PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, et al

Appellants

IN THE

CIRCUIT COURT

FOR BALTIMORE COUNTY

CASE NO. 88 CG 1080

ZONING CASE NO. 87-465-SPH

Vs.

MERCANTILE-SAFE DEPOSITAND TRUST COMPANY

Appellee

MEMORANDUM OPINION AND ORDER

This case comes before this Court on an appeal from an Order of the Baltimore County Board of Appeals ("Board"), dated February 4, 1988, granting the removal of all restrictions placed on the MacNabb Funeral Home in its operation of a crematorium.

On September 29, 1971, the MacNabb Funeral Home was granted a Special Exception for the operation of a crematorium in connection with its funeral establishment. The Special Exception required the MacNabb Funeral Home to use the crematorium only in conjunction with funerals that emanated from its establishment.

On June 10, 1987, the Zoning Commissioner of Baltimore County rescinded the restriction placed on the crematorium in 1971 when the Special Exception was granted. In addition, the Zoning Commissioner granted the Petition for a Special Hearing subject to restrictions on the hours of operation of the crematorium and the number of bodies cremated per year.



The special hearing was held before the Board on January 7, 1988. After a full hearing, the Board concluded, in its written Opinion and Order of February 4, 1988, that the operation of the crematorium does not infringe upon the health, safety and welfare of the community. Therefore, the Board removed all restrictions on the operation of the crematorium. This Court shall affirm the decision of the Board.

The scope of this Court's review in such cases is that if there was sufficient evidence to make the issue before the Board fairly debatable, then the decision of the Board must be affirmed. McLean v. Soley, 270 Md. 208, 310 A.2d 783 (1973).

Based upon a review of the entire record of the proceedings before the Board, including the exhibits, and after hearing argument of counsel in this appeal, this Court finds that reasonable minds could reasonably reach the conclusion from the facts in the record before the Board.

Accordingly, the decision of the Baltimore County Board of Appeals is hereby AFFIRMED and it is so ORDERED.

LEONARD S. JACOBSON, JUDGE

Date signed

COPIES SENT TO:

Phyllis Cole Friedman, Esquire Gary C. Duvall, Esquire Mr. Andrew Bibo

Mercantile-Safe Deposit and Trust Company,

BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY

Care No. 87-465-SPH

Petitioner \*

\* \* \* \* \* \* \* \* \* \*

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein requests that the special exception granted in Case No. 71-243-X be amended to rescind Restriction 1 from the Order therein to permit cremation of clientele referred by other funeral establishments.

The Petitioner, by McNabb Funeral Home (McNabb's), the Lessee, appeared and was represented by Counsel. Andrew Bibo, an adjacent property owner, and Richard Decker, President of the Holmehurst Community Association, appeared and testified in opposition.

Testimony indicated that the subject property, located on Frederick Road and Wade Avenue and presently zoned R-O, was granted a special exception for a funeral establishment with an incinerator to be used for calcination and/or cremation in Case No. 71-243-X. The Order contained therein restricted the use of the incinerator to McNabb's clientele only. The restriction was misinterpreted, and it was believed that referrals for cremations from other sources were permitted. The establishment has been operating under this assumption for 16 years. However, Mr. Bibo filed a complaint with the Health Department in or around 1985 regarding the emission of smoke and unbearable odors emanating from the establishment and then later complained to the Zoning Office. The Health Department began monitoring the incinerator emissions on a continuing basis, and the Zoning Office initiated enforcement procedures

regarding the restriction referred to above. As a result, the Petitioner filed the instant Petition to rescind Restriction 1 to allow the unfettered continuation of unlimited cremations from the property.

A summary of the Petitioner's and Protestants' testimony indicated that approximately 25 to 30 cremations per year were originally proposed and that this number has grown to 365 to 400 per year, approximately two-thirds of which are the result of referrals from other funeral homes. Most funeral homes advertise that they offer cremation services, but McNabb's actually performs the service. In fact, there are only two crematoriums now operating in Baltimore County. McNabb's is one of them. Because McNabb's depends on these referrals for business, the operation could not continue if the restriction were not rescinded. McNabb's averages about one cremation per day, upon request, and operates 24 hours a day, seven days a week. After the cremation, the remains are taken back to the referring funeral home. Traffic is minimal with approximately one vehicle visiting the site per day. The incinerator is located on property adjacent to Mr. Bibo's, and the smoke and odor he has had to experience has interrupted and denied him the quiet enjoyment of his property to which he is entitled.

The Department of Health investigated and conducted both continuous and rendom testing to determine whether air quality had been adversely affected by the utilization of the incinerator. A malfunction was found and corrected, and the Department of !tealth has recently approved the continuation of the necessary penalt after concluding that the incinerator and its use does not create any problems or violate any regulations.

The Petitioner seeks to amend the special exception granted in Case No. 71-243-X pucsuant to Section 500.7, Baltimore County Zoning Regulations

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There is no question that the number of cremations has increased over the past 16 years, although there is a question of how and why. Although the rationale for it expressed by the Petitioner is not acceptable, no complaints of any type were recorded until about 1985. Obviously, the traffic is not the source of the complaints; rather, it is the alleged emissions. McNabb's stated unequivocally that emissions emanate for only approximately six minutes at the start-up of the incinerator, and those emissions do not violate the air quality control standards in any way nor do they approximate the emissions described by Mr. Bibo. Just as unequivocally, Mr. Bibo disagreed. Either way, the Health Department finds no violation.

It is clear from all of the testimony and evidence presented that to rescind Restriction 1 would not be contrary to the spirit and intent of the BCZR and would not result in substantial detriment to the public good nor adversely impact the public health, safety, and welfare, provided the conditions precedent as delineated below are adhered to.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the rescinding of Restriction 1 as prayed for should be approved.

Therefore, IT IS ORDERED by the Zoning Commissioner of Baluimore County, day of June, 1987, that Restriction 1 in Case No. 71-243-X be rescinded and, as such, the Petition for Special Hearing is hereby GRANTED, from and after the date of this Order, subject, however, to the following rerictions which are conditions precedent to the relief granted herein:

> The hours of operation for the incinerator shall be 9:00 a.m. to 4:00 p.m., Monday through Friday.

2. The maximum number of cremations permitted per year shall be 400.

3. The Petitioner shall maintain a daily record of the number of cremations performed, which shall be

subject to periodic review by the Zoning Commissioner at his discretion.

AJ/srl

cc: Gary C. Duvall, Esquire R. Douglas Jones, Esquire People's Cransel

Petition Special Hearing SE/corner of Frederick Road \* and Wade Avenue - First Election District

MERCANTILE-SAFE DEPOSIT & TRUST COMPANY.

Petitioner.

BEFORE THE

ZONING COMMISSIONER

\* OF

BALTIMORE COUNTY

\* Case No. 87-465-SPH

\* \* \* \* \* \* \* \* \* \*

#### HEARING MEMORANDUM

Mercantile-Safe Deposit & Trust Company, Petitioner, files this Hearing Memorandum for the consideration of the Board of Appeals of Baltimore County.

#### I. INTRODUCTORY STATEMENT

The Petitioner requested that a special exception granted in Case No. 71-243-X be amended to rescind Restriction I from the Order thereir, so as to permit cremation of clientele referred by other funeral establishments. The Petitioner, by and through MacNabb Funeral Home, lessee, appeared before the Zoning Commissioner of Baltimore County. Testimony was presented which indicated that the subject property, located on Frederick Road and Wade Avenue and presently zoned R-O, was granted a special exception for a funeral establishment with a crematory in Case No. 71-243-X. The Order therein restricted the use of the retort to MacNabb "clientele" only. The Zoning Commissioner found that MacNabb had misinterpreted the restriction and was operating for 16 years under the assumption that

the restriction allowed referrals for cremation from other sources provided that MacNabb operated the facility.

Andrew Bibo, an neighboring property owner, filed a Complaint with the Health Department in 1986 regarding the emission of smoke and odors emanating from the establishment and then later complained to the Zoning Office. The Health Department has investigated the emissions and conducted both continuous and random testing to determine whether air quality had been adversely affected by utilization of the retort. Although at one time a malfunction was found and corrected, the Health Department has approved the continuation of the necessary permit for operation after concluding that the crematory and its use did not create any problems regarding emissions and that it did not violate any pertinent regulations.

MacNabb s is one of only two crematoria in Baltimore County. MacNabb performs approximately 365 to 400 cremations per year, many of which are the result of referrals from other funeral homes. Most funeral homes advertise that they offer cremation services, but MacNabb actually performs the service. Traffic generated by the operation is minimal with approximately one vehicle visiting the site per day.

In Baltimore County, crematoria have been permitted to operate pursuant to the Baltimore County Zoning Regulations in circumstances similar to those presented in the instant case. Specifically, in Case No. 85-3-SPHA, in which the petitioner was the Dulaney Valley Home of Lemon-Mitchell-Weidefeld, Inc.,

the Zoning Commissioner determined that a crematorium, flower shop and garage were accessory uses to a funeral establishment The property in the Lemon-Mitchell-Weidefeld case was zoned 0-1, and was adjacent to residential areas. In that case, the Commissioner determined that the proposed crematorium use was accessory and allowed the use of the crematorium without any restrictions as to number of cremations or hours of operation. This crematorium has yet to be built.

The only other operating crematorium in Baltimore County is located at Westview Memorial Park not far from MacNabb Funeral Home. The cemetery was and is a non-conforming use in the residentially zoned area off Winters Lane. The Westview crematorium was permitted without restriction and without a hearing. Submitted at this hearing is correspondence from the Zoning Commissioner Eric DiNenna, permitting the Westview Crematorium as an "accessory use" to a non-conforming use. This "decision" was rendered after the hearing required for the MacNabb crematorium.

#### II. LEGAL ARGUMENT

Petitioner respectfully submits that because the Zoning Commissioner has permitted two other crematoria to operate in Baltimore County in circumstances similar to those presented in the instant case, the Order of the Zoning Commissioner, dated June 10, 1987, which allows the Petitioner's operation of a crematorium, but which imposes certain restrictions not imposed in the other two cases, is arbitrary,

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capricious and discriminatory. Petitioner respectfully requests that it be allowed to operate its crematorium without the restrictions imposed by the Zoning Commissioner.

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It is well settled in Maryland that zoning regulations must be applied in a uniform manner. Specifically, Md. Ann. Code., Art. 66(b), § 4.02 provides that "all [zoning] regulations shall be uniform for each class or kind of building throughout any district or zone, but the regulations in one district or zone may differ from those in another district or zone." The uniformity provision aforementioned was derived from § 2 of the Standard State Zoning Enabling Act. With respect to the aforesaid act, Anderson, American Law of Zoning, § 5.22 (2d Ed. 1976), stated that the purpose of the provision was mainly a political rather than a legal one, i.e. to give notice to property owners that there shall be no improper discrimination. Montgomery County v. Woodward & Lothrop, 280 Md. 686 (1977).

In this connection, it is also recognized that distinctions and discriminations in applying the uniformity requirements are impermissible. City of Baltimore v. Mano Swartz, 268 Md. 79, 91, 299 A.2d 828 (1973). In Cassel v. City of Baltimore, 195 Md. 348, (1949), for instance, the Court of Appeals stated:

> The regulation for the use of property within the various use districts are supported upon the basic theory that they apply equally and uniformly within the district affected. Invidious distinctions and discriminations in zoning cannot

-2-

be allowed, for the very essence of zoning is territorial division according to the character of the land and the buildings, their peculiar suitability for particular uses, and uniformity of use within the use district.

