



CERTIFIED MAIL

Memorial Garden LLC and Gethesemane Cemetary
Attn: John B. Gouch
1215 Mineral Springs Rd
Charlotte, NC 28262

**RE: APPEAL
1504 WEST SUGAR CREEK ROAD
CASE NUMBER 2015-027**

Dear Memorial Garden LLC and Gethesemane Cemetary:

On June 30, 2015, the City of Charlotte Zoning Board of Adjustment ("Board") **upheld** the Zoning Administrator's interpretation that a crematory is not a permitted accessory use to a cemetery located on the subject site within the current INST(CD) (institutional, conditional district) zoning designation.

The Board based its decision on the following findings of fact:

1. The applicant is Gethsemane Cemetery and Memorial Gardens, LLC and (Represented by Kenneth Andrews and Robert L. Brandon).
2. The applicant is appealing the Zoning Administrator's interpretation that a crematory is not a permitted accessory use to a cemetery on the subject site with a conditional institutional zoning classification.
3. Gethsemane Cemetery and Memorial Gardens, LLC purchased the subject property in 2006 from Northside Baptist Church of Charlotte, North Carolina, Inc.
4. The subject property is approximately 32.1 acres and is occupied by a cemetery.
5. The subject property is zoned INST(CD) (institutional, conditional).
6. The site was originally part of a larger 187 acre rezoning by Northside Baptist Church approved by City Council in 1996 (rezoning petition 1995-089). The development standards of the Zoning Ordinance in place at the time of the conditional rezoning apply to the subject property.
7. The approved conditional site plan associated with rezoning petition 1995-089 stated "*the property shall be uses as a religious and educational facility with all of the associated and accessory facilities and functions.*" The approved conditional site plan identifies the "*existing cemetery*" and "*future cemetery area*" on the site plan along with the principal religious and educational facility. The cemetery was approved as an accessory use to the religious and educational facility.
8. Per Table 9.101 and Code Section 12.508, cemeteries were a permitted use under prescribed conditions within the INST zoning district at the time of the conditional rezoning.
9. The approved conditional site plan associated with rezoning petition 1995-089 also stated the following. "*The configuration and placement of buildings, parking, and circulation; as well as ancillary facilities, such as playing fields, tennis courts, field houses, track, bleachers, amphitheater,*

concession areas, rest rooms, and bus maintenance facilities, as shown on schematic plan sheet RZ-3 represent a firm design concept. There may be, however, minor modifications to the layout of the site, building, and circulation pattern, but such modifications shall be clearly incidental in nature and shall not deviate substantially from the basic design layout."

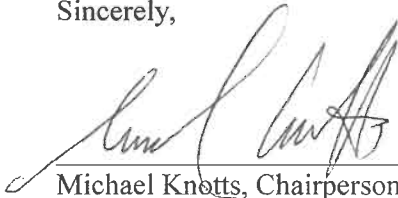
10. Per Table 9.101, crematories were not a permitted principal use within the INST zoning district at the time of the conditional rezoning. The 1996 Zoning Ordinance allowed crematories as a principal use by right in the UR-3, UR-C, office, B-1, B-2, UMUD, CC and NS zoning districts.
11. Per Code Section 12.508, crematories were not a permitted accessory use within the INST zoning district at the time of the conditional rezoning. The 1996 Zoning Ordinance allowed crematories as an accessory use within a cemetery of 100 acres or more in residential zoning districts, with prescribed conditions.
12. In 2012, a text amendment to the Zoning Ordinance was approved by City Council expanding the zoning districts where crematories are permitted as an accessory use within cemeteries of 100 acres or more. These districts included residential, institutional, office, B-1, B-2, BD, MX, NS, I-1, and I-2.
13. The addition of a crematorium would require an addition building not shown on the approved site plan.
14. Pursuant to Section 6.207 of the Charlotte Zoning Ordinance, the Zoning Administrator does not have authority to approve a change to the 1996 site plan that increases the number of buildings.

Based upon the above findings of fact, the Board concludes that the applicant has failed to meet the three standards stated in § 5.108(1) of the Ordinance, and more specifically:


The Zoning Board of Adjustment upholds the Zoning Administrator's interpretation that a crematory is not a permitted accessory use to a cemetery located on the subject site within the current INST(CD) (institutional, conditional district) zoning designation.

Pursuant to North Carolina General Statutes § 160A-388(e2), the Board's decision in Case No. 2015-027 may be appealed by a petition for review in the nature of *certiorari* to Superior Court within thirty (30) days from the date stated below, which is the date when the decision of the Board was filed in the Planning Department/Zoning Administration Division, or within thirty (30) days after receipt of the decision by an aggrieved party who filed a written request for such copy with the Clerk to the Board at the time of the hearing of the case, whichever is later.

Sincerely,


Michael Knotts, Chairperson

**DECISION FILED IN THE PLANNING
DEPARTMENT:**


Shad Spencer, Zoning Administrator

7/6/15
Date

7/6/15
Date

Cc: Kenneth Andrews
Robert Brandon