

CORRESPONDENCE SUMMARY

DATE: February 6, 2013

CORRESPONDENCE NUMBER: ZCOR 2013-0007

SUBJECT: Waterford Union of Churches Cemetery

1993 Ordinance Reference Numbers: 1-103(F)(2) When Permitted Uses Made Special Exception Use
2-102 Cemetery (SPEX in AR-1)
2-504(B) Cemetery (SPEX in CR-1)
5-637 Performance Standards – Cemetery
Article 8 Definition: Cemetery
Webster’s Definition: Churchyard

1972 Ordinance Reference Numbers:

Other Applicable Reference Numbers: Code of Virginia Section 57-26 (Cemetery Setbacks)
(LSDO/FSM/ZMAP/SPEX) Code of Virginia Section 54.1-2310 (Definitions)

Applicable Tax Map/PIN Numbers: MCPI: 304-47-3640 & 303-17-8429

Correspondence Summary:

Applicant sought determination regarding expansion of existing Waterford Union of Churches Cemetery, owned in trust by a 501(c)(3) trust appointed by the Loudoun County Circuit Court. The expansion would be onto adjoining property, not currently used for a cemetery. The cemetery predated County zoning and is subject to the provision that where a permitted use becomes a special exception use it shall be deemed to have approval, but expansion would require an additional special exception. The cemetery is zoned CR-1 and the proposed expansion is onto land split zoned CR-1/AR-1. Cemetery is special exception use in both districts. Section 5-637 includes performance standards for cemeteries, which standards are derived from provisions of the Code of Virginia regulating cemeteries. Under the Code of Virginia “churchyards” are exempt from local zoning. This cemetery cannot be considered a churchyard as it is not owned by a church.

PROPERTY OWNER:

Request Made by:
Mr. Robert Thompson
P.O. Box 345
Waterford, VA 20197

Owner:
Virginia Friend
P.O. Box 143
Waterford, VA 20197

Author: Larr Kelly

*Indicates where to file

Is this a determination? Check one: Yes No



Loudoun County, Virginia

www.loudoun.gov

Department of Building and Development
Zoning Administration / MSC# 60

1 Harrison Street, S.E., P.O. Box 7000, Leesburg, VA 20177-7000

Administration: 703-777-0397 • Fax: 703-771-5215

February 6, 2013

Mr. Robert Thompson
P.O. Box 345
Waterford, VA 20197

RE: ZCOR 2013-0007
Expansion of Waterford Union of Churches Cemetery onto neighboring land
(PINs: 304-47-3640 & 303-17-8429)

Dear Mr. Thompson:

This correspondence is in response to your January 23, 2013 electronic correspondence to me requesting a written determination concerning the possibility of expanding the existing Waterford Union of Churches Cemetery ("Cemetery"), located on PIN 303-17-8429 along Fairfax Street in Waterford. Specifically you have asked whether an expansion could be accomplished through means of a boundary line adjustment with the neighboring property or whether such an expansion would require approval of a special exception application. The short answer to your question is that approval of a special exception application would be required. A more detailed explanation follows.

The Cemetery was established in 1825 and predated the establishment of the County's Zoning Ordinance. The Cemetery is currently zoned Countryside Residential-1 (CR-1) under the Revised 1993 Zoning Ordinance ("Zoning Ordinance"). A cemetery is permissible as a special exception use within the CR-1 Zoning District. Inasmuch as the Cemetery predated the Zoning Ordinance, and all previous iterations of the Zoning Ordinance, then pursuant to Section 1-103(F)(2) of the Zoning Ordinance the Cemetery is deemed to have special exception approval. However, pursuant to this same section the expansion of the Cemetery will require the approval of a new special exception. Therefore, while the Cemetery is allowed to be located as it currently exists within the CR-1 Zoning District, its expansion would require approval of a special exception application.

