Of the many requests for information and assistance on zoning problems that have reached the office of the American Society of Planning Officials over the past five years, none has been more steadily recurrent than those dealing with funeral homes. The same question originates from planning agencies in nearly every section of the country: what is the proper zone location for funeral homes?

It is evident from the inquiries themselves, from reports in newspapers, and from the question at issue in numerous court cases that there exists a persistent pressure on local government agencies to permit the location of undertaking establishments in residence districts. Proponents of this position often display a well-developed knowledge of "word magic." Their technique ranges from the linguistic device of euphemism to what can only be called misrepresentation. The preference for "mortician" instead of "undertaker" and the tremendous popularity of "funeral home" over all other appellations are in themselves innocuous and understandable.** But when euphemism becomes a mechanism whereby it is implied that the make-up of the object or thing itself (in this case the preparation of dead human bodies for burial and the offering of facilities for ceremonial purposes) is changed or made more attractive, then the zoning issue is likely to become confused.

In this report we will attempt to clear up some of this confusion. We will also try to arm the planning agency -- beset by the task of recommending a suitable zoning classification for funeral homes -- with information on zoning practice and on the law as it has been defined by the courts. We will delve into some of the reasons for the increasing pressure on zoning administrative agencies to permit undertaking businesses in residence districts.

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*Copyright, American Society of Planning Officials, 1957.

**The Chicago Classified Telephone Directory contains 12 pages devoted to the category "undertakers." Despite this Red Book terminology, the word "undertakers" appears in only one firm name in all the hundreds of listings that appear there.
And we will outline some of the needs of this important enterprise on whose service modern society is, in the last analysis, completely dependent.

We are grateful to the National Selected Morticians for their cooperation in supplying us with a great deal of information on the background of the funeral service and the nature and requirements of the funeral business.

THE FUNERAL INDUSTRY

It is estimated that there are at present around 20,000 undertaking establishments in the United States. The latest count was taken in 1948 for the United States Census of Business. At that time there were 18,675 funeral service establishments and crematories. This compared with 18,196 in 1939.

Receipts for the entire year were $261,617,000 in 1939 and $372,355,000 in 1948. Bureau of the Census data show that receipts are still rising, if the data acquired for New York State are taken as representative. In 1948, receipts of funeral service establishments and crematories were $67,547,000 in that state, and in 1954 they were $78,974,000, representing an increase of 16.9 per cent. (Source: New York State Commerce Review, February 1957, published by the New York State Department of Commerce, Albany, New York.)

The term "undertakers" as used by the Bureau of the Census is a broad one and includes all types of funeral enterprises, from the partial-service operator at one end of the scale to the full-service mortuary at the other.

The partial-service operator may be a public embalmer, a "trade embalmer," or a "director" who has an office but no equipment, and who subcontracts for embalming and for supplying caskets and hearse.

What constitutes a full-service mortuary has been standardized by the National Selected Morticians, an association organized to improve funeral services, with offices at 1616 Central Street, Evanston, Illinois. A "complete funeral service establishment," as specified by NSM, has "a chapel, slumber rooms, preparation room, selection room with prices marked in plain figures, modern equipment, and a competent staff, and everything needed to conduct a modern funeral service."

A complete service establishment represents a large investment in building and equipment, and to go into business requires substantial working capital. On the average, it takes from three to five years before a new business begins to break even, according to NSM. Some idea of cost of starting a new funeral home is given in the findings of a survey made by NSM on Factors Influencing the Establishment of a Branch Funeral Establishment, (a Special Service Bulletin, published in 1954). Selected questions and answers dealing with finance are shown below:

**How Did You Finance Your New Branch?**

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*The size of the sample is apparently small.
a. With own capital. 69.23%
b. Real estate mortgage or loan. 50.00%

1. How long a time? -- Average of 3.6 years

2. Through bank? 34.62%
   Insurance company 3.85%
   Private citizens 3.85%
e. Someone built building and leased it. 3.85%
f. Other: 7.69%

Mortgage from former owner.
Purchased from owner on contract.

Dollar Estimates

a. How many dollars of investment in each branch per 1,000 population? Average -- $4,066.77
b. How many dollars of investment in branch per $10,000 of estimated income? Average -- $12,577.54

In Your Experience, How Many Years Has it Taken To Make Branch Profitable?

| From start | 13.79% |
| 1 year     | 27.59% |
| 2 years    | 10.34% |
| 3 years    | 6.89% |
| 4 years    | 3.45% |
| 5 years    | 10.34% |
| 6 years    | 3.45%

8 years 3.45%
5-10 years 3.45%
15 years 3.45%
Still not profitable 3.45%
Unprofitable after:
2 years 3.45%
3 years 3.45%
6 years 3.45%

Size of funeral establishments is usually measured by the case volume -- number of funerals a year. According to NSM's surveys among its own members -- who, by virtue of the association's methods of selection for membership, are of excellent financial standing -- 60 funerals a year is a minimum required to maintain a profitable business. The Occupational Outlook Handbook* reports that "in 1949, there was an average of only about 57 deaths per funeral home; however, the amount of business was very unevenly distributed among the establishments." One Chicago concern at the present time advertises that it conducts over 1,400 funerals a year.

