

5107
ORDON GRAY
MARGARET L. BARTMAN
EVELYN R. DODGE
vs.
NATHAN R. BARTMAN, and G. MITCHELL
ASSTON, and CHARLES STEINBOCK, JR.,
COUNTY BOARD OF APPEALS OF
BALTIMORE COUNTY

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW
NISC. DOCKET 2834

OPINION

This is an appeal from a unanimous decision of the County Board of Appeals granting a Special Exception for a funeral home at 8521 Loch Raven Boulevard in the Ninth Election District of Baltimore County presently zoned "B-1". This property is located on the east side of Loch Raven Boulevard, one lot south of White Oak Road.

The Special Exception was granted with four conditions and the order signed by the Board on June 15th, 1961. The property known as 8521 Loch Raven Boulevard is approximately 100 ft. south of White Oak Road and immediately to the north of White Oak Road on both the east and west sides of Loch Raven Boulevard up to Joppa Road, which is the first highway north of White Oak Road, are properties presently used for commercial purposes. South of White Oak Road and immediately adjacent to 8521 Loch Raven Boulevard the property is zoned "B-1", and presently occupied by three doctors and a dentist on the first floor and an insurance office on the second floor; on the south of the subject property is a residence known as 8519 and another residence known as 8517 and a vacant lot at 8515. Immediately south of the vacant lot at 8515 is Anuska Road and immediately south of this is a shopping center zoned "B-1".

Loch Raven Boulevard in front of 8521 is a dual highway containing three lanes north and three lanes south divided by a concrete strip.

Dr. Gray who owns the property at 8523 Loch Raven Boulevard opposes the Special Exception for fear that the use of the adjacent property for a funeral home will have an unfavorable effect on patients seeking his services as a doctor. It is noted, however, in the testimony that although Dr. Gray is a general practitioner, one of the doctors in the building is a dentist, and another an obstetrician. He is further of the opinion that the traffic situation would be increased.

use as an office building and did not feel that a funeral home would cause any worse traffic problems than would an office building.

Before any special exception is granted the Board must satisfy itself that the use for which the special exception is requested will comply with Section 502.1 of the Baltimore County Zoning Regulations. It is the unanimous opinion of the Board that these regulations will be fully complied with if the special exception for a funeral home were granted.

- (a) It is the Board's opinion that it would not be detrimental to the health, safety or the general welfare of the locality. While it is true that one neighbor, Dr. Gray, objected because of the adverse effect on his patients, it is difficult to believe that this is sufficient reason for denying the special exception. It was pointed out that the William Cook Funeral Home at St. Paul and Preston Streets in Baltimore City, is in an area with many doctors' offices and that patients must pass this funeral home on their visits to these doctors. Certainly the Board finds nothing in the operation of a funeral home that would be detrimental to the health or safety unless it be traffic which we discuss under (b).

- (b) While it is true that a funeral home brings traffic, this could be met by any use made of the subject property. In limiting by restrictions the size of the building, traffic seems to be no problem to the Board.

With regard to sections (c), (d), (e) and (f), we can find nothing in the operation of a funeral home that could possibly violate these sections of 502.1. It is therefore, the unanimous opinion of the County Board of Appeals that this special exception should be granted subject to the following conditions:

With respect to Dr. Gray, it is noted by the Court, having had an opportunity to view the location, that the entrance to Dr. Gray's office is on White Oak some considerable distance, at least 75 feet or approximately 100 feet east of Loch Raven Boulevard, and certainly the patients going into Dr. Gray's building could not see the funeral home; furthermore, as there is no parking allowed on Loch Raven Boulevard the space in front of Dr. Gray's property on Loch Raven Boulevard is designated as a bus stop and parking is prohibited so that his patients would enter Dr. Gray's office on White Oak Road and either park on White Oak Road or in the parking space provided by Dr. Gray immediately east of the building which he and his colleagues occupy. In respect to this it is noted that in the testimony the petitioner or the funeral director, has stated that he proposes to build a parking space for the vehicles using his funeral home in a parking lot to be erected in the back of his home and which will be screened from individuals using Dr. Gray's parking space.

In addition to Dr. Gray, Mrs. Bartman and Mrs. Dodge also oppose the funeral home, but it is interesting to note that one of these ladies, namely Mrs. Bartman, living at 8517 Loch Raven Boulevard, had entered into negotiations with an oil company for the sale of her property for a filling station.

