

RE: EXTENSION OF ORIGINAL PETITION FOR SPECIAL EXCEPTION NW/S of Merritt Boulevard, 1200' SW of Meadow Lane - 12th Election District
Eugene L. Sawyer, et al - Petitioners
NO. 72-283-X (Item No. 177)

BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY

EXTENSION ORDER

IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 23rd day of June, 1976, that the Special Exception for a funeral home be and the same is hereby extended, in accordance with Section 502.3 of the Baltimore County Zoning Regulations, for a period of three years, beginning February 11, 1977, and ending February 11, 1980.

A. D. DiFenna
Zoning Commissioner of Baltimore County

RE: EXTENSION OF ORIGINAL PETITION FOR SPECIAL EXCEPTION NW/S of Merritt Boulevard, 1200' SW of Meadow Lane - 12th Election District
Eugene L. Sawyer, et al - Petitioners
NO. 72-283-X (Item No. 177)

AMENDED EXTENSION ORDER

It is hereby ORDERED by the Zoning Commissioner of Baltimore County, this 29th day of June, 1976, that the Extension Order, dated June 23, 1976, passed in this matter, should be and the same is hereby AMENDED to read as follows:

"...beginning December 16, 1976, and ending December 16, 1979."

A. D. DiFenna
Zoning Commissioner of Baltimore County

dd
de-k
Leonard J. Ruck Incorporated



Funeral Directors

Honorable S. Eric DiFenna
Zoning Commissioner of Baltimore County
County Office Building
111 West Chesapeake Avenue
Townson, Maryland 21284

RE: Request For Extension of Time to Utilize Special Exception NW/S of Merritt Boulevard 1200' SW of Meadow Lane 12th District Eugene L. Sawyer, et al No. 72-283-X (Item No. 177)

Dear Commissioner DiFenna:

11/26/76
Request is hereby made on behalf of Leonard J. Ruck, Inc. for extension of time to utilize Special Exception for funeral home purposes, concerning the above captioned property. This Special Exception for a funeral home was granted by you under date of November 2, 1972 and a mandate affirming the grant of the Special Exception by the Court of Special Appeals of Maryland was handed down on February 11, 1979.

The reasons for the request of the extension of time for the Special Exception are as follows:

Fee Simple Title to all property in the assemblage could not be obtained by Leonard J. Ruck, Inc., contract purchaser, until after a final decision on this matter had been rendered by the Court of Appeals of Maryland which did not take place until May 5, 1975.

During the period between your decision to grant a Special Exception in this case and the denial of Certiorari by the Court of Appeals of Maryland, in effect affirming your decision, on May 5, 1975, one of the owners of 1946 Merritt Boulevard contracted a terminal illness and at the request of her spouse, settlement for said property, at which time possession was to be given to Leonard J. Ruck, Inc., was deferred pending the demise of the person in question. After the demise, the surviving spouse agreed to transfer possession of this property and settle for same on December 2, 1976. Hence it will work a hardship, if not be impossible, for Leonard J. Ruck, Inc. to have architectural plans drawn up, get same approved by County authorities, obtain approval of financing and have construction commenced before the expiration of the current Special Exception on February 11, 1979.

5383-09 HARFORD RD. • BALTIMORE, MARYLAND 21214 • PHONE 301/426-1517

Honorable S. Eric DiFenna
Zoning Commissioner of Baltimore County
Townson, Maryland

"For all of the above reasons, Leonard J. Ruck, Inc. respectfully requests you, pursuant to the authority vested in you by Section 502.3 Article 5 of the Baltimore County Zoning Regulations, to grant an extension for the utilization of the Special Exception for funeral home purposes of the above captioned property for an additional period of three years from the date of February 11, 1977 i.e. until February 11, 1980.

Sincerely yours,

LEONARD J. RUCK, INC.

Michael J. Ruck
Michael J. Ruck
Vice-President & Treasurer

MJR/ag

AG 1 2 1976

PETITION FOR ZONING RE-CLASSIFICATION AND/OR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I, or we, Eugene L. Sawyer, et al., legal owners, of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition (1) that the zoning status of the herein described property be re-classified, pursuant to the Zoning Law of Baltimore County, from an _____ zone to an _____ zone; for the following reasons:

All costs of this Petition for Special exception, and attorneys' fees, including such costs in the event of an appeal, shall be born by the contract purchaser, Leonard J. Ruck Inc.

see attached description

and (2) for a Special Exception, under the said Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property for funeral home

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above re-classification and/or Special Exception 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.

By: Leonard J. Ruck, Inc.
Harold N. Frigoberg
 Contract purchaser
 5303-09 Harford Road
 Baltimore, Md. 21214

By: Louis L. DePazzo
 Petitioner's Attorney
 38 S. Dundalk Avenue
 Baltimore, Maryland 21222

Address: 38 S. Dundalk Avenue
 Baltimore, Maryland 21222

ORDERED BY The Zoning Commissioner of Baltimore County, this _____ day _____ 1972, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commission of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the _____ day of _____ 1972, at _____ o'clock

Blair N. Blair
 Zoning Commissioner of Baltimore County

(over)

MEMORANDUM IN SUPPORT OF REQUEST FOR SPECIAL EXCEPTION

Now comes Bernard C. Ruck, President of Leonard J. Ruck, Inc., Contract Purchaser of the property described in the surveyor's description filed with the Petition For Special Exception for the allowance of a funeral establishment, filed herewith, under the title of Eugene L. Sawyer, et al, and Louis L. DePazzo, Attorney for the Petitioners in said Petition, and say:

1. That the use for which the Special Exception is requested, namely, a funeral establishment, will not be detrimental to the health, safety or general welfare of the locality involved in that the property is juxtaposed to property presently used for commercial purposes, and the use herein requested would provide an attractive buffer between the said commercial properties and neighboring residential properties.

2. That said use will not tend to create congestion in roads, streets or alleys thereon since said property borders on the North side of Merritt Boulevard, a dual lane divided highway, which provides adequate access to said property, and said property extends Northerly to Sunberry Road which also provides for adequate ingress and egress to said property. In addition thereto, sufficient off-street parking shall be provided on said property to service the use requested.

3. That said use will not create a potential hazard from fire, panic or other dangers, as evidenced by the plans of the proposed building to be used in connection with said use.

4. That said use will not tend to over-crowd land and cause undue concentration of population, as evidenced by the plats filed herewith.

5. That said use will not interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements.

LOUIS L. DEPAZZO
 ATTORNEY AT LAW
 38 S. DUNDALK AVE.
 DUNDALK, MD. 21222
 288-9303

conveniences, or improvements; in that its location is sufficiently distant from any schools or parks so as to negate any such interference, and no part nor element of said use extends beyond the property described.

6. That said use will not interfere with adequate light and air as more specifically illustrated by the plats and plans filed herein, and the very nature of the use requested.

Louis L. DePazzo
 Louis L. DePazzo
 38 S. Dundalk Avenue
 Baltimore, Maryland 21222
 288-9303
 Attorney for Petitioner

LEONARD J. RUCK, INC.
 By: Bernard C. Ruck
 Bernard C. Ruck, President
 5303-09 Harford Road
 Baltimore, Maryland 21214

LOUIS L. DEPAZZO
 ATTORNEY AT LAW
 38 S. DUNDALK AVE.
 DUNDALK, MD. 21222
 288-9303

PETITION FOR SPECIAL EXCEPTION IN THE
 for FUNERAL HOME CIRCUIT COURT
 N/W of MERRITT BOULEVARD & S/W of MEADOW LANE
 12th DISTRICT FOR
 EUGENE SAWYER, et al BALTIMORE COUNTY
 Petitioners :
 LEONARD J. RUCK, MISC. DOCKET 9
 Contract Purchaser POLIO 314
 CASE NO. 9073

ORDER OF APPEAL

MR. CLERK:

Please enter an Order of Appeal on behalf of the Protestants from the Judgment entered in this action on February 21, 1974.

Randolph N. Blair
 Randolph N. Blair
 5 Center Place
 Baltimore, Maryland 21222
 288-2460

John S. Arrick
 John S. Arrick
 2 Market Place
 Baltimore, Maryland 21222
 288-2900

I HEREBY CERTIFY that on this 12th day of March, 1974, a copy of the foregoing Order of Appeal was mailed to Louis L. DePazzo, Esquire, 38 S. Dundalk Avenue, Baltimore, Maryland 21222; John R. Cicero, Esquire, 321 N. Calvert Street, Baltimore, Maryland 21202 and William F. Mosner, Esquire, 21 W. Susquehanna Avenue, Towson, Maryland 21284.