"The funeral industry is not subject in the normal way to the economic law of supply and demand," states the California Assembly report on Funeral Directors,

Embalmers, Morticians and Funeral Establishments. (Final Report of the Subcommittee of the Assembly Interim Committee on Public Health, published by the Assembly of the State of California, 1953.) And there is evidence that the funeral business is indeed exceptionally stable. Demand, says this study, is fixed by the death rate which remains nearly static. Actually, in the United States the death rate is declining slightly, being 11.3 per 1,000 population in 1930, 10.8 in 1940, and 9.3 (estimated) in 1955. On the other hand, total number of deaths is increasing along with the increase in population. In 1940 there were 1,417,269 deaths and in 1955 the estimated number was 1,527,000.*

According to Occupational Outlook Handbook, (1951), the total volume of business handled by funeral homes is likely to increase slowly, with the number of deaths rising slowly for the next 40 years.

One of the remarkable features of the funeral business is the low rate of business failures. Of all industrial and commercial failures occurring in the United States in the four years from 1952 to 1955, undertakers are consistently at the bottom of the list. Furthermore, the gap between the number of failures among undertakers and those among the next lowest enterprise by number of failures is considerable. Some figures are offered for comparative purposes.** All activities mentioned here are within the "commercial service" group.

<table>
<thead>
<tr>
<th>Business and repair services</th>
<th>1952</th>
<th>1953</th>
<th>1954</th>
<th>1955</th>
</tr>
</thead>
<tbody>
<tr>
<td>(highest number of failures</td>
<td>178</td>
<td>243</td>
<td>305</td>
<td>320</td>
</tr>
<tr>
<td>in commercial service group)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Passenger and freight transportation (next highest)</th>
<th>178</th>
<th>212</th>
<th>282</th>
<th>255</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Hotels (next lowest, above undertakers)</th>
<th>28</th>
<th>25</th>
<th>37</th>
<th>41</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Undertakers</th>
<th>10</th>
<th>5</th>
<th>5</th>
<th>8</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Because of the relatively fixed demand for funeral services it is not easy to break into the funeral business. "A few men will find opportunities to start new funeral homes, although in most localities competition from established firms will be great," says the Occupational Outlook Handbook. "Openings with the older firms will be created mainly by retirements, and deaths of proprietors or employees." And although the NSM study on branch funeral homes does not give information on total number of new branches, it is evident that established funeral directors have a big advantage in any market that may open up due to population changes.

*Source for these figures is Statistical Abstract of the United States 1956, tables 68 and 71.

As a consequence of the restricted market for the primary funeral service, the funeral business is highly competitive. Given a supply and demand of relative stability, the business gained by any one funeral home must be secured by offering something more than what its competitors offer. This inducement takes the form of services added, services excellently performed, or amenities of building and surroundings.

FUNERAL HOME LOCATION FACTORS

When a funeral director decides to go into business, open a branch, or abandon his present location for a better one, he first decides on a service area. Usually a locality is selected that is under-serviced from a funeral home standpoint.

The reasons given for establishing a branch as shown in NSM's survey will give an idea of the factors that influence location. To the question, "Why did you establish branches?" the following answers were given:

<table>
<thead>
<tr>
<th>Reason</th>
<th>First reasons</th>
<th>Second reasons</th>
<th>Third reasons</th>
</tr>
</thead>
<tbody>
<tr>
<td>Normal expansion</td>
<td>44.83</td>
<td>3.45</td>
<td>10.34</td>
</tr>
<tr>
<td>Definite need in new area</td>
<td>13.80</td>
<td>37.93</td>
<td>3.45</td>
</tr>
<tr>
<td>Decrease of calls from original area</td>
<td>6.89</td>
<td>3.45</td>
<td>-</td>
</tr>
<tr>
<td>Previously served clients moving</td>
<td>6.89</td>
<td>6.89</td>
<td>6.89</td>
</tr>
<tr>
<td>Original place declining in service</td>
<td>3.45</td>
<td>13.80</td>
<td>-</td>
</tr>
<tr>
<td>Lack of parking facilities at original place</td>
<td>3.45</td>
<td>-</td>
<td>3.45</td>
</tr>
<tr>
<td>To improve location factor</td>
<td>-</td>
<td>3.45</td>
<td>10.34</td>
</tr>
<tr>
<td>Other reasons</td>
<td>20.69</td>
<td>13.80</td>
<td>6.89</td>
</tr>
</tbody>
</table>

Without knowing what the factors are that affect normal business expansion, it is still clear that the changing character and distribution of the local population is high on the list of reasons. This particular factor also predominate in "other reasons," of which the following statements are representative:

We have always served the community and since there has been considerable growth in that community since the war, and more growth anticipated, we considered it good business.

*   *   *

Unable to get business south of town due to river.

*   *   *

We maintained a small chapel in these places before. Increase in population of the small towns and surrounding area. If we did not open and operate a complete mortuary someone else would have. Each branch will do from 50 to 60 cases per year, which would justify the branch.
The influence of a changing local population comes out just as clearly in answers given to the question, "What factors influenced your choice of branch location?" Only a few of the responses are reproduced here:

To find a location of accessibility at the hub of several rapidly developing communities. One place had no funeral service operator there for more than 50 years.

* * *

Rapid residential growth in the branch area since World War II.

* * *

Picture looked like the area was a town that would grow beyond reason. It did just that.

When the general location for a new funeral home has been decided on, what factors are uppermost in the selection of a particular site?

In the first place, the modern mortuary needs a large piece of land. As a rule of thumb, the parcel should be a minimum of three times the area of the building, according to NSM. If, for example, the building will cover a ground area of 60 by 100 feet, then a parcel at least 18,000 square feet in area is needed. According to NSM's survey mentioned previously, the parcels acquired for new branch funeral homes covered in that survey have the following dimensions:

**Ground area**: Range -- 3,000 to 74,700 square feet  
Average -- 24,755 square feet

**Frontage**: Range -- 40 to 275 feet  
Average -- 129.97 feet

A second factor determining size of site and the selection of a preferred parcel is the amount of space available for off-street parking. Adequate off-street parking area is extremely important in conducting a funeral service, and this point has been emphasized over and over again, in different contexts, by the National Selected Morticians. For one thing, the funeral home, because of its nature, generates a great deal of local traffic. For another, the surrounding property owners object to having funeral procession cars parked frequently in the street.

