

**AREA BOARD OF ZONING APPEALS OF TIPPECANOE COUNTY**

**MINUTES OF A PUBLIC HEARING**

DATE..... FEBRUARY 22, 2017  
 TIME..... 7:00 P.M.  
 PLACE..... CO. OFFICE BLDG.  
 20 N. 3<sup>RD</sup> STREET  
 LAFAYETTE, IN 47901

**MEMBERS PRESENT**

Tom Andrew  
 Steve Clevenger  
 Steve Schreckengast  
 Ed Weast  
 Gary Schroeder  
 Ed Butz

**MEMBERS ABSENT**

Carl Griffin

**STAFF PRESENT**

Ryan O’Gara  
 Rabita Foley  
 Linda Underwood  
 Jay Seeger, Atty.

The Area Board of Zoning Appeals of Tippecanoe County public hearing was held on the 22nd day of February, 2017 at 7:00 P.M., pursuant to notice given and agenda posted as provided by law.

President Steve Clevenger called the meeting to order.

**I. APPROVAL OF MINUTES**

Ed Butz moved to approve the minutes from the January 22, 2017 BZA public hearing. Steve Schreckengast seconded and the minutes were approved by unanimous voice vote.

**II. NEW BUSINESS**

Ryan O’Gara said the petitioner for **BZA-1956—GRORU, LLC**, has requested a continuance to the March 22<sup>nd</sup> meeting and the petitioner for **BZA-1949—R.W. GROSS & ASSOCIATES** has requested a continuance to the April 26<sup>th</sup> meeting. The other two cases on the agenda are ready to be heard.

**III. PUBLIC HEARING**

Ed Butz moved that there be incorporated into the public hearing portion of each application to be heard this evening and to become part of the evidence at such hearing, the Unified Zoning Ordinance, the Unified Subdivision Ordinance, the Comprehensive Plan, the By-laws of the Area Board of Zoning Appeals, the application and all documents filed therewith, the staff report and recommendation on the applications to be heard this evening and responses from the checkpoint agencies. Steve Schreckengast seconded and the motion carried by voice vote.

Ed Butz moved to continue **BZA-1956—GRORU, LLC** to the March 22, 2017 Board of Zoning Appeals public hearing at petitioners’ request and **BZA-1949—R.W. GROSS & ASSOCIATES** to the April 26, 2017 Board of Zoning Appeals public hearing at petitioners’ request. Steve Schreckengast seconded and the motion was approved by unanimous voice vote.

Steve Clevenger read the meeting procedures.

**1. BZA-1954--TIPPECANOE CEMETERY MANAGEMENT, LLC:**

Petitioner is requesting the following variances to include a crematory service to an existing funeral home in a General Business (GB) zone:

1. To reduce the number of onsite parking spaces to 9 from the minimum requirement of 13 spaces; (UZO 4-6-3) and
2. To reduce the rear setback to 11' from the minimum required 15'; (UZO 2-17-8) on property located at 1671W 350N, Wabash 01 (SW) 23-4. The subject property is the same as that involved in the special exception case BZA-1955 (Crematories, SIC 726)

**2. BZA-1955--TIPPECANOE CEMETERY MANAGEMENT, LLC:**

Petitioner is requesting a special exception to convert a portion of an existing funeral home to add a crematory (SIC 726). The hours of operation would be from 8AM to 6PM, seven days a week on property located at 1671W 350N, Wabash 01 (SW) 23-4. **WITH CONDITION**

Ed Butz moved to hear **BZA-1954—TIPPECANOE CEMETERY MANAGEMENT, LLC** and **BZA-1955—TIPPECANOE CEMETERY MANAGEMENT, LLC** together and vote on separately. Steve Schreckengast seconded.

Ryan O'Gara presented the zoning map and aerial photos of the site. He summarized the area zoning and land use patterns, noting that most surrounding properties are zoned GB. He then highlighted the locations of other uses in the area. He explained that the large storage structure on the site was remodeled in 2016 to house a funeral home.

Variances

He said the change in use of the former storage shed has triggered these requests to make the parking and rear setback development standards conforming. Petitioner received an Improvement Location Permit to convert only 1518 sq. ft. of the shed's approximate 3500 sq. ft. into a funeral home with a maximum of eight funeral attendees and up to five employees at any given time. If petitioner receives permission to operate a crematorium at this site the parking requirement will be increased to 13 spaces which are four more than petitioner has available. The rear setback requirement for GB zoned properties has always been 15' and it appears the existing structure was constructed in violation of the ordinance and remains that way today. Petitioner's construction error cannot be considered a hardship. Petitioner could have requested rezoning to I2 or I3 for the land at the northeast corner of the cemetery and if approved, the crematory would have been allowed by right. The crematory would be adjacent to industrial zoning and away from nearby schools and apartments.