Randolph N. Blair

Rec'd 4-3-74
 10 AM



MATZ, CHILDS & ASSOCIATES, INC.
 CONSULTING ENGINEERS
 1020 Cromwell Drive, Baltimore, Md. 21204, Tel. 301/523-0900



LEONARD J. RUCK
 Attorney at Law
 38 S. DUNDALK AVE.
 DUNDALK, MD. 21222
 288-9303

DESCRIPTION

1.32 ACRE PARCEL, NORTHWEST SIDE OF MERRITT BOULEVARD, 1,200.00 FEET SOUTHWEST OF MEADOW LANE, BALTIMORE COUNTY, MARYLAND.

This Description is For A Special Exception In a DR-5 Zone

Beginning for the same at a point on the southeast side of Sunberry Road, said point being 1200.00 feet from the southeast corner of said Sunberry Road and Meadow Lane, said point being on the line of division between Lots 83 and 82 as shown on plat of "Dundalk Farms" recorded in the Land Records of Baltimore County in Plat Book 10, page 53, running thence binding on said division line, (1) S 60° 02' E 145.00 feet, thence binding on the rear line of division between Lots 55, 56, 57, 58 and Lot 82 as shown on said plat, (2) N 29° 58' E 200.00 feet to the line of division between Lots 58 and 59 as shown on said plat, thence binding on said division line, (3) S 60° 02' E 166.59 feet to a point on the northwest side of Merritt Boulevard, thence binding on the northwest side of said Merritt Boulevard, (4) S 29° 13' 30" W 150.03 feet to the northeasternmost right of way line for the widening of said Merritt Boulevard as shown on Baltimore County Bureau of Land Acquisition plat H. R. W. 53-137-D, thence binding on said right of way line, (5) N 39° 51' 30" W 10.00 feet



to a point on the northwesternmost right of way line as shown on said plat, thence binding on said right of way line, (6) S 29° 13' 30" W 125.03 feet, thence parallel to, and distant 25 feet southwesterly from the line of division between Lots 53 and 54 as shown on said plat of "Dundalk Gardens", (7) N 60° 02' W 162.86 feet to a point on the rear line of division between Lot 83 and Lots 52 and part of 53 as shown on said plat, thence binding on said division line, (8) S 29° 58' W 6 feet, more or less, to intersect a point on the existing "DR-CNS" zoning line, thence binding on said line, (9) northwesterly, 145 feet, more or less, to a point on the southeast side of said Sunberry Road, thence binding on the southeast side of said Sunberry Road, (10) N 29° 58' E 83.00 feet, more or less, to the place of beginning. Containing 1.32 acres of land, more or less.

KMS:mp J.C. #72022 March 15, 1972



LOUIS E. ANDERSON : BEFORE THE
 1937 Sunberry Road : ZONING COMMISSIONER
 Baltimore, Maryland 21222 :
 WALKER JUNG : OF
 1942 Sunberry Road : BALTIMORE COUNTY
 Baltimore, Maryland 21222 :
 JEAN M. H. JUNG : RE: Petition for Special
 1942 Sunberry Road : Exception, NW/S of
 Baltimore, Maryland 21222 : Merritt Boulevard,
 DANIEL LONG : 1200' SW of Meadow Lane-
 1954 Sunberry Road : 12th District
 Baltimore, Maryland 21222 : No. 72-283-X (Item No. 177)
 MADELINE MONTALBANO :
 1944 Sunberry Road :
 Baltimore, Maryland 21222 :
 BERNADINE SCINEPH :
 1947 Sunberry Road :
 Baltimore, Maryland 21222 :
 C. L. WARRINGTON :
 1907 Midland Road :
 Baltimore, Maryland 21222 :
 DONALD F. WILSON :
 1949 Sunberry Road :
 Baltimore, Maryland 21222 :
 Protestants - Appellants :
 vs. :
 EUGENE L. SAWYER :
 HAROLD N. FRIGBERG :
 DOROTHY E. 906 :
 Petitioners - Appellees :
 : : : : :
 NOTICE OF APPEAL

Please enter an Appeal from the Decision of the Zoning Commissioner of November 2, 1972, granting a special exception for a funeral establishment in the above entitled case to the County Board of Appeals for Baltimore County.

John S. Arrick
 John S. Arrick
 Attorney for Protestants- Appellants
 2 Market Place
 Baltimore, Maryland 21222
 288-2900

RE: PETITION FOR SPECIAL EXCEPTION : BEFORE
for Funeral Home : COUNTY BOARD OF APPEALS
NW/S of Merritt Boulevard 1200' :
SW of Meadow Lane : OF
12th District :
Eugene Sawyer, et al : BALTIMORE COUNTY
Petitioners :
Leonard J. Ruck, Inc. : No. 72-283-X
Contract Purchaser :

OPINION

This case comes before the Board on an appeal by the Protestants from an Order of the Zoning Commissioner dated November 2, 1972 granting the requested petition, subject to certain restrictions.

The Petitioner seeks a special exception to construct and operate a funeral home on a 1.32 acre parcel of land. The property is located on the northwest side of Merritt Boulevard just north of Merritt Avenue, and being 1200 feet southwest of Meadow Lane, in the 12th Election District, Dundalk, Baltimore County, Maryland. The property is irregular in shape and extends from Merritt Boulevard on the front to Sunberry Road in the rear. It can further be described as being composed of two adjoining rectangular parcels. The larger parcel fronts approximately 275 feet along Merritt Boulevard and is approximately 106 feet deep. The smaller parcel is adjacent to the rear of this and is offset from the front parcel but overlapping its width by approximately 75 feet of common boundary. Its size is approximately 150 feet along Sunberry Road by 145 feet deep. The overlapping section of the rear parcel plus an additional six (6) foot wide strip, a total of approximately 81 feet of width, and the entire front parcel, are presently zoned residential, D.R. 5.5. The remaining 69 foot width of the rear parcel is zoned Commercial, B.R., in a C.N.S. District. (See Plat, Exhibit No. 2).

In order to grant a special exception, the Petitioner must show that the requirements of Section 502.1 of the Zoning Regulations would be satisfied. Section 502.1 of the Zoning Regulations states:

"Before any Special Exception shall be granted, it must appear that the use for which the Special Exception is requested will not:

Eugene Sawyer, et al - No. 72-283-X 2.

- "a. Be detrimental to the health, safety, or general welfare of the locality involved;
- "b. Tend to create congestion in roads, streets or alleys therein;
- "c. Create a potential hazard from fire, panic or other dangers;
- "d. Tend to overcrowd land and cause undue concentration of population;
- "e. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences, or improvements;
- "f. Interfere with adequate light and air."

To support the petition, the contract purchaser, Leonard J. Ruck, Incorporated, had several witnesses testify on its behalf. Their testimony briefly condensed was to the effect that the Petitioner planned to establish a branch funeral home at this location that would cost a quarter million dollars, which building would conform architecturally and harmoniously with the adjacent residences; (see artist's renditions, Exhibits 3-C, 3-D, 3-E and 3-F, and also see photos of the Ruck Funeral Home located on Harford Road, Exhibits 3-A and 3-B); that funeral activity and undertaking activities would be oriented away from the residential houses on Sunberry Road; that there would be no odors; that no traffic hazards would be created by the funerals; that the operation would not be detrimental to the health, safety or welfare of the area residents; that there is a need, and that specifically the requirements of Section 502.1 of the Zoning Regulations would be satisfied.

Mr. Wilsie H. Adams, a zoning and planning consultant, testified as an expert witness for the Petitioner, and gave documented testimony that a funeral home does not depreciate neighboring residential values. It was his opinion that the petition use would stabilize the neighborhood and create a desirable buffer that would stop the spread of what may otherwise be objectionable commercial use.

Mr. Temple H. Peirce, a realtor testifying as an expert witness for the Protestants, disagreed with Mr. Adams' testimony and claimed that the funeral home would be detrimental to neighboring residential values.

fact that the subject use would not be detrimental to the health, safety and general welfare of the community. In fact, it was his feeling that it would be an adequate buffer between the commercial uses to the south, at the intersection of Merritt Boulevard and Merritt Avenue, and the residential uses to the north. It was testified to that there would be one (1) entrance from Merritt Boulevard onto the subject property, which would be used as an "entrance only", and another access point on Sunberry Road, which would strictly be an "exit" driveway.

Residents of the area, in protest of the subject Petition, indicated that they felt that the subject use would be detrimental to their health, safety and welfare. They also felt that it would be a very morbid use of the property adjoining their residences. It was stated that a union hall, to the south of the subject property, generates much traffic and many parking problems along Sunberry Road and, that this subject use would increase this problem. It was also testified to that the union hall has very little off-street parking. The subject property would have sufficient if not more than sufficient parking for its proposed use.

Furthermore, the residents cited that their main objection is that a funeral home is a very depressing use and also would be detrimental to the health of the residents in the area. The residents also cited the lack of a need for a funeral home in the area. It was also testified to that the Dundalk Community College, approximately two (2) blocks to the west of the subject property, is near completion and would also cause additional traffic in the area.