But more important is consideration of the feelings of the bereaved. To them, it is an indignity and a cause of considerable anxiety to have to cope with local street traffic at the highly emotional moment when the body is being taken from the funeral chapel to the cemetery.

Consequently, at the modern funeral home, the funeral procession lines up in the parking area. For this operation to be conducted smoothly and without trouble, the off-street parking area cannot be cramped. Aisles wide enough for maneuvering vehicles are desirable, and enough parking spaces to accommodate the maximum number of cars is a necessity.
In the NSM survey it was found that the range of number of parking spaces furnished in new branch funeral homes extended from zero to 100. The average was 29.5 spaces.

David R. Levin, in the study, Zoning for Parking Facilities (Highway Research Board, 2101 Constitution Avenue, Washington 25, D. C., 1950), makes the following recommendations:

The amount of parking that is generated at a funeral establishment is obviously a function of the number of funerals that can be handled at the same time, or with some overlap, the size of the facilities, the reputation of the funeral home, and the social and economic characteristics of the groups catered to. It is suggested that off-street parking space be required to be provided for all "official" vehicles of mortuaries or funeral homes, plus one space for each family resident on the premises, plus additional spaces equal to 75 per cent of the number of employees (other than resident on premises), plus such additional space for funeral visitors as shall be determined by the board of zoning adjustment (or other local body vested with appropriate authority) to be desirable, considering the many variables characterizing any particular establishment. The board of zoning adjustment should be governed, however, in such a determination by the general tenor and level of requirements set forth in detail in connection with other property uses.

The companion study, Parking Requirements in Zoning Ordinances (1954), also published by the Highway Research Board, reported on 38 zoning provisions that required off-street parking for mortuaries or funeral parlors. The previous study had listed only four.

The third factor in selection of a site for a new mortuary building is room for expansion. Here again, the ratio between building size and parking holds true. National Selected Morticians observes that the trend is toward increasing transportation by automobile, and the funeral service, like shopping centers, must make provision for adequate parking, both for the present and the future.

In addition to the irreducible factors of size of building, adequate parking area, and room for expansion of building and parking area, there are other considerations that influence a funeral director in his choice of site. Most important of these is a "quiet area." This term, as used in the funeral service, specifically means freedom from noisy street traffic. While the funeral director prefers a quiet area because it offers him a competitive advantage, this advantage in turn is a reflection of the attitude of the persons attending a funeral. To them there is something highly incongruous in holding a funeral in noisy traffic surroundings that often possess other characteristics of blatant commercialism. Also, it is disturbing to the procession to have to compete with heavy local street traffic en route. In the words of funeral industry spokesmen, "the public demands a good location." And in the slogan, "the funeral service is a service for the living," a good location is one of the things foremost in mind.
One final factor should be mentioned. In conjunction with the factors discussed previously, it illustrates the strangely ambiguous nature of the funeral business, which seeks both a residential privilege and business advantages. This is the relation of the parcel to the street system. For easy access of vehicles and uninterrupted exit of the funeral procession, a corner site is preferred. Furthermore, a corner site offers excellent opportunities for "identification" or sign visibility.*

**SOME MISCONCEPTIONS**

Discussed in this section are three arguments that are sometimes used in the interest of securing a residential location for a funeral home. This is not to imply that all funeral directors employ these arguments, or any one of them. However, since the zoning problem of funeral home location seems to be widespread, it may be desirable to try to cut through some of the confusion caused by using words that bear little factual relationship to the situation they describe.

The undertaking service is a profession, and for zoning purposes it should, therefore, be classed with doctors. (See also the court decisions on this point, page 17.)

Example: Five mortuary operators in Charlotte, North Carolina petitioned to amend the zoning ordinance to permit funeral homes in Residence Two districts. The attorney representing them argued that North Carolina law classifies morticians as professional men. Because, he contended, "state law recognizes funeral homes as professions, they should have the same zoning rights as doctors." The planning commission replied that pharmacists, veterinarians, beauticians, barbers, and "a variety of other occupations" are termed professions by the state statutes. Yet, they added, the drug store is properly restricted by the zoning ordinance to locating in a business district. So are barber and beauty shops. (Source: The Charlotte Observer, June 18, 1956.)

Fact 1. One of the basic and most important operations carried on in funeral establishments requires training and licensing and has a professional aspect.** This is the art of embalming. According to the Occupational Outlook Handbook, the embalmer prepares bodies for final disposition, in conformity with state laws and local ordinances. "Preparation includes sterilizing and preserving the body by injecting embalming fluid or by other

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*Good signs, from the standpoint of the funeral business, are visible from several directions, conform to the architecture of the building (e.g., a colonial building should have a colonial type sign), and are done in good taste.

**The Occupational Outlook Handbook lists funeral directors and embalmers as being engaged in one of the "professional, semiprofessional, and administrative occupations."
means. Embalmers may also dress the body, apply cosmetics to give a natural appearance, and restore maimed or disfigured bodies."

Qualifications for the occupation of embalmer are described as follows in the Occupational Outlook Handbook:

In all States and the District of Columbia embalmers must be licensed. Some States have a separate funeral director's license while others have a common license for both embalming and funeral directing. Most people now entering these occupations obtain the licenses needed for both types of work.

