

**Board of Zoning Adjustment  
Staff Report**  
August 18, 2014



<b>Case No(s):</b>	14CUP1011
<b>Project Name:</b>	Newcomer Funeral Home Crematory
<b>Location:</b>	10304 Dixie Highway
<b>Owner(s):</b>	Kentucky Funeral Services, LLC
<b>Applicant(s):</b>	Newcomer Funeral Service Group
<b>Representative(s):</b>	William B. Bardenwerper
<b>Project Area/Size:</b>	885 square feet
<b>Existing Zoning District:</b>	CM, Commercial Manufacturing
<b>Existing Form District:</b>	SWC, Suburban Workplace Corridor
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	14 – Cindi Fowler
<b>Case Manager:</b>	Jon E. Crumbie, Planner II

**THIS CASE WAS CONTINUED FROM THE JULY 21, 2014 PUBLIC HEARING TO ALLOW MORE INFORMATION TO BE GATHERED BY THE APPLICANTS AND GENERAL PUBLIC. NO NEW INFORMATION IS PROVIDED IN THIS STAFF REPORT.**

**REQUEST**

- Conditional Use Permit to allow a crematory addition to an existing funeral home in an CM zoning district
- The Board must decide if the landscaping is sufficient.

**CASE SUMMARY/BACKGROUND**

The applicant requests to add an 885 square feet crematory to an existing funeral home. The applicant operates funeral homes in 8 different states. The reason for adding the crematory to this site is because an existing Newcomer Funeral Home in Middletown is too small.

**SITE CONTEXT**

The property is located in the Suburban Marketplace Corridor Form district which is characterized by a mixture of uses, including offices, shops, restaurants and services. The site has commercial uses to the east and south, school to the north, and residential uses to the south and west.

**LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE**

	Land Use	Zoning	Form District
<b>Subject Property</b>			
<b>Existing</b>	Funeral Home	CM	SMC
<b>Proposed</b>	Funeral Home/Crematory	CM	SMC
<b>Surrounding Properties</b>			
<b>North</b>	School, Hospital	R-4	N
<b>South</b>	Commercial, Residential Single Family	R-4, C-2	N, SMC
<b>East</b>	Commercial	C-1, C-2	SMC
<b>West</b>	Residential Single Family	R-4	N

### PREVIOUS CASES ON SITE

**9-161-85** Change in zoning from R-4 to C-2 and R-4 to C-4 was approved Fiscal Court on July 8, 1986. Revised plan to allow a grocery store on site was approved by LD&T on December 13, 1990.

### INTERESTED PARTY COMMENTS

Staff has received numerous calls and letters concerning the proposal (see attached letters).

### APPLICABLE PLANS AND POLICIES

Cornerstone 2020  
Land Development Code

### STANDARD OF REVIEW AND STAFF ANALYSIS FOR CONDITIONAL USE PERMITS

#### 1. Is the proposal consistent with the applicable policies of the Comprehensive Plan?

STAFF: The proposal is consistent with the applicable policies of the comprehensive plan. Additional landscaping will be added near the proposed crematory. The rear of the property will remain open space. No new lighting or signage is proposed.

#### 2. Is the proposal compatible with surrounding land uses and the general character of the area including such factors as height, bulk, scale, intensity, traffic, noise, odor, drainage, dust, lighting, appearance, etc?

STAFF: The proposal is compatible with the general character of the surrounding neighborhoods in terms of height, bulk, scale, intensity, drainage, dust, and lighting. The site was a former grocery store.

3. Are necessary public facilities (both on-site and off-site), such as transportation, sanitation, water, sewer, drainage, emergency services, education, recreation, etc. adequate to serve the proposed use?

STAFF: The proposal has been reviewed by Public Works and MSD and both have approved the plan. The Pleasure Ridge Park Fire District did not comment on the proposal.

4. Does the proposal comply with the following specific standards required to obtain the conditional use permit requested? There are 2 items in the listed requirements for a crematory. Item A. is not required and the applicant will be asking to modify item B.

Crematories may be allowed in any non-residential district, or as an accessory use to a cemetery within a residential district upon the granting of a Conditional Use Permit and compliance with the following requirements:

- A. The site shall be reviewed by the Air Pollution Control Board (APCD), and a permit shall be obtained in conformance with APCD requirements.
- B. The crematory operation shall be a minimum of 200 feet from property containing a residential use, or greater distance as required by the board. **The crematory will be approximately 52 feet from property containing a residential use. The residential property is located to the south of the proposed use.**

#### TECHNICAL REVIEW

There are no outstanding technical review issues.

