
MEMORANDUM TO: Mayor and City Council

VIA: Tanisha Briley, City Manager

FROM: Jasmine Forbes, Planner

DATE: October 5, 2020

SUBJECT: Final Staff Analysis
SP-8415-2020 10 and 14 East Deer Park Drive

APPLICANT/ OWNER:
Robert DeVol
DeVol Funeral Home
2222 Wisconsin Avenue NW
Washington, DC, 20007

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TAX MAP REFERENCE:
Block V, Lot 1- ID# 09-02691081
Parcel P861- ID# 09-00818677

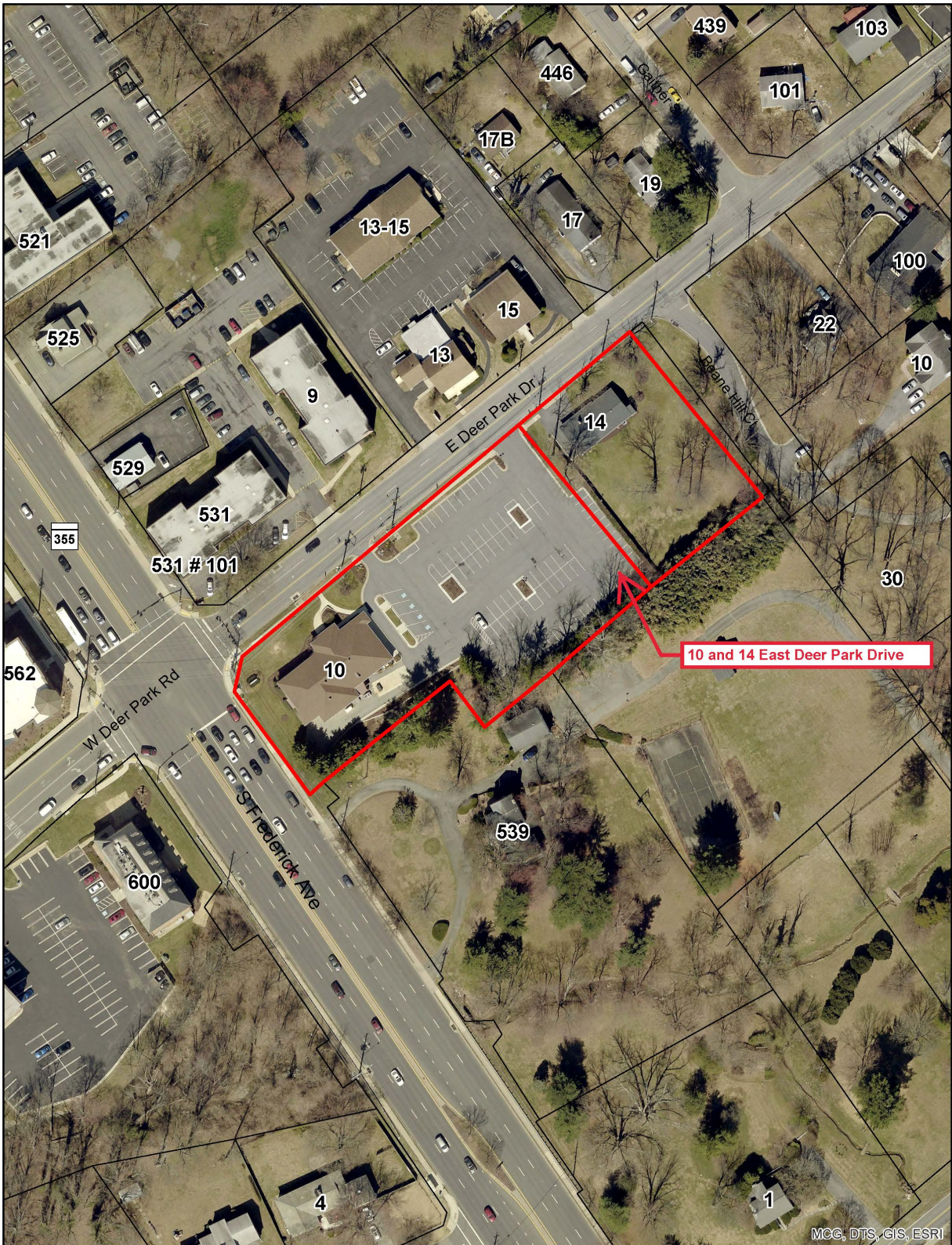
REQUEST:

Application SP-8415-2020¹ has been filed requesting concept site plan approval to expand the services for the existing DeVol Funeral Home at 10 East Deer Park Drive. The application proposes converting an existing single-family house at 14 East Deer Park Drive to a funeral home, with associated viewing parlors and crematorium. The plan also includes expansion of the existing parking lot and other minor site improvements. The subject properties are zoned CD (Corridor Development).

LOCATION:

The subject properties are situated along East Deer Park Drive. The site is currently accessible from East Deer Park Drive east of South Frederick Avenue.

¹ Exhibit 1



Location Map

BACKGROUND

The Applicant, Robert DeVol of DeVol Funeral Home, is requesting approval to expand the services for the existing DeVol Funeral Home at 10 East Deer Park Drive. The application proposes converting an existing single-family house at 14 East Deer Park Drive to a funeral home, which includes viewing parlors and an associated crematorium. The Applicant will submit a preliminary subdivision plan as part of the preliminary/final site plan application to consolidate the two (2) lots. A final record plat will be required prior to the issuance of a site development permit. A public hearing was held on August 3, 2020. During the course of the hearing, the Council and the public had the following questions:

- The allowed use of crematoriums as part of a funeral home in the CD zone;
- The environmental impacts and regulations of the associated crematorium;
- The impact of expanding the funeral home and adding a crematorium on the adjacent neighborhood;
- Other jurisdiction's regulations for similar use; and
- The required public hearing notifications

At the conclusion of the hearing, the City Council, announced by motion, the closing of their record 5 PM, on September 2, 2020 with policy discussion and final action anticipated for September 21, 2020. The City Council, at the request of the Applicant², granted by motion an extension of the record during the August 17, 2020 regular meeting, until 5 PM on September 16, 2020 with policy discussion and final action on October 5, 2020. A subsequent request by the Applicant³ to reopen the Mayor and City Council record until 5 PM on October 7, 2020 was denied by motion by the City Council during the September 21, 2020 regular meeting. The Applicant held a Community Informational Meeting on September 9, 2020 to discuss the project with the community.

In response to the comments received, the Applicant submitted letters summarizing their response to all comments received during the public hearing. The Applicant's responses can be found in the packet as Exhibits 264, 267, 348, 349 and 350. Information presented during the August 3, 2020 meeting, including zoning and site plan history, public facilities, and the application reviewed can be found in the Preliminary Background Report⁴.

SCHEMATIC DEVELOPMENT PLAN PROPOSAL⁵

As mentioned above, the Applicant is requesting approval to expand the services for the existing DeVol Funeral Home at 10 East Deer Park Drive. The application proposes converting an existing single-family house at 14 East Deer Park Drive to a funeral home, which includes viewing parlors and an associated crematorium. The Applicant

² Exhibit #96

³ Exhibit #318

⁴ Exhibit #359

⁵ Exhibit #9

will be required to submit a preliminary subdivision plan as part of any future preliminary/final site plan application(s) to consolidate the two lots.

The project will be divided into two (2) phases. The first phase includes the conversion of the existing single-family structure and minor improvements to the site to accommodate ADA access to the building. The Applicant plans to construct a one-story 600 square foot addition in the rear of the existing building. The building will include viewing parlors and a single retort crematorium equipment. The Applicant also plans to construct a five foot sidewalk along the front of 14 East Deer Park Drive to provide pedestrian connectivity to an existing sidewalk.