For embalmers' licenses, the usual requirements are: Minimum age of 21; good moral character; residence in State for prescribed number of years; high-school graduation (as of late 1949, 11 States required some college training); completing an embalming course; completing apprenticeship (usually a 2-year period, which may have to be served before, after, or concurrently with the required school course); and passing an examination given by the State. Requirements for funeral directors' licenses are about the same, except that the course in embalming is required in only a few States and only 1 year of apprenticeship is usually specified. There are about 25 schools of embalming, most of which give a 9- to 12-month course. Three universities offer courses in mortuary science.

Fact 2. Mortuary occupations are not listed in the National Roster of Scientific and Specialized Personnel, description of professions series, published in 1947 by the U. S. Employment Service, Department of Labor. (Parasitologist, anatomist, X-ray technician, pharmacist, veterinarian are some of the professions in the medical field that are listed in this series.)

Fact 3. Funeral homes advertise.** For an enlightening glimpse of the extent of this nonprofessional practice, a perusal of the undertakers section in the "yellow pages" of a telephone directory is recommended. In addition to describing services offered, display advertisements contain such statements as "reasonable rates," "merchandise on display," "a price to fit any purse," "cost a matter of desire," and "we stock a complete line of caskets competitively priced."

See also Dictionary of Occupational Titles, Part I, Definition of Titles, prepared by the Job Analysis and Information Section, Division of Standards and Research, United States Department of Labor. (Superintendent of Documents, U. S. Government Printing Office, Washington 25, D. C.; 1939.)

In contrast, physicians and surgeons, osteopathic physicians, dentists, optometrists, and veterinarians are listed by name, address, and sometimes specialty.

Conclusion: Undertaking establishments, funeral homes, and mortuaries are not professional establishments in the accepted sense of the term "professional." Certain skills employed in the process of preparing dead human bodies for burial or cremation require technical training. For reasons of public health, embalmers must be licensed by the state. This action does not make them professional. In this respect, they are no different from numerous other businesses that employ individuals who have technical skills (or even professional training).

A funeral home is primarily a place for the conduct of religious services and is so similar to a church that it should be permitted in zones where churches are permitted.

Example: A petition was submitted to the planning commission of a California city proposing that a large parcel of land, 227 by 225 feet in area in a R-1 zone be rezoned R-2, and that the R-2 Two-Family Residence District use list be changed to permit funeral homes.

Observations: In the argument, it was pointed out that "the principal portion of any funeral establishment is the chapel, which is designed solely and only for religious ceremonies." Also: "It is true that a mortuary is a business in the sense that it operates or attempts to operate for profit; however, a mortuary is in every sense at least a quasi-public institution and certainly the character of its business is entirely religious in nature."

It is rather interesting from a public relations standpoint to note that throughout the application for rezoning, the term "funeral chapel" was adhered to, with few exceptions. Another point of interest regarding technique is that the funeral home representatives argued against rezoning the parcel to a C-1 district. That they did this mainly to protect the funeral home from other commercial uses is unlikely, since only one parcel was involved. More probable is the explanation that the neighbors would object to a commercial designation more than they would to another residential designation. Actually, there was a good case for rezoning to R-2, since the property adjoined a R-3 zone on one side and properties across the street were R-2. Furthermore, this parcel had stood idle for some time. However, to further amend the ordinance to permit mortuaries in R-2 zones is, of course, quite another matter.

The claim that a mortuary is primarily a religious institution needs no rebuttal.

Since funeral homes and cemeteries both are necessary for the care of the dead, funeral homes should be permitted in any zone where cemeteries are permitted.

Example: An ordinance was introduced in the Atlanta city council in August 1956 to create a "C.M.F-1 -- Cemetery, Mausoleum and Funeral Home District."
This designation would have applied to "all land areas in the City of Atlanta, which are at this time owned, dedicated, set aside for use or used for cemetery or mausoleum purposes by any person, firm or corporation engaged in the business of operating a cemetery or mausoleum, as shown by the deed records of the clerk's office of Fulton County and DeKalb County, Georgia."*

Comments: The answer to this argument rests on the premise that a funeral home is a business, whereas cemeteries are not -- even though they may be privately owned. PLANNING ADVISORY SERVICE Information Report No. 16, Cemeteries in the City Plan (July 1950), pointed out that "comparatively few published city plans have listed cemeteries as a separate land use classification. They are normally classed as a 'semi-public' use, a class that may also include churches, golf clubs, privately owned amusement parks, private health and charitable institutions, etc."

Generally speaking, the practice in zoning ordinances is to permit cemeteries in residence districts. Sometimes they are permitted in residence districts only as a special exception. Other large-area uses such as airports, local government buildings, and educational institutions are treated similarly. It is common in county zoning ordinances for cemeteries to be assigned to agricultural, rural residence, or suburban residence zones.

The phrase, "business of operating a cemetery or mausoleum" appearing in the proposed C.W. F. district of the Atlanta zoning ordinance is an example of "word magic." To call a cemetery a business enterprise in no way affects the custom of treating it as a semi-public use. Presumably it was employed in an attempt to establish a likeness between a mortuary and a cemetery.

