

Mr. John J. Lang, Deputy Director, Planning Commission (cont'd)

on the residents of the community, thus impairing the health of the neighborhood and contributing to the physical deterioration of the neighbors. The requirement in the Ordinance that the funeral home should have the appearance of the other houses in the neighborhood seems calculated to eliminate many of the depressing effects which the court, in the Lewis case, stated that such businesses have on the neighborhood. It seems apparent that an ordinance rezoning property to allow its use as a funeral home may promote the public welfare only if the gloom and pall usually accompanying such activities are eliminated. This would seem akin to a requirement in an Ordinance similar to that involved in the Ellicott case, that the owner take certain safety precautions in the operation of a filling station. Such provisions, although restrictive in their nature, would seem to be clearly in furtherance of the public safety and welfare.

There appears to be no purpose to be served by providing that, upon cessation of the use of the premises for a funeral home, it revert to a Residential Use status by the passage of a proper Zoning Ordinance. It would be legal to provide that premises should revert to a Residential Use status even without the passage of an Ordinance and, since the City Council today cannot bind the City Council to pass an Ordinance in the future, the inclusion of the provision relating to the passage of such an Ordinance lacks any effect.

In view of the above, it is the opinion of this office that the restrictive provisions of the Ordinance, if included for the purpose of promoting the public health, safety, morals and welfare, and if they bear a reasonable relationship thereto, do not affect the validity of the Ordinance.

Very truly yours,

/s/ THOMAS N. BIDDISON
City Solicitor

/s/ HAMILTON O'DUNNE
Assistant City Solicitor

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