

February 14, 1947.

Report on funeral of Amos H. Barr, held February 13, 1947 at the home of Frederick A. Cole, 6338 Frederick Ave., Catonsville.

On February 13, 1947, I called at the home of Frederick A. Cole at 5:30 p. m. and viewed the body laid out in the front west room of Mr. Cole's home. The lady in charge told me that the funeral would be held at 8:00 p. m. that night but the body would not be shipped until Friday morning, February 14, 1947, to Millersville, Pa. She asked me to sign the register which I did. At 7:30 p. m. I went back again to the Cole home to see if the funeral was held at 8:00 p. m. About 7:45 p. m. a car arrived with the preacher and two ladies, they stayed in the house until 8:30 p. m. and then got in the car and went away. I stayed around the house until 9:10 p. m. and the body had not been removed up until that time.

Henry P. Cole
Inspector.

REPORT ON FUNERAL HELD ON APRIL 14, 1947, at 2:00 o'clock P. M. FROM THE HOME OF FREDERICK A. COLE, 6338 Frederick Road, Catonsville.

The funeral of James W. Hartley, was held at the above address on April 14, 1947, at 2:30 o'clock p. m. Mr. Hartley was a man approximately 60 to 65 years of age. We viewed the body at 1:25 p. m. and registered in the book provided for this purpose. The services were held at 2:00 o'clock p. m. and the services were over at 2:20 p. m. The body was removed from the home at 2:45 p. m. There were approximately 14 cars in the funeral procession. Two cars in the procession had Tag No. 101-560-47 and Tag no. 52-800-48. We also secured the name of the police officer who directed traffic, his name being Laumann, from the Catonsville Police Station. There also was a photographer taking pictures, we did not get his name but the license number of his car was 335-372-48.

There were quite a number of people standing along the street, watching the funeral procession, who seemed to be people living in the neighborhood.

Henry P. Cole
Inspector

COUNTY COMMISSIONERS OF BALTIMORE COUNTY, MARYLAND

A Municipal Corporation, Complainant
vs
FREDERICK A. COLE, Defendant
IN THE CIRCUIT COURT FOR BALTIMORE COUNTY IN EQUITY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

Your Orator complaining, says:

1. That pursuant to Section 72-B of Article 3 of the Code of the Public Local Laws of Maryland, your Complainant, by resolution dated January 2, 1946, established within the limits of Baltimore County a comprehensive plan of zoning; that said plan divided Baltimore County into zoning districts and therein regulated and restricted the erection, construction, reconstruction, alteration, repair and use of buildings, structures and land.
2. That one of the zones so established is known as "D" Residence Zone and said Regulations provide that no building or land located within such a "D" Residence Zone shall be created, altered, repaired or used except for certain specified uses as set forth in said Regulations. That said specified uses do not include the use of such property for a funeral home or mortuary.
3. That the Defendant and his wife, Vallie V. Cole, are the owners of a tract of land situate at 6338 Frederick Avenue, in Catonsville, Baltimore County, Maryland; that said property is located within the outlines of a zoning district which has been by said Regulations established as a "D" Residence Zone.

4. That in flagrant violation of the said Zoning Regulations, the Defendant, who is a licensed funeral director, has for many months been operating and maintaining a funeral parlor or mortuary on the said premises and using said land for the purpose of conducting funerals.

5. On the 30th day of October, 1946, the Defendant petitioned the Zoning Commissioner of Baltimore County for a reclassification of said property from a "D" Residence Zone to an "R" Commercial Zone in order that he might be legally entitled to conduct a funeral parlor on said premises; that said petition was duly heard before the Zoning Commissioner of Baltimore County and by his order dated the 3rd day of January, 1947, the said petition was refused and that no appeal from said decision to the Board of Zoning Appeals of Baltimore County was prosecuted by the Defendant.

6. That the Defendant has, on a number of occasions been advised of his violation of Zoning Regulations and has been warned repeatedly against a continuance of his illegal conduct of funerals and the operation of a funeral home on said premises, but in spite of said warnings the Defendant has continued to violate said Regulations and on April 14, 1947, the Defendant conducted a funeral from said premises.

WHEREFORE YOUR COMPLAINANT prays:

1. That the Defendant may be enjoined from using the premises known as 6338 Frederick Avenue, Catonsville, for the conduct of a funeral parlor and the conducting of funerals therein in violation of Zoning Regulations and Restrictions.

2. And for such other and further relief as your Complainant's case may require.

AND as in duty bound, etc.