THE ATTITUDE OF THE COURTS TOWARD THE LOCATION OF FUNERAL HOMES

Before the days when zoning was common in the United States, the location of funeral homes in residence districts was opposed on the claim that they constituted a nuisance. Even today, location in a residential area is occasionally contested on these grounds. One such case is Frederick et al. v. Brown Funeral Homes, Inc., In re Brown Funeral Homes, Inc., Supreme Court of Louisiana, April 28, 1952, on application for rev. Nov. 10, 1952, 62 So.2d 100 (Vol. 5 ZD, p. 88), wherein it was pointed out that the courts of 22 states have held that the establishment or operation of a funeral home should be enjoined in a strictly residential neighborhood.

*The background events are of interest. In April 1956 an amendment to the Atlanta zoning ordinance was introduced that would permit mortuaries in any residence zone in Atlanta. The Cascade Citizens Committee was formed to oppose the erection of a mortuary in the Greenwood Cemetery, located in a residential area fronting on Cascade Road. However, the board of aldermen approved the amendment and issued a building permit to the mortuary firm. On suit by the committee, a temporary injunction was issued. In the meantime, the Supreme Court of Georgia, ruling in another case, invalidated the article of the zoning ordinance that had been the authority for the issuance of the permit to the mortuary.
In Mutual Service Funeral Homes v. Fehler et al., Supreme Court of Alabama, April 24, 1952, reh. den. May 15, 1952, 58 So.2d 770, (Vol. 4 ZD, p.153), a funeral home was held to be a nuisance in a wholly residential section of the city of Cullman, Alabama. This particular case is of interest because the Supreme Court considered the rights of a residential neighborhood. It said: "A residential area must have a boundary. Outside of that boundary it is not residential and not entitled to its benefits. Inside of that boundary as a residential district it is entitled to the benefits of being free from disturbing business enterprises situated in it. . . ."

In Jack et al. v. Torrant et al., Zoning Commission of Town of Litchfield v. Torrant et al., Supreme Court of Errors of Connecticut, Feb. 21, 1950, 71 A.2d 705 (Vol. 2 ZD, p. 90), both upper and lower courts had pointed out that a funeral home was not a nuisance per se, and that the case must be judged on its facts. The courts did find that in this case the funeral home was a nuisance in fact, since its presence depressed the value of the surrounding property and the occupants of the surrounding homes suffered a direct and immediate adverse effect because of the nature of the funeral business. However, the Supreme Court of Errors also said: "Had the defendants established and maintained this funeral home for a substantial period without objection, a very different question might be involved in determining whether the plaintiffs could obtain injunctive relief."

The judges were somewhat more blunt in two of the earlier cases where funeral homes had been enjoined as a nuisance in a residential area. From the case of Street v. Marshall, St. Louis, Mo., 291 S.W. 494, involving location in a residential section of a funeral home in which no embalming was done and where funerals averaged only one a month:

No amount of skill or tact can wholly eliminate from the undertaking business its constant reminders of death, the one thing from which the normal individual instinctively flees, whatever his religion or philosophy of life. To be compelled to live in a continuing atmosphere of death is intolerable. While the undertaking business is not only lawful but indispensable, there is no justification or excuse for its seeking out and establishing itself in localities devoted exclusively to homes, where it not only materially detracts from the comfort and happiness of those who dwell there, but ruinously depreciates the values of their real estate as well.

Equally forthright is the following, from the decision of the Supreme Court of Minnesota in the case of St. Paul v. Kessler, 173 N.W. 17:

We agree with the courts above mentioned that the ordinary normal person cannot live next door to an undertaking establishment or funeral home where dead bodies are continuously carried in and out and are kept for longer or shorter periods, without thereby being more or less deprived of the comfortable enjoyment of his home. The business, then, is such that it may be regarded as a private nuisance in residence districts.

The law of nuisances and the law of zoning are entirely different. These
nuisance cases are of interest because in their decisions the courts have identified the essentially distressing nature of the mortuary business and have stated their opinion that it is incompatible with a home environment.

Since the very earliest days of zoning the courts have held that undertaking establishments are a commercial use, and being a commercial use, they do not belong in residence districts.* This opinion has not been unanimous, but it has been so overwhelmingly in the majority that it is considered a general rule.

In litigation, attorneys for funeral directors have claimed that a funeral home is not a business. They have claimed that the occupation of funeral director is a profession and that sometimes it is a customary home occupation. The Rathkopfs, in their chapter on "Home and Other Occupations in Residence Districts" in The Law of Zoning and Planning observe that in all cases where it was claimed that the mortician was practicing a profession, the court held that such occupation was a business, not a profession. Some of these cases are cited below; others are listed in PLANNING ADVISORY SERVICE Information Report No. 54, Zoning Regulation of Home Occupations (September 1953).

The point at issue in most of the cases that follow was whether a use variance or special exception had been properly granted.

These cases by no means constitute a complete list. They do, however, include nearly every case reported in ZONING DIGEST from 1949 on. Omitted are a few of indefinite outcome and those that turn on an unusual point to which the fact of the funeral home is incidental. For references on earlier cases, readers are referred to James Metzenbaum's The Law of Zoning (Baker, Voorhis & Co.; second edition, 1955), and Charles A. and Arden H. Rathkopf's The Law of Zoning and Planning (Clark Boardman Co. Ltd., New York; third edition, 1956).

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*See Edward M. Bassett, Zoning. (New York: The Russell Sage Foundation; 1940). Observing that the courts have "rather uniformly upheld the exclusion" of mortuaries from residence districts, he cites 28 cases occurring in 18 state courts between the years 1920 and 1934.
Zoning Cases on Funeral Homes

FUNERAL HOME ALLOWED IN RESIDENTIAL DISTRICT

Lawson et al. v. Zoning Board of Review of the Town of North Providence et al., Supreme Court of Rhode Island, Aug. 31, 1956, 125 A.2d 199 (9 ZD 12).