Special Exception

The ordinance makes a distinction between funeral homes, permitted by right in GB zones, and crematories, permitted by special exception in association with funeral homes. The distinction provides the means to assess the impact of various byproducts of the cremation process that could have a significant impact on neighboring property owners and their uses. Staff has no information on the level of visible and/or toxic emissions that might be acceptable and how petitioner plans to handle them. This is something staff needs to know with a childcare facility and apartments nearby. Staff's research concluded that the cremation process will result in additional noise and possible toxic emissions as a consequence of this use.

He summarized the ballot items for the variances and special exception and said if the variances and special exception requests are approved, petitioner will need to comply with the requirements of Indiana Code 23-14-31 to renovate and operate a crematory at this location prior to obtaining an Improvement Location Permit. He concluded with a recommendation of denial for both variance requests and the special exception but with the following condition if the special exception is approved:

1. The crematory must be reviewed and approved by the Indiana Department of Environmental Management before acquiring the Improvement Location Permit.

Steve Schreckengast asked if there is a reason the Board has to hear the variance requests first because it makes more sense to vote on the special exception first. If the special exception does not pass there is no need for the variances.

Jay Seeger explained that the variances have to be heard first because the site has to be ordinance compliant before a special exception can be granted.

Daniel Teder, PO Box 280, Lafayette, IN 47902, attorney representing the petitioner, said Craig Rice, petitioner's representative, is present to answer any questions as well as a representative from Matthews Environmental Solutions to talk about the use. He added that Matthews has been in business for over 75 years. He thinks it is vital the Board hear about the funeral home and crematory prior to voting. His clients improved this site by renovating the building, paving and striping the parking lot, and adding greenspace and received an Improvement Location Permit from the County to do the work. At that time everyone believed that this use was allowed and there was no intent to defraud. His first handout shows pictures of the site and the site plan with setbacks for the various buildings in the area. A portion of the day care center's west side faces the east side of this building and the center's rear door faces Kalberer Road (north) with the main entry on the other side of this building. The rear of petitioner's building has an 11' strip of grass and the day care's parking lot is behind that. The children's play area is fenced and is 118' from the rear of the funeral home. Corpses will be received from a service company and there will be a maximum of four deliveries per day. The service truck will be driven into the building and the door will be closed before the corpse is dropped off. The funeral home will have two part-time employees and the crematory will have one part-time employee with all employees working the rest of the time at the cemetery petitioner owns. Only corpses will be prepped at this site and there will be no viewings and no services. Once the service is completed the service truck will return to pick up the casket or urn. He added that petitioner will agree to limit the number of employees to only four. His second handout has a graph showing emission comparisons. This process will not create any smoke or odor and very little emission. Also included in the handout are support letters from other crematory owners whose businesses are located in a residential zone, surrounding residential neighbors, and a health officer with location maps attached. The letters are from funeral homes in Logansport, Indianapolis, Ft. Wayne, and South Bend. The 3<sup>rd</sup> handout is from a local appraiser who spoke to the neighbors of the crematory on Schuyler Avenue and learned none of the neighbors had any complaints on the use. The appraiser also researched sales in the area and feels the crematory will not have a negative impact on property values.

Don Collins, 1121 Finger Lake Road, Myrtle Beach, SC, 29577, representing Matthews Environmental Solutions, said Matthews has been building cremation units for over 50 years and is the largest manufacturer in the world. Ten units have been installed in Indiana in the last two years. The units are environment friendly and every unit is tested prior to leaving the plant. Before a machine can be delivered it has to go through IDEM for approval. IDEM has looked at 70 machines and all have been approved. The machines are fully-automatic and have a system to control the smoke, smell, and odor. The operating temperature is 1600+ degrees and even after a machine has been running all day the outside will only be warm to the touch. He pointed out that crematories are everywhere because of the increased demand. He said he has been in the funeral business for 48 years and he knows Matthews takes pride in what they do and stands by its clients. He explained the body has a tracking number and he then described the 2.5 hour cremation process. The processor pulverizes the cremains in a self-contained environment. He pointed out that most funeral homes are located in residential neighborhoods. The sound from the machine is less than 60dB and a person can even talk on their cell phone while the machine is running. He went on to say the stainless steel stack will penetrate the roof and be 3' above the highest point of the roof but it can be shrouded to look like a regular chimney. The heat from the unit will create a haze that will be visible in the winter.