In regard to the granting of this Special Exception by the County Board of Appeals the function of the Court on review is well settled. In an appeal from a decision of the Board the Court may not substitute its own judgment as to the wisdom or soundness of action taken by the Board but will decide only whether or not such action was capricious, arbitrary, discriminatory or illegal. It is not the function of the Court to zone nor remove, but only to decide whether the Board properly applied the applicable law to the facts.

If there is room for reasonable debate as to whether the facts justified the Board in granting the Special Exception its action must be upheld. Official Code of Zoning Appeals 214 Mt. 551 at page 362. In respect to this the records show substantial evidence to support the Board's finding and its decision in granting the Special Exception is at least fairly debatable.

ORDER

The above entitled matter having been fully argued by counsel and the Court having fully reviewed the testimony and exhibits, it is this 15th day of September 1961, ORDERED by the Circuit Court for Baltimore County that the decision of the County Board of Appeals of Baltimore County granting the Special Exception for a funeral home with restrictions as set out in the opinion of the Board be, and the same is hereby affirmed.

(signed) JAMES J. LINDSEY

- There will be no physical structural change to the exterior of the premises whatsoever with the exception that the porch on the south side of the building may be enclosed.
- That the funeral home operation will be confined to the basement and first floors only and that the second floor will be used as a residence.
- That there will be no maintenance of cars on the premises and that the existing garage will be for passenger cars only.
- The granting of this special exception is granted subject to the property owner obtaining approval from the Office of Planning on plans for parking, and plans for ingress and egress.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 15th day of June, 1961, by the County Board of Appeals, ORDERED that the special exception should be and the same is hereby granted.

Any appeal from this decision must be in accordance with Rule No. 1101 of the Rules of Practice and Procedure of the Court of Appeals of Maryland.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

[Handwritten signatures]
G. Mitchell Asst.
Charles Steinbock Jr.

RE: PETITION FOR SPECIAL EXCEPTION
FOR FUNERAL ESTABLISHMENT -
2. S. Loch Raven Boulevard 102.6'
S. White Oak Road, 9th District,
Frank A. Smith and Loretta S.
Smith, Petitioners

BEFORE

COUNTY BOARD OF APPEALS

OF
BALTIMORE COUNTY

No. 5107-X

OPINION

This is a petition for a Special Exception for a Funeral Home on property located on the east side of Loch Raven Boulevard, 1 lot south of White Oak Road, known as 8521 Loch Raven Boulevard. The property is located in the Ninth Election District of Baltimore County and is presently zoned "B-1".

In considering any special exception it is most important to consider the zoning and usage of the surrounding properties.

On the east side of Loch Raven Boulevard, immediately to the north of White Oak Road, is "B-1" zoning and all properties on this side of Loch Raven Boulevard, as well as the west side until you reach the Joppa Road, are "B-1" and presently used for commercial enterprises. To the south of White Oak Road and immediately adjacent to the subject property on the north is "B-1" property, presently occupied by three doctors and a dentist on the first floor and an insurance office on the second floor. To the south of the subject property, immediately adjacent to the subject property, is a residence known as 8519; another residence at 8517 and a vacant lot at 8515. The last three properties are zoned "B-1". At this point we find Anuska Road and immediately to the south of Anuska Road is "B-1" property occupied by a Shopping Center.

-1-

BREWSTER, BOONE, MAGUIRE, BRENNAN and COOK
ATTORNEYS AT LAW
308 WEST CHESAPEAKE AVENUE
TOWSON, MD. 21204
VOLUME 5-1117-1004

November 30, 1960

Mr. John C. Orr, Deputy Zoning Commissioner
Baltimore County Office of Planning and Zoning
County Office Building
111 N. Chesapeake Avenue
Towson 1, Maryland

Dear Mr. Jones:

Re: Petition for Special Exception for
Funeral Establishment - 2. S. Loch
Raven Boulevard 102.6' S. White Oak
Road, 9th Dist., Frank A. Smith and
Loretta S. Smith, Petitioners.

Please enter an appeal to the Baltimore County Board of Appeals in the above captioned case and transmit all records to the Board of Appeals.

I enclose herewith check in the amount of \$70.00 to cover costs.

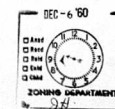
Thanking you for your cooperation I remain,

Sincerely,
[Signature]
A. Gordon Boone

ATB-lk

Encl.

cc
Smith & Harrison



On the west side of Loch Raven Boulevard immediately opposite the subject property are commercial properties occupied by a Drive-In Laundry and Cleaning Plant and two other commercial usages. At this point, Loch Raven Boulevard is a dual highway, each side being three lanes wide.