Exception for funeral home held proper. Ordinance authority to grant an exception so broad that there is wide opportunity for "spot zoning."

Cunningham et al. v. Leimkuehler et al., St. Louis Court of Appeals, Missouri, March 15, 1955, 276 S.W.2d 633 (7 ZD 148).

The court of appeals reversed the circuit court, holding that a lawful nonconforming use existed in the funeral parlor and that it might be continued. The funeral parlor was located in an area zoned for four-family dwellings, but which had been zoned commercial prior to 1950.


Funeral home permitted as variance in residential A district. The building is a single-family dwelling of 14 rooms. The board of review held that its use as a single-family dwelling was outmoded because of its size. Editor's Note: The reasons given by the board were such as to suggest that the legislative body should have considered changing the zone.

Woodbury et ux. v. Zoning Board of Review of City of Warwick, Supreme Court of Rhode Island, June 29, 1951, 82 A.2d 164 (3 ZD 163).

Board of review did not abuse its discretion in issuing a variance for a funeral home in a residence B district.

Clark et al. v. Board of Zoning Appeals of Town of Hempstead et al., Supreme Court, Nassau County, Oct. 27, 1948, 90 N.Y.S.2d 507 (1 ZD 127).

Court upheld grant of variance for funeral home in a B residence district. The court pointed out that the property in question was located on a six lane state highway; that the land immediately to the north thereof is zoned for business; and there are gas stations, a doctor's office and residence, and a church in the immediate vicinity. Editor's Note: On the basis of the information provided by the decision, it would appear that this called for a change in zoning rather than for a variance.

FUNERAL HOME PROHIBITED IN RESIDENCE DISTRICT

McCaulley et al. v. Albert E. Bridge & Son et al., Supreme Court of Louisiana, June 29, 1956, reh. den. Sept. 28, 1956, 90 So.2d 78 (9 ZD 15).
Special permits that did not provide standards to govern the action of the council were illegal.

Mahoney et al. v. City of Chicago, Supreme Court of Illinois, May 23, 1956, as mod. on den. of reh. Sept. 23, 1956, 137 N.E.2d 37 (8 ZD 274).

The lower court held the zoning ordinance arbitrary and illegal when it excluded undertaking establishments from apartment districts. In reversing the lower court, the Supreme Court said that it was valid to exclude an undertaking establishment from apartment districts.

Tripp v. Zoning Board of Review of the City of Pawtucket, Supreme Court of Rhode Island, June 8, 1956, 123 A.2d 144 (8 ZD 203).

The zoning board of review refused to grant an exception or variance for the use of a residence in a residence A district as a funeral home. The court held that the exception and the variance had been properly refused.

Veal v. City of St. Louis, Supreme Court of Missouri, March 12, 1956, reh. den. April 9, 1956, 289 S.W.2d 7 (8 ZD 160).

This is a later version of the case summarized in Vol. 6 ZD, p. 163 in which the St. Louis court of appeals held that the board of adjustment did not err in rescinding a building permit. The Supreme Court held that the board of adjustment had acted within its powers and that plaintiff's right to use her property as a funeral establishment had been finally adjudicated adversely to her.


Variance for morticians home in a single-residence district properly denied.


The zoning ordinance permits undertaking establishments in an E residence district if approved by the board of appeals. The supreme court held that the board did not err in refusing permit for an undertaking establishment. The board determined that the permit would violate the general zoning plan, since the area was residential, and would cause substantial inconvenience to the surrounding neighborhood.


Six residents of the city of Gurdon (population 2,400) sought to enjoin
appellees from establishing a funeral home in a residential district within the city. The city has no zoning ordinance. The Supreme Court opinion was divided, though the majority held that the modern rule is one that prohibits undertaking establishments in areas that are residential.

Clark et al. v. Board of Zoning Appeals of Town of Hempstead et al. (Barnes, Intervener), Court of Appeals of New York, May 25, 1950, 92 N.E.2d 903 (2 ZD 155).

Board of appeals exceeded authority in granting variance for funeral parlor in residence district.

Marrocco v. Board of Adjustment of City of Passaic et al., Superior Court of New Jersey, Appellate Division, Sept. 28, 1949, 63 A.2d 470, (1 ZD 127).

Funeral home not permitted in residential district. Petitioner must prove board of adjustment was unreasonable in refusing variance.

Ackerman et al. v. Board of Commissioners of Town of Belleville et al., Superior Court of New Jersey, Dec. 9, 1948, 62 A.2d 476 (1 ZD 15).

Board of adjustment erred in granting variance for funeral parlor in a residence district.

PARKING FOR FUNERAL PARLOR PROHIBITED IN RESIDENTIAL DISTRICT


Defendant used a residential lot, which adjoins commercial lot on which funeral parlor is located, for parking of cars and hearses. It was for this he was convicted of violating the zoning ordinance.

Scaliet et al. v. Stock et al., Supreme Court of Missouri, Dec. 8, 1952, 253 S.W.2d 143 (5 ZD 67).

Lots in multiple-residence district (which adjoin lots in commercial district intended for use by an undertaking establishment) could not be used for parking purposes.

FUNERAL HOME IS A COMMERCIAL USE

Whittle et al. v. Doing et al., Court of Appeals of Maryland, Aug. 20, 1956, 125 A.2d 41 (8 ZD 270).
Issuance of a special permit for a funeral establishment in a residential zone invalid because it is spot zoning.

Miller v. Planning Commission of the City of Torrance, District Court of Appeal, California, Jan. 20, 1956, 292 F.2d 278 (8 ZD 77).