Joe Burgett, 2887 North 400 West, West Lafayette, IN 47906, said Burgett's Learning Center has been located on this site for over 47 years and he was there from the beginning as a 3-year old child and has owned the center for the last 19 years. He disagreed with Daniel Teder who said the play yard is located 118' from this site because the children's play area is only 17' from the proposed crematorium. He distributed a handout that shows the location of the multi-purpose room that serves 24 children at a time on the end of the center and said the doors and windows are often open. The crematory also will be located 11' from the teacher's parking lot and the office where all potential clients come to visit the center and talk with staff. That is also the main entrance for tours and visitors. The front entrance on the other

side is primarily used for drop-off and pick-up. The center serves 200 children daily and he knows parents are extremely concerned with the health of their children. There are 70 children at the center who have special diets and dozens of children have various special health needs. Perceptions matter whether they are real or not and this use will have a negative impact on his business. He agrees with staff that this use could cause fire safety issues. Right now people park on Kalberer to attend funerals at the cemetery and cars parked on Kalberer make it dangerous for people to walk to the CityBus stop. He went on to say there are cultures that require the family to be on site during the cremation so they will need to use the funeral facilities. He asked that both variance requests be denied.

Josh Burgett, 6222 West 75 North, West Lafayette, IN 47906, said the Hindu funeral tradition requires the family to go to the crematory and actually flip the switch to turn the machine on. Ceremonies are carried on while the body is put in the machine and remain on site for the entire process. He is concerned about emissions. He distributed a handout that shows dioxin is a group of chemicals that are a by-product of the industrial process and incineration. Agent Orange is the most notable dioxin and the one that every other dioxin is compared to. According to the World Health Organization, dioxins are highly toxic and can cause reproductive and developmental problems, damage to the immune system, interfere with hormones, and cause cancer according to the World Health Organization. He explained that all his sources are cited in his handout and all the data he is using is Environmental Protection Agency reported. The EPA has established both a safe level of dioxin exposure per day and estimated the amount of dioxin released per body during cremation. The EPA tests were done on a crematory with an emission scrubber. A crematory emits 86,735 times the safe daily exposure for a 15lb. child. A crematory will release 346,000 times the dioxin safe level if it does four bodies a day. He added that dioxins stay in the air a long time. He visited a crematory in town and he could hear and see the heat wave, smell the process, and hear the machine run. He also has concerns about the value of other properties his family owns. He referred to the aerial to point out the corner lot that is ripe for development and he believes the crematory will reduce the marketability of his family's property.

John Burgett, 510 Main Street, Lafayette, IN 47901, said he is representing himself and his wife and added that he has been an attorney in Lafayette for 55 years. He feels this is a case of making a cash cow out of a sow's ear. He explained that Bill Wilhoit and his son do a beautiful job with Soller-Baker Funeral Homes and in establishing Tippecanoe Memorial Gardens Cemetery. The cemetery was once locally owned but in August 2014 Futura Group investors from Ewing New Jersey acquired Memory Gardens and the LLC sees big money to be harvested in Tippecanoe County. He distributed the December 2016 Tippecanoe Memorial Garden price list and pointed out that funeral services can run to many thousands of dollars with ala carte pricing. The number of cremations has increased because of the high cost of funerals and the LLC decided to turn the cemetery's 40 year old equipment/machinery shed into a money-making crematorium they propose to operate seven days a week with one to four bodies per day at a cost of \$3,000 to \$4,500 each. The LLC must think tonight's outcome is a given because the December price guide lists funeral and cremation services. The crematory will generate \$42,000 per week if it averages 1.5 bodies per day at an average cost of \$4,000. The owners received a permit to turn the old tool shed into a funeral home with a 12' x 12' chapel for services to satisfy the UZO requirements that a crematory be operated in association with a funeral home. Daniel Teder said his clients have no plans to operate a funeral home at this site. He then distributed a handout of the funeral services a funeral home must provide by statute and administrative code. If a funeral home is not located on this site there is an issue allowing a crematory on site because it has to be associated with a funeral home. There is no way to provide all the required services in half of an old tool shed that has to contain an embalming room, a 12'x 12' chapel, an area to display funeral merchandise, counseling for survivors, and arrange and conduct a funeral. All this will be conducted next to the roar of the crematorium a few feet away from a thin-framed wall in the other half of the old shed. He went on to say the outside walls of the crematory will be less than 20' away from a licensed day care facility that has been in the same site for over 20-years and cares for over 200 children daily, 38 staff members with outdoor play yards and parking. A typical crematory will reduce a 200lb. man to 8lb. of bone residue in 2.5 hours. The remaining 192lb. of molecules will be blown out the large exhaust stack on top of the building that will settle down on surrounding neighborhoods. The creation of this so-called funeral home and the proposed crematory is a cardinal perversion of the UZO and is a loophole to be plugged. That is the reason for the existence and oversight of this Board. Staff is well-informed and is recommending denial for the variances and the special exception and he concurs.