The second phase of the project will increase the existing parking lot from 89 spaces to 111 spaces in order to accommodate occasions when there is a large funerals and decrease the amount of on-street parking required for vehicle overflow. The required parking calculation for a funeral home is one space per four seats plus one space per employee. The existing funeral home is required 83 spaces and provides 89 spaces. The addition of the new building at 14 East Deer Park Drive will be required to provide 89 spaces on the property. There is adequate parking on the existing lot to facilitate both buildings. Pursuant to Section 24-219(b) of the City Code, maximum parking permitted is ten percent more than required. If the number of parking spaces provided are over the ten percent, then the Planning Commission must approve a parking wavier. The Applicant is providing more than ten percent of the parking maximum, therefore will need to request a parking waiver from the Planning Commission during final site plan review.

A new stormwater management facility is proposed to be located in the new parking lot island. The submitted preliminary stormwater management and sediment and erosion control applications (SWM-8418-2020 and SEC-8417-2020) have been approved by the Department of Public Works⁶.

As part of this application, the Applicant submitted a Preliminary Forest Conservation Plan. The Applicant plans to remove approximately seven trees that are less than thirty DBH (Distance Breast Height). The Applicant plans to provide four Common Hackberry trees to meet afforestation requirements. A Final Forest Conservation Plan will be required during final site plan review.

As part of the Concept Site Plan application, the Applicant had provided conceptual architecture elevations for the building. The new one-story 600 square foot addition will be clad in vinyl siding and incorporates a brick watertable. The Applicant plans to paint the brick on the existing building to match the addition. There are no other changes proposed to the existing building. At the August 3, 2020 Public Hearing, the Applicant noted that the proposed chimney stack was not included in the plans because the height was not determined by the Maryland Department of the Environment (MDE). The Applicant submitted revised conceptual building plans showing how the chimney stack could possibly look⁷. The revised plans shows an eight foot chimney stack clad in siding

⁶ Exhibits 284 and 285

⁷ Exhibit 264

to match the structure. As noted in a memo from Carol Lynn Green, the Applicant had Green Toxicology LLC, conduct an air quality analysis to determine the appropriate height of the chimney, which would fit the character of the neighborhood⁸. The analysis is based upon Maryland Department of the Environment (MDE) air pollutant standards and a maximum of four cremations in an eight hour period. The plan notes that the new chimney for the cremation equipment location and height is subject to change based on the MDE permitting requirements. The Applicant is also exploring the possibility of planting a tree to further screen the proposed chimney. The proposed trees shown on the plans demonstrate the full established growth and the location of the trees is subject to change as part of the final site plan. If the Council were to approve Concept Site Plan SP-8415-2020, Staff recommend a condition that prior to issuance of building permit, final design of the chimney stack, after determination by Maryland Department of the Environment (MDE), must be presented to the Mayor and City Council and Planning Commission for review and approval to ensure the final design, height, location, and appearance still substantially meet the findings for approval as outlined in this resolution.



Exhibit #264: Revised Conceptual Building Elevations

⁸ Exhibit #350



2 RIGHT SIDE (WEST) ELEVATION
Scale: 1/4"=1'-0"



3 REAR (SOUTH) ELEVATION
Scale: 1/4"=1'-0"

Exhibit #264: Revised Conceptual Building Elevations



① FRONT (NORTH) ELEVATION
Scale: 1/4"=1'-0"

Exhibit #264: Revised Conceptual Building Elevations

Are Crematoriums Allowed in the CD Zone

During the public hearing, there were questions from the public about whether a funeral home with a crematorium is allowed in the CD zone. The City Code does not reference crematoriums. Pursuant to the City Code, funeral home is defined as:

“Any building in which one or more parlors or rooms are maintained for the temporary resting place of dead human bodies pending final disposition thereof. Such building may also include the following: Space and facilities for the preparation of such bodies for burial or other final disposition; a chapel for the purpose of conducting religious or memorial services or ceremonies (and in which no emergency ambulance service is provided); rooms or space for administrative offices for conducting the business of the home; rooms or space for the housing of equipment, including motor vehicles; living quarters for not more than one family unit who are employees or owners of such funeral home or children of such employees or owners. Emergency ambulance service shall not be provided from the building.”