Without reviewing the evidence further in detail but based on all the evidence presented at the hearing, in the judgment of the Zoning Commissioner of Baltimore County, the proposed use would not be detrimental to the health, safety and welfare of the community. The subject property is a vacant piece of land adjoining B. L. zoning or commercial land to the south and individual homes to the north. The completion of the Dundalk Community College, two

(2) blocks to the west, could ultimately be used as a factor in evidence presented in a subsequent case, to show a substantial change in the character of the neighborhood, if this property were to be petitioned for a reclassification to a commercial zone.

In the opinion of the Zoning Commissioner, the establishment of a funeral home would stabilize this area and would serve as a buffer between the residences to the north along Sunberry Road and to the commercial uses to the south. Part of the property, as aforementioned, is zoned commercially at this time, said property being located on the narrow Sunberry Road. The traffic along Merritt Boulevard has not reached its peak and the proposed use would not overburden the roads in the area. The Petitioners have met the prerequisites of Section 502.1 of the Baltimore County Zoning Regulations.

Therefore, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 2nd day of November, 1972, that the Special Exception for a Funeral Home should be and the same is hereby GRANTED for the herein described property or area from and after the date of this Order subject to the following restrictions:

1. Low level lighting being installed in the parking areas of the subject property, said lighting not to exceed six (6) feet in height.
2. There only be one (1) entrance from Merritt Boulevard on to the subject property.
3. The means of entering the subject property shall be from the entrance on Merritt Boulevard, said entrance being an "entrance only" type use, and indicated as named.
4. The means of egress and ingress along Sunberry Road be an "exit only" road with no entering permitted.
5. The property be properly screened in accordance with the Baltimore County Zoning Regulations.
6. A site plan being approved by the Bureau of Public Services, State Highway Administration and the Office of Planning and Zoning.

Zoning Commissioner of Baltimore County

Eugene Sawyer, et al - No. 72-283-X 3.

Mr. Eugene J. Clifford, Director of Traffic Engineering for Baltimore County, testified that although he agreed generally with the Petitioner's expert traffic witness, Dr. Ewell, he thought it undesirable for safety reasons to have the subject proposed exit traffic onto the decelerating lane of Merritt Boulevard.

Other protestants who testified were fearful of a possible traffic increase on residential Sunberry Road, and were also fearful that a funeral home would have a morbid, depressive effect on their lives and on their admittedly attractive residential area.

The Board finds that this is a very close case to decide, but believes the greater weight of testimony and evidence is with the Protestants. The Board believes that granting the special exception will create traffic problems on Sunberry Road and will, in fact, be detrimental otherwise to the general welfare of the locality involved, and therefore will deny the requested petition for a special exception for a funeral home.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 13th day of June, 1973, by the County Board of Appeals ORDERED, that the Special Exception petitioned for, be and the same is hereby DENIED.

Any appeal from this decision must be in accordance with Chapter 1105, subtitle B of the Maryland Rules of Procedure, 1961 edition.

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

John A. Slowik, Chairman
John A. Miller
Robert L. Giffland

RE: PETITION FOR SPECIAL EXCEPTION : BEFORE THE
NW/S of Merritt Boulevard, : ZONING COMMISSIONER
1200' SW of Meadow Lane - :
12th District : OF
Eugene L. Sawyer, et al - :
Petitioners : BALTIMORE COUNTY
NO. 72-283-X (Item No. 177) :

The Petitioners request a Special Exception for a funeral home to be located on the northwest side of Merritt Boulevard, twelve hundred (1200) feet southwest of Meadow Lane, in the Twelfth District of Baltimore County, containing 1.32 acres of land, more or less.

Evidence on behalf of the Petitioners indicated that the contract purchaser, Leonard J. Ruck, Incorporated, plans to construct a funeral home on the premises. It was stated that the proposed structure is intended to be of a residential nature, to compliment the neighboring homes. This property is irregular in shape and is located between Merritt Boulevard and Sunberry Road to the west. A portion of the property on Sunberry Road, for a distance of seventy-five (75) feet, is zoned B. L. There was extensive testimony describing the actual nature and extent of a funeral business at this location and, also to the time of funerals and hours of visitation by persons visiting the funeral home. It was testified to that the contract purchaser is willing to spend up to forty-four thousand dollars (\$44,000) for the purpose of landscaping and screening of the subject property from the adjoining residences.

An engineer, testifying for the Petitioners, indicated that there was water and sewer facilities available to the property and that same were adequate.

Further testimony indicated that funeral procession line-ups would be visible, but said processions would not line-up on adjoining streets.

Mr. Wilsie H. Adams, former Zoning Commissioner of Baltimore County and presently a zoning consultant and real estate broker, testified to the

ORDER RECEIVED FOR FILING

ORDER RECEIVED FOR FILING

ORDER RECEIVED FOR FILING

STATE HIGHWAY ADMINISTRATION
300 WEST FAYETTE STREET
BALTIMORE, MD 21201

June 9, 1972

Mr. Louis L. DePazzo, Esquire
38 South Dundalk Ave.
Baltimore, Md. 21222

Re: Merritt Blvd.
Balto. Co.
Property Owner: Eugene L. Sawyer
Propose Ruck's Funeral Parlor

Dear Mr. DePazzo:

In compliance with your request of June 7, we submit the following comments which will modify our comments of April 26 to Mr. S. Eric DiNenna.

Access within the deceleration lanes are potential points of unexpected conflict and generally should not be permitted.

Merritt Blvd. is a Federal Aid-Secondary-County Road without denied access features therefore you are entitled to access provided it is not a hazard.

The County has apparently indicated that they would approve of one access point at the northern extremities of your property. Said location being almost outside of the deceleration lane. As the intermediary between the County and the Federal authority on this type of highway situations, we will acquiesce to the County's decision in allowing one entrance onto Merritt Blvd. Every effort on the part of your client must be made to make this entrance safe.

Trusting this is satisfactory to you, I remain,

Very truly yours,
Charles Lee Chief,
Development Engineering Section

cc: S. Eric DiNenna
Michael S. Franigan
John Meyers
Mr. Mulhearn

November 2, 1972

Louis L. DePazzo, Esquire
38 S. Dundalk Avenue
Baltimore, Maryland 21222

RE: Petition for Special Exception
NW/S of Merritt Boulevard,
1200' SW of Meadow Lane -
12th District
Eugene L. Sawyer, et al -
Petitioners
No. 72-283-X (Item No. 177)

Dear Mr. DePazzo:

I have this date passed my Order in the above captioned matter in accordance with the attached.

Very truly yours,
S. ERIC DINENNA
Zoning Commissioner

cc: John Arnick, Esquire
2 Market Place
Baltimore, Maryland 21222

John R. Cicero, Esquire
321 N. Calvert Street
Baltimore, Maryland 21202

JAN 23, 1975

PETITION FOR SPECIAL EXCEPTION * IN THE CIRCUIT COURT
FOR FUNERAL HOME * FOR BALTIMORE COUNTY
N/W S OF MERRITT BOULEVARD 1200' *
S/W OF MEADOW LANE *
12th DISTRICT *
* MISC. DOCKET: 9
EUGENE SAMYER, et al * FOLIO : 314
Petitioners * CASE : 5073
LEONARD J. RUCK, INC. *
Contract Purchaser * Zoning File No. 72-283-X
*

MEMORANDUM OPINION

This case involves a request for a special exception and not for a zoning reclassification. The County Board of Appeals denied the special exception, and the function of the Court here is to determine whether there was substantial evidence to justify that denial but the Court may not substitute its judgment for that of the Board. City of Baltimore vs. Sapero, 186 A.2d 884, 230 Md. 291. This rule does not mean that the Board's decision is absolute, for if, upon review, a court finds there was not substantial evidence for the denial of the application and on the other hand it finds that there was sufficient evidence that the Petitioner had complied with the requirements of Section 502.1 of the Zoning Regulations, is required to reverse the Board. Montgomery County vs. Merlands, 96 A.2d 261, 202 Md. 279; Rockville Fuel & Feed Co. vs. Board of Appeals, 163 A.2d 499, 137 Md. 103.

It should further be noted that the decision of the Zoning Commissioner who is recognized as an expert in the field should be given weight. Dundalk Holding Co. vs. Horn, 292 A.2d 77, 266 Md. 200. In this case the Zoning Commissioner approved the special exception.

