

4. *The granting of the variance would be materially detrimental to the public welfare by establishing a precedent that could be cited to support similarly unwarranted variances in the future.*

A motion was made by Koluch, seconded by Hetrick, that this matter be Denied. The motion carried by the following vote:

Aye 5 - Brnabic, Chalmers, Colling, Hetrick and Koluch

Absent 2 - Fons and McGunn

2017-0007

PUBLIC HEARING - FILE NO. 16-033

Location: 2201 Crooks Rd., located on the east side of Crooks, between Hamlin Rd. and Star Batt Dr., Parcel Identification Number 15-28-102-002, and zoned REC-W (Regional Employment Center - Workplace).

Request: An appeal of staff's determination under Section 138-4.300 (Land Use Table) and Section 138-4.105 (Prohibited Uses) of the Code of Ordinances, that the proposed crematorium facility is not a permitted use by the City's Zoning Ordinance.

Applicant: Gary M. Piontkowski
2201 Crooks Rd.
Rochester Hills, MI 48309

(Reference: Staff Report dated January 5, 2017, prepared by Edward P. Anzek, Director of Planning, and associated documentation were placed on file in the Planning Department and by reference becomes part of the record hereof.)

Chairperson Colling read the request for the record, and asked the applicant to come forward and provide a summary of the request.

Mr. Gary Piontkowski, 2201 Crooks Rd., Rochester Hills, property owner and applicant, introduced himself and handed out copies of his presentation materials to the members. He indicated he has been researching crematorium facilities and the cremation process for the last year and a half. When he first started to research this issue, he thought the facility was going to smell, be gross and he really didn't want to do it. But he's changed his mind after research. The machines for the crematoriums are very EPA oriented; there is no smell or smoke. He was amazed at how clean it burns. His own stacks in the auto collision paint spray booth and the nearby restaurants all have more smoke, etc., coming out of their stacks. In the crematoriums, the first burner is at 950 degrees, the second burner is at 3,050 degrees and that actually burns and destroys any of the smoke going into the system. But it's not really smoke. In his report there is a picture of a cylinder in use and what is being emitted is steam, not smoke. 85% of the human body is water, so what is coming out of the stacks is steam. He commented this is not bad for the environment at all. He visited other crematoriums in the area, and there are dance studios and aerobics right next to them, being used while the crematorium machines are running. He feels the use will not impact any nearby businesses, they won't even know it's there. There was no smell as it burns so efficiently and clean.

The Chair asked for a summary of the staff report.

Mr. Anzek explained that the ZBA's responsibility tonight is to determine if staff erred in judging whether crematoriums are permitted in the City. When he first met with Ms. O'Brien, a representative from Alternative Burial Services, they were trying to find a definition or something similar in the ordinance that would accommodate this operation, but couldn't. In consulting with John Staran, the City Attorney, he could not come up with any definition in the Zoning Ordinance that supports a crematorium. Section 138-4.105 Prohibited Uses states "uses that are not specifically listed as a principal use or conditional use permitted by this ordinance in a zoning district, or otherwise determined to be similar to a listed, and permitted use, shall be prohibited in the district". Mr. Staran stated the Zoning Ordinance is based on permissibility, and anything not expressly listed in it or a similar use, is therefore prohibited. Plans were submitted to the Building Department to convert a section of the applicant's building into a crematorium. Mr. McEwen brought this to Planning's attention, discussions began and the request was denied. It's not an issue of staff not liking the proposal, we are just applying the ordinance to the question asked. The conclusion is that crematoriums are not permitted. Staff has initiated a study on this matter based on need. It is also based on suitability for the City as determined by the Planning Commission and City Council. They are the ones that control the Zoning Ordinance. The ZBA is the legislative body that regulates the ordinance. Mr. Anzek thanked the applicant for his research as it will help staff in their study, but it doesn't go to the question before the Board tonight.

Chairperson Colling stated he understands it's not a matter of the business proposed, it's not a matter of the environmental impact, and it's not a matter of smell or decorum. The ZBA has to look at the ordinance as written today to determine whether or not this is a permitted use. The City's Zoning Ordinance is written to be somewhat permissive in that unless something is expressly permitted, it's not allowed by implication. Unfortunately, the closest ordinance we have is for an incinerator, which is barred in the City. He agrees with the applicant in principle as to his business plan and analysis; but the ZBA is a quasi-judicial board and he can't legislate from the bench. He can make a recommendation to Council. He strongly urges Council and the Planning Commission to assign some priority to this issue, make a determination quickly on the matter and to come up with an ordinance regarding crematoriums, if they want them in the City. There has to be an ordinance specifically designed around crematoriums, not incinerators. This is his recommendation.