The CD zone permits all uses which are listed as permitted and not solely as special exceptions or conditional uses in all zoning districts unless otherwise prohibited. A funeral home is a permitted use in the C-2 (General Commercial) Zone. The proposed building will not be used as a stand-alone crematorium, which would not be permitted. A crematorium is permitted if it is part of a funeral home building. Staff has received guidance from City’s Deputy Attorney Frank Johnson about the proposed use⁹. As stated in Mr. Johnson’s email, it was concluded as long as the crematorium was

⁹ Exhibit #97

included as part of a building that also had one or more parlor rooms as temporary resting places, the definition of funeral home would allow a crematorium. The proposed plan includes a viewing parlor room and therefore the building would be considered a funeral home and the associated crematorium would be allowed.

Environmental Regulations on Crematoriums

As noted in the memo from Carol Lynn Green, because crematoriums releasing air emissions, they are permitted and regulated by the Maryland Department of the Environment (MDE)¹⁰. MDE is responsible for regulating sources of air emissions within the State and to ensure that the Applicant has satisfied all federal and state air standards. Staff also received confirmation from MDE on the regulations of crematoriums¹¹. The Applicant must receive a MDE-issued permit to install cremation equipment prior to construction and operation. After an initial temporary operating period, an air quality State permit to operate must be renewed every five years. MDE will not review a permit application until it has received zoning approval. MDE has established a formal process for public participation for the permit application review. If City Council were to approve Concept Site SP-8415-2020, Staff recommend a condition that the Applicant to submit documentation to the City from the Maryland Department of the Environment (MDE) every five years or sooner, as determined by MDE's inspection and recertification requirements, that demonstrates that the crematorium facility meets all State of Maryland air quality standards and requirements.

Environmental Impacts from the Crematorium Use

During the public hearing, there were questions about the environmental impacts that a crematorium will have to the adjacent residential community. As noted in an email from MDE, crematoriums are considered air pollution sources, because they emit both federally regulated criteria pollutants such as oxides of nitrogen (NOx), volatile organic compounds (VOC), sulfur dioxide (SO₂), carbon monoxide (CO), particulate matter and hazardous air pollutants. Crematoriums are not air pollution major sources and do not require any federal permit approvals. Below is a list that MDE provided of average criteria pollutant emissions from one retort machine. The federal major source thresholds applicable in Montgomery County for each pollutant are listed in parentheses.

- NOx: 4.5 tons per year (25 tons per year)
- VOC: 1.6 tons per year (25 tons per year)
- SO₂: 1.0 tons per year (250 tons per year)
- CO: 3.8 tons per year (250 tons per year)
- Particulate Matter: 0.8 tons per year (250 tons per year)
- Total HAP: Less than 1.0 tons per year (25 tons per year)
- Single Most Emitted HAP: Less than 0.5 tons per year (10 tons per year)

¹⁰ Exhibit #350

¹¹ Exhibit #136

From a federally regulatory standpoint, crematories emit a minor amount of emissions. From a State regulatory standpoint, crematories must not cause visible emissions and must emit less than 0.10 grains of particulate matter per standard cubic feet of dry exhaust gases. The crematorium equipment must not create a nuisance or odor. MDE notes that a well operated and maintained crematory will not cause any visible emissions, will meet the particulate matter emissions standard and will not cause a nuisance or odor. For the permit application review, the Applicant must demonstrate that the concentration of each toxic air pollutant's emissions at the property line and beyond are less than the threshold determined in State regulation to be protective of public health. A permit would not be issued if the Applicant cannot demonstrate compliance to federal and state air quality requirements.

The Applicant had Green Toxicology LLC. conduct an air quality analysis to determine the air quality impacts from the proposed crematorium equipment and the proposed chimney stack height. This analysis followed the methodology that MDE uses during the permit application process. The analysis included the evaluation of forty-four chemicals known to be emitted from crematories. As noted in a memo, Green Toxicology determined that assuming adherence to certain conditions, the proposed emissions from the crematory would not adversely affect air quality and public health would not be harmed by emissions from the proposed crematory¹². DeVol expects to have no more than 250 cremations a year, which is less than five cremations a week. Operational hours may be modified by MDE during the permitting process.