COUNTY COMMISSIONERS OF BALTIMORE COUNTY

BY _____
Solicitor for Complainant. President

Petition for Zoning Re-Classification

0761

To The Zoning Commissioner of Baltimore County:-

Vallie V. Cole and
Fredrick A. Cole, legal owners of the property situate

on the north side of Frederick Road, near Catonsville, in the 1st Election District of Balto. Co., beginning 148.66' west of Syngton Ave., thence westerly, on said side of Frederick Road, 321.34' with a right angle depth northerly of 200'

herely petition that the zoning status of the above described property be re-classified, pursuant to the Zoning Law of Baltimore County, from an "R" Residence zone to an "R" Commercial zone.

Reasons for Re-Classification:

Character of use for which above property is to be used: Existing building to be used for funeral home

Size and height of building: front _____ feet; depth _____ feet; height _____ feet.
Front and side set backs of building from street lines: front _____ feet; side _____ feet.
Property to be posted as prescribed by Zoning Regulations.

We, agree to pay expenses of above re-classification, advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

Vallie V. Cole
Fredrick A. Cole
Legal Owner

Address: 6338 Frederick Ave.
Catonsville, Md.

ORDERED by The Zoning Commissioner of Baltimore County, this _____ 20th _____ day of _____ 1946, that the subject matter of this petition be advertised, as required by the "Zoning Law of Baltimore County, in a newspaper of general circulation throughout Baltimore County, that property be posted, and that the public hearing herein be had in the office of the Zoning Commissioner of Baltimore County, in the Record Bldg. in Towson, Baltimore County on the _____ 10th _____ day of _____ November _____ 1946, at _____ o'clock P. M.

Henry P. Cole
Zoning Commissioner of Baltimore County

(over)

Pursuant to the advertisement, posting of property, and public hearing on the above petition and it appearing that by reason of _____ the above re-classification should be had.

It is Ordered by the Zoning Commissioner of Baltimore County this _____ day of _____ 1947, that the above described property or area should be and the same is hereby re-classified, from and after the date of this Order, from a _____ zone to a _____ zone.

Zoning Commissioner of Baltimore County

Pursuant to the advertisement, posting of property and public hearing on the above petition and it appearing that by reason of location, "spot zoning", a persuasive character of use and being in an exclusive residential zone.

It is Ordered by the Zoning Commissioner of Baltimore County, this _____ day of _____ 1947, that the above petition be and the same is hereby denied and that the Residence above described property or area be and the same is hereby continued as to and remain a _____ zone.

Henry P. Cole
Zoning Commissioner of Baltimore County

January 2, 1947.

Re: Vallie V. &
Fredrick A. Cole,
6400 Frederick Road,
Catonsville - 200, Md.

Gentlemen:

Re: Petition for Reclassification from a "D" Residence Zone to "R" Commercial Zone, N.S. Fredrick Row's, Bgs. 148.66' West Syngton Ave., W. 321.34' by N. 200' - Vallie V. Cole, et al, Petitioners

I have today, January 2, 1947, passed my Order as Zoning Commissioner, denying the petition for reclassification in the above entitled matter. My reasons for turning down this petition are briefly as follows:

The land involved in this petition is situate on the north side of Frederick Road, at or near Catonsville, in the First District of Baltimore County, beginning about 130 feet west of Syngton Avenue and having a frontage of about 200 feet westerly on Frederick Road with a right angle and parallel depth northerly of 200 feet. The zoning map shows the lot above mentioned, as well as the land in the rear thereof, zoned for commercial purposes. The land to the west of the lot and fronting on Frederick Road about 200 feet there it joins a commercial area and with a considerable width, is also a zoned residential area. The land westerly from the lot and for a continuing distance of about 1400 feet and with considerable depth is also zoned exclusively for residential purposes. The entire area of land opposite and on south side of Frederick Road is likewise exclusively zoned for residential purposes with no interpreted commercial uses or zones.

The petition recites that the building, which has heretofore been used continuously for residential purposes is now to be used as a building to be used for funeral home.

The granting of this petition, in effect, would establish a small isolated commercial spot in a large exclusive residential zoned area and would be "spot zoning". Spot zoning has been held by the Courts and zoning authorities (and is more fully amplified in a comparatively recent editorial in

Approved _____
County Commissioners of Baltimore County

Date _____ By _____ President

In Pet. Application of Fred. A. and Vallie V. Cole

This is an application for a change in zoning from D Residential to E Commercial for property located on the north side of Frederick Road 148 feet west of Symington Avenue.

Pursuant to an act of the General Assembly of Maryland, known as Chapter 502 of the Acts of 1945, and approved March 29, 1945, the County Commissioners of Baltimore County were empowered to regulate and restrict within Baltimore County, the height, number of stories and size of buildings and structures, the percentage of lot that may be occupied, the size of yards, courts, the set back or distance of any buildings or structures from front or side lot, road, street or alley line and other open spaces, the density of population and location and use of buildings, structures and land for trade, industry, residence or other purpose. In accordance with this law, codified as Section 72B of Article 3 of Code of Public Local Laws of Maryland, the property for which the present change has been applied was zoned D Residential.