195 Md. at 354.

Likewise in Appelstein v. Mayor & City Council of Baltimore, 156 Md. 40 (1928), a petitioner sought permission to use the first floor of a building for a drugstore and a grocery store. The Zoning Commissioner approved the request, and the Board of Zoning Appeals of Baltimore City reversed it. On appeal, the court determined that the Board of Appeals acted arbitrarily and discriminatory. The court stated that although the Board of Appeals expressed concern that the use of the property, in a residential area, for an ordinary drugstore and a grocery store would create hazards from fire or disease, it was clear that their true objection was to the commercial use by the applicants of a property in a residential neighborhood. The court ruled that because the building was fire safe and because "thousands of similar stores are found all over the city, in suburban as well as in densely populated areas", the Board acted in a discriminatory manner. The court stated:

> But to permit any public agency in it uncontrolled discretion to forbid the use of property in one block because it would create hazards from fire or disease, and permit an identical use in another block similar in all respects to the first, because it would not create such hazards. would be to delegate to it the power to deprive the citizen of his property and vested rights without due process of law.

> > -5-

The Hon. Thomas J Allinger Page 2 January 15, 1988

MILES & STOCKBRIDGE

impugned his integrity which he wanted to clear up with the Board. Obviously, as his counsel, I would have recommended against any further communication with the Epard inasmuch as I felt the Board had a good grasp of the situation.

On behalf of the Petitioner, I would respectfully request that the Board deny Ms. Friedman's request to reopen the hearing or to declare a mistrial.

Thank you for your consideration.

GCD:1d

cc: Phyllis Cole Friedman, Esquire People's Counsel for Baltimore County 156 Md. at 50. Courts in other jurisdictions are in accord. See, e.g., Ford Leasing Development Co. v. City of Ellisville, 718, S.W.2d 228, 233 (Mo. App. 1986) ("City is not authorized to pick and choose between similarly situated applicants [for conditional use permit]."): Northwestern College v. City of Arden Hills, 281 N.W.2d 865, 869 (Minn. 1979) (a zoning ordinance must operate uniformly on those similarly situated: municipality cannot deny special-use permit for private college in residential area where it had granted numerous applications for another private college similarly situated).

The Commission, in the cases of Westview Memorial and Lemon-Mitchell-Weidefeld, has permitted the operation of crematoria adjacent to residential areas, without the imposition of any restrictions as to number of cremations, nours of operation, nor the source of the remains being disposed of. The circumstances in the cases of Westview Memorial and Lemon-Mitchell-Weidefeld are virtually identical to the circumstances presented in the instant case. To allow Westview Memorial and Lemon-Mitchell-Weidefeld to operate their crematoria without restriction, and to impose restrictions upon MacNabb, would be to apply the zoning regulations in an arbitrary, capricious and discriminatory manner.

III. CONCLUSION

For the foregoing reasons, and for the reasons advanced at the hearing, Petitioner respectfully requests that the special exception granted in Case No. 71-243-X be amended

to rescind Restriction No. 1 from the Order therein, and that MacNabb be permitted to perform cremation of clientele referred to it by other funeral establishments, and that no restrictions be imposed upon MacNabb with respect to such operations.

Gary C. Duvall MILES/& STOCKBRIDGE 401 Washington Avenue Towson, Maryland 21204 (301) 821-6565

Attorney for Petitioner

#### CERTIFICATE OF SURVICE

I HEREBY CERTIFY that on this \_\_\_\_ day of January, 1988, a copy of the aforegoing Hearing Memorandum was hand-delivered to R. Douglas Jones, Esquire, Lerch & Huesman, 504 Old Court Building, 16 South Calvert Street, Baltimore, Maryland 21202; to Mr. Andrew Bibo, 13 Wade Avenue, Baltimore, Maryland 21228; and to Phyllis C. Friedman, Fsquire, People's Counsel for Baltimore County, Old County Court House, Towson, Maryland 21204.

Gary C. Duvall

KESMEO1.MEM

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10 LIGHT STREET BALTIMORE, MARYLAND 78200 HOL BAY STREET EASTON MARTIAND 20001

HISO RANDOM BILLS ROAD

PATRICK, VIROINIA 22000

GARY C. DUVALL.

MILES & STOCKBRIDGE 401 WASHINGTON AVENUE TOWSON, MARYLAND 21204 \_\_\_\_ TELEPHONE DOI-621-6565

CABLE MILBRIDGE TELEX 87-541

LAW OFFICES

BOCKVILLE, HARTLAND BOSSO ING PENNSTEVANIA AVENUE, N. W.

HIT WEST PATRICE STREET

PHEDERICE, MANYLAND RITCH

DAN RUNGERFORD COURT

January 15, 1988

The Honorable Thomas J. Bollinger Acting Chairman County Board of Appeals Room 200, Courthouse Towson, MD 21204

RE: Mercantile-Safe Deposit and Trust Company, Petitioner Case No. 87-465-SPH

Dear Mr. Bollinger:

I have just received Ms. Friedman's letter of January 14, 1988. Suffice it to say that its contents were a complete surprise to me. Mr. MacNabb did not seek my advice nor did I sanction his writing to you and submitting documents after the close of the case. His action, however, I believe, although misguided, can be excused under the circumstances.

After receiving Ms. Friedman's correspondence, I contacted my client immediately and first chastised him for writing to you directly without my knowledge. He indicated to me that he felt that his integrity had been somewhat impugned before the Board because he could not account for the one body which apparently did not show up on one of his records. He wanted to assure, rightly or wrongly, the Board that he had not violated Commissioner Jablon's Order and had, in fact, arranged for disposition of the third body at a crematorium outside of Baltimore County.

I believe the Board has all the evidence in front of it to make a decision in this case and that nothing Mr. MacNabb did was prejudicial to the case presented by People's Counsel. I can see no reason to reopen the case or to declare a mistrial because of a citizen's misunderstanding as to the procedures to be followed. Obviously, if Mr. MacNabb were trying to do anything improper, he would not have carbon copied Ms. Friedman.

Again, I can only emphasize that Mr. MacNabb was attempting to clear up a point he felt was left hanging and which he felt

## Galtimore County, Marylan

PEOPLE'S COUNSEL RM. 223, COURT HOUSE TOWSON, MARYLAND 21204 494-2188

PHYLLIS COLE FRIEDMAN People's Counsel

PETER MAX ZIMMERMAN Deputy People's Counsel

January 14, 1988

The Honorable Thomas J. Bollinger Acting Chairman County Board of Appeals Room 200, Court House Towson, Maryland 21204

> RE: Mercantile-Safe Deposit & Trust Co.. Petitioner - Case No. 87-465-SPH

Dear Mr. Bollinger:

I have before me a letter from Mr. George MacNabb dated January 11, 1988 addressed to you and the County Board of Appeals and containing certain selected documents.

I most strongly object to the consideration of these documents in that one of the documents has been selectively photocopied and if offered into evidence, I would have had the opportunity to cross-examine and bring certain other evidence to the attention of the Board. I therefore request that the hearing be reopened and that a subpoena be issued to Mr. MacNabb to bring with him his complete business records for Security Process Crematory, Inc., the list of cases, his checkbook, and the daily record of the number of cremations performed. Alternatively, please consider this a motion for a mistrial and a rehearing.

Very truly yours,

Phyllis Cole Friedman People's Counsel for Baltimore County

cc: Gary C. Duvall, Esquire R. Douglas Jones, Esquire

PCF:sh

PE : II A HI MAL EBRI DOUNTY BOARD OF APPEALS



DEAR MR. BOLLINGER:

# MacNabb Funeral Home, P.A. 301 Frederick Road • Catonsville, Maryland 21228 • (301) 747-4770

JANUARY 11, 1988

MR. THOMAS J. BOLLINGER, ESQ. BALTIMORE COUNTY BOARD OF APPEALS OLD BALTIMORE COUNTY COURT HOUSE, ROOM 200 TOWSON, MARYLAND 21204

SUBJECT: BOARD OF APPEALS HEARING ON THE MACNABB CREMATORIUM

DURING OUR REBUTTAL OF MR. BIBO'S TESTIMONY, MRS. FRIEDMAN NOTED THAT THERE WERE DISCREPANCIES BETWEEN MY TWO SETS OF CREMATION RECORDS. AS I EXPLAINED IN MY TESTIMONY WE HAVE A LOG OF THE ARRIVAL OF ALL CREMATIONS WHICH HAS BEEN KEPT SINCE THE CREMATORY BEGAN OPERATION, AND ALSO A RECORD OF THE DAILY NUMBER OF CREMATIONS PERFORMED WHICH IS KEPT IN ACCORDANCE WITH ZONING ORDER 87-465-SPH DATED JUNE 10, 1987. MY RESPONSE WAS THAT I BELIEVED THAT THE CREMATIONS IN QUESTION WERE SENT TO ANOTHER CREMATORY WITH WHICH WE HAVE AN ARRANGEMENT TO HANDLE ANY CASES WHICH WE CANNOT HANDLE, HOWEVER I DID NOT HAVE AVAILABLE THE RECORDS TO SUBSTANTIATE THIS.

POLLOWING THE HEARING I INSPECTED THE CREMATION RECORDS IN QUESTION FROM SEPTEMBER 1987 AND FOUND THAT ACCORDING TO OUR CREMATORY LOG WE HAD RECEIVED THIRTY FOUR (34) BODIES FOR CREMATION DURING SEPTEMBER, HOWEVER OUR RECORDS THAT ARE KEPT TO COMPLY WITH THE ABOVE ZONING ORDER INDICATED THAT WE HAD ONLY PERFORMED THIRTY TWO (32) CREMATIONS. THE DIFFERENCE BETWEEN MY RECORDS OF TWO (2) CREMATIONS WERE, AS I HAD TESTIFIED, SENT TO ANOTHER CREMATORY.

ENCLOSED PLEASE FIND COPIES OF THE RECORDS IN QUESTION, \_ALONG WITH COPIES OF CHECK STUBS AND THE CANCELLED CHECKS WHICH -SUBSTANTIATE THAT THE CREMATIONS IN QUESTION WERE IN FACT ACREMATED AT ANOTHER CREMATORY AND THEREFORE ACCOUNT FOR THE ODISCREPANCIES BETWEEN OUR RECORDS.

IF I CAN BE OF ANY FURTHER ASSISTANCE WITH PROVIDING THE BOARD WITH FACTUAL INFORMATION ON OUR CREMATORY, PLEASE DO NOT HESITATE TO CONTACT ME. THANK YOU.

SINCERELY,

Sery C. Man Mill

GEORGE E. MACNABB

CC: MRS. PHYLLIS COLE FRIEDMAN BALTIMORE COUNTY PEOPLE'S COUNSEL A Golden Rule Funeral Home



# County Board of Appeals of Baltimore County

Room 200 Court House Tomson, Margland 2120-1 (301) 191-3180 October 15, 1987

### N C T I C E O F A S S I G N M E N T

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). ABSOLUTELY NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE IN ACCORDANCE WITH RULE 2(c), COUNTY COUNCIL BILL #59-79.

CASE NO. 87-465-SPH

MERCANTILE-SAFE DEPOSIT AND TRUST CO.

SE/corner Frederick Rd. and Wade Ave.