GEOGRAPHICAL LAYOUT

Petitioner owns several lots totalling 1.54 acres of

which . . . acres is now zoned B-R, and the request is for a special exception to put a funeral home plus parking on the remaining 1.32 acres. The tract lies between two streets in Dundalk with a frontage of 275 feet on Merritt Boulevard and running back to Sunberry Road where the street frontage is 150 feet. Sixty-nine feet of this Sunberry Road frontage for a depth of 145 feet is now zoned B-R. To the east of the frontage of the property and across Merritt Boulevard exists a church and it has expressed its approval of the funeral home. (T. 17) To the south of the property and abutting it on the Merritt Boulevard side exists Harold's Bar and stores which are zoned B-R. To the south of the property and abutting it on the Sunberry Road side exists a union hall which is zoned B-R. Across Sunberry Road and to the west of the subject tract are residences some of which are used for commercial purposes. (T. 11) To the north of the property exist single family residences. (T. 86-90)

Merritt Boulevard is a main artery divided into four lanes with a median strip separating them. A third southbound lane exists near the subject tract and this becomes a turn-off lane for traffic onto Merritt Avenue.

Sunberry Road is a residential street 30 feet wide with parking permitted.

The proposal is to build a funeral home on the Merritt Boulevard portion of the lot and to use the rear section towards Sunberry Road for parking. Traffic proceeding south on Merritt Boulevard would enter to the northerly part of the lot and would then continue around the funeral home to park in the rear. (T.66) All exit would be from the Sunberry Road side where autos could proceed for a short distance to Merritt Avenue and thereby to the

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vs. Hayes, 261 A.2d 164, 256 Md. 575.

On the other hand, Applicants called Wilsie Adams as their real estate expert, and he had documented transactions and comparable sales compiled as the result of his investigation into the sales of residences near local funeral homes. These statistics showed no depreciation in price. It was further his feeling that no one would want to build a residence on the vacant land next to the bar and union hall, and that a funeral home would provide a reasonable buffer zone preventing commercial encroachment into the residential area to the north. (T. 106-113)

The Court concludes that the protestants did not present evidence legally sufficient to show adverse economic effect, but there was properly documented testimony establishing that residential property values near funeral homes are not depressed.

(3) The Board alluded to testimony of the residents that a funeral home would have a morbid, depressive effect on their lives, but it did not state that it was rejecting the application for this reason. Be that as it may, such subjective fears would not be sufficient legal justification to refuse the special exception. This is not a reclassification case, and the zoning regulations do allow funeral homes in residential areas. Since the regulations already provide that the proposed use is compatible with residential uses so long as certain conditions are met, the residents cannot now argue that funeral homes should not be located in residential areas. If they have disagreement with the law, they must impetune the Baltimore County Council to remove funeral establishments as a permitted use in residential zones. In this connection, the Court observes that the authority cited by Appellees, Jack Lewis, Inc. vs. Mayor and City Council of

- 6 -

main arteries.

The court viewed films of the area which had been produced before the Board and the corner in question generally appeared to be of a commercial nature with adequate streets and no apparent traffic congestion at the time the films were taken.

The northern portion of Petitioner's lot is improved by a residence, but the land between this residence and the bar and union hall is vacant. It is intended to tear down the residence and to construct an expensive funeral home of dignified appearance with considerable outlays for shrubbery, fencing, etc. (T. 6, 7)

THE BOARD'S FINDINGS

In summarizing the testimony, the Board of Appeals did find that there was evidence presented that the applicant complied with the requirements of Sec. 502.1 of the Zoning Regulations, but in deciding what is called a "very close case" it gave "greater weight" to testimony and evidence of the protestants. This testimony, as stated by the Board, was that of (a) Temple H. Pierce, a realtor, who claimed that the funeral home would be detrimental to neighboring residential values; (b) Eugene J. Clifford, Director of Traffic Engineering, who thought it "undesirable for safety reasons to have the subject property exit traffic onto the decelerating lane of Merritt Boulevard"; (c) property owner protestants who feared a possible traffic increase on Sunberry Road, and also feared that the funeral home would have a morbid, depressive effect on their lives and attractive residential area.

The Court has carefully read the transcript but it cannot find substantial evidence to justify the Board's conclusions.

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Baltimore, 164 A.2d 220, 164 Md. 146, is not apposite since there was a reclassification case and funeral establishments were not permitted in the residential area unless a reclassification were granted. We do not have the same situation here where only a special exception is concerned.

After the case was heard by this Court, the Protestants on January 10, 1974, filed a Motion for Re-Hearing and for Leave to Offer Additional Evidence.

In answering the Protestants' Motion for Re-Hearing on the basis that 69 feet of the frontage on Sunberry Road was classified BL by mistake in the Zoning Office, it does not appear to the Court that the existence of the BL zoning (whether erroneous or not) would have any effect whatsoever on the decision in this case. Neither the Zoning Commissioner nor the Board of Appeals placed any reliance, pro or con, on the strip zoned for commercial purposes. This was so because the application was not for a zoning reclassification but instead for a special exception which applies only to the land zoned residential. The real question is whether the residential tract is suitable for a funeral home so there is little significance to the fact that a part of the rear lot is zoned for commercial purposes. It should be pointed out, however, that by using the entire property for a funeral home, the commercial strip on Sunberry Road will not be developed for commercial purposes and this should serve to maintain the status quo along Sunberry Road.

The applicant did argue that it has a right to intensify traffic on Sunberry Road because of the commercial strip, but this was argument only and it did not influence the Court's decision. This Court was concerned with the proof and as outlined above, it has accepted the traffic testimony of

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(1) With regard to the testimony of Mr. Clifford, it must be recognized that he did not testify that the special exception would create traffic congestion; but his objection was to have traffic leave the funeral home by way of the turnoff lane into Merritt Boulevard. (T. 152, 153) Since the plan clearly shows that traffic is to enter only from Merritt Boulevard from the northern end of the property (not from the turnoff lane) and is to exit onto Sunberry Road only, it is difficult to see what adverse weight can be given to Mr. Clifford's testimony since his objections have been fully covered by the traffic layout. (T. 85-86) The applicant's traffic expert, Dr. Swell, took careful traffic counts for the periods when most funerals occur and, therefore, when traffic generated by the funeral home would be most likely to congest the streets; and he concluded that funerals would not cause a tie-up of traffic on Sunberry Road because it would take less than a minute for the average funeral to leave the site, drive down Sunberry Road, and enter into the flow of traffic on Merritt Avenue. (T. 58-66) Mr. Clifford did not disagree with this testimony, and the protestants presented nothing contrary-wise through experts who took counts or presented statistics. Several of the individual protestants felt that there was a possibility of congestion, but these vague conjectures and opinions, unsupported by expertise, statistics or studies cannot be considered "substantial evidence." Rockville Fuel and Feed Co. vs. Board of Appeals, supra; Piccerelli vs. Zoning Board, 226 A.2d 249.

It is the Court's conclusion that there was sufficient probative evidence before the Board to clearly establish that the Applicant had complied with 502.1(b) of the Zoning Regulations, and that the testimony to the contrary was conjectural only.

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Dr. Swell as being legally sufficient to satisfy the criteria of the Zoning Regulations (Section 502.1) concerning traffic congestion. He stated that the proposed use would not tend to create congestion in the streets so, despite the nature of the zoning along Sunberry Road, the expert's testimony is to the effect that the funeral home will not unduly overburden the streets in the area and this is the real issue. Conversely, Protestants did not produce traffic testimony sufficient to legally justify the Board in rejecting Dr. Swell's opinion. Residents testified as to their subjective feelings and the board found that they "were fearful of a possible traffic increase on residential Sunberry road", but the zoning decisions in Maryland have consistently held that such non-expert testimony is not sufficient to prove traffic congestion.

One further note: it seems strange to this Court that it would take the Planning Department of Baltimore County until January 7, 1974 to discover that it made an error on Sunberry Road. The Planning staff reviewed this application and the plats submitted in support thereof as far back as June 1972, and it ostensibly reviewed the case again when it was heard before the Zoning Commissioner in June, 1972, and when the case was heard before the Board of Appeals in January, 1973. From an examination of the relevant plats it appears that the BL zone was not put on by error but that it was a logical extension of the existing BL line running through from Merritt Boulevard. To now say that such was error appears to be after thought.

In conclusion, the Court would point out that it cannot reclassify the 69 foot strip on Sunberry Road even if it felt that such classification had been erroneously assigned by the planners; nor is there any provision at law whereby the Protestants

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could have the strip declassified. The short answer seems to be that the application at bar is not to make a commercial use of the land but only to use it for a special exception category so that it becomes relatively unimportant whether the strip in question was properly classified or not.

For the reasons stated above, the Motion for Re-Hearing must be denied as well as the request to offer additional evidence.