Within the past few months, and certainly since March 29, 1945, the applicants purchased this property knowing at that time that it was within a residential area and that it had been so classified by the authorities of Baltimore County and at the time of the hearing a great many of the residents within a radius of three blocks of the proposed location presented themselves and protested against this change in zoning. In addition to that there was presented to the Commissioner written protests by approximately 250 people which number includes all but 8 of the property owners within a radius of three blocks. Several of the protesters testified before the Commissioner and among other things stated that there are now three funeral homes within three thousand feet of the proposed location but not within the area which has been classified D Residential. Some of the protesters who testified before the Commissioner have been residents of this particular area for several years, while others, many of whom are returned service men and who have acquired homes in the row house development

within this area, have only lived there for a period of 8 or 9 months. If this area is changed from D Residential to E Commercial all of these home owners, those who have maintained homes within the area for many years as well as those who have lived there only a few months, will sustain serious loss as far as property value is concerned. It is submitted that with particular reference to the protesters who recently acquired property within the row house development had every right to believe when the zoning law was passed for Baltimore County and this area was zoned D Residential that they could rely upon that and not be subjected to a change in zoning upon the application of one individual. The establishment of a funeral home at this particular location will have a disastrous effect upon the other property owners in the immediate vicinity. No good and sufficient reason was assigned by the applicant for a change in the zoning other than his desire to open a funeral home at this location.

In 1935, the Court of Appeals of Maryland had before it for decision the case of Jack Lewis, Inc. vs. The Mayor and City Council of Baltimore, et al, 164 Md. Page 147. In that case an application was made with the building engineer of Baltimore City for a permit to make certain alterations or repairs in a private home known as 1804 Rutaw Place in the City of Baltimore and to adapt it to use as a "funeral home". The proposed location was in territory shown on the use district map adopted as part of the zoning ordinance, as a residential use district. The application was opposed and denied by the Building Engineer and this decision was affirmed upon appeal by the Board of Zoning Appeals and later by the Baltimore City Court and finally by the Court of Appeals of Maryland. The language used by Judge C. Fritz at that opinion at page 155 is very pertinent to the present case.

"From the character of the application it is highly probable that the business will be conducted in the least offensive and most unobjectionable manner possible, but, even so, it will nevertheless be an undertaking business. That such a use may adversely affect persons residing in the immediate neighborhood of the proposed establishment

in the comfortable enjoyment of their homes, and lessen the value thereof for residential purposes, is neither an arbitrary nor an unnatural presumption, but on the contrary it is an inevitable inference from common knowledge of the nature and the minds of men. Because of their mortal nature, the certainty of death and the uncertainty of the time thereof, there is in the human race an instinctive horror of death, and upon the instinctive desire to postpone or avoid it rests the first great law of nature. Much of the world's wealth is spent in prolonging life, the severest punishment known to the law is to be deprived of it, and few there are who when the last call comes "leave the warm precincts of the cheerful day nor cast one longing lingering look behind". Death to the ordinary man is associated always with sorrow and pain, with the loss of those nearest and dearest to him, with severed friendships that may not be renewed, and with the dissolution of ties of love and affection which sweetened his life, and cheered and consoled him in misfortune and adversity. Consequently, to one of normal sensibilities, the presence of dead bodies, the gloomy trappings of funeral woe, the pall, the hearse, the shroud, and the casket, the knowledge that within a few feet of him bodies are being prepared for sepulture, the unending coming and going of funeral processions, must have a depressing and disturbing effect wholly inconsistent with the healing repose and respite from work and worry, which, whatever its character, is usually associated with the atmosphere of the home. And in dealing with the question in issue here, such factors are quite as much entitled to consideration as those which have a more direct, tangible, and physical effect, for it cannot now be doubted that physical deterioration may and probably will result from conditions which constantly depress and disturb the mind, nor, as was pointed out in City of Baltimore v. Fairfield Imp. Co., 87 Md. 364 at seq., 39 A 1081, 1084, is it essential that the sensations aroused by such condition be upon demonstrable facts. In that case Judge Cherry for the court referring to the establishment of a hospital for the treatment of leprosy said: "There are modern theories and opinions of medical experts that the contagion is remote, and by no means dangerous; but the popular belief of its perils, founded on the Biblical narrative, on the stringent provisions

The Board as the product of individuals who for personal and pecuniary reasons seek to have their properties changed, to the zoning regulations, different from those covering the neighborhood, and that, while a funeral home may be a part of the neighborhood, it is nevertheless classified property as a business, 'profession' is in nevertheless classified property as a business.