#### STAFF CONCLUSIONS

Additional landscaping will be added near the area for the crematory and no new construction is proposed. Based upon the information in the staff report, the testimony and evidence provided at the public hearing, BOZA must determine if the proposal meets the standards for granting the Conditional Use Permit in the LDC.

#### NOTIFICATION

Date	Purpose of Notice	Recipients
07/02/14	APO Notice	First tier adjoining property owners Neighborhood notification recipients
07/03/14	Sign Posting	Subject Property

#### ATTACHMENTS

- 1. Zoning Map



## 2. Aerial Photograph



3. Cornerstone 2020 Staff Checklist

#	Cornerstone 2020 Guidelines & Policies	Cornerstone 2020 Plan Element	Plan Element or Portion of Plan Element	Pre-App Finding	Pre-App Comments	Final Finding	Final Comments
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1	Form District Goals F1, F2, F3, F4, Objectives F1.1, F2.1-2.5, F3.1-3.2, F4.1-4.5	Community Form/Land Use Guideline 1: Community Form	B.8: The proposal integrates into the existing pattern of development, which includes a mixture of medium- to high-density uses.	√	The facility will be in an existing funeral home.		
12	Form District Goals F1, F2, F3, F4, Objectives F1.1, F2.1-2.5, F3.1-3.2, F4.1-4.5	Community Form/Land Use Guideline 2: Centers	A.13/15: The proposal shares entrance and parking facilities with adjacent uses to reduce curb cuts and surface parking, and locates parking to balance safety, traffic, transit, pedestrian, environmental and aesthetic concerns.	√	The proposal will have the same entrance as the funeral home.		
15	Form District Goals F1, F2, F3, F4, Objectives F1.1, F2.1-2.5, F3.1-3.2, F4.1-4.5	Community Form/Land Use Guideline 3: Compatibility	A.2: The proposed building materials increase the new development's compatibility.	-	Staff does not know the building materials of the development.	√	The building is brick.
18	Form District Goals F1, F2, F3, F4, Objectives F1.1, F2.1-2.5, F3.1-3.2, F4.1-4.5	Community Form/Land Use Guideline 3: Compatibility	A.6: The proposal mitigates any adverse impacts of its associated traffic on nearby existing communities.	-	Transportation Planning has reviewed the proposal and has comments.	√	Transportation Planning has reviewed and approved the proposal.
19	Form District Goals F1, F2, F3, F4, Objectives F1.1, F2.1-2.5, F3.1-3.2, F4.1-4.5	Community Form/Land Use Guideline 3: Compatibility	A.8: The proposal mitigates adverse impacts of its lighting on nearby properties, and on the night sky.	-	Staff does not know if any new lighting will be added.	√	No new lighting will be added.
23	Form District Goals F1, F2, F3, F4, Objectives F1.1, F2.1-2.5, F3.1-3.2, F4.1-4.5	Community Form/Land Use Guideline 3: Compatibility	A.23: Setbacks, lot dimensions and building heights are compatible with those of nearby developments that meet form district standards.	+/-	The proposal will be in an existing building, but staff could not determine where it will be located.	√	CUP area has been highlighted on the plan.
24	Form District Goals F1, F2, F3, F4, Objectives F1.1, F2.1-2.5, F3.1-3.2, F4.1-4.5	Community Form/Land Use Guideline 3: Compatibility	A.24: Parking, loading and delivery areas located adjacent to residential areas are designed to minimize adverse impacts of lighting, noise and other potential impacts, and that these areas are located to avoid negatively impacting motorists, residents and pedestrians.	-	Transportation Planning has reviewed the proposal and has comments.	√	Transportation Planning has reviewed and approved the proposal.
25	Form District Goals F1, F2, F3, F4, Objectives F1.1, F2.1-2.5, F3.1-3.2, F4.1-4.5	Community Form/Land Use Guideline 3: Compatibility	A.24: The proposal includes screening and buffering of parking and circulation areas adjacent to the street, and uses design features or landscaping to fill gaps created by surface parking lots. Parking areas and garage doors are oriented to the side or back of buildings rather than to the street.	+/-	Existing screening and buffering exists, but staff is not aware of any new landscaping/buffering.	√	Some trees will be added, but applicant will be asking to keep landscaping as is.
27	Form District Goals F1, F2, F3, F4, Objectives F1.1, F2.1-2.5, F3.1-3.2, F4.1-4.5	Community Form/Land Use Guideline 3: Compatibility	A.28: Signs are compatible with the form district pattern and contribute to the visual quality of their surroundings.	-	Staff does not know if new signs will be added to the site or building.	√	No new signage proposed.