1st Election District

SPH-Amnd. Order Case 71-243-X, to permit cremations from other establishments

6/10/87 - Z.C. Order - that the Petition for Special Hearing is GRANTED subject to restrictions.

Counsel for Protestants, Lerch and Huesman

THURSDAY, JANUARY 7, 1988, at 10 a.m.

ASSIGNED FOR: CC: Gary C. Duvall, Esq.

Counsel for Petitioner

Wayne Townsend

R. Douglas Jones, Esq.

Protestant Richard Decker

Andrew Bibo

Phyllis C. Friedman to People's Counsel

Kathleen and Ann M. Jackson

Norman E. Gerber James Hoswell J. Robert Haines Ann M. Nastarowicz James E. Dyer Margaret E. duBois

June Holmen, Secretary



# County Board of Appeals of Baltimore County

Room 200 Court House Towson, Maryland 2120-1 (301) 494-3180

#### NOTICE OF ASSIGNMENT

October 15, 1987

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). ABSOLUTELY NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE IN ACCORDANCE WITH RULE 2(c), COUNTY COUNCIL BILL #59-79.

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for Special Hearing is GRANTED subject to restrictions.

Counsel for Petitioner

Protestant

People's Counsel

ASSIGNED FOR:

THURSDAY, JANUARY 7, 1988, at 10 a.m.

Wayne Townsend

CC: Gary C. Duvall, Esq.

R. Douglas Jones, Esq.

Counsel for Protestants, Lerch and Huesman

Richard Decker

Andrew Bibo

Phyllis C. Friedman

Kathleen and Ann M. Jackson

Norman E. Gerber James Hoswell J. Robert Haines Ann M. Nastarowicz James E. Dyer Margaret E. duBois

Richard Decker Andrew Bibo Phyllis C. Friedman

Gary C. Duvall Wayne Townsend R. Douglas Jones Kathleen and Anne Jackson N. Gerber, J. Hoswell J. R. Haines, Ann Nastarowicz, J. Dyer, M. duBois

10/15/87 - Following were notified of hearing set for Thurs. Jan. 7, 1988, at 10 a.m.:

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#### SECURITY PROCESS CREMATORY, INC.

P.O. BOX 9319

BALTIMORE, MD. 21228

THE INFORMATION CONTAINED HEREIN IS PURSUANT TO ZONING ORDER 87-465-SPH, DATED JUNE 10, 1987, AND IS SUBJECT TO PERIODIC REVIEW BY THE ZONING COMMISSIONER AT HIS DISCRETION.

#### DAILY RECORD OF THE NUMBER OF CREMATIONS PERFORMED

#### SEPTEMBER 1987

|              |              |           |                 |          | CALL BOOK STORY |                |  |
|--------------|--------------|-----------|-----------------|----------|-----------------|----------------|--|
| SUNDAY       | MONDAY       | TUESDAY   | WEDNESDAY 2     | THURSDAY | FRIDAY          | SATURDAY<br>5  |  |
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Total CREMATIONS 32

2650 Chailes E. MERONTA 9-9-87 GEORGE CROUBE 9-11-87 Robt. V. TARKS 9-11-87 2656 CLARA F. Clyde 9-12-87 DAVID 4. GuiLA 9-12-87 2658 KilliAN M. Hysol 9-13.87 PATRICIA L. GOMER 9-14-87 MYLLIS DAVIS9-158. 2643 Whipe BETTIN 9-17 8; 2666 Another hocy PAURIE GLASSING 3/8. 3671 CARRIE L. Piggs 9-25-87 2674 CARREC HOKEWAY 9 298. 2675 RUDERT PERRONE 93087 2676 MADRED STUDER 9-308,

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| HYLLIS C. FRIEDMAN  | , PEOPLE'S   |  |   |  |  |
| COUNSEL FOR PALTIMON  | RE COUNTY,   | 1  | CG Doc. No.   | 53   |  |
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| awrence E. Schmidt  |  |  |   |  |  |
| awrence E. Schmidt  |  |  |   |  |  |
| awrence E. Schmidt<br>County, and in answ   | er to the Order f  | or Appea   | al directed a   | gainst them  | in this case   |
| awrence E. Schmidt<br>County, and in answerewith return the   | er to the Order f  | or Appea   | al directed a   | gainst them  | in this case   |
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Mercantile-Safe Deposit & Trust Co. Case No. 87-465-SPH Order for Appeal to the C.B. of A. from Phyllis C. July 6, 1987 Friedman, People's Counsel for Balto. County. Order for Appeal to the C.B. of A. from Gary C. Duvall, July 7 Esq., on behalf of Petitioner. Hearing on appeal before County Board of Appeals January 7, 1988 Order of the County Board of Appeals that the Petition of February 4 Mercantile-Safe Deposit & Trust Co. for the lessee, McNabb Funeral Home, to operate the crematory without restrictions be GRANTED. Order for Appeal filed in the Circuit Ct. for Baltimore February 29 County by Phyllis C. Friedman, People's Counsel for Baltimore County, and Andrew Bibo. Petition to accompany Order for Appeal filed in the February 29 Circuit Ct. for Baltimore County. Certificate of Notice sent to interested parties March 1 Transcript of testimony filed March 25 Petitioner's Exhibit No. 1 - Aerial Map of area w/site in yellow " " 2 - Zoning Map - is R.O. 1934 " " 3 - Opinion by Eric DiNenna, 9/29/71 " " 4 - Video tape of crematory in operation " " 5 - Commonwealth test data " 6 - Eric DiNenna's letter, 1/16/73 " 7 - Weidefield Site Plan " 8 - Westview Facility Aerial photo B. " " 9 - Cremation Statistics " " 10 - Records of Balto. Co. Inspection - Environmental Services, State of

Mercantile-Safe Deposit & Trust Co. Case No. 87-465-SPH

March 29, 1988

Record of proceedings filed in the Circuit Court for Baltimore County.

Record of proceedings pursuant to which said Order was entered and upon which said Board acted are hereby forwarded to the Court. together with exhibits entered into evidence before the Board. However, all tangible material or evidence of an unwieldy or bulky nature will be retained in the Board of Appeals' office, and upon request of the parties or the Court will be transmitted to the Court by whomever institutes the request.

Respectfully submitted,

ounty Board of Appeals of Baltimore

Douglas Jones. Esquire. Lerch & Huesman. 504 Dld Court Savings & Loan Blog., 16 S.Calvert St., Baltimore, MD 21202.

IN THE IN THE MATTER OF THE APPLICATION OF CIRCUIT COURT MERCANTILE-SAFE DEPOSIT & TRUST CO. FOR BALTIMORE COUNTY 1st ELECTION DISTRICT 1st COUNCILMANIC DISTRICT AT LAW PHYLLIS C. FRIEDMAN, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY. CG Doc. No. 53 Folio No. 280 ANDREW BIBO, PLAINTIFFS File No. 88-CG-1080 ZONING CASE NO. 87-465-SPH 

CERTIFICATE OF NOTICE

Mr. Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, Thomas J. Bollinger, Arnold G. Foreman and Lawrence E. Schmidt, constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the appeal to the representative of every party to the proceeding before it; namely, Gary C. Duvall, Esq., 401 Washington Ave., Towson, Md. 21204, Counsel for Petitioner; R. Douglas Jones, Esq., Counsel for Protestants, Lerch and Huesman, 504 Old Court Savings and Loan Bldg., 16 S. Calvert St., Baltimore, Md. 21202; Richard Decker, President, Holmehurst Community Assoc., 10 Holmehurst Ave., Catonsville, Md. 21228, Protestant; Andrew Bibo, 1 and 1/2 Wade Ave., Catonsville, Md. 21228, Plaintiff; and Phyllis C. Friedman, Rm. 223, Old Court House, Towson, Md. 21204, People's Counsel for Baltimore County, Plaintiff, a copy of which Notice is attached hereto and prayed that it may be made a part thereof.

> County Board of Appeals of Baltimore County Am. 200, Court House, Towson, Md. 21204

> > 359

### PETITION FOR SPECIAL HEARING

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) 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 for a Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve \_\_\_\_\_

To amend the order in Case #71-243-X so as to specifically permit cremation of cliental from other funeral homes and to remove the restriction in said Order prohibiting such cremation.

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

I, or we, agree to pay expenses of the above Special Hearing advertising, per etc., upon filing of this Petition, and further agree to and are to be bound by the zoning remains and restriction. tions of Baltimore County adopted pursuant to the Zoning Law for Baltimore Law.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

| Contract Purchaser:  | Legal Owner(s):   |                      |
|--|---|----------------------|
| (Type or Print Name)   | (Type or Print Name) Try  | SUST C               |
| Signature  | Signsture   | HAP SW               |
| Address  | (Type or Prin; Name)  | _Z                   |
| City and State   | (Signature)   | C-D<br>DATE <u>G</u> |
| Attorney for Petitioner:   | 2 Hopkins Plaza<br>P. O. Box 2257 347-82  | 800 A                |
| GARY C. DUVALL  (Type or Print Name)   | Address Phone No  | 1000                 |
| Signature C. Linay   | Baltimore, MD 21203 City and State  | DP                   |
| 401 Washington Avenue  | Name, address and phone number of legal owner,<br>tract purchaser or representative to be contacted | con-                 |
| Towson, MD 21204   | WAYNE TOWNSEND  |                      |
| City and State   | Name 347-828  | 2                    |
| Attorney's Telephone No.: 821-6565   | 2 Hopkins Plaza 347-828 Address Balto., MD 21203 Phone No.  |                      |
| ORDERED By The Zoning Commissioner of  | Baltimore County, this30th  | day                  |
| orMarch, 1987, that the required by the Zoning Law of Baltimore County out Baltimore County, that property be posted, a Commissioner of Baltimore County in Room 1 | and that the public hearing be had before the Zor   | ning<br>1gh-         |
| County, on the l8th day of .   | May 10_87, a11:00 cc  | iock                 |
| AM.  |   |                      |
|  | 1200 -00  |                      |
|  | - Child Jalier  |                      |

Mercantile-Safe Deposit & Trust Co. Case No. 87-465-SPH

I HEREBY CERTIFY that a copy of the aforegoing Certificate of Notice has been mailed to Gary C. Duvall, Esq., 401 Washington Ave., Towson, Md. 21204. Counsel for Petitioner: R. Douglas Jones, Esq., Counsel for Protestants, Lerch and Huesman, 504 Old Court Savings and Loan Bldg., 16 S. Calvert St., Baltimore, Md. 21202; Richard Decker, President, Holmehurst Community Assoc., 10 Holmehurst Ave., Catonsville, Md. 21228, Protestant; Andrew Bibo, 1 and 1/2 Wade Ave., Catonsville, Md. 21228, Plaintiff; and Phyllis C. Friedman, Rm. 223, Old Court House, Towson, Md. 21204, People's Counsel for Baltimore County, Plaintiff, on this 1st day , 1988. March

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY. and ANDREW BIBO.

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

AT LAW

Appellants

: Docket No. 53 MERCANTILE-BAFE DEPOSIT AND : Folio No. 280 TRUST COMPANY. : File No. 88-CG-/082 Appelles

Zoning Case No. 97-465-69H : 1::::::

Please note an appeal from the Opinion and Order of the County Board of Appeals dated February 4. 1988 in the abovecaptioned matter.