Variance held properly granted for mortuary in C-1 retail commercial district.

Scollet et al. v. Stock et al., Supreme Court of Missouri, Dec. 8, 1952, 253 S.W.2d 143 (5 ZD 67).

The court held that an undertaking establishment was a permitted use on commercially zoned property but that adjoining lots in multiple-residence district could not be used for funeral home parking.


The court held that the occupation of an undertaker or funeral director is a business and not a profession. The building department had no power to authorize the use of a building contrary to the provisions of the zoning ordinance. A funeral parlor is prohibited in a residential zone.


The undertaking operation is a business and not a profession.

FUNERAL HOME PROHIBITED IN A BUSINESS DISTRICT

City of Atlanta v. Awtry & Lowades Co., Supreme Court of Georgia, April 12, 1949, 53 S.E.2d 353 (1 ZD 80).

Permission was sought from the board of zoning appeals to relocate an undertaking establishment into a business zone. The court listened to protests that the funeral home would "substantially and permanently injure the appropriate use of the neighboring property" and would not say that the board's action in refusing a permit to the funeral home was unreasonable, arbitrary, and discriminatory.
Just as the courts have usually upheld exclusion -- when called upon to decide on the propriety of granting a use permit for a funeral home in a residence district -- so most zoning ordinances designate a funeral home as a commercial use.

Bassett traces the reasons for this practice. He says that before zoning nearly every municipality had one or more mortuaries in buildings that had been private homes with ample grounds surrounded by residences. He observes that from the point of view of the owner and the people attending funerals there was an appropriateness in such location. However, the neighbors objected, and when zoning ordinances were adopted, new funeral homes were relegated to business districts.

There is no indication that things have changed significantly. In 1945, the National Selected Morticians made a survey of zoning practice and reported their findings in a special service bulletin titled Zoning -- Regulations and Legal Opinions. In brief, they found that:

Of the 90 individual zoning ordinances studied, 11 of them (12%) permitted funeral homes to be established in residential zones [under special conditions]. . . . On the other hand, 76 cities and municipalities, or 84%, permitted (or did not restrict) the establishment of funeral homes and mortuaries in the business or commercial zone. . . . Only one of the zoning ordinances specifically restricted mortuaries from locating in the business or commercial zone. In two California cities, funeral homes were located in special "undertaking districts."

The following examples are selected more or less at random from the ASPO zoning ordinance collection, except that the emphasis is on ordinances of recent date. They do not differ markedly from the findings of the NSM survey and are believed to be representative. Several features are of particular interest:

1. Mortuaries, funeral homes, or undertaking establishments are seldom found among the permitted use lists of residence districts.

2. Although a rightful commercial use, mortuaries are excluded more often than not from neighborhood business districts.

3. In three instances, mortuaries appear as a principal use in a new kind of business district -- a district whose tributary residential area is composed of several neighborhoods outside the central area. (See District of Columbia, Seattle, and Vancouver, B. C.)
Anne Arundel County, Maryland (1954) -- first permitted in light commercial district (neighborhood business).

Buffalo, New York (1953) -- first permitted in R4 apartment district.

Chicago Heights, Illinois (1953) -- permitted in C-commercial district but excluded from neighborhood shopping and central business districts.

District of Columbia (proposed 1956) -- first permitted in C-2 districts (community business center). "The C-2 District is designed to provide for both shopping and business needs for large segments of the city outside the central area. Such Districts would be located with access to main highways and include office employment centers. They might be tributary to large residential areas and would have high requirements for off-street parking."

Gainesville, Georgia (1956) -- first permitted in C-B central business district.

Greensboro, North Carolina (1954) -- permitted in all commercial and industrial districts except the central business district.

Los Angeles, California (amended to 1955) -- permitted in all commercial districts and M-1 district, provided the zoning administrator grants them permits as conditional uses. Not permitted in CR and C-1 limited business.

Macon-Bibb County, Georgia (1956) -- first permitted in C-2 general commercial zone.

Maricopa County, Arizona (amended to 1954) -- permitted in a neighborhood commercial district subject to the following conditions:
(1) Loading, unloading and stacking of automobiles to be on premises.
(2) Require masonry wall of 5 foot minimum height along any side or rear year adjacent to any residential district or use.

Mesa, Arizona (1949) -- excluded from business A and B districts; permitted only in general business or industrial districts.

Miami, Florida (amended to 1950) -- prohibited in B-1 neighborhood business district. First permitted in B-2 district.

Milwaukee County, Wisconsin (amended to 1953) -- permitted in local business districts, the only commercial districts established in the ordinance.

Mt. Lebanon Township, Pennsylvania (1955) -- first permitted in "C" commercial district, the only commercial zone provided.

Muskogee, Michigan (1952) -- permitted in all commercial and industrial districts.

New Orleans, Louisiana (1953) -- first permitted in heavy commercial district.

Oak Ridge, Tennessee (1956) -- permitted in O office district and B-2 general business district.
Oregon City, Oregon (1954) -- first permitted in C-2 commercial district.

New York, New York (amended to 1954) -- explicitly prohibited in restricted retail districts.

Maryland-Washington Regional District in Prince George County, Maryland (1949) -- first permitted in B-2 districts.


Providence, Rhode Island (amended to 1953) -- permitted in all business and industrial districts except local business districts.

Pulaski, Tennessee (1954) -- first permitted in local business district along with "other retail business or services which are essential to the convenience of the neighboring residences."

Raleigh, North Carolina (1954) -- specifically prohibited in neighboring business district.

San Mateo, California (1956) -- first permitted in C-2 (second commercial) district.