Mr. William R. Johnston testified that he is the Contract Purchaser of the subject property based on the granting of this special exception. He further testified that he had been in the funeral business for some sixteen years and was a licensed mortician. His plans are to live with his wife on the second floor of the residence and convert the first floor into a funeral home. He stated that he plans to have only three viewing rooms. He would be willing to restrict the property to its present use as well as to limit the funeral home use to the first floor and basement. Further, that he would make no exterior changes to the property.

The protestants presented three witnesses. Dr. Edward Gray, who owns the property at 8523 Loch Raven Boulevard; Mrs. Bartman and Mrs. Dodge.

Dr. Gray opposes the Special Exception for he fears that the use of the adjacent property for a funeral home will have an adverse effect on persons seeking his services as a general practitioner. He testified that many of his patients are old and have heart conditions and that the reminder of death could possibly lead them to find another doctor. Also that he felt that the use of this property for a funeral home would increase the traffic. Mrs. Bartman and Mrs. Dodge opposed the funeral home use, although Mrs. Bartman had no objections to it.

-2-

RE: PETITION FOR SPECIAL
EXCEPTION FOR FUNERAL
ESTABLISHMENT - 2. S.
Loch Raven Boulevard 102.6'
S. White Oak Road, 9th Dist.,
Frank A. Smith & Loretta S.
Smith, Petitioners

BEFORE

DEPUTY ZONING COMMISSIONER

OF

BALTIMORE COUNTY

No. 5107

Pursuant to the advertisement, posting of property and public hearing on the above petition for a special exception to use the property described for a Funeral Establishment, and it appearing that by reason of location, the granting of the special exception would be detrimental to the health, safety, or general welfare of the locality involved and would tend to create congestion in the roads, streets or alleys therein, the special exception should be denied, therefore: It is this 16th day of November, 1960, by the Deputy Zoning Commissioner of Baltimore County, ORDERED that the aforesaid special exception should be and the same is hereby denied.

[Signature]
Deputy Zoning Commissioner
of Baltimore County

BY: Frank A. Smith & Loretta S. Smith

All that parcel of land in the Ninth District of Baltimore County being all that parcel of land on the East side of Loch Raven Boulevard beginning 102.6 feet South of White Oak Road; thence Southerly and Easting 102.6 feet to the East side of Loch Raven Boulevard 103 feet; thence South 45 degrees 45 minutes East 182.92 feet; thence North 10 degrees 16 minutes East 27.05 feet; thence North 72 degrees 52 minutes West 178.2 feet to the place of beginning.

for a Special Exception
 hereby petition ~~XX~~ pursuant to the
 Zoning Law of Baltimore County, ~~XXXXXX~~ ~~XXXXXXXXXX~~ ~~XXXX~~
 Reasons ~~XXXXXXXXXXXXXXXXXXXX~~ Special Exception.....
 For use as a funeral establishment.....

----- See Plot Plan -----
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.

I, or 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, Maryland, as amended pursuant to the Zoning Law for Baltimore County.

William E. Johnson Frank A. Smith
Elizabeth S. Johnson Koretta S. Smith
Elizabeth H. Johnson Koretta S. Smith Legal Owner
Contract Purchasers

Contract Purchasers _____ Address c/o A. Gordon Boone - J. Thomas
305 W. Chesapeake Avenue
Towson 4, Maryland
Valley 3-7300

ORDERED By The Zoning Commissioner of Baltimore County, this 15th day of September, 1960, 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 the same be posted, and that the public hearing herein be had in the office of the Zoning Commissioner of Baltimore County, at the Reckord Building, in Towson, Baltimore County, on the 15th day of October, 1960, at 10:00 o'clock, A.M.

Zoning Commissioner of Baltimore County

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

Towson, Maryland

#5107

District: 8th Date of Posting: 10-12-60

Posted for: General Home

Postmaster: George R. Hunsent, et al

Location of property: 855 South Western Blvd, 1025 off of Southside C&D

Location of property: Southside, between 8551 South Western Blvd.

Location of Signs: Posted on property between 8551 South Western Blvd.