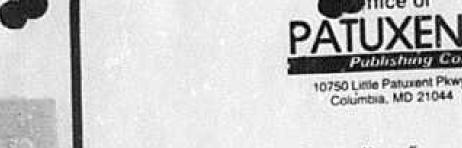
NOTICE OF APPEAL

Undrew Ectolic Andrew Bibo 1 1/2 Wade Avenue Baltimors. MD 21228 747-7302 People's Counsel for Baltimore County

Peter Max Zimmerman Deputy People's Counsel Room 223. Court House Towson. Maryland 2:204 494-2188

I HEREBY CERTIFY that on this  $2.7 \, \text{th}$  day of February, 1938, a copy of the foregoing Notice of Appeal was served on the VAdministrative Assistant. County Board of Appeals. Room 200, Court House. Towson, MD 21204; and a copy mailed to Gary C. Duvall, Esquirs, 401 Washington Ava., Towson, MD 21204; and R.

Beginning for the same at the corner formed by the intersection of the southeasternmost side of Frederick Road as laidout sixty-six (66.00) feet wide and the easternmost side of Wade Avenue forty (40) feet wide and running thence as now surveyed and with courses referred to True Meridian as established by Baltimore County and binding on the right of way of the Baltimore County Beltway as shown on State Roads Commission Plat No. 19870 the two following courses and distances via: South 77 degrees 03 minutes 19 seconds East 50.93 feet, and South 24 degrees 00 minutes 59 seconds East 171.08 feet, thence leaving said Beltway and running South 72 degrees 24 minutes 14 seconds West 69.56 feet to intersect the abovementioned side of Wade Avenue and thence binding thereon North 15 degrees 40 minutes 35 seconds West 196.00 feet to the place of beginning....containing 0.236 acres of land more or less.



THIS IS TO CERTIFY, that the annexed advertisement of PETITION FOR SPEICAL HEARING

was inserted in the following:

Catorsville Times \$24.79 Arbutus Times

weekly newspapers published in Baltimore County, Maryland one successive weeks before once a week for the 2 day of May 19.87, that is to say, the same was inserted in the issues of

April 30, 1987

DATE AND TIME Monday, Min.

18, 1957, at 11:00 a.m. PLOUG HEARING FROM 301

County Office Studies, 111 West Consuposate Avenue Towars, Mail

The Zoring Commissions of Baltimore County, by authory of the Zoring Act and Regulations of Baltimore County, sell hold a pulsur.

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Sale Deposed and Total Co. as shown an the plot year time with the Zoreng Office.

In the event that the Petitiones

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period for great country shows, Such request must be recurred in seming by the date of the hearing cal above or made at the hearing.

RE: PETITION FOR SPECIAL HEARING SE Corner Frederick Rd. and Wade Ave., Ist District

TRUST COMPANY, Petitioner

BEFORE THE ZONING COMMISSIONER

: Case No. 87-465-SPH

MERCANTILE-SAFE DEPOSIT AND

. . . . . . .

#### ENTEY OF APPEARANCE

Please enter the appearance of the People's Counsel in the abovecaptioned matter. Notices should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

> Phyllis Colc Friedman People's Counsel for Baltimore County

OF BALTIMORE COUNTY

Peter Mex Zimmerman Deputy People's Counsel Room 223, Court House Towson, Maryland 21204 494-2188

I HEREBY CERTIFY that on this 29th day of April, 1987, a copy of the foregoing Entry of Appearance was mailed to Gary C. Duvall, Esquire, 401 Washington Ave., Towson, MD 21204, Attorney for Petitioner.

Gary C. Duvall, Esquire 401 Washington Avenue Towson, Maryland 21204

April 8, 1987

#### NOTICE OF HEARING

RE: PETITION FOR SPECIAL HEARING SE/cor. Frederick Rd. and Wade Ave. 1st Election District - 1st Councilmanic District Mercantile-Safe Deposit and Trust Co. - Petitioner Case No. 87-465-SPH

11:00 в.в. Monday, May 18, 1987 PLACE: Room 301, County Office Building, 111 West Chesapeake

Avenue, Towson, Maryland

No. 32421 BALTIMORE COUNTY, MARYLAND OFFICE OF FINANCE - REVINUE DIVISION MISCELLANEOUS CASH RECEIPT FOR FILLING FOR VARIANCE /TEM 359 B DEGeneralDDDDFR Stopf MESTAUTILE - POT TUNES (MENABLE)

CERTIFICATE OF POSTING 87-465-SPH ZONING DEPARTMENT OF BALTIMORE COUNTY

District Lat

Posted for: Aprical Theories

Petitioner: Mercantle - Safe Deposit and Trust Co:

Loca ion of property: SE/Corner of Frederick Road and Wade are: Location of Signs Lougn SE/Corner of Frederich Road and Wook are and Irigin SW/Corner of Frederick Road and Wook are Remarks:

Posted by A. J. Queta Date of return: May & -87

Signature Humber of Signet 2

# CERTIFICATE OF PUBLICATION

TOWSON, MD., \_\_\_April\_30\_\_\_\_\_, 19\_87\_ THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., appearing on \_April\_30\_\_\_\_\_19\_87\_.

> THE JEFFERSONIAN, Susan Sudud Obrest Publisher

: IN THE CIRCUIT COURT PEDPLE'S COUNSEL FOR BALTIMORE COUNTY. : FOR BALTIMORE COUNTY ANDREW BIBD, AT LAW Appellants : Docket No. \_\_\_\_\_ MERCANTILE-SAFE DEPOSIT AND : Folic Nc. \_\_\_\_\_ TRUST COMPANY, : File No. \_\_\_\_\_\_ Appellee Zoning Case No. 87-465-SPH : 11111

PETITION\_ON\_APPEAL The People's Counsel for Baltimore County, and Angrew(Bibo, a neighbor. Protestants below and Appellants herein, having heretofore filed a Notice of Appeal from the Opinion and Order of the County Board of Appeals under date of February 4. 1988. in compliance with Maryland Rule 9-2(e), file this Petition on Appeal setting forth the grounds upon which this Appeal is taken, viz:

1. That the County Board of Appeals is without authority to grant the proposed netition because only uses designated and listed within the specific zoning classifications are permitted and a crematory is not a listed use in the Baltimore County Zoning Regulations.

2. The proposed use also is not an accessory use because the proposed modification does not fall within the definition of accessory use in the Baltimore County Zoning Regulations.

BALTIMORE COUNTY OFFICE OF PLANNING & ZONING TOWSON, MARYLAND 21204 494-3353

ARNOLD JADLON ZONING COMMISSIONER

May 12, 1987

JEAN M. H. JUNG DEPUTY ZONING COMMISSIONER

Gary C. Duvall, Esquire 401 Washington Avenue Towson, Maryland 21204

> RE: PETITION FOR SPECIAL HEARING SE/cor. Frederick Rd. and Wade Ave. 1st Election District - 1st Councilmanic District Mercantile-Safe Deposit and Trust Co. - Petitioner Case No. 87-465-SPH

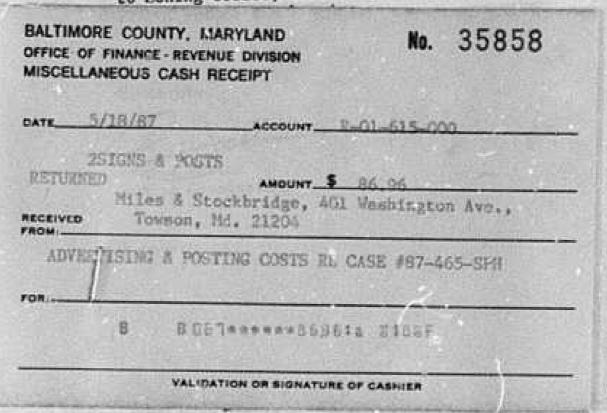
Dear Mr. Duvall:

Order is issued.

THIS FEE MUST BE PAID AND THE ZONING SIGN AND POST RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT BE ISSUED.

Do not remove sign from property from the time it is placed by this office until the day of the hearing itself.

Please make the check payable to Baltimore County, Maryland, and remit to Zoning Office, Room 113, County Office Building, Towson, Maryland



3. The proposed crematory in a residential-office district is effectively a primary commercial use insofar as it is expanded to receive bodies from all over the metropolitan region.

4. The decision of the County Spard of Appeals is artitrary, capricious, and otherwise unlawful.

WHEREFORE, Appellants pray that the Order of the County Board of Appeals under date of February 4, 1988 be reversed. and the petition for special hearing be denied.

Andrew Blad 1 1/2 Wade Avenue Baltimore. MD 21228 747-7302

People's Counsel for Baltimore County

Peter Max Zimmerman Deputy People's Counsel Room 223. Court House Towson, Maryland 21204 494-2188

SIGIEMENT\_DE\_EDINTS\_AND\_AUTHOBITIES

Baltimore County Zoning Regulations Section 203.3 (uses permitted in an R.O zone); Settion 1901.108 (uses permitted by special exception in a D.R. zone): and Section 101 (definition of accessory use).

Nesignal Memorial Pack. Inc. v. Board of Zoulng Arreals of Eaicfan\_County, 348 8.5.2nd 248 (Va. 1986): Jos Escryy. City of Bellingham, 706 P.2d 1103 (Wash.App. 1985): Bighard Kowalski Ya.

John Lamar. \_et\_al.. 25 Md. App. 493 (1975); and Arundel Supply Corporation, st al. v. Cason, et al., 265 Md. 371 (1972). Copies of the above cases are attached.

PETITION FOR SPECIAL HEARING

Case No. 87-465-SPH

DATE AND TIME: Monday, May 18, 1987, at 11:00 a.m.

plan filed with the Zoning Office.

hearing set above or made at the hearing.

Regulations of Baltimore County, will hold a public hearing:

remove the restriction in said order prohibiting such cremation

LOCATION:

1st Election District - 1st Councilmanic District

Southeast Corner Frederick Road and Wade Avenue

PUBLIC HEARING: Room 301, County Office Building, 111 W. Chesapeake Avenue,

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and

Petition for Special Hearing to amend the order in Case No. 71-243-X so as to

specifically permit cremation of cliental from other funeral homes and to

Being the property of Mercantile-Safe Deposit and/ , as shown on plat

In the event that this Petition(s) is granted, a building permit may be issued

within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period

for good cause shown. Such request must be received in writing by the date of the

BY ORDER OF

ARNOLD JABLON

ZONING COMMISSIONER OF BALTIMURE COUNTY

I HEREBY CERTIFY that on this 29th day of February, 1988, a copy of the foregoing Petition on Appeal was served on the Administrative Secretary, County Board of Appoals, Room 200, Court House. Towson, MD 21204; and a copy mailed to Gary C. Duvall. Esquire, 401 Washington Ave.. Towson, MD 21204: and R. Douglas Jones, Esquire, Lerch & Huesman, 504 Dld Court Savings & Loan Bldg., 16 S. Calvert St., Baltimore, MD 21202.

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Carol 1982, ment be another to disto court to cour

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n of the Court. [25 Md. App. ess situation. In the instant case I the restrictions works no injury o injustice to the parties, thus the nd thus partially enforceable.