CONCLUSION

For the reasons stated, the Court finds that there was not substantial evidence to justify a denial of the special exception. The Protestants' witnesses expressed, for the most, only their fears and misgivings as to what might happen without presenting statistics, studies, or other hard evidence to show that their fears had some justification. And the traffic man, Mr. Clifford, objected only to an exit which does not and will not exist in fact. The Application presented sufficient testimony to show that the requirements of Section 502.1 have been met. Therefore, the opinion of the Board of Appeals will be overruled and the decision of the Zoning Commissioner, dated November 2, 1972, is hereby reinstated subject to all of the conditions therein set forth.

February 21, 1974

H. King MacDaniel
H. KING MACDANIEL
JUDGE

Copy to:
Louis L. DePazzo, Esq.
John R. Cicero, Esq.
William F. Mosner, Esq.
Randolph N. Blair, Esq.
John S. Arnick, Esq.
County Board of Appeals
William H. Adkins, Director, Adm. Office of the Courts
Eugene Creed, Administrator

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BALTIMORE COUNTY ZONING ADVISORY COMMITTEE

May 31, 1972

Louis L. DePazzo, Esq.,
39 S. Dundalk Avenue
Baltimore, Maryland 21222

RE: Special Exception Petition
Item 177
Eugene L. Sawyer, et al - Petitioner

Dear Sirs:

The Zoning Advisory Committee has reviewed the plans submitted with the above referenced petition and has made an on site field inspection of the property. The attached comments are a result of this review and inspection.

The subject property is located on the northwest side of Merritt Blvd. in the 12th District of Baltimore County. This partially improved property has frontage on both Merritt Blvd. and Sunberry Road. The property to the west is improved with a tavern, some small stores and a union hall. The properties on the east are improved with individual residential dwellings. Sunberry Road is an attractive residential street.

The subject petition is accepted for filing, however, revised plans must be submitted to this office prior to the hearing that indicate the following:

- 1.) The entrance closest to Merritt Avenue must be closed.
- 2.) The entrance on Sunberry Road should be located at the westernmost aisle.
- 3.) Indicate the residential dwellings on the north side of Sunberry Road.

This petition is accepted for filing on the date of the enclosed filing certificate. Notice of the hearing date and time which will be held not less than 30, nor more than 90 days after

Office Phone
288-8303

LOUIS L. DEPAZZO
ATTORNEY AT LAW
38 SOUTH DUNDALK AVENUE
DUNDALK, MARYLAND 21222

June 7, 1972

Residence Phone
288-1968

Mr. Charles Lee, Chief
Development Engineering Section
State Highway Administration
300 West Preston Street
Baltimore, Maryland 21201

Re: Item 177
Z. A. C. Meeting April 25, 1972
Property Owner: Eugene Sawyer,
et al
Location: N/W/S Merritt Blvd.
200' N/E of Merritt Avenue
Present Zoning: D.R. 5.5
Proposed Zoning: Special Exception
for a funeral home.
No. Acres: 1.32
District: 12

Dear Mr. Lee:

Confirming my conversation with you this date, I am submitting herewith the comments of Michale S. Flanagan, Traffic Engineer Associate, Department of Traffic Engineering, Baltimore County, Maryland.

I personally spoke with Mr. Flanagan today, and he advised that he will testify at the trial on June 14, 1972 to the effect that the site plan would be acceptable provided that a revision of the plat be submitted allowing only one entrance as indicated in his comments.

My client feels that the present plat, with two entrances does not create a traffic hazard, all things considered, however, we are willing to submit a revised plat showing only the one entrance.

Would you kindly reconsider your department's comments of April 26, 1972, in light of a restriction to the one entrance, so as to permit, if possible, your approval of the plat as revised, allowing only one entrance.

Thank you in advance for your cooperation in this matter.

Respectfully submitted,

Louis L. DePazzo

Louis L. DePazzo, Esq.
Item 177
Page 2
May 31, 1972

the date on the filing certificate, will be forwarded to you in the near future.

Very truly yours,

Oliver L. Myers
OLIVER L. MYERS, Chairman

John J. Dillon
JOHN J. DILLON, JR., Zoning Technician II

DLMLJUG:JD

Enclosure

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. S. Eric DiNenno, Zoning Commissioner Date: June 8, 1972

FROM: George E. Gavellis, Director of Planning

SUBJECT: Petition #72-283-X. Petition for Special Exception for a Funeral Home. Northwest side of Merritt Boulevard 1200 feet Southwest of Meadow Lane. Eugene L. Sawyer, Harold N. Friedberg and Dorothy E. Bowman - Petitioners
12th District
HEARING: Wednesday, June 14, 1972 (1:00 P.M.)

The staff of the Office of Planning and Zoning has reviewed the subject petition for a Special Exception for a Funeral Home and has the following advisory comments to make:

It notes that the proposed Funeral Home is situated at the deceleration lane between Merritt Boulevard and Merritt Avenue and through its parking arrangement proposes to have cross connection with Sunberry Road. It notes also the comments of the Zoning Advisory Committee relative to reducing or eliminating proposed access points on Merritt Boulevard and limiting access to Sunberry Road to but one point. We question first of all the impact of the original plan with respect to both traffic and use compatibility with the adjoining residences and whether or not funeral activities in the magnitude seemingly proposed by the petitioner would interfere with the rights of adjoining residents to use and enjoy their property within the context of their residential zoning. We question whether or not the almost total use of the property for either building or parking will tend to overcrowd land and tend to create congestion on adjoining streets - particularly Sunberry Road if access to the site is limited to that road.

From a planning viewpoint we believe that a funeral home here represents an intrusion of a non-residential use into an otherwise residential area and that serious questions about patterns for and locations of access make the special exception here not proper.

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: S. Eric DiNenno Date: May 8, 1972

ATTN: Oliver L. Myers
FROM: Ellsworth N. Myers, P.E.

SUBJECT: Item #177 (1971-1972)
Property Owner: Eugene L. Sawyer, et al
N/W/S Merritt Boulevard, 200' N/E of Merritt Avenue
Present Zoning: D.R. 5.5
Proposed Zoning: Special Exception for a funeral home
District: 12th
No. Acres: 1.32 acres

The following comments are furnished in regard to the plat submitted to this office for review by the Zoning Advisory Committee in connection with the subject item.

Highways:

Merritt Boulevard, a County road, is improved as a divided highway on a right-of-way of varying width. No further highway improvements are required. The proposed westernmost entrance is undesirable.

Sunberry Road is an improved County street. No further highway improvements are required. This street is residential in nature. If vehicular access is to be permitted this site therefrom, it is suggested that any proposed entrance be located southeasterly as far as possible along Sunberry Road.

The construct or reconstruction of any sidewalk, curb and gutter, entrances, aprons, etc. required in connection with the redevelopment of this site would be the full financial responsibility of the petitioner.

However, the entrance locations are subject to approval by the Department of Traffic Engineering, and shall be constructed in accordance with Baltimore County Standards.

Sediment Control:

Development of this property through stripping, grading and stabilization could result in a sediment pollution problem, causing private and public holdings downstream of the property. A grading permit is, therefore, necessary for all grading, including the stripping of top soil.

Storm Drains:

Provisions for accommodating storm water or drainage have not been indicated on the submitted plan.

J. Austin Deitz
Chief



Baltimore County Fire Department

Towson, Maryland 21284

873-7316

April 26, 1972

Office of Planning and Zoning
Baltimore County Office Building
Towson, Maryland 21284

Attention: Mr. Oliver L. Myers, Chairman
Zoning Advisory Committee

Re: Property Owner: Eugene L. Sawyer, et al

Location: N/W/S Merritt Boulevard, 200' N/E of Merritt Avenue

Item No. 177 Zoning Agenda 4/25/72

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments "shown marked with an 'X'" are applicable and required to be corrected or incorporated into the final plans for the property.

- (X) 1. Fire hydrants for the referenced property are required and shall be located at intervals of feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.
- () 2. A second means of vehicle access is required for the site.
- () 3. The vehicle dead-end condition shown at

- () 4. EXCEEDS the maximum allowed by the Fire Department. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operations.
- (X) 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 191 "The Life Safety Code", 1970 Edition prior to occupancy.
- () 6. Site plans are approved as drawn.
- () 7. The Fire Prevention Bureau has no comments at this time.

Reviewer: *H. J. Kelly* Noted and Approved: *Paul S. Reischer*
Planning Group Special Inspection Division Deputy Chief
Fire Prevention Bureau

RLS
4/25/72

Item #177 (1971-1972)
Property Owner: Eugene L. Sawyer, et al
Page 2
May 8, 1972

Storm Drains: (Cont'd)

The Petitioner must provide necessary drainage facilities (temporary or permanent) to prevent creating any nuisances or damages to adjacent properties, especially by the concentration of surface waters. Correction of any problem which may result, due to improper grading or improper installation of drainage facilities, would be the full responsibility of the Petitioner.

The plan should be revised to indicate the proposed storm drainage.

Water and Sanitary Sewer:

Public water supply and sanitary sewerage are available and serving this property.