Your proposed expansion to the subject property is into land that is not currently used for cemetery purposes, and such property, PIN 304-47-3640, is split zoned CR-1 and Agricultural-Rural-1 (AR-1). You have not indicated which portion of the subject property you wish to use for your proposed expansion. However, the portion of the subject property that adjoins the Cemetery is zoned CR-1, and is presumed to be the area of the proposed expansion. Nevertheless, both CR-1 and AR-1 zoning districts specify "cemetery" as a special exception use.

You should be aware that Section 5-637 of the Zoning Ordinance, a copy of which is attached hereto, contains regulations that are specific to cemeteries. These regulations require, among other matters, that the minimum area for a cemetery is ten acres, that the cemetery uses must be

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set back at least 150 feet from all lot lines and must be set back at least 250 yards (750 feet) from a residence unless the property owner of such residence consents to having the cemetery located closer to their residence. I note that there are a number of residences within 250 yards of the Cemetery and the consent of the property owners of such residences will be required in order to reduce this 250 yard setback.

Section 5-637(C)(2) of the Zoning Ordinance indicates that it derives these setback standards from Section 57-26 of the Code of Virginia. That Section of the Code of Virginia exempts "churchyards" from the requirements of the Zoning Ordinance. However, the documentation you have provided to me shows that the Cemetery is not owned by a church, but is owned by a trust that enjoys 501(c)(3) standing with the Internal Revenue Service. While the Zoning Ordinance does not specifically define "churchyard", it does specify that where a word, term or phrase is not defined in the Zoning Ordinance, then the word, term or phrase shall have the meaning ascribed to it in the latest edition of Webster's Unabridged Dictionary. Webster's defines a churchyard as a "yard which belongs to a church and often used for burials". Since the Cemetery is not owned by a church, it cannot be deemed to be a "churchyard".

You have also indicated that the proposed expansion would only be used for the interment of ashes and inquired as to whether this would mean that the expansion would not be considered to be a cemetery. Article 8 of the Zoning Ordinance defines a cemetery as "a place used or intended to be used for the interment of human remains or pet animal remains, and dedicated or designated for that purpose, including columbariums, mausoleums, and mortuaries when operated in conjunction with and within the boundaries of such cemetery". Therefore, even though the proposed expansion would only be for the interment of ashes, such use is still within the Zoning Ordinance's definition of a cemetery.

I note, for your information, that under the Code of Virginia definition of "cemetery", as found in Section 54.1-2310 of the Code, "the sprinkling of ashes or their burial in a biodegradable container on *church grounds* or their placement in a columbarium on *church property* shall not constitute the creation of a cemetery" (emphasis added). Otherwise, this section defines a cemetery as "any land or structure used or intended to be used for the interment of human remains. The term "interment" is defined to mean "all forms of final disposal of human remains, including but not limited to, earth burial, mausoleum entombment and niche or columbarium inurnment".

This determination applies solely to the referenced property and is not binding upon the County, the Zoning Administrator, or any other official with respect to any other property. No person may rely upon this determination with respect to any property other than the referenced property. This opinion is valid as of the date of this letter and this opinion does not and shall not relieve the owner or any occupant of the property in question from the obligation to comply with all applicable Zoning Ordinance and other County Ordinance requirements. This opinion is based upon the text of the Zoning Ordinance as it exists today, February 6, 2013, and such text is subject to change.

Please be advised that any person aggrieved, or any officer, department or agency of Loudoun County affected by any decision of the Zoning Administrator or by any order, requirement, decision or determination made by an administrative officer in the administration or enforcement

of the provisions of the Revised 1993 Zoning Ordinance may appeal said decision within thirty (30) days to the Board of Zoning Appeals in strict accordance with Section 15.2-2311 of the Code of Virginia. This decision is final and unappealable if not appealed within 30 days. An application package for an appeal to the Board of Zoning Appeals may be obtained by visiting the Loudoun County Government Center, 1 Harrison St., S.E., Second Floor, Customer Service, Leesburg, VA. Two copies of the completed application must be submitted to the Department of Building and Development, Customer Service counter, with the fee payment of \$350.00, within 30 days from the date of this letter.