Mr. Anzek deferred to Ms. Brnabic as the Planning Commission Representation, that this will be taken up as a discussion item with the Planning Commission as soon as possible.

The Chair opened the floor for Board discussion.

Mr. Hetrick agrees that as a quasi-judicial Board, the ZBA's job is not to evaluate the business plan or the market opportunity. As such, agrees that the Board would uphold what was proposed as a denial of the request from staff. As

the representative from City Council, he agrees that something needs to occur as soon as possible to either allow the conditional use or whatever the analysis would provide, to be reviewed by the Planning Commission and City Council. Until such time, he has to agree with the denial as it stands.

Ms. Brnabic totally agrees; this is an appeal of an administrative decision. The Board has to deal with this issue in that format right now. There will be a discussion on this matter at Planning Commission because there is nothing in the ordinance right now.

Mr. Piontkowski agreed and offered his help in any way he can. The business is done very discreetly; there are no windows, and no one will know what is happening inside. He feels there is a need in the City for this type of business as we are running out of space for burials. He wants to help make it work for the City.

Mr. Chalmers thanked the applicant for being a business owner and asked how his proposed use came about. There is no "for lease" sign in front of the building, so how did Mr. Piontkowski get matched up with the crematorium business.

Mr. Piontkowski indicated he wanted to be a mortician when he was younger, but couldn't pass the coursework. He did not seek out the crematorium business, it's his idea.

Ms. Brnabic asked if this issue could be added to next week's Planning Commission agenda as a discussion item.

Mr. Anzek confirmed this issue will be brought forward as a discussion item. It can't be done as an ordinance amendment yet because the study is not complete. If there is support for this use, there would be certain standards that would go with the development, such as no windows, no visibility from the street, modest signage, etc.. The Planning Consultants have started some initial research and are looking into what it takes - demands from funeral homes, etc. It will be discussed at Planning Commission as to support with appropriate conditions or standards for their implementation. It will then come back for a Public Hearing if this is the desired approach of the Planning Commission.

MOTION by Koluch, seconded by Hetrick, in the matter of File No. 16-033, that an appeal of staff's denial of the right to use property located at 2201 Crooks Road for a crematorium, Parcel Number 15-28-102-002, zoned REC-W (Regional Employment Center - Workplace) be **DENIED**, and further that the decision by the Zoning Board of Appeals is based on the following findings:

- 1. Section 138-4.300 Table of Permitted Uses by District, does not list crematorium(s), crematories, or any similar term as a permitted by right or by Conditional use permit in any Zoning District of the City.*
- 2. That by standard practice and by Ordinance requirement, as stated in Section 138-4.105, there are not any other uses that are determined to be similar to a crematorium that is permitted in the District.*

3. Section 138-4.105 Prohibited Uses, states that any use not listed as a permitted use or conditionally permitted use, or any similar use, is prohibited.

4. And that the legal opinion provided by the City Attorney supports the decision of staff.

A motion was made by Koluch, seconded by Hetrick, that this matter be Denied. The motion carried by the following vote:

Aye 5 - Brnabic, Chalmers, Colling, Hetrick and Koluch

Absent 2 - Fons and McGunn

Chairperson Colling clarified that the motion to appeal has been denied, and the ZBA is upholding staff's decision in this case.

RESOLUTION by Hetrick that the Zoning Board of Appeals asks the Planning Commission and City Council to consider developing an ordinance regarding crematoriums within the City, and standards for the same if they choose to allow them. The ZBA also asks that consideration of this matter happen quickly.

Ayes: All Nays: None Absent: Fons, McGunn **MOTION CARRIED.**

ANY OTHER BUSINESS

No other business was brought forward for discussion.

NEXT MEETING DATE

The next Regular Meeting is scheduled for February 8, 2017.

ADJOURNMENT

Chairperson Colling adjourned the meeting at 7:45 p.m.

*Ernest W. Colling, Jr., Chairperson
Zoning Board of Appeals
City of Rochester Hills*

Sandi DiSipio, Recording Secretary