Ellsworth N. Myers
ELLSWORTH N. MYERS, P.E.
Chief, Bureau of Engineering

END:EHM:FW:RSE

P-204 Key Sheet
11 SE 11 Position Sheet
SE & E & P Topo
103 Tax Map

REPORTED

IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 98

September Term, 1974

LOUIS E. ANDERSON et al.

v.

EUGENE SAWYER et al.

Thompson,
Moylan,
Davidson, JJ.

Opinion by Davidson, J.

Filed: December 16, 1974

VAICP
MSD

This appeal is from an order of the Circuit Court for Baltimore County, reversing a decision of the Baltimore County Board of Appeals (Board) which had denied a special exception for the construction of a funeral home on land zoned for residential use. We shall affirm the order of the Circuit Court requiring the grant of the special exception.

The record shows that the subject property lies in a block bounded by Merritt Boulevard on the south, Merritt Avenue on the west, Sunberry Road on the north, and Meadow Lane on the east.¹ (See location plan, Exhibit 2, attached hereto.) The parcel, consisting of 1.5 ± acres of land, is comprised of five separate lots, three of which front on Merritt Boulevard and two of which front on Sunberry Road. It is zoned D.R.-5.5 (Density-Residential, 5.5 dwellings per acre).² The two easternmost lots fronting on Merritt Boulevard are developed with single-family homes. The remainder of the tract is undeveloped.

On the east end on the north the subject property is bounded by D.R.-5.5 land upon which single-family houses, ranging in price from \$30,000 to \$50,000, are located. On the west the site is adjoined by land zoned B.R. in a C.N.S. district (Commercial, neighborhood shopping). That portion of the B.R.

¹For purposes of this appeal, Merritt Boulevard and Sunberry Road are treated as running in an east-west direction.

²The westernmost 69 feet of the lot which fronts on Sunberry Road is classified in the B.R. zone (Business-Roadside).

owners, presented testimony intended to show that the grant of the requested special exception would tend to create congestion on neighboring roads and streets and would, in other respects, be detrimental to the health, safety and general welfare of the locality involved. According to them, the entrance on the Merritt Boulevard deceleration lane was unsafe; the proposed use would create traffic congestion on Sunberry Road and would generally increase the amount of traffic moving throughout the residential community. Moreover, they alleged that the proposed use would create a wedge for future commercialization, and would have a depressing psychological effect that would interfere with the enjoyment of the adjoining properties, make them less saleable, and prevent them from being sold in value as much as

3 (Cont.) decisions of the zoning commissioner with respect to such matters shall be subject to appeal to the board of appeals as provided in this article."

See also Baltimore County Zoning Regulations (Interim ed. 1971) § 500-5.

The appropriate standards governing the award of a special exception, enumerated in Baltimore County Zoning Regulations (Interim ed. 1971) § 502-1, are as follows:

- "Before any Special Exception shall be granted, it must appear that the use for which the Special Exception is requested will not:
- "a. Be detrimental to the health, safety or general welfare of the locality involved;
 - "b. Tend to create congestion in roads, streets or alleys therein;
 - "c. Create a potential hazard from fires, panic or other dangers;
 - "d. Tend to overcrowd the land and cause undue concentration of population;
 - "e. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;
 - "f. Interfere with adequate light and air."

the application. The development plan approved by the Commissioner called for the construction of a Colonial-style funeral home, consisting of one-story plus a basement, to be located on the Merritt Boulevard portion of the subject property, and an off-street parking lot for 73 cars to be situated on the Sunberry Road portion of the property. Access to the property was to be limited to a single entrance on Merritt Avenue, located as near to the eastern border of the subject property as possible. Egress was to be limited to a single exit on Sunberry Road, located as close to the westernmost boundary of the subject property as possible. All exiting vehicles were to be required to turn left onto Sunberry Road.

At the hearing on appeal to the Board such testimony was presented to show that the grant of the special exception satisfied all of the requirements of the Baltimore County Zoning Regulations.³ In opposition, the protestants, neighboring land-

³See Baltimore County Zoning Regulations (Interim ed. 1971) § 1801.1C.3 which establishes that funeral homes are permitted uses by way of special exception in all B.R. zones. Baltimore County Code (1972 Cum. Supp.) § 22-23 provides, in pertinent part, that:

"Subject to the appropriate principles, standards, rules, conditions and safeguards as set forth in the zoning regulations, the zoning commissioner, upon petition, may grant variances from area and height regulations and may make special exceptions to the zoning regulations in harmony with their general purpose and intent; provided, that the issuance of all such special exceptions and variances shall be subject to appropriate principles, standards, rules, conditions and safeguards set forth in the zoning regulations, and that all

zoned land, abutting the subject property, which fronts on Sunberry Road contains a union hall used by union members for meetings and social events. A commercial enterprise, Harold's Bar, is located on that portion of the B.R. zoned land fronting on Merritt Boulevard. On the north and across Sunberry Road the subject property confronts land zoned D.R.-5.5 which is developed with single-family houses. Lying between these houses on the north side of Sunberry Road and Merritt Avenue on the west there is a used car lot. On the south and across Merritt Boulevard the subject property faces D.R.-5.5 zoned land upon which the Dundalk Presbyterian Church is located.

Merritt Boulevard is a main traffic artery with a speed limit of 45 miles per hour. The section of that road which adjoins the subject property consists of five lanes--three west-bound and two east-bound--divided by a median strip. The west-bound lane of Merritt Boulevard which immediately adjoins the subject property is a deceleration lane which begins at the easternmost edge of the subject property and ultimately becomes a right-hand turn onto Merritt Avenue. Harold's Bar has two driveways onto the deceleration lane. The existing residences located on the easternmost portion of the subject property also have driveways which lead directly onto the deceleration lane. Sunberry Road is a 30 foot-wide residential street with parking permitted on both sides.

The application for a special exception was filed with the Zoning Commissioner (Commissioner) who, after a hearing, granted

other homes in the area.

In its opinion denying the requested special exception, the Board said:

"The Board finds that this is a very close case to decide, but believes the greater weight of testimony in evidence is with the protestants. The Board believes the granting of the special exception will create traffic problems on Sunberry Road and will, in fact, be detrimental otherwise to the general welfare of the locality involved, and therefore, will deny the requested petition for a special exception for a funeral home."

The applicable standards for judicial review of the grant or denial of a special exception have been frequently expressed by the Court of Appeals. Turner v. Hammond, 370 Md. 41, 54-55, 330 A.2d 543, 550-51 (1973); Cason v. Bd. of Co. Comm'rs, 261 Md. 699, 707, 275 A.2d 661, 665 (1971); Rockville Fuel v. Bd. of Appeals, 25 Md. 183, 187-88, 262 A.2d 499, 502 (1970); Montgomery County v. Merland's Club, Inc., 202 Md. 279, 287, 56 A.2d 251, 264 (1953). The conditional use or special exception is a part of the comprehensive zoning plan soaring the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any fact or circumstance negating the presumption. The duties given the Board are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is

in harmony with the general purpose and intent of the plan.

Whereas, the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. Rockville Fuel v. Board of Appeals, supra, 257 Md. at 191, 260 Md. at 503. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of the disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception is arbitrary, capricious and illegal. The case before us falls within the latter category.

Here, in order to deny the right of the property owner to enjoy the requested special exception, the Board needed before it probative evidence that the proposed use would, in fact, create traffic congestion on Sunberry Road, and would, in fact, be detrimental otherwise to the general welfare of the locality involved. In this case there was no such probative evidence presented. In reviewing the evidence before the Board it must

MICROFILMED

be noted that the opinion or conclusion of an expert or lay witness is of no greater probative value than that warranted by the soundness of his underlying reasons and facts. Surkovich v. Doub, 258 Md. 263, 272, 265 A.2d 447, 451 (1970); Creswell v. Baltimore Aviation, 257 Md. 712, 721, 264 A.2d 838, 843 (1970); Westview Park v. Hayes, 256 Md. 575, 581-82, 261 A.2d 164, 167 (1970); Miller v. Abrahams, 239 Md. 263, 273, 211 A.2d 309, 314 (1965). Thus, unsupported conclusions of witnesses to the effect that a proposed use will or will not result in harm amount to nothing more than vague and generalized expressions which are lacking in probative value. Rockville Fuel, supra, at 257 Md. 193, 262 A.2d 504-05.

