



REPLY TO: TALLAHASSEE

August 5, 2015

VIA ELECTRONIC MAIL AND UNITED STATES MAIL

Lysia Bowling, Esquire
City Attorney
222 W. Main Street
Seventh Floor
Pensacola, Florida 32502

Re: *Notice of City Code Violation -- 4020 N. Davis Highway, Pensacola*

Dear Ms. Bowling:

Our law firm represents CEJ South, Inc., in regard to a "Notice of City Code Violation" ("NOV") dated July 15, 2015, for property located at 4020 N. Davis Highway, Pensacola, Florida ("Property"). (For your convenience, I have enclosed a copy of the NOV). During our telephone discussion on August 3, 2015, you informed me that the City of Pensacola ("City") would withdraw the NOV if our client agreed to take the following actions:

1. Obtain a license from the State of Florida to operate a funeral home at the Property;
2. Obtain a business license from the City to operate a funeral home at the Property;
3. Demonstrate that the crematory located on the Property constitutes an accessory use to the funeral home; and
4. Cease all cremations until the above-referenced three (3) actions have been completed.

I request written confirmation that I have accurately summarized the terms of the City's proposed agreement to withdraw the NOV.

At this juncture, our client has applied for a license from the State of Florida to operate a funeral home at the Property. Additionally, our client has also applied for a business license from the City to operate a funeral home at the Property. Furthermore, our client has ceased all cremations on the Property.

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In regard to Item #3, I respectfully request that the City reconsider its request because it is our opinion that a stand-alone crematory is an authorized principal use on the Property. Thus, even though we believe the crematory qualifies as an accessory use to the existing funeral home, there is no need to make such a determination in light of the fact that a stand-alone crematory is an authorized principal use on the Property. The following is the basis for our opinion.

Analysis

According to the Interactive Map available through the Escambia County Property Appraiser's website, the Property is presently zoned "M-1" or Light Industrial. Section 12-2-9(A) of the City of Pensacola's Land Development Code ("City's LDC"), which sets forth the purpose of the M-1 zoning district, states:

The industrial land use district is established for the purpose of providing areas for industrial development for a community and regionally oriented service area. The industrial zoning district's regulations are intended to facilitate the manufacturing, warehousing, distribution, wholesaling and other industrial functions of the city and the region. . . .

Pursuant to Section 12-2-9(B)(1) of the City's LDC, the following uses are allowed in the M-1 zoning district:

- (a) Any use permitted in the C-3 district.
- (b) Outdoor storage and work.
- (c) Wholesale business.
- (d) Lumber, building material yards.
- (e) Furniture manufacture/repair.
- (f) Assembly of electrical appliances, instruments, etc.
- (g) Welding and metal fabrication, except the fabrication of iron and steel or other metal for structural purposes, such as bridges, buildings, radio and television towers, oil derricks, and sections for ships, boats and barges.
- (h) Processing/packaging/distribution.
- (i) Canning plants.
- (j) Ice plant/storage buildings.
- (k) Bottling plants.
- (l) Stone yard or monument works.
- (m) Manufacturing uses of a scale and intensity likely to be capable of producing sound, vibration, odor, etc. that is incompatible with the general commercial districts.

- (n) Community correctional centers.

(Emphasis supplied). The following uses are allowed in the C-3 zoning district:

- (a) Any use permitted in the C-2 district. Outside storage and work shall be permitted for those uses and the following uses, but shall be screened by an opaque fence or wall at least eight (8) feet high at installation. Vegetation shall also be used as a screen and shall provide seventy-five (75) percent opacity. The vegetative screen shall be located on the exterior of the required fence.
- (b) Outside kennels, runs or exercise areas for animals subject to regulations in section 12-2-54
- (c) Growing and wholesale of retail sales of trees, shrubs and plants.
- (d) Bakeries, wholesale.
- (e) Ice cream factories and dairies.
- (f) Quick-freeze plants and frozen food lockers.
- (g) Boat sales and repair.
- (h) Outdoor theaters.
- (i) Industrial Research laboratories and pharmaceutical companies
- (j) Truck sales and repair.
- (k) Light metal fabrication and assembly.
- (l) Contractors shops.
- (m) Adult entertainment establishments subject to the requirements of chapter 7-3 of this Code.
- (n) Industrial laundries and dry cleaners using combustible or flammable liquids or solvents with a flash point of one hundred ninety (190) degrees Fahrenheit or less which provide industrial type cleaning, including linen supply, rug and carpet cleaning, and diaper service.
- (o) Retail lumber and building materials.
- (p) Warehouses.
- (q) Plumbing and electrical shops.
- (r) New car and used car lots, including trucks which do not exceed five thousand (5,000) pounds.
- (s) Car rental agencies and storage, including trucks which do not exceed five thousand (5,000) pounds.
- (t) Pawnshops and secondhand stores.
- (u) Tattoo parlors and studios.
- (v) Mini-storage warehouses.

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- (w) Advanced manufacturing and/or processing operations
provided that such use does not constitute a nuisance due to
emission of dust, odor, gas, smoke, fumes, or noise.
- (x) Accessory buildings and uses customarily incidental to the
above uses.

(§ 12-2-8(B)(4), City's LDC) (emphasis supplied).

Although the City's Comprehensive Plan and the City's LDC do not specifically address a "crematory" or "crematorium" as a stand-alone use in any future land use category or zoning district, Section 12-1-5 of the City's LDC provides:

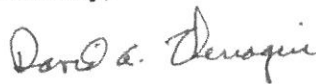
In the event there is not a particular use listed anywhere in this title that corresponds with a proposed use, then it shall be interpreted that the use described in this title having the most similar characteristics as the use in question shall apply.

Consequently, pursuant to Section 12-1-5 of the City's LDC, a crematory or crematorium, absent an express prohibition, is allowed as a stand-alone use in the zoning district with uses with the most similar characteristics.

As reflected above, the M-1 zoning district allows, among other things, "processing" and "advanced processing operations." "Cremation" is not defined in the City's LDC. However, the term "cremation" is defined by statute as "any mechanical or thermal process whereby a dead human body is reduced to ashes and bone fragments" and also "includes any other mechanical or thermal process whereby human remains are pulverized, burned, recremented, or otherwise further reduced in size or quantity." § 497.005(20), Fla. Stat. (2014) (emphasis supplied). Thus, a crematory or crematorium is a permitted use within the M-1 zoning district and is allowed on the Property as a principal use. (For your convenience, copies of the above-referenced provisions from the City's LDC are enclosed with this letter).

Please advise whether you agree with our analysis and, if so, whether the City will agree to withdraw its request that our client demonstrate that the crematory located on the Property constitutes an accessory use to the funeral home. I appreciate your attention to this matter and look forward to receiving your prompt response.

Sincerely,



David A. Theriaque