IP, HARVEY & COOK

Term "Our Customers" y the trial court included in the hom appellant could not solicit all ent on Stump's books after May contract) but excluded prospective d any customer whose account im when he first affiliated with the trial judge incorrectly defined " in clause 4 of the contract as anyone working for Stump.

term should be interpreted to se business was generated by nployed by Stump. We agree with ly reasonable interpretation of the he context in which it was used is s generated by appellant while he The trial court expressed it in the Tolman Loundry, supra [171 (1936)]: "The customers and ed were for the benefit of the creased good will became the aster, however much their be attributed to the servant's and skill. Since the servant

ded to produce these results, ne right to their enjoyment. Similarly in Deserting, supra, 542 (1928)], the Court pointed the employer which was the npetitive agreement. In Silver L [231 Md. 1, 188 A. 2d 155 ognized that restraint may be

KOWALSKI v. LAMAR

justified if a part of the compensated services of the former employee consisted in the creation of the good will of customers and clients which is likely to follow the person of the former employee'. [231 Md. 7.] See also John Roane, Inc. v. Ticeed, 89 A. 2d 548, 33 Del. Ch. 548, 41 A.L.R.2d 1 (1952), where the Supreme Court of Delaware, construing Maryland law, held that 'reasonable restrictions against competition to prevent the pirating of the employer's good will will be enforced, provided such restrictions extend no further than the necessities of the case dictate."

Decree affirmed. Appellant to pay costs.

RICHARD KOWALSKI ". JOHN LAMAR ET AL.

[No. 587, September Term, 1974.] Decided April 1, 1975. Zonnig - Conducting Of Commercial Business Upon Land Classified As Residential - Uses Permitted As Of Right Or By Special Ecception -Where Any Use Of Land Other Than Those Permitted And Being Carried
On As Of Right Or By Special Ecception In Prohibited — There Was Not
An Ista Of Evidence To Support A Finding That Uses Complained Of Were
Either Permitted Uses, Being Carried On A: A Matter Of Right Or By
Special Ecception Nor Did They Fall Within The Amoit Of The Definition
Of An Accessing Use As Provided By Zoning Regulations And The
Affirmation By Trial Court Of Zoning Board's Finding Was Ecroneous.

Appeal from the Circuit Court for Baltimore County (MACDANIEL, J.). Complaint filed by Richard Kowalski against John Lamar alleging violation of zoning regulations by permitting certain commercial business to be conducted on land zoned residential. From an order affirming the Baltimore County

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ZONING-"Gravel Pit" Defined-Where A Gravel Pit Is Permitted, It Is Anticipated That The Use Will Be For An Eccavation From Which Gravel Will De Removed And Not Particularly For Wasking And Screening Of The Gravel. ZONING-"Gravel Pit" - Accessory Use-Washing, Screening And Botching Of Materials Trucked In From Other Places Is Not

A Use Accessory To The Excavation Of Gravel On The Property. STATUTES-Although Customs And Usage Are Admissible To Ascertain The Intention Of A Legislative Body When A Statute Is Vague Or Ambiguous, No Custom Can Nullify The Clear And

Manifest Menning Of The Statute. ZONING-A Use And Occupancy Permit Cannot Be Validated

Under Provisions For Correcting Erroneous Permits Where The Use Itself Has Been Declared Illegal, INJUNCTIONS-DECREES - APPEAL - A Matter May Be Remanded For Revision Of A Deeres To Comply With The Requirements Of Maryland Rule BB78 a Without Upsetting The Effect

Of The Deerre. Motion for rehearing filed May 8, 1972; denied May 16,

Three appeals in one record from the Circuit Court

for Prince George's County (Powers, Ralph W., J.). Suit by James P. Cason and other residents of Prince

George's County, Maryland, against Arundel Supply Corporation, Arundel Concrete Co., Arundel Asphalt Products, Inc., Ben Woodward and Lorenzo F. Thompson seek-

v. COMPTROLLER

activities; to determine and

babilities in regard to future

mine the location of advanta-

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s, as well as making provision

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perience of its management, as

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within the language and pur-

the order of the Maryland Tax

ng that the e was no denial of the laws under the Fourteenth

Order of August 20, 1971, af-

firmed, the appellant to pay

panagement relations, to name

CHESAPEAKE AND PO PANY OF MARYLA: di consumption of certain foods Do. 625. Septs th or decline in various areas

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C. & P. TEI

RES IPSA LOGITTUR - NEGLIGED Doctrine Of Res Ipm Loquitur - E

> J. A. R. (HAILE, J.).

Inspect And To Maintain - Burde Loquitur To Apply To Recover For Must Show Defendant Guilty Of Particular Injury - Res Issu Loqui That Circumstances Attendant Ups A Character As To Justify A Jury 3d the purpose of § 57 in Read Accident - When Act That Co Tempra, as follows: Undisclosed, Neither Doctrine Or Principal Of Presumption Can Be diditional license fee for the Party Charged With Harring By Ne or in the 'chain store' busi-Which A Suit Has Been Brought - advantages such a method Res Ipea Loquitur Does Not App Cansed By An Instrumentality W. Caused By An Instrumentality W. dering more equal competi-Doctrine Count Be Acaded Of Will dering more equal competi-Fault Was Defendant's And Will and additional revenue for Defendants Absent A Showing The Test that the Legislature con-Joint Or Exclusive Control Of Isja amber of stores or mercan in Sufficient To Show Defer the Chain increased there Instrumentality Involved In Cases Unless It Is Shown A Proper In increase in the advantages Cansing Casualty - Plaintiff Has Which Will Permit Conclusion The A. at 746.) Injuries Were Caused By Defenda Loquitur Is Merely One Kind Of C 200 d by Fair Lanes by the greater May Reamnably Difer Both Ne Occurrence Of Ecent And Defends Where Plaintiff Failed To Show I. Instrumentality Causing Canualty dant And Ecolence Was Equally reming Forces, Dectrine Or Res Ipm Dang of the Comptroller in deny-

Appeal from the Circui

KOWALSKI P. LAMAR

Opinion of the Court.

sing that the busi-may have sn't make

COMPAND TO THE TAX

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requirements of the rule and the reasonable requests of

Case remanded for a revision of the decree conformable with the views stated in As revised the decree is af-Costs to be paid by the ap-

HOOKS ET AL v. COMPTROLLER OF THE TREA-SURY OF THE STATE OF MARYLAND

> [No. 299, September Term, 1971.] Decided April 13, 1972.

TAXATION - Class Actions For Refunds Or Appeals To The Maryland Tux Court Ars Not Permitted-Maryland Rule 209 Is Not Applicable To The Comptroller Or The Tax Court Under Maryland Rule 5 i.

TAXATION - The Exemption From The Retail Sales Tax Of Transportation Services In No Way Relates To The Rent Which A Driver Paye For The Taxicab Which He Leases, Code (1957, 1969 Repl. Vol.), Art. 81, Sec. 326 (n).

TAXATION-Rental Of Tangible Personal Property Is Considered To Be A Sale Under The Retail Sales Tar Act, Code (1957, 1969 Repl. Vol.), Art. 81, Sec. 224(d),

TAXATION .- Where The Purchase Of Gasoline Is A Part Of The Price A Driver Pays For Rental Of A Taxicab, Sales Of The Gazoline Are Subject To The Retail Soirs Tax, Code (1957, 1969 Repl. Vol.), Art. 81, Sec. 224 (i).

TAXATION - CONSTITUTIONAL LAW - That Lessee-Drivers Of Taxicabs Must Pay Sales Tux On Amounts Paid Under The Cab Lease Agreement While Owner-Drivers Pay No Sales Tax Is HOOKS v. COMI

Opinion of the

Not A Denial Of Equal Protection-Amendment.

R. L. H. Appeal Irom the Baltimore C

Appeal from the affirmance b of the denial by the Comptrol claim for refund of retail sales on behalf of himself and all o Cab Association, Inc., who were a judgment in favor of the Con-

Judgment affirmed, costs to b The cause was argued before FINAN, SINGLEY, SMITH and D

Archie D. Williams for appe

William J. Rubin, Assistant whom was Francis B. Burch. brief, for appellee.

SINGLEY, J., delivered the opi

Edward W. Hooks, who lea

basis from Checker Cab Assoc sociation of about 86 owners. here seeks to recover the sales the rent which he and other d paid. Under the rental agreem and his colleagues paid a fixed for the use of the taxicab for a or not they operated the taxical in addition, agreed to purchase gasoline consumed during the cess of the market price.

It seems to be conceded that come exclusively from the amo

July 30,1987

Kathieen Jackson Anne Marie Jackson 50 Wade Ave Catonsville, Maryland 21228

To Whom It May Concern,

Please notify us of the date and time for the hearing of Case No. 87-465-SPH. Please let us know as soon as possible so that we may notify others of the date and time. Thank you very much. Sincerly,

Lathlein Gackson Kathleen Jackson

anne man Jackson Anne Marie Jackson

> SE OF A 1- SUA FEPT COUNTY BOARD OF APPEALS

RE: PETITION FOR SPECIAL HEARING SE Corner of Frederick Rd. and Wade Ave., 1st District

> MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, Petitioner

1 1 1 1 1 1 1 1

NOTICE OF APPEAL

Please note an appeal from your decision in the above-captioned matter, under date of June 10, 1987, to the County Board of Appeals and forward all papers in connection therewith to the Board for hearing.

ZONING OFFICE

Phyllfs Cole Friedman People's Councel for Baltimore County

: BEFORE THE ZONING COMMISSIONER

: Case No. 87-465-SPH

OF BALTIMORE COUNTY

Leter May Commercia

Peter Max Zimmerman Deputy People's Counsel Room 223, Court House Towson, Maryland 21204 494-2188

I HEREBY CERTIFY that on this theday of July, 1987, a copy of the foregoing Notice of Appeal was mailed to Gary C. Duvall, Esquire, 401 Washington Ave., Towson, MD 21204; and R. Douglas Jones, Esquire, 504 Old Court Savings & Loan Bldg., 16 S. Calvert St., Baltimore, MD 21202.

Peter Max Zimmerman

ZONING OFFICE

GARLY C. DUVALL

TOWSON, MARYLAND 21204 TELEPHONE DOI-621-0505 CABLE MILBRIDGE TELEX 87-3M

LAW OFFICES MILES & STOCKBRIDGE

401 WASHINGTON AVENUE

May 29, 1987

RE: Item #359, Case #87-465-SPH Petitioner: Mercantile-Safe Deposit and Trust Company

Dear Mr. Jablon:

Mr. Arnold Jablon

Zoning Commissioner

County Office Building

111 W. Chesapeake Avenue

Towson, Maryland 21204

Please be advised that the new stack for my client's crematorium is now in place and in operation. Inasmuch as we had been informed, prior to the filing of our Petition for Special Hearing, that air quality would not be an issue at our request to remove the restriction in the 1971 Special Exception, we were unprepared to meet the air quality testimony that was permitted to come in at the time of the hearing. Accordingly, with the new stack now in place, we have requested the Baltimore County Health Department's Division of Air Pollution Control to come out and monitor the facility with the new stack. As I indicated in my May 21st letter, we will operate for two weeks and see if we can meet with Mr. Bibo and Mr. Jones to reach a satisfactory resolution which can be presented to you.

Since we had believed that air quality and emissions would not be an issue at the hearing on May 18th, the only possible issue which could have been raised with regards to the removal of Restriction No. 1 was traffic. Since the air quality issue was permitted to be addressed and you indicated that you might impose restrictions on the operation as to hours and sources of business, if the parties cannot reach an amicable resolution, we would request a reopening of the hearing to address those issues. I don't think this is an unfair request in light of our reliance on the representations of your office that the air quality issues would not be addressed at the hearing.

