

Re: Petition for Special Hearing for Parking in a residential area. E.S. Arbutus Ave., 130' from Frederick Rd. 1st District, Edward S. MacNabb, Jr., Petitioner

BOARD OF APPEALS
FOR
BALTIMORE COUNTY
No. 5426 Sp. Hear.

NOTICE OF APPEAL

On behalf of Carl S. Bloede, Robert M. Lynch, Jr. and V. Carl Bloede, protestants and adjoining property owners, please note an Appeal on this 4th day of January, 1962 to the Board of Appeals of Baltimore County from the Order of Zoning Commissioner John G. Rose, granting the above Petition.

Harry Goldman, Jr.
HARRY GOLDMAN, JR.
Attorney for Appellants
Central Savings Bank Building
Charles & Lexington Streets
Baltimore 2, Maryland
VERA 7-1223

A copy of the foregoing was mailed to Eugene G. Picks, Esquire, Smith and Harrison, Jefferson Building, Towson 4, Maryland.



RECORDED & INDEXED
JAN 10 1962
BALTIMORE COUNTY
CLERK OF THE BOARD OF APPEALS

Re: Petition for Special Hearing for parking in a residential area - E.S. Arbutus Ave., 130' from Frederick Road, 1st Dist., E.S. MacNabb, Jr., Petitioner

BEFORE
ZONING COMMISSIONER
OF
BALTIMORE COUNTY
No. 5426-Sp. Hear.

Upon hearing on the above petition for a special hearing to approve parking on the east side of Arbutus Avenue 130 feet from Frederick Road, in the First District of Baltimore County, I have this 7th day of December, 1961, passed my Order approving the parking on the subject property, subject, however, to the construction of said parking lot in accordance with plan approved by the Office of Planning & Zoning.

John G. Rose
John G. Rose
Zoning Commissioner
of Baltimore County

PETITION FOR A SPECIAL HEARING

In the Matter of
Petition of
EDWARD S. MACNABB, JR.
ZONING COMMISSIONER
OF BALTIMORE COUNTY

For a Special Hearing
To the Zoning Commissioner of Baltimore County

J. EDW. S. MACNABB JR.
J. EDW. S. MACNABB JR.
Petitioner

hereby petition for a Special Hearing, under the Zoning Law and Regulations of Baltimore County, to determine whether or not the Zoning Commissioner of Baltimore County should approve ~~the construction of a parking lot~~ parking in a residential area.

Location of property:
Fronting 130' on the east side of Arbutus Avenue, at its intersection with Frederick Road in the Catonsville Area.



Edward S. MacNabb, Jr.
Edward S. MacNabb, Jr.
Petitioner
301 Frederick Ave
Address: Catonsville 28 East

HARRY GOLDMAN, JR.
ATTORNEY AND COUNSELLOR AT LAW
CENTRAL SAVINGS BANK BUILDING
CHARLES AND LEXINGTON STREETS
BALTIMORE 2, MARYLAND
VERA 7-1223



January 3, 1962

Hon. John G. Rose
Zoning Commissioner of Balto. County
County Office Building
Towson 4, Maryland

Re: Petition of MacNabb
No. 5426 Sp. Hear.

Dear Mr. Commissioner:

I enclose a Notice of Appeal in the above case and a check for \$35.00 to cover the costs of the same.

With best wishes to you in the New Year, I am

Sincerely,

Harry Goldman, Jr.
HARRY GOLDMAN, JR.

HG:kvg
Enclosures

COURT OF APPEALS OF MARYLAND

No. 290
September Term, 1962

CARL S. BLOEDE, et al
v.
EDWARD S. MacNABB, JR.

Anderson
Hammond
Prescott
Harney
Marbury, JJ.

Opinion by Harney, J.

Filed: May 14, 1963

This is an appeal by the protestants (Carl S. Bloede and others) in a zoning case from the order of the Circuit Court for Baltimore County affirming the order of the board of appeals granting the petitioner (Edward S. MacNabb, Jr.) a use permit for commercial funeral home parking in a residential area.