A qualified traffic expert, presented by the applicant, testified with respect to the traffic impact which the proposed use would have upon Sunberry Road. His opinion was based upon a study of the traffic to be generated by the proposed use and the traffic conditions then existing upon Sunberry Road. He testified that in his opinion Sunberry Road could comfortably and safely accommodate the volume of traffic to be generated by the proposed use. In contrast, the only expert testimony presented to the contrary was that of Eugene J. Clifford, director of traffic engineering for Baltimore County. He stated that, although he had not made a study of traffic at the location of the proposed special exception, he had reviewed the proposal and had "checked over the roads and the property." In essence, his testimony regarding Sunberry Road consisted of a statement that

it is undesirable to increase traffic on a 30-foot-wide road in a residential neighborhood in which parking is permitted on both sides of the street. In addition, several nearby residents testified that the grant of the special exception would result in traffic congestion on Sunberry Road. Thus, the testimony presented by the protestants neither contradicts nor rebuts that of the appellant's qualified traffic expert to the effect that Sunberry Road is capable of absorbing the increase in traffic which the proposed use would generate. There are no facts provided by either the expert or the laymen to support the conclusion that increased traffic on Sunberry Road is "undesirable" or that traffic congestion will, in fact, result from the increase in traffic to be generated by the proposed use. Consequently, the testimony presented to the Board to show that the grant of the requested special exception would result in traffic congestion on Sunberry Road was totally devoid of probative value, and was, in effect, no evidence at all.

The testimony presented to show that the grant of the special exception would otherwise be detrimental to the general welfare of the locality involved is similarly lacking in probative force. The applicant presented the testimony of a qualified traffic expert who opined that the entrance on Merritt Boulevard was safe. He pointed out that both the State Roads Commission and the Department of Traffic Engineering in Baltimore County have approved the location of the proposed entrance.

The only evidence presented to the contrary was that of

be confined to that small portion of Sunberry Road lying between the subject property and its intersection with Merritt Avenue. It is apparent that under those circumstances the conclusion that the grant of the requested special exception will result in an increased flow of traffic through residential streets other than Sunberry Road is totally unsupported and entitled to no weight.

The remaining evidence of adverse effects suffers from similar deficiencies. The applicant presented two experts qualified in the fields of planning and zoning. They testified that the proposed use constituted an appropriate buffer between the existing commercial and residential zones and would stabilize the neighborhood by preventing further expansion of the commercial uses located to the west of the subject property. In support of this opinion they pointed out that for many years the subject property had remained vacant and undeveloped with single-family residences because of its proximity to the commercially zoned land on which the union hall and Harold's Bar are located. They concluded that, given its location adjoining commercially zoned land, the subject property is not likely ever to be developed with single-family residences and, therefore, unless developed with a special exception use, the subject property will be highly susceptible of reclassification to a commercial zone.

In contrast, some neighboring property owners expressed the view that the grant of the requested special exception would create a wedge for future commercialization. This conclusion is completely vitiated by the evidence in the record which shows

that there are existing expensive single-family residences on all of the property which adjoins the subject property so that the possibility of commercial expansion to the east is remote at best. Moreover, it has been recognized in Maryland that a special exception use cannot constitute a change in the character of a neighborhood sufficient to justify a reclassification of adjoining property. Heiler v. Prince George's County, 264 Md. 410, 417, 286 A.2d 772, 775 (1972); see Creswell, supra, at 257 Md. 719, 264 A.2d 843-43. Thus, the testimony of the neighbors in this respect, which neither contradicts nor rebuts that of the experts in planning and zoning, amounts to nothing more than a generalized fear unsupported by facts or reasons. It does not constitute probative evidence on the question of adverse effect.

Finally, the applicant presented much evidence to show that the proposed use would not interfere with the enjoyment of adjoining properties and would not depreciate the values of such homes. An architect testified that the appearance of the building, which would be residential in nature and Williamsburg in design, would be compatible with and complementary to the neighboring homes. Extensive landscaping was to be provided in order to screen the operations from view. Lights were to be on standards no higher than four feet in order to avoid reflecting on adjoining residential properties. According to the owner, the architect, and a qualified expert in the field of land planning, the 73 parking spaces proposed were more than ample, so that it would be unnecessary for cars to park on Sunberry Road. The

traffic pattern within the compound was so arranged as to prevent the headlights of any car from shining directly into any residential backyard and to permit funeral processions, which on the average consist of nine cars, to be lined up within the compound without the necessity of using Sunberry Road. A witness qualified as both an expert in zoning and planning as well as a real estate broker, testified that the grant of the special exception would not adversely affect the property values of the adjoining residences. In support of his position he testified as to the original purchase price and the subsequent sale price of a number of homes in close proximity to funeral parlors at other locations in Baltimore County. His figures indicated that all of those homes had appreciated in value.

A qualified expert in the field of real estate transactions and real estate appraisals testified on behalf of the protestants that he thought the proposed use would depreciate the value of homes in the neighborhood because it would create more traffic in the area and homeowners "do not like to live on a busy street." He also stated that "even if he [the applicant] has the best architecture in the world, it is going to be an eyesore" to the adjoining property owners. He additionally opined that notwithstanding the screening to be provided "there will be a reflection, and an attraction of bugs and Lord knows what" which will preclude outdoor living on the properties adjacent to the subject property and thereby interfere with the enjoyment of those properties. He pointed out that the off-street parking lot was in-

beginning of the deceleration lane, thus minimizing the accident potential for cars entering the property. Mr. Clifford's failure to take these facts into account leaves his conclusion that an access onto Merritt Boulevard will increase the potential for accidents totally unsupported by reasons. More importantly, his opinion is unsupported by any specific facts which would lead to the conclusion that, given the traffic conditions then existing on Merritt Boulevard and the traffic which would be generated by the requested special exception, the use of a proposed entrance from Merritt Boulevard would probably result in accidents. In short, Mr. Clifford's testimony is too vague and generalized to be accorded any probative value. In essence, it amounts to no evidence at all.

Finally, with respect to the traffic impact of the requested special exception, both a witness qualified as an expert in real estate transactions and several of the neighboring property owners testified that the grant of the special exception would have an adverse effect because it would increase the traffic flowing through other residential streets of the neighborhood. In so doing the protestants failed to take into account the fact that, according to the applicant, all traffic would be required to enter on Merritt Boulevard and to exit on Sunberry Road, and that all traffic exiting onto Sunberry Road would be required to turn left. Accordingly, all vehicular traffic onto the subject property will traverse Merritt Boulevard, a non-residential street, while all vehicular travel from the subject property will

adequate for the formation of very large funerals. He stressed that a location next to a funeral home was psychologically depressing and that, consequently, people do not like to live next to a funeral home. He concluded that for all of these reasons the homes of adjacent property owners would not appreciate in value as much as the homes of others in the area and would not be as attractive or saleable as would otherwise be the case. He offered no specific evidence of sales of comparable property to substantiate that conclusion.

A number of neighboring property owners testified to the same effect. One of them, who was renting a house which adjoined the proposed parking lot, testified that if the proposed use were developed he would not exercise his option to buy. Still another witness testified that ^{one time} she had looked at a home for sale for which the asking price was \$39,000; that when she discovered it was near a funeral home she was no longer interested in purchasing it; and, that, in fact, the home had sold for only \$31,500.

As we have set forth above, there was uncontradicted and unrefuted evidence that the grant of the requested special exception, as specifically proposed, would not increase traffic flowing through residential streets. The testimony that "even the best architecture in the world would result in an eyesore" is so unreasonable as to be entitled to no weight. Unsupported statements about reflections of light and the attraction of bugs amount to nothing more than the expression of vague and generalized fears. The slight discomfiture which might result from the

fact that unusually large funerals could not be totally formed within the confines of the subject property is too minimal in significance to establish that the proposed use would depreciate the value of adjoining properties. Thus, none of these reasons is sufficient to support the protestants' conclusion that the value of their properties would be depreciated.

There can be no doubt that an undertaking business has an inherent depressing and disturbing psychological effect which may adversely affect persons residing in the immediate neighborhood in the enjoyment of their homes and which may lessen the values thereof. Indeed, it is precisely because of such inherent deleterious effects that the action of a local legislature in prohibiting such uses in a given zone or zones will be regarded as promoting the general welfare and as constitutionally sound.

Jack Lewis, Inc., v. Mayor and City Council of Baltimore, 164 Md. 146, 155-56, 164 A. 220, 224-25 (1933). But in the instant case the legislature of Baltimore County has determined that as part of its comprehensive plan funeral homes are to be allowed in residential zones notwithstanding their inherent deleterious effects. By defining a funeral home as an appropriate use by way of special exception, the legislature of Baltimore County has, in essence, declared that such uses, if they satisfy the other specific requirements of the ordinance, do promote the health, safety and general welfare of the community. As part of the comprehensive zoning plan this legislative declaration shares in a presumption of validity and correctness which the courts

will honor. Turner, supra, at 270 Md. 54, 310 A.2d 550; Rockville Fuel, supra, at 257 Md. 187-88, 262 A.2d 502.