32	Livability Goals H3 and H5, all related objectives	Community Form/Land Use Guideline 5: Natural Areas and Scenic and Historic Resources	A.2/4: The proposal includes the preservation, use or adaptive reuse of buildings, sites, districts and landscapes that are recognized as having historical or architectural value, and, if located within the impact area of these resources, is compatible in height, bulk, scale, architecture and placement.	√	The proposal will be in an existing building.		
38	Mobility Goals A1-A6, B1, C1, D1, E1, E2, F1, G1, H1-H4, I1-I7, all related Objectives	Mobility/Transportation Guideline 7: Circulation	A.1/2: The proposal will contribute its proportional share of the cost of roadway improvements and other services and public facilities made necessary by the development through physical improvements to these facilities, contribution of money, or other means.	-	Transportation Planning has reviewed the proposal and has comments.	√	Transportation Planning has reviewed and approved the proposal.
41	Mobility Goals A1-A6, B1, C1, D1, E1, E2, F1, G1, H1-H4, I1-I7, all related Objectives	Mobility/Transportation Guideline 7: Circulation	A.9: The proposal includes the dedication of rights-of-way for street, transit corridors, bikeway and walkway facilities within or abutting the development.	-	Transportation Planning has reviewed the proposal and has comments.	√	Transportation Planning has reviewed and approved the proposal.
42	Mobility Goals A1-A6, B1, C1, D1, E1, E2, F1, G1, H1-H4, I1-I7, all related Objectives	Mobility/Transportation Guideline 7: Circulation	A.10: The proposal includes adequate parking spaces to support the use.	√	The parking is fine. 90 minimum and 180 maximum. The site has 108.		
48	Livability, Goals B1, B2, B3, B4, Objectives B1.1-1.8, B2.1-2.7, B3.1-3.4, B4.1-4.3	Livability/Environment Guideline 10: Flooding and Stormwater	The proposal's drainage plans have been approved by MSD, and the proposal mitigates negative impacts to the floodplain and minimizes impervious area. Solid blue-line streams are protected through a vegetative buffer, and drainage designs are capable of accommodating upstream runoff assuming a fully-developed watershed. If streambank restoration or preservation is necessary, the proposal uses best management practices.	√	MSD has reviewed the proposal and has no comments.		
49	Livability Goals C1, C2, C3, C4, all related Objectives	Livability/Environment Guideline 12: Air Quality	The proposal has been reviewed by APCD and found to not have a negative impact on air quality.	√	APCD has reviewed the proposal and has no comments.		
51	Quality of Life Goal J1, Objectives J1.1-1.2	Community Facilities Guideline 14: Infrastructure	A.2: The proposal is located in an area served by existing utilities or planned for utilities.	√	Area is served by LG&E.		
52	Quality of Life Goal J1, Objectives J1.1-1.2	Community Facilities Guideline 14: Infrastructure	A.3: The proposal has access to an adequate supply of potable water and water for fire-fighting purposes.	√	Area is served by PRP Fire District.		
53	Quality of Life Goal J1, Objectives J1.1-1.2	Community Facilities Guideline 14: Infrastructure	A.4: The proposal has adequate means of sewage treatment and disposal to protect public health and to protect water quality in lakes and streams.	√	MSD has service in the area.		

#### 4. Letter from APDC



AIR POLLUTION CONTROL DISTRICT  
LOUISVILLE, KENTUCKY

GREG FISCHER  
MAYOR

KEITH H. TALLEY, SR.  
DIRECTOR

June 11, 2014

Chairman David Proffitt  
Louisville Metro Board of Zoning Adjustment  
444 S. Fifth St., Suite 300  
Louisville, Ky. 40202

RECEIVED  
JUN 11 / 2014  
PLANNING &  
DESIGN SERVICES

RE: 14CUP1011

Dear Mr. Proffitt:

The Louisville Metro Air Pollution Control District has received inquiries from the public regarding Newcomer Funeral Home's proposed cremation facility at 10304 Dixie Highway. Since the Board of Zoning Adjustment may be receiving similar questions, I want to offer for the record the APCD's regulatory viewpoint regarding crematories in Louisville/Jefferson County.

