R Zone. This also furthers the goal of providing adequate light, air and privacy. The uses are in harmony with the specific purposes of the R-R Zone since the application is exempt from submitting an approved Type II Tree Conservation Plan and a stormwater management concept plan has been approved. (Sections 27-317(a)(1) and (a)(3))

(5) The Application does not require the grant of a variance or other departure. It therefore satisfies all applicable requirements of the Zoning Ordinance. (Section 27-317 (a)(2))

(6) The uses are designed in a manner to minimally impact the surrounding properties and residents. Access will be from Belvidere Road rather than the main, more traveled Enterprise Road. Additional landscaping will be provided. The Funeral Home and Reception Hall will be virtually unseen by neighboring residences. The buildings will aesthetically blend with the area, preserving its residential character. Finally, most funeral services and repasts will occur outside of the peak hours for transportation. Accordingly, any impact on transportation facilities would be negligible. (Sections 27-317 (a)(4) and (5))

(7) As noted above, the Application is exempt from the requirements of the Woodland

Habitat Conservation Ordinance and there are no regulated environmental features on site. (Section 27-317(a)(6) and (7))

(8) The property is not located within the Chesapeake Bay Critical Area Overlay Zone. (Section 27-317(b))

(9) The provisions of Section 27-357 are also satisfied. The side and rear yard setbacks for both the proposed Funeral Home and Reception Hall are greater than 50 feet. (Section 27-357(a)(1)) The subject property is approximately 7.3887 acres in size. (Section 27-357(a)(2)) The report prepared by Sapperstein & Associates indicates that the proposed uses would increase the value of the subject property and would not adversely impact the value or character of the neighboring properties if developed as proposed on the Site Plan (i.e., with limited hours of operation, constructed using materials in keeping with the character of the neighborhood, with landscaping, etc.). (Sections 27-357 (a)(3) and (4)) Finally, there are conditions of approval for this request that will ensure that the uses not create undue traffic congestion, and more may be required at the time of subdivision review. (Section 27-357(a)(5))

(10) Section 27-615 mandates that signs associated with a nonresidential use (such as a Funeral Home) located in a residential zone follow the sign regulations for the C-O Zone. Section 27-614 (a)(2) notes that the maximum size of the sign shall be fifty (50) square feet if the lot has frontage on a divided highway with a right-of-way of at least one hundred (100) feet. Enterprise Road (MD 193) is a divided highway at the subject site with an 120-foot right-of-way and the site has frontage thereon. Accordingly, I agree that the free-standing on-site sign may be a maximum of 50-square-feet in size.

(11) The record in this case reveals "no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan". It would, therefore, be proper to grant the request, once the conditions addressed below are satisfied.

DISPOSITION

Approval of SE-4795, subject to the following conditions:

1. Prior to the issuance of any permits, Applicant shall revise the Special Exception Site Plan as follows, and submit a copy of the Revised Site Plan to the Office of the Zoning Hearing Examiner for approval and inclusion in the record:

- a. Revise Note 36 to read as follows:

36. Permitted and Prohibited Use of the Accessory Reception Hall:

- (i) Permitted Use:

Funeral Repasts for the families/friends of deceased funeralized on site ONLY. Hours of Operation 12:00PM-5:00PM daily.

Services by fraternal groups, etc., in honor of the deceased may also occur during the above hours of operation and/or Monday through Friday, 6:00PM -8:00PM.

(ii) Prohibited Use:

- 1) Social Events-Parties, Dances, Cabarets, etc.
- 2) Wedding Receptions, Graduation Parties, etc.
- 3) Rental to Outside Groups or Entities.

- b. Delineate an eight-foot-wide sidewalk along the subject site's entire frontage of Enterprise Road (MD 193), unless modified by the Maryland State Highway Administration.
- c. Delineate a standard sidewalk along the subject site's entire frontage of Belvidere Road, unless modified by the Prince George's County Department of Permitting, Inspections and Enforcement and the Prince George's County Department of Public Works and Transportation.

2. Prior to acceptance of a preliminary plan of subdivision, Applicant shall submit a revised traffic study for review. The study shall include the same two critical intersections, shall include the Traditions at Beechfield (PPS 4-17018) and any other approved and unbuilt development as background developments, and shall study weekday AM peak-hour, weekday PM peak-hour, weekday midday peak-hour (event), and Saturday peak-hour(event) traffic at both critical intersections.
3. Prior to issuance of any building permits for the subject property, the following road improvements shall (a) have full financial assurances, (b) have been permitted for construction through the operating agency's access permit process, and (c) have an agreed-upon timetable for construction with the appropriate operating agency:
 - a. Widening of the Belvidere Road approach to Enterprise Road (MD 193) to allow for exclusive right-turn and left-turn lanes.
 - b. Provision of signage along the property's Enterprise Road (MD 193) frontage to direct patrons of the uses to the driveway accessing Belvidere Road.
4. The Use & Occupancy Permit required for the Funeral Home shall include a notation about the accessory Reception Hall on site.

5. The on-site sign may be a maximum of 50-square-feet in size if the Department of Permitting, Inspections and Enforcement notes that it meets the requirements of Section 27-614 (c).

[Note: The Special Exception Site Plan, Landscape Plan, architectural renderings and sign detail are Exhibits 32 (a)-(b) and Exhibits 33(a)-(d)]