Please contact me at 703-777-0507 if I can provide any additional information or assistance regarding the above matter.

Sincerely,



Larr Kelly
Planner, Zoning Administration

Attachment: Section 5-637 Revised 1993 Zoning Ordinance

cc: Nichole Dozier, Zoning Administrator
Mark Stultz, Deputy Zoning Administrator
Ron Brown, Deputy County Attorney
Janet Clarke, Blue Ridge District Supervisor
Scott K. York, Chairman, Board of Supervisors
Virginia Friend (Owner) P.O. Box 143, Waterford, VA 20197

"Establish" and "enlarge" are not used interchangeably. — The language of this section completely demonstrates that the legislature did not intend the words "establish" and

"enlarge" to be used interchangeably, but that the use of one excluded any idea that it embraced or meant the other. *Temple v. City of Petersburg*, 182 Va. 418, 29 S.E.2d 357 (1944).

§ 57-26. **Restrictions as to location of cemeteries and as to quantity of land.** — (1) *Restrictions as to location.* — No cemetery shall be hereafter established within a county or the corporate limits of any city or town, unless authorized by appropriate ordinance subject to any zoning ordinance duly adopted by the governing body of such county, city or town; provided that authorization by county ordinance shall not be required for interment of the dead in any churchyard or for interment of members of a family on private property; nor shall any cemetery be established within two hundred fifty yards of any residence without the consent of the owner of the legal and equitable title of the residence; provided that subject to the foregoing if the location for the proposed cemetery is separated from any residence by a State highway, it may be established upon such location without the consent of the owner of such residence if it be not less than two hundred fifty feet from the residence at its nearest point thereto; provided such prohibition and restriction shall not apply where the tract of land intended for use as a cemetery is separated from any residence by a State highway and now contains a public or private burial ground and is not within the corporate limits of any city or town; and no cemetery shall be hereafter established, and no burial made in any part of any cemetery, other than a municipal or city cemetery, located within three hundred yards of any property owned by any city, town or water company, upon which or a portion of which are now located driven wells from which water is pumped or drawn from the ground in connection with the public water supply.

(2) *Quantity of land.* — Nothing contained in §§ 57-22 to 57-25 shall be so construed as to authorize a conveyance of more than three hundred acres or the condemnation of more than two acres of land for the use of a cemetery.

(3) *Action for damages.* — When damage is done to adjacent land by the establishment of such cemetery, whether established by purchase or condemnation, the owners whose lands have been damaged shall have a right to action for such damage against any person, firm, corporation, or municipality, establishing the cemetery; provided such action be instituted within one year from such establishment.

(4) *Exceptions.* — The prohibitions and restrictions as to the location or establishment of cemeteries shall not apply to the town of Stuart, in Patrick County, to the town of Gretna, in Pittsylvania County, to the town of Shenandoah in Page County, or to the Woodbine Cemetery in the city of Harrisonburg, Rockingham County. And if the location for the proposed cemetery be in Norfolk County it may be established on such location if consent thereto be given by the owners of every residence within two hundred fifty feet thereof at its nearest point to any such residence, or if the location for the proposed cemetery is separated from any such residence by a State highway it may be established upon such location without the consent of the owner of such residence if it be not less than one hundred fifty feet from the residence at its nearest point thereto. (Code 1919, § 56; 1926, p. 866; 1934, p. 13; 1942, p. 102; 1944, p. 462; 1948, p. 492; 1952, c. 108; 1954, c. 10; 1960, c. 161.)

Purpose and scope. — This section seeks to protect two objects, namely residences and land. *Lambert v. City of Norfolk*, 108 Va. 259, 61 S.E. 776 (1908).

A cemetery may not be established in a city or town, but it may be added to or enlarged without running counter to the

inhibition found in the section. *Temple v. City of Petersburg*, 182 Va. 418, 29 S.E.2d 357 (1944).

To enlarge or add to a cemetery is not to establish one within the meaning of this section. *Temple v. City of Petersburg*, 182 Va. 418, 29 S.E.2d 357 (1944).