The petitioner owns and has operated as a nonconforming use for approximately thirty years a funeral home located on the southwest corner of Wade Avenue and Frederick Road in the Catonsville area. He also owns the lot, which is the subject of this controversy, having acquired it by deed from the State Roads Commission which had acquired it by condemnation in the course of constructing the Baltimore Beltway. The lot, which lies in a northerly direction from the funeral home, across, but not immediately adjacent to, Frederick Road, is located in a residential area on the east side of a private road known as Arbutus Avenue. The lot is bounded on the east and south by the right-of-way of the State Roads Commission used as an exit from the Beltway into Frederick Road. Between the lot and the paved portion of the Beltway exit there is a turf-covered shoulder or slope, eighteen feet in width at its narrowest point, extending along the right-of-way to Arbutus Avenue. At present the whole lot is unimproved and is covered with trees and undergrowth which serve to shield the properties of the protestants from the commercial areas along Frederick Road. It is conceded that the lot cannot be used for residential purposes.

The trees and undergrowth on the southerly end of the lot are to remain, but that part of the lot proposed to be used as a parking facility will, if granted, accommodate thirty passenger automobiles which would otherwise have to be parked on the public streets in the area. And while patrons using the parking lot would ordinarily have to cross Frederick Road, not only against the normal traffic on that street but also against the merging traffic from the Beltway, at a point where there is no traffic control signal, the petitioner proposed to remedy this condition by having the attendants at the funeral home park the automobiles of the patrons on the parking lot and return them as and when required.

One of the contentions of the protestants (and the only one we need consider) is that the order granting the off-street parking permit violated the applicable zoning regulations.

Section 409.4 a of the Baltimore County zoning regulations authorizes the zoning commissioner to issue a permit for the use of land in a residential zone for a parking area, provided such use permit is conditioned on, among other requirements, the land so used being either adjoining or "across an alley or street from the business or industry involved."

Whatever other situations may be included in the phrase "across the street from," we think it cannot be said --bearing in mind that the word "street" in the zoning regulations is defined in part as a right-of-way providing primary access to properties abutting thereon -- that the proposed parking lot is across the street from the funeral home when in fact it is separated therefrom not only by Frederick Road but also by the intervening turf-covered shoulder or slope along the Beltway exit owned by the State Roads Commission.

The order of the lower court affirming the order of the board of appeals must therefore be reversed.

ORDER REVERSED: THE COSTS TO
BE PAID BY THE APPELLEE.

CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

#5426

District: 1st Date of Posting: 11-15-61
Posted for: Special Hearing for Parking in a Residential Area
Petitioner: Edward S. MacNabb, Jr. et al
Location of property: Fronting 130ft. on the E.S. of Arbutus Ave.
Location of Signs: East side of Arbutus Ave. 95ft. north of Frederick Ave.
Remarks: _____
Posted by: George R. Hammond Date of return: 11-16-61



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

September 22, 1961
Contract: B 635-12-420
Item No.: 355-96
Property: Edmond B. Harn

Mr. Edward S. MacNabb, Jr.
Frederick Rd. Wade Avenue
Catonsville, Maryland

Dear Mr. MacNabb:

This will acknowledge receipt of your certified check in the amount of \$4,526.26 covering the balance payment for the excess land of the above captioned property.

This office regrets to inform you that we can not draw the deed as requested. Your request would require the drawing of a life estate in the land. Please send us the name or names you desire to appear in the deed. It is suggested that if you desire the deed drawn as proposed, that upon receipt of our executed deed, you have another deed drawn conveying the property as requested in your note.

We are returning to you the executed copy of the contract for your own records and it is not necessary to return this contract to the Commission.

Your cooperation and immediate reply to this letter is requested so that it will no further delay the drawing of the deed.

Very truly yours,

Carl E. Bloede
Carl E. Bloede, Jr., Chief
Property Management Section
Right of Way Division

RSB:asb

Att: Executed copy of contract

CC: Mr. E. C. Chaney
Mr. W. C. Hann

RE: PETITION OF EDWARD S. MCNABB, JR., :
for Use Permit for Parking in a :
residential area on the East side of :
Arbutus Avenue, 130' from :
Frederick Road, 1st District :
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
No. 5245

The petitioner in this case seeks to obtain a Use Permit for the use of land in a residential zone for a parking area in connection with the operation of a Funeral Parlor located at 301 Frederick Road on the southwest corner of Frederick Road and Wade Avenue. The subject property is located 130 feet from the north side of Frederick Road and is bounded on the south by the right of way for an exit road from the Baltimore Beltway; on the east by the Beltway; on the north by a residence and on the west by Arbutus Avenue.

Arbutus Avenue is a dead end road, paved with blacktop and has no sidewalks. There is one residence on the east side and four homes on the west side of the street. It was testified that Arbutus Avenue is a private road for the use of residents of Eden Terrace.