The Courts and zoning authorities have also held that the conduct of a funeral home is properly classified as a business. In determining the application of zoning regulations and that, while a funeral home may be a part of the neighborhood, it is nevertheless classified property as a business, 'profession' is in nevertheless classified property as a business.

An appeal may be taken from my decision to the Board of Zoning Appeals of Baltimore County. This appeal must be in writing addressed to the Commissioner and directed that appeal be sent to the Board of Zoning Appeals. The cost of appeal is \$25.00 and must be paid at the time the appeal is filed.

Very truly yours,

Zoning Commissioner.

J. J. Ford

cc: J. Francis Ford, Esq.,
1835 O'Halloran St.,
Baltimore - W. M.
Mr. J. J. Ford,
122 E. Lexington Ave.,
Baltimore - W. M.

of the Kossie law that show how dreadful were its ravages, and great the terror which it excited, and an almost universal sentiment, the result of a common concurrence of thought for centuries, cannot, in this day, be shaken or dispelled by mere scientific asseveration or conjecture. It is not, in this case, so much a mere academic inquiry as to whether the disease is in fact highly or remotely contagious, but the question is whether, viewed as it is by the people generally, its introduction into a neighborhood is calculated to do a serious injury to the property of the plaintiff there located."

It might also be pointed out that in that same opinion the Court cited with approval several cases from out of this jurisdiction wherein it has been held that the establishment of a funeral home within a residential district may become a nuisance. The Court of Appeals, as recently as July of this year, had before it the case of Ulrich vs. State, 46 Atl. 2 and Folio 637 which was an appeal from the Criminal Court of Baltimore City which upheld the conviction of Mr. Ulrich for using his home within a residential area as a funeral home. In the Ulrich case it was testified that as in the present case no preparation of the bodies was made at the location within the residential area but was done elsewhere.

The application in this case, if granted, would amount to spot zoning inasmuch as the location proposed to be changed is well within a residential area. "Spot zoning" has long been frowned upon. If this application is granted and this particular location rezoned to E Commercial, it is not speculative to say that the present applicants could do with the property as they saw fit in connection with any commercial venture that they or their assigns might undertake. Further it was pointed out at the hearing that inroads into this area of a commercial nature have already been attempted. Within the last three months the zoning Commissioner rejected an application for a filling station at the southeast corner of Frederick Road and Symington Avenue, which is almost directly across the street from where the involved property is located and for the reason that it was considered "spot zoning".

In conclusion it is submitted that the applicants have not stated such a case to warrant the Commissioner in changing the zoning in this particular instance. It has not been shown that there is a need for additional funeral homes in this area and no sound reason has been given why the zoning should be changed. As was said by the Michigan Court in the case of Adams vs. Kalamazoo Ice & Fuel Co., 245 Mich. 201, "The legitimate purpose of a zoning ordinance, as a relative to a residence district, is to preserve and not to disrupt existing conditions." "Spot zoning is not favored and to recommend this invasion in a purely residential area by a commercial enterprise would be to nullify, in effect, the present zoning laws in Baltimore County and establish a dangerous precedent as far as the residents of Baltimore County and prospective home buyers in that County are concerned. The residents of the area immediately adjacent to the proposed location have almost unanimously registered a protest against the proposed invasion of their residential use district.

For the foregoing reasons it is respectfully submitted that the recommendation of the Commissioner in this matter should be in the negative.

J. Francis Ford
Attorney for Protestants

October 30, 1946

RECEIVED of Vallie V. Cole and Frederick A. Cole, the sum of Eighteen (\$18.00) Dollars, being cost of petition for reclassification, advertising and posting of property, North side of Frederick Road, 1st District of Baltimore County.

Zoning Commissioner

Hearing:
Monday, Nov. 18, 1946
at 2:30 o'clock p.m.

PAID
OCT 17 1946
COUNTY COMMISSIONERS
OF BALTIMORE
J. J. Ford

CERTIFICATE OF PUBLICATION

TOWSON, MD. 11/16/46
THIS IS TO CERTIFY, That the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., on the day of November 1946, the first publication appearing on the 1st day of November 1946.
THE JEFFERSONIAN,
Manager.

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 1 Date of Posting: Nov 4/46
Posted for: Funeral Home
Petitioners: Vallie V. Cole and Fred A. Cole
Location of property: North side of Frederick Rd
148 feet west of Symington Ave
Location of signs: North side of Frederick Rd 29.9 feet west of Symington Ave
Remarks: Henry C. Gentry
Posted by: Henry C. Gentry Date of return: Nov 6/46