As I am sure all parties to this case would agree, it is important that all issues and facts be brought to the attention of you before you make any final ruling.

imore County Zoning Commissioner Office of Planning & Zoning Towson, Maryland 21204 494-3353

Baltimore County Board of Appeals

Old Courthouse, Room #205

Towson, Maryland 21204

Arnold Jablon Zoning Commissioner

July 14, 1987



RE: Petition for Special Hearing SE/cor. Frederick Road and Wade Avenue Mercantile-Safe Deposit and Trust Company - Petitioner Case No. 87-465-SPH

Dear Board:

Please be advised that on July 6 and 8, 1987 appeals of the decision rendered in the above-referenced case were filed by both People's Counsel for Baltimore County and Gary C. Duvall, Esquire, Attorney for Petitioner.

Please notify all parties to the case of the appeal hearing date and time when it has been scheduled. If you have any questions concerning this matter, please do not hesitate to contact this office.

Very truly yours,

MILES & STOCKBRIDGE

AJ:bjs

cc: Gary C. Duvall, Esquire 401 Washington Avenue, Towson, Md. 21204

Mr. Wayne Townsend 2 Hopkins Plaza, Baltimore, Md. 21203

R. Douglas Jones, Esquire Lerch & Huesman, 504 Old Court Bldg., 16 S. Calvert St., Balto., Md. 21202

1 and 1/2 Wade Avenue, Baltimore, Md. 21228

Phyllis Cole Friedman, Esquire People's Counsel for Baltimore County Old Courthouse, Rm. 223, Towson, Maryland 21204

File



Mr. Arnold Jablon May 29, 1987

B4 NORTH WEST STREET EANTON, MARYLAND 19901 Page 2 DAR BUNGERFORE COURS ROCKVILLE, MARYLAND POSSO

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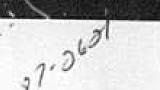
I will be back to you by June 18, 1987 to see if a satisfactory resolution can be worked out among the active participants to this case.

Thank you for your continued cooperation in this regard.

Very traly yours,

GCD/tlh

cc: Douglas Jones, Esquire Mr. Andrew Bibo Mr. George S. MacNabb Richard Payne, Esquire



SUITE SO4

RICHARD D. PAYNE

Arnold Jablon, Esquire

for Baltimore County County Courts Building

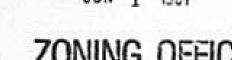
Towson, Maryland 21204

Zoning Commissioner

Dear Mr. Jablon:

LOYOLA PEDERAL BUILDING 22 W. PENNSYLVANIA AVENUE TOWSON, MARYLAND 21204 May 28, 1987

LAW OFFICES



828-8990

Re: MacNabb Funeral Home 47-465- SPN MERCASTILE - SEE EO.

On behalf of myself and the other protestants, I felt that in view of Mr. Downes recent letter to you I should respond.

I represented the Holmehurst Improvement Association in the former hearing and we felt that the decision of Commissioner DiNenna was correct and imminently fair to both sides. A funeral home is a local service allowed in a substantially residential zone to provide the needs of the community, and Commissioner DiNenna expanded this use to allow Mr. MacNabb to provide crematory services for the people in his community.

Although we do not agree that a crematory is an auxiliary use of a funeral home, and I think there is substantial authority for this, we still felt that to try to cooperate with Mr. MacNabb it would be a reasonable use of his building; however, this is still substantially a residential zone in this community and the uses should conform to that over-all concept of the use along Frederick Road of services to the community of Catonsville.

We feel it almost ludicrous to reward Mr. MacNabb, who cannot plead ignorance of the existence of the ruling of the Zoning Commissioner, for violating these rules for some 10 or 12 years. and only coming in when he got caught. We think that, at the very best, Mr. MacNabb should abide by Commissioner DiNenna's prior ruling and that it should be sustained. You expressed some desire to expand the operation, but it certainly in no way could be considered a community operation if he is bringing bodies in at the rate of 400 per year from all over the State of Maryland, and even from out of state, for all the undertakers, the morgue, etc., and certainly even with his own operation for destroying bodies for those that he takes care of, the hours should be limited to those that will not interfer with the residential character of the

\* BEFORE THE JUL 8 1987

ZONING ZONING OFFICE \* OF BALTIMORE COUNTY

\* Case #87-465-SPH

ORDER OF APPEAL

Please note an appeal, on behalf of the Petitioner in the above-captioned matter, to the Board of Appeals for Baltimore County from the Decision of the Zoning Commissioner on the 10th

> MILES & STOCKBRIDGE 12th Floor 401 Washington Avenue Towson, MD 21204 (301) 821-6565

Attorneys for Petitioner

CERTIFICATE OF SERVICE

IN RE: PETITION SPECIAL HEARING

Trust Company,

District

day of June, 1987.

SE/corner of Frederick Road

Mercantile-Safe Deposit and

Petitioner

and Wade Avenue-1st Election

I HEREBY CERTIFY that on the 7 day of July, 1987, a copy of the aforegoing Notice of Appeal was mailed to R. Douglas Jones, Esquire, Lerch & Huesman, 504 Old Court Building, 16 South Calvert Street, Baltimore, MD 21202; and to Mr. Andrew Bibo, 15 Wade Avenue, Baltimore, Maryland 21228.

ZONING OFFICE

neighborhood that he is located in. This would certainly be no more than five (5) days per week during the hours of 9 AM to 3 PM because it would take another two (2) hours for the unit to cool down and eliminate the odors from the environment, and eliminate weekends and holidays and that there could be no more than one (1) unit located in the crematorium.

To reiterate, we do not feel that an expanded commercial use of burning of bodies from all over the State of Maryland and increasing of operation on an unlimited hasis is in the spirit of zoning for a service which is supposed to be supplied a community need to the local community in which it is located.

CERTIFICATE OF POSTING

Number of Signs: 2

Very truly yours .\_\_

- .75 447

87-465-5PH

cc: Gary C. Duvall, Esquire Mr. Andrew Bibo Holmehurst Improvement Association 10 Holmehurst Avenue, Catonsville, MD 21228

87-465-SIR W. L. Hawkins, Past President AND TRUST CO.

MURCANTILU- SAFE DUTISIT

Arnold Jablon, Zoning Commissioner May 22,1987 County Office Building 111 W. Chesapeake Ave. Towson, MD 21204

Dear Sir

R. W. Decker, President

K. Fehrenbach, V. Pres.

G. Dickler, Trea. L. Makowske, Sec.

Directors: R. Payne

C. Higdon

D. Jones

J. Rubin

I have just been handed a copy of a letter from Mr. Duvall to you. I have also just had a conversation with Mr. Bibo about the activities of McNabb. Now in view of the fact that both Mr. Bibo and myself will be out of the country for a peroid of time I am worried that justice and fairness may not be served. Hopefully I am wrong.

I think that it has been admitted that the law was broken and I think something should be done on that score first. Should the District Attorney be involved at this point?

Also, Mr. Bibo feels that McNabb is burning at all hours now, and from many sources. We worry that the material being burned is not what McNabb says it is, and in view of the obvious disagreement on the facts I think a full investigation should be made. The fact that Mr. McNabb admitts to breaking the law should, I would think gives proper cause to call a stop to his activities until the full declosure of the facts are made.

I hope that you will give this approach some consideration.

Beginning for the same at the corner formed by the intersection of the southeasternmost side of Frederick Road as laidout sixty-six (66.00) feet wide and the easternmost side of Wade Avenue forty (40) feet wide and running thence as now surveyed and with courses referred to True Meridian as established by Baltimore County and binding on the right of way of the Baltimore County Beltway as shown on State Roads Commission Plat No. 19870 the two following courses and distances via; South 77 degrees 03 minutes 19 seconds East 50.93 feet, and South 24 degrees 00 minutes 59 seconds East 171.08 feet, thence leaving said Beltway and running South 72 degrees 24 minutes 14 seconds West 69.56 feet to intersect the abovementioned side of Wade Avenue and thence binding thereon North 15 degrees 40 minutes 35 seconds West 196.00 feet to the place of beginning....containing 0.236 acres of land more or less.

BALTIMORE COUNTY OFFICE OF PLANNING & ZONING

County Office Building 111 W. Chesapeake Avenue Towson, Maryland 21274

Zoning Commissioner

Petitioner Mercantile Safe Doposit and Received by:
Attorney Gary C. Duvall, Paquire James E. Dyec

Chairman, Zoning Plans Advisory Committee

LAW OFFICES MILES & STOCKBRIDGE

401 WASHINGTON AVENUE TELEPHONE DOI-801-8505

TOWSON, MARYLAND 21204 CABLE MILBRIDGE

TELEX 87-811 May 21, 1987

10 LIGHT STREET BALLINGHE MARTLAND BISOR

EASTON, MARYLAND SHOOT D49 HUNGERFORD COUNT ROCEVILLE, MANTLAND ROSSO

> IFGE PENNSTEVANIA AVENUE, N. W. WASHINGTON, D. C. POCCOS

B4 NORTH WEST STREET

HAND - DELIVERED

GANY C. DUVALL

Mr. Arnold Jablon Zoning Commissioner County Office Building 111 W. Chesapeake Avenue Towson, Maryland 21204

> RE: Item #359, Case #87-465-SPH Petitioner: Mercantile Safe Deposit and Trust Company

Dear Mr. Jablon:

My client has asked that I bring to your attention several items which were not presented at the hearing on Monday. As you are aware, the petition which we have filed only requests the removal of Restriction No. 1 of the 1971 Order granting the special exception. There has never been any restriction imposed on the hours of operation. My client wanted me to bring to your attention that State law requires him not to cremate any bodies until 12 hours after time of death. Crematoriums in the area do not provide refrigeration facilities to store bodies for subseguent disposal. Accordingly, bodies are usually disposed of promptly. As Mr. MacNabb indicated at the hearing, the minimum time required for disposition of a body is usually three hours. No one knows when bodies will be received since unfortunately, death is not that predictable. Logistically, you can see the problems of placing a limitation on the hours of operation in that the Petitioner would not know when bodies are going to be received; how long he would have to hold them; and how long it would take to dispose of the bodies. In other words, an hours of operation limitation would pose a definite problem on prompt disposition of bodies.

It was our understanding that the hearing would not address the issues of air quality and emissions since that had been already investigated and resolved in favor of the Petitioner by the Baltimore County Health Department's Division of Air Pollution Control. Therefore, we were unprepared to respond to Mr. Bibo's charges of "smoke and other emissions" emanating from the facility by providing to the Commissioner the Report of Observation of Visible Emissions prepared in the regular course of business by the State Department of Health and Mental Hygiene. As Mr. MacNabb indicated, the State permit has been renewed for the crematorium after thorough investigation of Mr. Bibo's complaints.

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

Arnold Jablon To Zoning Commissioner

Date\_\_Aprill\_13,\_1987\_\_\_\_\_

Norman E. Gerber, AICP, Director FROM \_\_Office\_of\_Planolog\_and\_Zoning\_

SUBJECT\_\_\_Zuning\_Petitions\_No.\_87-A65-SpH, 87-469-SpH and 87-470-SpH

In view of the subject of these petitions, this office offers no comments.