Other Jurisdictions Regulations on Crematoriums

Comments were raised about other jurisdictions regulations on crematoriums. While other municipalities regulate funeral homes and crematoriums differently, the application is required to only follow the City's zoning ordinance. The CD zone permits all uses which are listed as permitted and not solely as special exceptions or conditional uses in all zoning districts unless otherwise prohibited. A funeral home is a permitted use in the C-2 (General Commercial) Zone. The proposed building will not be used as a stand-alone crematorium, which would not be permitted. A crematorium is permitted if it is part of a funeral home building. In their response, the Applicant's Attorney provided the following information about other jurisdictions.

- Montgomery County- Permits a funeral home with accessory cremation services as a conditional use in several single-family residential zones and as a permitted used in the County's General Retail Zone. Staff further reviewed the Montgomery County code and noted that the cremation of remains is prohibited under the Funeral Home use. A Crematory use is a conditional use in the IH zone (Heavy Industrial). A funeral home is a permitted use in the GR (General Retail) zone. It is a conditional use in the following zones: AR (Agricultural), RE-2 (Residential Estate), RE-1 (Residential Estate), R-200 (Residential), R-90 (Residential) and LSC (Life Sciences Center) zones. It is also a limited use in the CRT (Commercial Residential Town) and CR (Commercial Residential) zones.

¹² Exhibit #350

- Frederick County- Allows funeral homes with accessory services in several commercial and mixed-use zones. Staff concurs with Applicant's Attorney findings. Funeral Homes are a permitted use subject to site development plan approval in the MX (Mixed Use) and GC (General Commercial District) zones.
- City of Frederick- Allows funeral homes with accessory cremation services in several commercial and mixed-use zones. Staff concurs with the Applicant's Attorney findings. Funeral homes with a crematorium are permitted in the PB (Professional Business), GC (General Commercial) and MU (Mixed Use) zones with conditions and requirements.
- Anne Arundel County- Allows funeral homes with accessory cremation services in several commercial zones. Staff concurs with the Applicant's Attorney findings. Funeral Homes on a local road are a conditional use in the C2 (Commercial Office Districts), C3 (General Commercial Districts) and C4 (Highway Commercial Districts) zones. Funeral Homes on a collector or arterial road is a permitted use in the C2, C3 and C4. Funeral Homes are also permitted in the MXD-C, MXD-E and MXD-T zones.
- City of Rockville- Staff reviewed the zoning code for City of Rockville and notes that a crematorium is not included in the funeral home definition and is defined separately. Funeral Homes are a conditional use in the following zones: MXTD, (Mixed-Use Transit District), MXCD (Mixed-Use Corridor District), MXB (Mixed-Use Business), MXNC (Mixed-Use Neighborhood Commercial), MXC (Mixed-Use Commercial) and MXT (Mixed-Use Transition) Crematoriums are permitted only where existing as of March 16, 2009).

CONCLUSION

Approval of SP-8415-2020, by the City Council is dependent upon the findings required under § 24-160G.7(b) of the City Code. Staff has provided draft resolutions for the Councils consideration for approval or denial of Concept Site Plan SP-8415-2020. If City Council were to approve Concept Site Plan SP-8415-2020, Staff recommends the following conditions:

1. Applicant to submit documentation to the City from the Maryland Department of the Environment (MDE) every five years or sooner, as determined by MDE's inspection and recertification requirements, that demonstrates that the crematorium facility meets all State of Maryland air quality standards and requirements; and
2. Prior to issuance of building permit, final design of the chimney stack, after determination by Maryland Department of the Environment (MDE), must be presented to the Mayor and City Council and Planning Commission for review and approval to ensure the final design, height, location, and appearance still substantially meet the findings for approval as outlined in this resolution.