The presumption that the general welfare is promoted by allowing funeral homes in a residential use district, notwithstanding their inherent depressing effects, cannot be overcome unless there are strong and substantial existing facts or circumstances showing that the particularized proposed use has detrimental effects above and beyond the inherent ones ordinarily associated with such uses. Consequently, the bald allegation that a funeral home use is inherently psychologically depressing or adversely influences adjoining property values, as well as other evidence which confirms that generally accepted conclusion, is insufficient to overcome the presumption that such a use promotes the general welfare of a local community. Because there were neither facts nor valid reasons to support the conclusion that the grant of the requested special exception would adversely affect adjoining and surrounding properties in any way other than would result from the location of any funeral home in any residential zone, the evidence presented by the protestants was, in effect, no evidence at all.

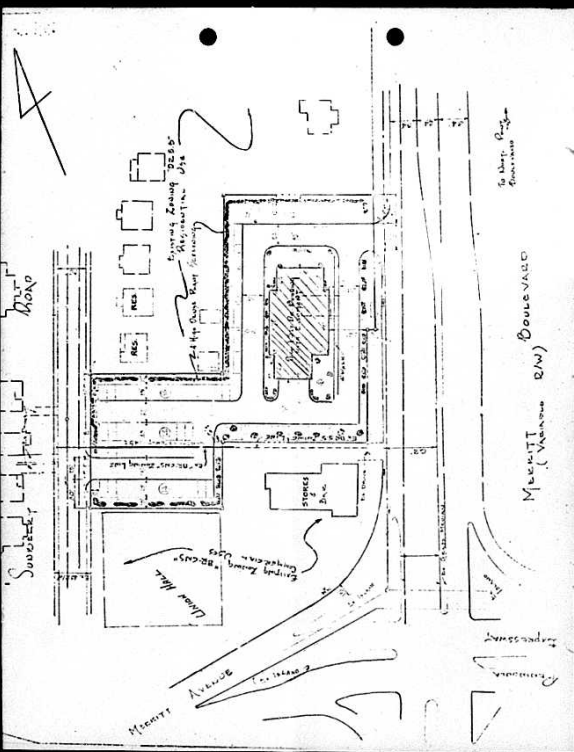
In Turner, supra, at 270 Md. 60, 310 A.2d 553, the Court of Appeals expressed itself as follows:

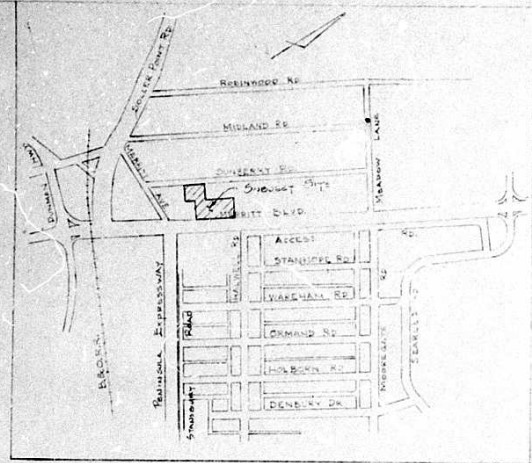
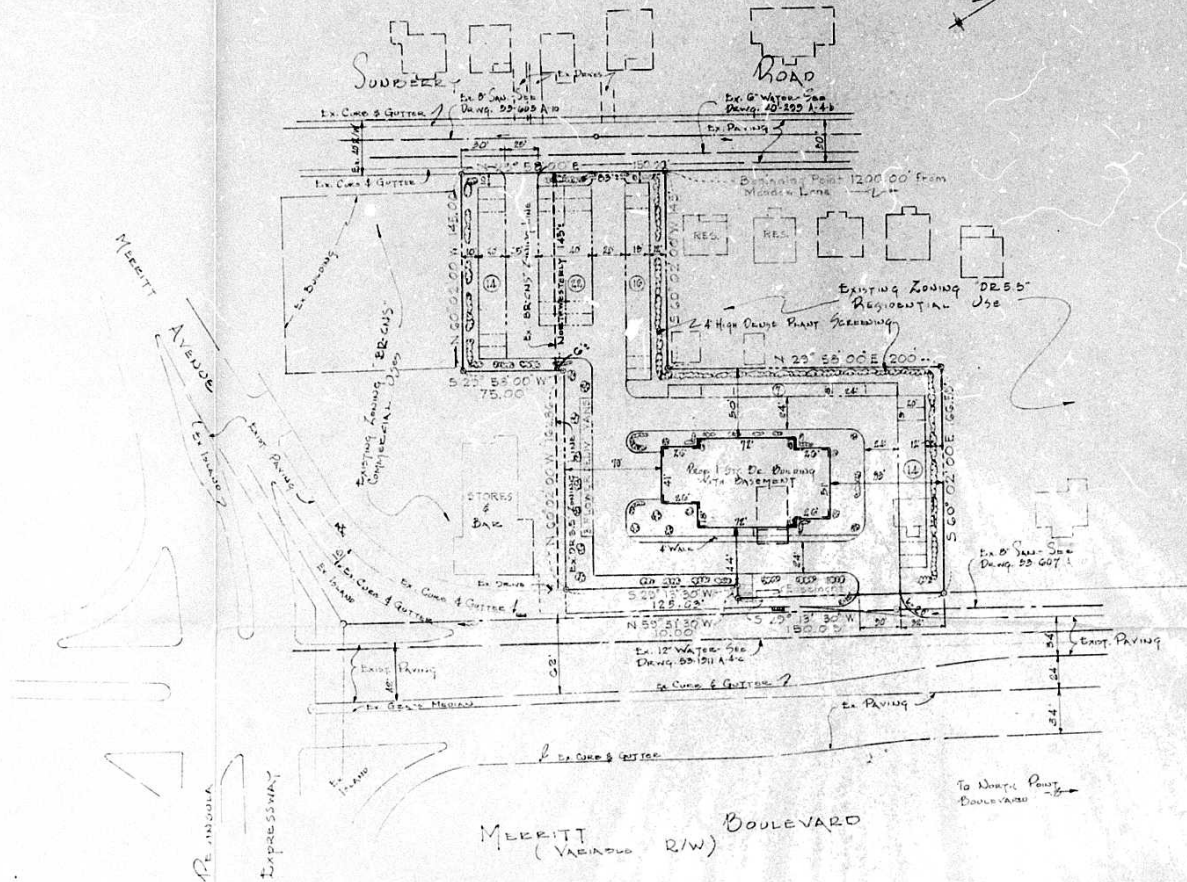
"We have said that substantial evidence is required to support the findings of the Board and that substantial evidence is more than a scintilla of evidence. All definitions of scintilla, at least in this context, are imprecise but if we assume it takes ten gossamers to make a scintilla then the appellee's evidence before the Board

falls well short of five gossamers." This is precisely the situation here. The record is so devoid of substantial supporting facts as to be incapable of raising a debatable issue. The protestants have shown nothing more than that they would suffer the same degree of harm as would be suffered by any homeowner of a funeral home were permitted on land adjacent or in close proximity to their residences. If the residents of Baltimore County do not want funeral homes in residential use districts, they should prevail upon the local legislature to change the ordinance.

The order of the Circuit Court reversing the Board's denial of the requested special exception is affirmed.

ORDER AFFIRMED. COSTS TO BE PAID BY THE APPELLANTS.





LOCATION PLAN
Scale: 1" = 500'

GENERAL NOTES

1. Total Area of Site Equals 1.82 Acres ±
2. Existing Zoning of Site "DR-CMS" & "DR-BB"
3. Existing Use of Site "No Use" & "Residential Use"
4. Proposed Zoning of Site "BR-CMS" & "DR-BB" with Special Exceptions
5. Area of Site Requesting "Special Exceptions" Equals 1.82 Acres ±
6. Proposed Use of Site "Furniture Home"
7. Proposed Parking Data:
 - A. Van Spaces Near Corner 2001 Sq Ft (Requires 10 Spaces)
 - B. Van Spaces Along 1000 Sq Ft (Requires 5 Spaces)
 - C. Total Required Equals 55 Spaces
 - D. Total Proposed Equals 18 Spaces
8. All Special Exceptions Will be Made up Within This Site & Will Not Require the Use of Public Parks

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JUN 12 1972

MAP	FILE
SECTION	
DESIGNER	
D. TO	
TYPE	
PLANNED	
BY	
FINAL	
BY	



PLAT TO ACCOMPANY PETITION
FOR
SPECIAL EXCEPTION FOR PROPERTY
VICINITY
MERRITT BOULEVARD & MERRITT AVENUE
ELECT N DOWNEY ST
SCALE: 1" = 500'
APRIL 5, 1972
REVISED: APRIL 13, 1972
JUNE 9, 1972



MATZ, SULLOZ & ASSOCIATES
1510 S. ...
77022 L.E. E.L.



JAN 24, 1975