NEG:JGH:slb

ZONING OFFICE

Mr. Arnold Jablon May 21, 1987 Page 2

MILES & STOCKBRIDGE

Nevertheless, my client and I would like to suggest that the Commissioner delay the issuance of any Order on our petition until the installation of the new stack at the crematorium which Mr. MacNabb testified to. This stack is being delivered today and will hopefully be installed within the week. We would like to operate for a two week period after the installation of the new stack to see if this eliminates the complaints and concerns

Thereafter, I will consult with Mr. Bibo and Mr. Jones to see if a satisfactory resolution can be worked out among all parties, so that my client does not have to face the possibility of losing his business nor does the community association and Mr. Bibo have to face the possibility of being dissatisfied with your decision and incurring the expense of appealing the same.

In conclusion, I would like to request that you postpone the issuance of any Order and allow the installation of the new stack with subsequent operation for a two week period. I will then take it upon myself to contact Mr. Bibo and Mr. Jones to see if this installation proves satisfactory to them. Thereafter, I will report to you and inform you whether or not a resolution can be reached or whether we should reopen the proceedings for additional evidence so that the matter can be fully heard before the Zoning Commissioner.

Thank you for your anticipated cooperation.

GCD/tlh

cc: Douglas Jones, Esquire Mr. Andrew Bibo Mr. George S. MacNabb

Mr. Bibo expressed at the hearing.

BALTI MORE COUNTY ZONING PLANS ADVISORY COMMITTEE

COUNTY OFFICE BLDG. 111 W. Chesapeake Ave. Towson, Maryland 2120 000

Chairman

MEMBERS Bureau of Engineering

Department of Traffic Engineering State Roads Commission Bureau of Fire Prevention Boalth Department

Project Planning **Building Department** Poard of Education Ioning Administration industrial

Development

May 8, 1987

Gary C. Duvall, Esquire 401 Washington Avenue Towson, Maryland 21204 RE: Item No. 359 - Case No. 87-465-SPH

Petitioner: Mercantile-Safe Deposit and Trust Co. Petition for Special Hearing

Dear Mr. Duvall:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above-referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested. but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. The Director of Planning may file a written report with the Zoning Cormissioner with recommendations as to the suitability of the requested zoning.

Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received. I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

Very truly yours, Zoning Plans Advisory Committee

JED:kkb

Enclosures

cc: Mr. Wayne Townsend 2 Hopkins Plaza Baltimore, Maryland 21203

District / at

Posted for: Apricial Therring

Petitioner: Mescentile - Sale Deposit and Frust Co:

Location of property: SE/Corner of Frederick Road and Wede ave: Your petition has been received and accepted for filing this Location of Signs: I sugar SE/Corner of Frederich Road and Whole as

are and I sugar SW/Corner of Frederich Road and Whole as

Remarks:

Posted by Signature

Date of return: May 5-87

CPS-008

March 30, 1987

Mr. A. Jablon Zoning Commissioner County Office Building Towson, Maryland 21204

Att: Mr. J. Dyer

Re: ZAC Meeting of 3-24-87 ITEM: #359. Property Owner: Mercantile-Safe Deposit and Trust Company, Trustee Location: SE/C Frederick Road Route 144, and Wade Avenue Existing Zoning: R-O Proposed Zoning: Special Hearing to approve an amendment to the order in Case No. 71-243-X to remove Restriction No. 1 Area: 0.236 Acres District: 1st Election District

Dear Mr. Jabion:

On review of the submittal of 1-20-71, the State Highway Administration finds all access to the site generally acceptable.

Very truly yours,

Chewl Le Charles Lee, Chief

Bureau of Engineering Access Permits

CL:GW:maw

PEOPLE'S COUNSEL FOR

BALTIMORE COUNTY, et al

MERCANTILE-SAFE DEPOSI

AND TRUST COMPANY

Appellants

Appellee

::::::

cc: Mr. J. Ogle

By: George Wittman

IN THE

CIRCUIT COURT

FOR BALTIMORE COUNTY

ZONING CASE NO. 87-465-SPH

CASE NO. 88 CG 1080

My telephone number is (301) 333-1350 Teletypewriter for Impaired Hearing or Speech 383 /555 Baltimore Metro - 565-0451 D.C. Metro - 1-800-492-5062 Statewide Toll Free

NEMORANDUM OPINION AND ORDER

of the Baltimore County Board of Appeals ("Board"), dated February

4, 1986, granting the removal of all restrictions placed on the

MacNabb Funeral Home in its operation of a crematorium.

with funerals that emanated from its establishment.

number of bodies cremated per year.

This case comes before this Court on an appeal from an Order

On September 29, 1971, the MacNabb Funeral Home was granted

a Special Exception for the operation of a crematorium in connection

with its funeral establishment. The Special Exception required the

On June 10, 1987, the Zoning Commissioner of Baltimore County

MacNabb Funeral Home to use the crematorium only in conjunction

rescinded the restriction placed on the crematorium in 1971 when

the Special Exception was granted. In addition, the Zoning Com-

missioner granted the Petition for a Special Hearing Subject to

restrictions on the hours of operation of the crematorium and the

P.O. Box 717 / 707 North Calvert St., Baltimore, Maryland 21203 - 0717

BALTIMORE COUNTY
DEPARTMENT OF TRAFFIC ENGINEERING
TOWSON, MARYLAND 21204
494-3550

STREMEN YEX XXXXXXXXX REFERE C. Richard Moore Acting Director

April 17, 1987

Mr. Arnold Jablon Zoning Commissioner County Office Building Towson, Maryland 21204

Dear Mr. Jablon:

The Department of Traffic Engineering has no comments for items number 360, 361, 362, 363, 364, 365, 359, and 366.

Very truly yours,

Traffic Engineer Associate II

MSF:1t

The special hearing was held before the Poard on January 7, 1988. After a full hearing, the Board concluded, in its written Opinion and Order of February 4, 1988, that the operation of the crematorium does not infringe upon the health, safety and welfare of the community. Therefore, the Board removed all restrictions on the operation of the crematorium. This Court shall affirm the decision of the Board.

The scope of this Court's review in such cases is that if there was sufficient evidence to make the issue before the Board fairly debatable, then the decision of the Board must be affirmed. McLean v. Soley, 270 Md. 208, 310 A.2d 783 (1973).

Based upon a review of the entire record of the proceedings before the Board, including the exhibits, and after hearing argument of counsel in this appeal, this Court finds that reasonable minds could reasonably reach the conclusion from the facts in the record before the Board. to ther guneated area are justable-hear

Accordingly, the decision of the Baltimore County Board of Appeals is hereby AFFIRMED and it is so ORDERED

electioner printed the reticion Date \_igned \_ /8/7//88

restrictions on the hours of COPIES SENT TO:

Phyllis Cole Friedman, Esquire Gary C. Duvall, Esquire Mr. Andrew Bibo

The Special Executed to the gr

THE PERSON NAMED IN is a firm that the till trained

BALTIMORE COUNTY

PAUL H. REINCKE

Mr. Arnold Jablon

Zoning Commissioner

Towser "aryland 21204

Item No.: 359

Gentlemen:

Office of Planning and Zoning Baltimore County Office Building

FIRE DEPARTMENT TOWSON, MARYLAND 21204-2586-

March 19, 1987

Zoning Agenda: Meeting of 3/24/87

Fire Prevention Bureau

RE: Property Owner: Mercantile Safe Deposit and Trust Co., Trustee

Pursuant to your request, the referenced property has been surveyed by this

to be corrected or incorporated into the final plans for the property.

( ) 2. A second means of vehicle access is required for the site.

EXCEEDS the maximum allowed by the Fire Department.

) 7. The Fire Prevention Bureau has no comments, at this time

( ) 4. The site shall be made to comply with all applicable parts of the

(x) 5. The buildings and structures existing or proposed on the site shall

Fire Prevention Code prior to occupancy or beginning of operation.

comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1976 edition prior

Bureau and the comments below marked with an "X" are applicable and required

( ) 1. Fire hydrants for the referenced property are required and shall be

located at intervals or \_\_\_\_\_feet along an approved road in

accordance with Baltimore County Standards as published by the

Location: SE/C Frederick Rd. and Wade Avenue

Department of Public Works.

to occupancy.

) 6. Site plans are approved, as drawn.

Special Inspection Division

1 ) 3. The vehicle dead end condition shown at \_\_\_\_\_

BATIMORE COUNTY, MARY AND

INTER-OFFICE CORRESPONDENCE

| UBJECT Zoning Advisory Co | mmittee Scheduled Meeting 3/24/87 |
|---------------------------|-----------------------------------|
| Items - order listed as   | to types of petitions             |
| Item #360 .               | See Comment                       |
| Item #361                 | Standard Comment                  |
| Item #362                 | See Comments                      |
| Item #363                 | Standard Comments                 |
| Item #364                 | See Comments (critical area)      |
| Item #365                 | Standard Comments                 |
| Item #366                 | See Comments                      |
| Item #357                 | See Comments                      |
| Item #358                 | See Comments                      |
| Item #359                 | No Comment                        |

CEB: bac

THE THE APPLICATION OF MERCANTILE-SAFE DEPOSIT & TRUST CO. CIRCUIT COURT FOR 1st ELECTION DISTRICT BALTIMORE COUNTY 1st COUNCILMANIC DISTRICT AT LAW PHYLLIS C. FRIEDMAN. PEOPLE'S COUNSEL FOR BALTIMORE COUNTY. CG Doc. No. 53 Folio No. 280 ANDREW BIBO, PLAINTIFFS File No. 88-CG-1080 ZONING CASE NO. 87-465-SPH

PROCEEDINGS BEFORE THE ZONING COMMISSIONER AND THE BOARD OF APPEALS OF BALTIMORE COUNTY

TO THE MONORABLE, THE JUDGE OF SAID COURT:

And now come Thomas J. Bollinger, Arnold U. Foreman and

Lawrence E. Schmidt, constituting the County Board of Appeals of Baltimore

County, and in answer to the Order for Appeal directed against them in this case. herewith return the record of proceedings had in the above entitled matter:

No. 87-465-SPH

March 30, 1987 Petition of Mercantile-Safe Deposit and Trust Co. for special hearing to amend the Order in Case No. 71-243-X so as to specifically permit cremation of cliental from said Order prohibiting such cremation.

March 30 Order of Zoning Commissioner directing advertisement and posting of property - date of hearing set for May 18. 1987, at 11:00 a.m.

May 2 Certificate of Posting of property

May 5 Certificate of Publication in newspaper

> Comments of Baltimore County Zoning Plans Adv'sory Committee

April 13 Comments of Baltimore County Director of Planning May 18 At 11:00 a.m. hearing held on petition of Zoning

Order of Zoning Commissioner that the Petition for Special

PERMIT

-2-

June 10

May 8

Commissioner.

Hearing is GRANTED, subj. to restrictions.

Mercantile-Safe Deposit & Trust Co. Case No. 87-465-SPH

February 4

Order for Appeal to the C.B. of A. from Phyllis C. July 6, 1987 Friedman, People's Counsel for Balto. County.

Order for Appeal to the C.B. of A. from Gary C. Duvall, July 7 Esq., on behalf of Petitioner.

Hearing on appeal before County Board of Appeals January 7, 1988

Order of the County Board of A peals that the Petition of Mercantile-Safe Deposit & Trust Co. for the lessee, McNabb Funeral Home, to operate the crematory without restrictions be GRANTED.