Remarks:

Posted by: George R. Hunsent Date of return: 10-13-60

INVOICE
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE
Division of Collection and Receipts
COURT HOUSE
TOWSON, A. MARYLAND

TO: Messrs. Brewster, Boone, Maguire, Bryman & Cook, 305 W. Chesapeake Ave., Towson 1, Md.	BILL TO Zoning Department of Baltimore County 113 County Office Building Towson 1, Md.	TOTAL AMOUNT DUE
REPORT TO ACCOUNT NO. <u>01-622</u>		CHECK
QUANTITY	DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE	
Part of appeal to County Board of Appeals #5107 10-660 3725 0 * * 111 - 10-660 3725 0 * * 111 - 70.00 70.00		70.00 70.00
3		
INSTRUCTIONS: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON 4, MARYLAND RETURN UPPER SECTION OF THIS BILL WITH YOUR REMITTANCE.		

INVOICE
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE
Division of Collection and Receipts
COURT HOUSE
TOWSON 4, MARYLAND

TO: Frank A. Smith 5081 Loch Haven Blvd. Towson, Md.		BILLED BY: Zoning	NOVAL AMOUNT \$ 24.00
DEPOSIT TO ACCOUNT NO. <u>01068</u>	DETAILS UPPER SECTION AND RETURN WITH YOUR REMITTANCE		DATE
QUANTITY	Advertising and posting of property - Frank A. Smith		24.00
PAID - Baltimore County, Md. - Chief of Assessors			
11-260 2400 * * * TIL-			24.00
3			
IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWNSHIP 4, MARYLAND. PLEASE RETURN UPPER SECTION OF THIS BILL WITH YOUR REMITTANCE.			

INVOICE
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE
Division of Collection and Receipts
COURT HOUSE
TOWSON 4, MARYLAND

To: J. Thomas Kilgott, Esq. 302 W. Chesapeake Avenue Towson 4, Maryland		BILLED BY: Zoning	TOTAL AMOUNT \$ 29.50
REPORT TO ACCOUNT NO. 01622			
QUANTITY	DETAILS OF UPPER SECTION AND RETURN WITH YOUR REMITTANCE		CHARGE
—	Advertising ani sign - Frank Smith et al		29.50
FBI — Baltimore County, Md. — Office of Finance			
10-7040 1 1 5 9 * * * TIL — 10-7040 1 1 5 9 * * * TIL —			29.50 29.50
3 IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON 4, MARYLAND PLEASE RETURN UPPER SECTION OF THIS BILL WITH YOUR REMITTANCE.			

INVOICE
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE
Division of Collection and Receipts
COURT HOUSE
TOWSON 4, MARYLAND

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INVOICE
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE
Division of Collection and Receipts
COURT HOUSE
TOWSON 4, MARYLAND

To:	J. Thomas Billicott, Esq. 305 N. Chesapeake Ave. Towson 14, Md.	BILL TO	Zoning	<table border="1"> <tr> <td data-bbox="1923 580 1957 592">TOTAL AMOUNT</td> <td data-bbox="1957 580 1977 592">\$ 50.00</td> </tr> <tr> <td data-bbox="1923 592 1957 603">DUE</td> <td data-bbox="1957 592 1977 603">50.00</td> </tr> </table>	TOTAL AMOUNT	\$ 50.00	DUE	50.00
TOTAL AMOUNT	\$ 50.00							
DUE	50.00							
REPORT TO ACCOUNT NO. 01602	DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE							
QUANTITY	Petition Fortesimal Exemption- Frank Smith et al.							
—								

CERTIFICATE OF PUBLICATION

TOWSON, MD., September 29, 1960.

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., once on each one time successive weeks before the 17th day of October, 1960, this last publication appearing on the 31st day of September, 1960.

THE JEFFERSONIAN,
Frank H. Hutton
Manager.

Cost of Advertisement, \$.....

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 9th Date of Posting: 9-28-60
 Posted for: Special Operation - Juvenile Establishment
 Petitioner:
 Location of property: East end of Oak Road, 1/2 mile South of
White Oak, 1/2 mile N. of
 Location of Signs: East end of Oak Road, 1/2 mile South of
White Oak Road.
 Remarks:
 Posted by: George R. Hume Date of return: 9-28-60
 Signature

STATE OF MARYLAND
STATE ROADS COMMISSION
300 WEST PRESTON STREET
BALTIMORE 1, MD.

Mr. John G. Ross
Deputy Zoning Commissioner
County Office Building
Baltimore, Maryland

RE: Zoning Petition No. S107-X
Special Exception
East side of Loch Raven Boulevard
Rt. 662

Dear Mr. Ross:

This office has reviewed the subject petition and has no objection to the Special Exception, however, if the Zoning Commission should see fit to grant the petition, it is recommended that the plan for ingress and egress be made subject to the approval of the State Road Commission.

Thank you for your cooperation.