Seattle, Washington (proposed, 5th draft, 1955) -- first permitted in EC community business zone. (Not permitted in EN neighborhood shopping zone.) The EC zone is described as one that "provides for larger business centers serving the greater needs of several neighborhoods."

Superior, Wisconsin (1953) -- by amendment: "It is the intent of this addition to make the establishment of a mortuary or funeral home a permissive use in Multiple-Family District or Zone."

Vancouver, British Columbia (1956) -- first permitted, subject to special approval by the Technical Planning Board in C-2 commercial district (suburban), "a district catering for the day-to-day needs of residents in several neighborhoods and comprising a large district of the city."
SUMMARY AND CONCLUSIONS

Having examined the law as it is expressed in court cases and zoning ordinances, and the needs of the funeral business and the desires of persons attending funerals, can we now answer the question: what is the proper zone location for funeral homes?

It is evident that we have here one of the dilemmas so often encountered in zoning. This instance is perhaps more controversial than others because of the nature of the use involved and the emotional associations that surround it.

Householders and parents do not want to live next door to a funeral home. Translated into zoning terms this means that the public does not want funeral homes in residence districts. For more than 35 years, courts have backed up the laws that reflect this viewpoint, and it is unlikely that they will reverse their position.

The courts, furthermore, have been outspoken in maintaining that a mortuary remains -- no matter how attractively designed and discreetly managed -- a facility for the care of dead human bodies. And to have such a facility close to the place where one lives runs counter to the whole idea of family life.

On the other hand, the distraught survivors of the deceased, also the public, do not want to have funerals held in business districts. It offends their sensibilities, and they may well consider it an outrage to have to put up with traffic and surroundings of a strongly commercial nature.

Knowing this, and striving to offer the best service he can, the funeral director seeks a parcel of land in a pre-determined service area that will adequately accommodate his building and parking lot and that at the same time is located in a quiet area. His viewpoint is well expressed in a statement made in the petition for rezoning cited earlier: "Funeral chapels can no longer logically be confined within the commercial area because of the noise factor, congestion, lack of parking, and total absence of the reverent, quiet, dignified atmosphere such an institution must have in order to fulfill and satisfy the desires and needs of the people in bereavement."

Very often, these influences make a residential lot his first choice. Moreover, he needs a large parcel, and land prices are almost invariably higher in business areas. This factor is a further inducement to secure the residential lot for his funeral home, if at all possible.

In contrast to the candid expressions of the courts, which go to the heart of the mortuary operation, the funeral director is likely to emphasize mode of operation and external features such as landscaping, fine architecture, and off-street parking. Sometimes the "home-like" character of a building is stressed, or an attempt is made to acquire the acceptability of a profession or an institution.

Faced with these opposing pressures, what is the planning agency as advisor, the board of appeals as adjudicator, and the council as enacter of laws to do?
First, these groups are limited by the law as it stands. If a clear cut state supreme court case on the location of a funeral home has been handed down, then the problem is solved -- though the matter may have to again be carried through to a decision.

Second, and equally important, government agencies should invoke for guidance the purposes of the police power and its manifestation in the zoning statute and ordinance. Their obligation in administering a police power statute is to serve the interests of the public as a whole rather than the interests of a segment of the public -- when these two are in conflict.

Third, they should bear in mind that once a special permit or use variance is granted for a funeral home in one residence district, the bars are down. It will be very difficult to turn down a second application. Hence, the practical question is not merely the advisability of a funeral home in a particular location, but the advisability of funeral homes in all areas that are similarly zoned.

On the other side of the picture, these governmental groups should inquire as to how far up the use hierarchy, away from the main commercial zone, they can go and still not violate fundamental zoning tenets. The district categories that immediately come to mind are the intermediate business districts. And here it is the city that should avoid falling into a semantic trap. A zone designated "local business district" may in fact draw from a market area made up of a number of neighborhoods.* In a high-density section of a large city, this market area may have as many as 50,000 people living in it. Example of business districts that serve several neighborhoods and that have names that are descriptive of their actual trade areas are the community business districts of the District of Columbia, Seattle, and the suburban commercial area of Vancouver, B. C.

What are some other applications of the principle of permitting funeral homes in all business zones except those that serve one or two immediate neighborhoods? In growing suburban areas, business zones should be planned in which funeral homes will be permitted. It is one of the facts of life that this service will eventually be needed, and this certainty should not be overlooked.

In the older portions of most cities there are business zones whose boundaries should perhaps be revamped. Some of the court cases cited in this report indicate that rezoning had lagged behind changed conditions. Characteristic of the older residential sections that border central business districts are large dwellings, now outmoded for single-family use. Some of these are adaptable for funeral homes, and in many ways they are desirable for this purpose, since they can be remodeled into a funeral home cheaper than a new mortuary can be built. And the wood paneling and ornamental glass windows often found in their interiors help create the desired atmosphere of intimacy and warmth.**

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**The NSM survey showed that 63 per cent of new branch establishments were located in remodeled buildings, though there is no further breakdown on what the prior use of the buildings had been.
A field survey of land use trends in these sections may indicate that their residential character is only residual and their dominant character institutional and business.

In addition to the intermediate business districts, there may be special office building and institutional districts in which mortuaries are appropriate. An example of this type is the office district established by the Oak Ridge, Tennessee zoning ordinance.

The reasons for excluding funeral homes from all residence zones are as good and strong as they ever were. However, it seems fairly evident that many cities have failed to closely examine and consider the locational requirements of this important service enterprise that needs protection from congested streets and noisy surroundings.