Section 409.4 (A) of the Baltimore County Zoning Regulations states that "the land to be used (for a parking area) must adjoin or be across an alley or street from the business or industry involved." The protestants contended that the subject tract of land was not across the street from the funeral parlor by virtue of the State Roads Commission right of way intervening. It is the unanimous opinion of the Board of Appeals that this right of way becomes part of the street, i.e. Frederick Road, and so comes within the provisions of the Code.

The size of the lot is such that a residence could not be built on it under existing zoning. At the present time, it is an unimproved lot covered with trees and undergrowth.

The petitioner stated that the proposed lot would provide parking space for 13 cars and would be used to handle the overflow from his present parking spaces. It is to be used only for cars of visitors to the funeral home and would not be used for storage of funeral home vehicles or trucks.

The protestants stated the value of this land for parking would decrease the value of their homes. They also contended that deed restrictions on Eden Terrace property restricted the use of land to residential purposes. This Board is of the opinion that determination of the validity of deed restrictions are beyond the scope of its powers.

The Board is unanimous in its opinion that the property in question meets the requirements of Section 409.4 of the Baltimore County Zoning Regulations and that the petitioner should be granted a use permit for a parking area, subject to the following restrictions:

1. Only passenger vehicles, belonging to visitors to the funeral home, may use the parking area.
2. No loading, service or any use other than parking shall be permitted.
3. No parking shall be permitted after 10 p.m..
4. Lighting shall be regulated so as not to glare beyond the property lines and must be turned off at 10 p.m..
5. A paved surface, properly drained, shall be required.
6. A satisfactory plan showing parking arrangement and vehicular access must be provided and such plan shall be approved by the Office of Planning and Zoning.
7. Suitable screening by a wall, fence, or planting shall be placed between the parking lot and the residence to the north.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 15th day of March, 1962, by the County Board of Appeals, ORDERED that the Use Permit petitioned for, be and the same is hereby granted, subject to the aforementioned restrictions.

Any appeal from this decision must be in accordance with Chapter 1100, subtitle B of Maryland Rules of Procedure, 1961 edition.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Arthur W. Hoffman
CHAIRMAN
Charles H. Sturges
G. Mitchell Austin

INVOICE
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE
Division of Collection and Receipts
COURT HOUSE
TOWSON 4, MARYLAND
No. 9744
DATE 11/29/61

TO: McCall Funeral Home
Frederick & Wade Aves.
Catonville 20, Maryland
BILLED BY: Zoning Department of
Baltimore County

DEPOSIT TO ACCOUNT NO. 01622
QUANTITY DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE COST
Advertising and posting of your property 22.50
TOTAL AMOUNT \$22.50

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
No. 10214
DATE 12/1/62

TO: Harry Goldman, Jr., Esq.
Central Savings Bank Bldg.,
Charles & Lexington Sts.,
Baltimore 2, Md.
BILLED BY: Zoning Department of
Baltimore County
119 County Office Bldg.,
Towson 4, Md.

DEPOSIT TO ACCOUNT NO. 01622
QUANTITY DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE COST
Cost of appeal to County Board of Appeals 65.00
No. 5245 - Op. Hear. 35.00
TOTAL AMOUNT \$100.00

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
No. 8164
DATE 10/9/61

TO: McCall Funeral Home
Frederick & Wade Aves.
Baltimore 20, Maryland
BILLED BY: Zoning Department of
Baltimore County

DEPOSIT TO ACCOUNT NO. 01622
QUANTITY DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE COST
Petition & posting of property for a Special Hearing 30.00
TOTAL AMOUNT \$30.00

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
No. 10758
DATE 5/2/62

TO: Harry Goldman, Jr., Esq.
44 Central Savings Bank Bldg.
Baltimore 2, Maryland
BILLED BY: County Board of Appeals

DEPOSIT TO ACCOUNT NO. 01510105
QUANTITY DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE COST
Cost of certified documents-Edward S. McNabb, Jr. E/S Arbutus Ave. 8.00
130' from Frederick Rd. - 1st Dist.
TOTAL AMOUNT \$8.00

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.