Very truly yours,
Charles Lee, Chief
Development Engineering Section
John G. Ross
Rts. John L. Duerst
Asst. Development Engineer

Very truly yours,
Charles Lee, Chief
Development Engineering Section
John L. Duerr
BY: John L. Duerr
Asst. Development Engineer

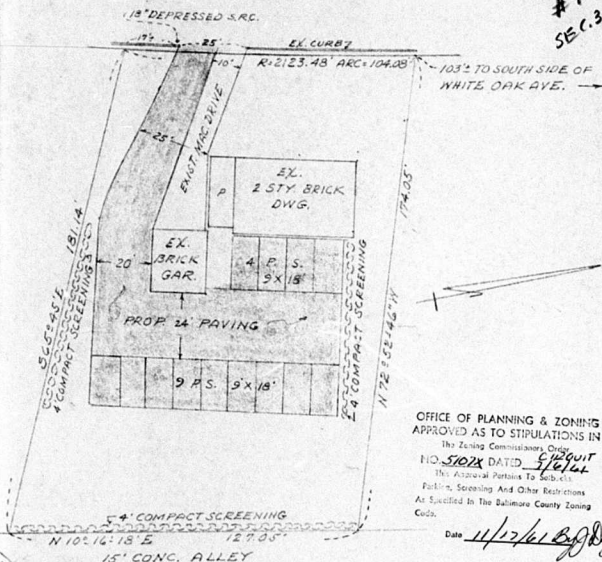
☐ Ann'd
☐ Rec'd
☐ Ret'd
☐ Ext'd
☐ Chkd

JUL 13 '60
 ZONING DEPARTMENT
 By *BA*

9TH ELECTION DISTRICT OF BALTO. COUNTY, MD.

LOCH RAVEN BLVD.

#5107XA
MRP
#9
SEC. 3-C



OFFICE OF PLANNING & ZONING
APPROVED AS TO STIPULATIONS IN
THE Zoning Commission's Order
NO. 5107X DATED 5/16/64
The Approval Pertains To Sub-cls
Parking, Screening And Other Restrictions
As Specified In The Baltimore County Zoning
Code.

Date 11/26/64



PROPOSED DRIVEWAY IMPROVEMENT & PARKING
TO ACCOMPANY ZONING FILE

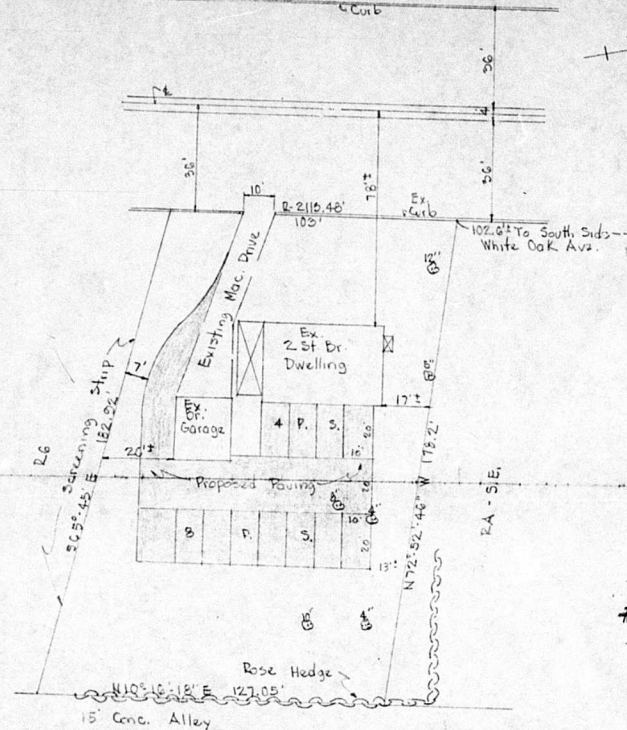
SCALE 1" = 30'

WILLIAM M. MAYHADER
COUNTY SURVEYOR
CIVIL ENGINEER & LAND SURVEYOR
COURT HOUSE TOWNSON 4, MD.

NOVEMBER 16TH 1964

LOCH RAVEN

BLVD.



#5107-X



E. F. RAPHAEL & ASSOCIATES
REG. LAND SURVEYORS
COURTLAND AVE.
TOWSON 4, MARYLAND

APPROVED FOR FILING
Reviewed By [Signature]
Date 7/15/66

PLAT TO ACCOMPANY
ZONING APPLICATION
9TH ELECT. DIST. BALTO. CO., MD.
SCALE - 1" = 30' MAY 5, 1965