All Louisville/Jefferson County businesses, big and small, are subject to basic air pollution regulations, and in the past crematories had been subject to an APCD permit that did not require any emissions reductions. But modern crematories utilize combustion technology that reduces emissions significantly. As part of an overhaul of APCD permitting regulations to prioritize major sources of air pollution, crematories and other small pollution sources are not required to seek an APCD permit to operate.<sup>1</sup>

Like any entity in Louisville, crematories are required to minimize environmental impacts so as not to cause a nuisance. If not operated and maintained properly, visible emissions or objectionable odors will signal improper operation. Although this is uncommon with crematories, improper operation will be corrected, and if needed, APCD will take enforcement action.

The APCD has been contacted by some citizens who are concerned about emissions of mercury, a component used in dental fillings, during cremation. While mandatory removal of

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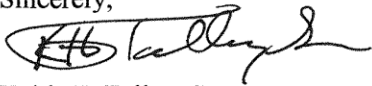
<sup>1</sup> APCD Regulation 2.02, Air Pollution Regulation Requirements and Exemptions

dental fillings before cremation – a practice currently prohibited in Kentucky<sup>2</sup> – would help alleviate this issue, the amount of mercury emitted by a crematory is very low<sup>3</sup> and unlikely to exceed the *de minimis* value of 144 pounds of mercury per year per facility under the APCD's Strategic Toxic Air Reduction Program (STAR).

Removing the mercury before cremation and controlling emissions with filters are possible strategies to reduce mercury emissions. Although positive ideas, the risk associated with crematories does not warrant an APCD initiative to regulate these units. The APCD can see the merits of a statewide regulation, but must apply its limited resources elsewhere at this time.

Please contact me if you have any questions. I can be reached at (502) 574-7229 or [keith.talley@louisvilleky.gov](mailto:keith.talley@louisvilleky.gov).

Sincerely,



Keith H. Talley, Sr.  
Director

cc: Emily Liu, Director of Planning & Design Services  
Jon Crumbie, Case Manager, Planning & Design Services

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JUN 1 / 2014  
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<sup>2</sup> KRS 367.97514, Processing Procedures and Restrictions

<sup>3</sup> "Use and Release of Mercury in the United States" (Page 62), December 2002, National Risk Management Research Laboratory, Office of Research and Development, U.S. Environmental Protection Agency



**AIR POLLUTION CONTROL DISTRICT  
LOUISVILLE, KENTUCKY**

**GREG FISCHER**  
MAYOR

**KEITH H. TALLEY, SR.**  
DIRECTOR

May 13, 2014

Darren Miller  
Newcomer Funeral Home (ID# 1841)  
10304 Dixie Highway  
Louisville, KY 40243

Dear Mr. Miller:

After reviewing the equipment located at the Newcomer Funeral Home facility, 10304 Dixie Highway, Louisville, KY 40243, and in accordance with District Regulation 2.02 Section 2, it has been determined that the facility is exempt from permitting. If additional air pollution sources are to be installed that would increase potential emissions above the exemption thresholds of 5 tons per year of Criteria Pollutants or 1000 pounds per year of Hazardous Air Pollutants, please inform the District and submit a permit application.

Please feel free to contact me if you have any questions at 502-574-5141 or [Narathip.Chitradon@louisvilleky.gov](mailto:Narathip.Chitradon@louisvilleky.gov).

Sincerely,

*Narathip Chitradon*  
Engineer I  
Air Pollution Control District

[www.louisvilleky.gov](http://www.louisvilleky.gov)

WWW.LOUISVILLEKY.GOV/APCD 850 BARRET AVENUE, ROOM 205 LOUISVILLE, KENTUCKY 40204-1745

**14CUP1011**

**Conditions of Approval**

1. The site shall be developed in strict compliance with the approved development plan (including all notes thereon). No further development shall occur on the site without prior review and approval by the Board.
2. The Conditional Use Permit shall be "exercised" as described in KRS 100.237 within two years of the Board's vote on this case. If the Conditional Use Permit is not so exercised, the site shall not be used a crematory without further review and approval by the Board.