CARL S. BLOEDS, :
ROBERT M. LYNCH, JR. and :
V. CARL BLOEDS, :
Protestant-Appellants :
CIRCUIT COURT
FOR
BALTIMORE COUNTY
COUNTY BOARD OF APPEALS OF :
BALTIMORE COUNTY :
and :
EDWARD S. McNABB, JR., :
Appellees :
No. 255L
Docket Misc. 7
Folio 152

November 8, 1962

Before: HONORABLE JOHN GRASON TURNBULL, Judge

Appearances:

Harry Goldman, Jr., Esquire, in behalf of Protestant-Appellants.

James D. Nolan, Esquire, Assistant County Solicitor, in behalf of County Board of Appeals of Baltimore County.

George Barrett Johns, Esquire, in behalf of Edward S. McNabb, Jr.

Reported by:

Paul O. Griffin
Official Court Reporter

In the Circuit Court for Baltimore County

(Counsel made opening argument to the Court.)

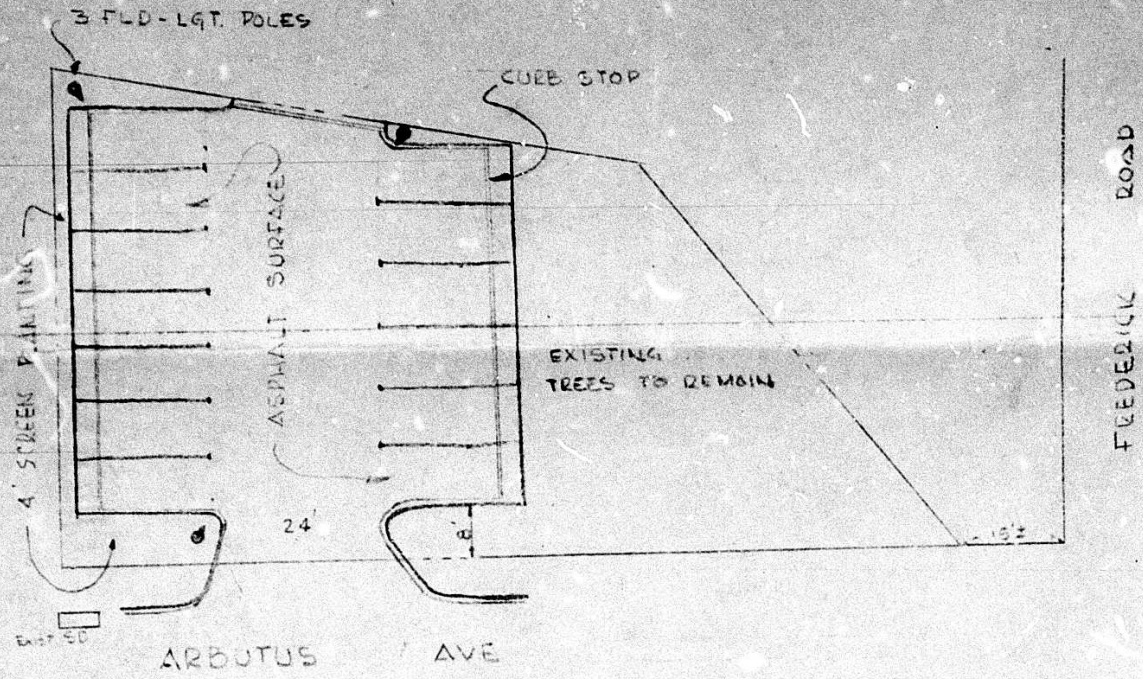
THE COURT: Gentlemen, on the matter of congestion of traffic, and that kind of thing, I think the record had sufficient basis from which the Board of Appeals could draw a conclusion that the granting of this permit would help to relieve congestion. The suggestion that the applicant is having his property confiscated because he cannot build on it leaves me cold, because he knew, or should have known, he was at least chargeable with notice that he couldn't build when he bought it.

The only thing that really concerns me is the Board's finding that the plot is across a public street from a funeral parlor, and that, I think, comes down to a question of law, and there the Court has the obligation to rule no matter what the Board would have found.

It is, in my opinion, very close, but the Board having come to the conclusion that the right of way became part of a street, to wit, Frederick Road, and it being close, I do not think the Court should upset the decision of the Board unless it is clear to the Court that the Board misinterpreted the law. It is not, in my opinion,

clear that the Board did misinterpret the law, and therefore, I will sign the necessary order sustaining the Board's decision.

MICROFILMED



SUGGESTED PARKING LAYOUT
PREPARED BY: OFFICE OF PLANNING
FOR
MACNABB FUNERAL HOME

SCALE 1" = 20'

4 PRINTS