Daniel Teder said the situation is not as bad as the remonstrators make it sound. He referred to his handout that shows the emission from cooking hamburgers and diesel trucks is worse than this use. He agrees that the state statute says there has to be a chapel on site and provide funeral services on site and his client will comply with state law. His client is a very large entity and pointed out that there are two chapels at the cemetery across the street. He agrees that there might be a few Hindus in this community but he feels that number is very low. He reminded the Board that all the neighbors that wrote the letters included in his handout say there is no odor, smoke, or emissions and have no complaints. The request is for a 4' reduction in the rear setback. The side setback where the day care is located meets the ordinance requirements. He agrees the crematory will be closer to the day care on the side but farther away in the rear. He added that the setback variance is needed just to make the funeral home conforming.

Don Collins said petitioner's emission study was done in the United Kingdom where all the crematories are government-controlled and do thousands of cremations annually. He pointed out that the EPA would not allow anything that would potentially damage this country and our families. The emissions from crematories are so minute that many states do not even regulate them any longer. He went on to say the remonstrator's noise study was done by B & L Cremation Systems which is a competitor of Mathews. They are a small company and may ship about 50 to 60 machines per year. Mathews is the largest cremation equipment manufacturer in the world and ships 140+ units per year. Mathews' machines produce 60dB or below.

Steve Schreckengast recognized Josh Burgett.

Josh Burgett showed the Board the Crematory Association's report touting the test results from Woodlawn tests done by the EPA in Bronx, New York. The EPA used that test to come up with their dioxin emissions numbers per body. He wanted to make it clear that the tests were done in the US and not in the UK. He added that hamburgers and diesel trucks do not emit dioxins.

Tom Andrew said the staff report suggests that petitioner build the crematory in a nearby existing industrial zone where the use is permitted by right. He asked staff to show the aerial and point out where the industrially zoned land is located.

Ryan O'Gara displayed the aerial and said the Purdue Research Park and Purdue Research Foundation are located near the R3 zone on the other side of Kalberer. Staff is recommending petitioner obtain property on that side of the street and rezone it to I2 to be able to establish this use by right. He added that there already is heavy industrial zoning in that area.

Tom Andrew asked if locating on industrially zoned land will take care of the dioxin and environmental concerns.

Ryan O'Gara said emissions are fixed points and are what they are but the crematory will be in a location that is far away from other uses if it is in industrially zoned land.

Ed Weast asked the petitioner why he is not locating the crematory on the cemetery property.

Ryan O'Gara replied that he is not sure if there is available land on the cemetery property.

Steve Schreckengast asked if the cemetery and this building have the same owners.

Ryan O'Gara said both have the same owners.

Steve Clevenger asked what the side setback in the GB zone is.

Rabita Foley said the setback for this property is 0' because this property abuts GB property.

Daniel Teder feels it is highly unlikely PRF will sell land to be used for a crematory. PRF would prefer uses that fit into the Research Park or something that is residential like they did north of the cemetery. Even if Purdue did agree to sell some land for this use his clients would still have to go through the

rezone process. The crematory could be located on available land in the cemetery but he is not sure about access.

The Board voted by ballot 3 yes to 3 no on **BZA-1954—TIPPECANOE CEMETERY MANAGEMENT, LLC Variance #1** resulting in an inconclusive vote.

<u>YES Votes</u>	<u>NO Votes</u>
Gary Schroeder	Ed Butz
Steve Schreckengast	Ed Weast
Tom Andrew	Steve Clevenger

The Board voted by ballot 3 yes to 3 no on **BZA-1954—TIPPECANOE CEMETERY MANAGEMENT, LLC Variance #2** resulting in an inconclusive vote.

<u>YES Votes</u>	<u>NO Votes</u>
Gary Schroeder	Ed Butz
Steve Schreckengast	Ed Weast
Tom Andrew	Steve Clevenger

Jay Seeger said **BZA-1954—TIPPECANOE CEMETERY MANAGEMENT, LLC** will be heard again at the March 22, 2017 BZA meeting due to inconclusive votes for both variance requests. He added that the Board cannot vote on **BZA-1955—TIPPECANOE CEMETERY MANAGEMENT, LLC** until the variances are approved.

Ed Butz moved to continue **BZA-1955—TIPPECANOE CEMETERY MANAGEMENT, LLC** to the March 22, 2017 BZA meeting. Steve Schreckengast seconded and the motion was approved by unanimous voice vote.

#### IV. ADMINISTRATIVE MATTERS

None

Steve Clevenger stated that unless any member has an objection the chair will order the findings of each member casting a vote for the majority decision of the Board to be the collective findings of the Board in support of the decision of the Board. Hearing none, it is so ordered.

#### VI. ADJOURNMENT

Ed Butz moved for adjournment. Steve Schreckengast seconded.

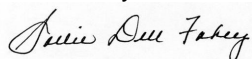
The meeting adjourned at 8:20p.m.

Respectfully submitted,



Linda Underwood  
Recording Secretary

Reviewed by,



Sallie Dell Fahey  
Executive Director