Order for Appeal filed in the Circuit Ct. for Baltimore County by Phyllis C. Friedman, People's Counsel for February 29 Baltimore County, and Andrew Bibo.

Petition to accompany Order for Appeal filed in the Circuit Ct. for Baltimore County. February 29

Certificate of Notice sent to interested parties March 1 Transcript of testimony filed March 25

Petitioner's Exhibit No. 1 - Aerial Map of area w/site in yellow

# = 2 - Zoning Map - is R.O. 1984 w w 3 - Opinion by Eric DiNenna, 9/29/71

" " 4 - Video tape of crematory in operation

" " 5 - Commonwealth test data

" " 6 - Eric DiNenna's letter, 1/16/73 " 7 - Weidefield Site Plan

# # 8 - Westview Facility Aerial photo 8.

" " 9 - Cremation Statistics

w " 10 - Records of Balto. Co. Inspection - Environmental Services, State of

Mercantile-Safe Deposit & Trust Co. Case No. 87-465-SPH

Record of proceedings filed in the Circuit Court for March 29, 1988 Baltimore County.

Record of proceedings pursuant to which said Order was entered and upon which said Board acted are hereby forwarded to the Court, together with exhibits entered into evidence before the Board. However, all tangible material or evidence of an unwieldy or bulky nature will be retained in the Board of Appeals' office, and upon request of the parties or the Court will be transmitted to the Court by whomever institutes the request.

Respectfully submitted,

Mounty Board of Appeals of Baltimore

cc: Gary C. Duvall, Esq. R. Douglas Jones, Esq. Phyllis C. Friedman

THE APPLICATION OF CIRCUIT COURT MERCANTILE-SAFE DEPOSIT & TRUST CO. . FOR SPECIAL HEARING ON PROPERTY LOCATED ON THE SOUTHEAST CORNER OF FREDERICK RD. AND WADE AVE. BALTIMORE COUNTY 1st ELECTION DISTRICT 1st COUNCILMANIC DISTRICT AT LAW PHYLLIS C. FRIEDMAN, PEOPLE'S CG Doc. No. 53 COUNSEL FOR BALTIMOPE COUNTY. AND Folio No. 280 ANDREW BIBO, PLAINTIFFS File No. 88-CG-1080 ZONING CASE NO. 87-465-SPH CERTIFICATE OF NOTICE Mr. Clerk:

IN THE MATTER OF

IN

THE

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, Thomas J. Bollinger, Arnold G. Foreman and Lawrence E. Schmidt, constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the appeal to the representative of every party to the proceeding before it; namely, Gary C. Duvall, Esq., 401 Washington Ave., Towson, Md. 21204, Counsel for Petitioner; R. Douglas Jones, Esq., Counsel for Protestants, Lerch and Huesman, 504 Old Court Savings and Loan Bldg., 16 S. Calvert St., Baltimore, Md. 21202; Richard Decker, President, Holmehurst Community Assoc., 10 Holmehurst Ave., Catonsville, Md. 21223, Protestart; Andrew Bibo, 1 and 1/2 Wade Ave., Catonsville, Md. 21228, Plaintiff; and Phyllis C. Friedman, Rm. 223, Old Court House, Towson, Md. 21204, People's Counsel for Baltimore County, Plaintiff, a copy of which Notice is attached hereto and prayed that it may be made a part thereof.

> County Board of Appeals of Baltimore County Am. 200, Court House, Towson, Md. 21204

County Board of Appeals of Baltimore County Room 200 Court House Comson, Margland 21204 (301) 494-3180 March 1, 1988

Phyllis C. Friedman People's Counsel for Balto. County Court House

Townon, Md. 21204 Re: Case No. 87-465-SPH Mercantile-Safe Deposit & Trust Co. Dear Mrs. Friedman:

In accordance with Rule B-7 (a) of the Rules of Procedure of the Court of Appeals of Maryland, the County Board of Appeals is required to submit the record of proceedings of the appeal which you have taken to the Circuit Court for Baltimore County in the above entitled matter within thirty

The cost of the transcript of the record must be paid by you. Certified copies of other documents necessary for the completion of the record must also be at your expense.

The cost of the transcript, plus any other documents, must be paid in time to transmit the same to the Circuit Court not later than thirty days from the date of any petition you file in court, in accordance with Rule B-7

Enclosed is a copy of the Certificate of Notice which has been filed in the Circuit Court.

Very truly yours,

June Holmen, Secretary

Enclosures cc: Andrew Bibo



County Board of Appeals of Baltimort County Room 200 Court House

Coinson, Maryland 21204 (301) 494-3180

March 1, 1988

Gary C. Duvall, Esq. 401 Washington Ave. Towson, Md. 21204

Dear Mr. Duvall:

Re: Case No. 87-465-SPH Mercantile-Safe Dep. & Trust Co.

Notice is hereby given, in accordance with the Rules of Procedure of the Court of Appeals of Maryland, that an appeal has been taken to the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Wine Holmen, Secretary

Encl. cc: Wayne Townsend R. Douglas Jones, Esq. Richard Decker Kathleen and Ann Jackson Mike Kendall P. David Fields James Hoswell Robert Haines Ann Nastarowicz James Dyer Docket Clerk

APPEAL

Petition for Special Hearing SE/Corner of Frederick Road and Wade Avenue 1st Election District - 1st Councilmanic District Mercantile-Safe Deposit and Trust Company - Petitioner Case No. 87-465-SPH

Petition for Special Hearing Description of Property

Plat of Property dated 1/20/71

Certificate of Posting

Certificates of Publication

Entry of Appearance of People's Counsel

Director of Planning & Zoning Comments

Zoning Plans Advisory Committee Comments

Copy of Case No. 71-243-X in which Special Exception for a funeral establishment was Granted

Correspondence from Gary C. Duvall, Esquire, Attorney for Petitioner, dated May 21, 1987

correspondence from Richard Decker, President, Holmehurst Community Association, dated May 22. 1987

correspondence from Richard Payne, Esquire, on behalf of himself and other Protestants dated May 28, 1987

Correspondence from Gary C. Duvall, Esquire, dated May 29, 1987

Correspondence from Gary C. Duvall, Esquire, dated June 5, 1987

orrespondence from R. Douglas Jones, Esquire, Attorney for Protestants, dated June 9. 1987

etitioner's Exhibits: :) No Exhibit No. 1 identified in the file

2) Copies of Advertisement in the Yellow Pages

Protestant's Exhibits: 1) Resolution of the Holmehurst Imp. Assoc.

2) Letter dated May 15, 1987 from the Holmehurst Community Association

3) Letter dated May 18, 1987 from R. Douglas Jones. Esquire, Attorney for Protestants

MERCANTILE SAFE-DEPOSIT & TRUST COMPANY

granted in Case No. 71-243-X

March 30, 1987

October 24

Mercantile-Safe Deposit & Trust Co.

March , 1988.

Case No. 87-465-SPH

SE/corner of Frederick Road and Wade Avenue SPH -to rescind restriction of special exception

1st Election District

Petition filed by Merc Safe-Deposit & Trust for special hearing to smend Order in Case #71-243-X to permit cremation of clientele from other funeral homes and to remove restriction in said

Order restricting such cremations. Order of Z.C. -SPH GRANTED w/restrictions June 10 Order for Appeal filed to CBA by Phyllis C. July 6

Friedman, Esq., People's Counsel Order for Appeal filed by Gary Duvall, Esq., on July 7 behalf of retitioner

January 7, 1988 Hearing held before the Board Febr 4 Order of the Board -GRANTED SPH of Merc. for the

> lessee, McNabb Funeral Home, to operate crematory without restriction

Febr 29 Order for Appeal filed in CCt for BCo by Phyllis C. Friedman, Esq., for Balto County & Andrew Bibo

Petition to accompany appeal filed in CCt. Febr 29 March 1 Certificate of Notice to interested parties

Transcript of testimony and record of proceedings March 28 filed in CCt for BCo

> Order signed by Leonard S. Jacobson, Judge that: C.B. of A. is AFFIRMED.

I HEREBY CERTIFY that a copy of the aforegoing Certificate of

Notice has been mailed to Gary C. Duvall, Esq., 401 Washington Ave., Towson,

Md. 21204, Counsel for Petitioner; R. Douglas Jones, Esq., Counsel for

Protestants, Lerch and Huesman, 504 Old Court Savings and Loan Bldg.,

16 S. Calvert St., Baltimore, Md. 21202; Richard Decker, President,

Holmehurst Community Assoc., 10 Holmehurst Ave., Catonsville, Md. 21228,

Plaintiff; and Phyllis C. Friedman, Rm. 223, Old Court House, Towson, Md.

21204, People's Counsel for Baltimore County, Plaintiff, on this 1st day

Protestant; Andrew Bibo, 1 and 1/2 Wade Ave., Catonsville, Md. 21228,

#87-465-SPH

1st Councilmanic District



### County Board of Appeals of Baltimore County Room 200 Court House Comeon. Margiand 2120-1

(301) 494-3180

February 4, 1988

Gary C. Duvall, Esquire 401 Washington Avenue

> RE: Case No. 87-465-SPH Mercantile-Safe Deposit & Trust Co.

Dear Mr. Duvall:

Towson, MD 21204

Enclosed is a copy of the final Opinion and Order passed today by the County Board of Appeals regarding the subject

Sincerely,

Administrative Secretary

Encl.

cc: Mr. Wayne Townsend R. Douglas Jones, Esq. Mr. Richard Decker Mr. Andrew Bibo Phyllis Cole Friedman, Esquire Michael Kendall P. David Fields James G. Hoswell J. Robert Haines Ann M. Nastarowicz James E. Dyer 46byn Clark Arnold Jablon, County Attorney IN THE MATTER OF THE APPLICATION OF MERCANTILE-SAFE DEPOSIT & TRUST CO .: FOR SPECIAL HEARING ON PROPERTY FREDERICK ROAD AND WADE AVENUE 1st ELECTION DISTRICT 1st COUNCILMANIC DISTRICT

REFORE COUNTY BOARD OF APPEALS

> BALTIMORE COUNTY CASE NO. 87-465-SPH

OPINION

This matter comes before the Board on a request by Mercantile-Safe Deposit and Trust Company to rescind a restriction of a special exception granted in Case No. 71-243-X which permitted cremation of clientele through the McNabb Funeral Home, lessee, but restricting the cremations to McNabb "clientele". The Zoning Commissioner granted the petitioned-for special hearing subject to certain restrictions.

Prior to addressing the issue of the merits in this case, the Board notes that following the hearing a letter was received by the Board from George E. McNabb, Jr., dated January 11, 1988. On January 14, the Board received a letter from People's Counsel objecting to Mr. McNabb's correspondence and requesting that the hearing be reopened or, in the alternative, making a motion for mistrial and a rehearing. On January 19, the Board received a letter from Gary C. Duvall, Esquire, Counsel for the Petitioner, apologizing to the Board for the action of the Petitioner and requesting that the motion of People's Counsel be deniew. The Board need not address the motion of People's Counsel because the Board did not consider, read, or review the material submitted by Mr. McNabb prior to reaching its conclusion on the merits in this case. For these reasons, the motion of People's Counsel for a mistrial is denied.

Case No. 87-465-SPH Mercantile-Safe Deposit & Trust Co.

People's Counsel's case in opposition to the petition consisted of the testimony of Mr. Bibo and Mr. Bailey, both close neighbors, but not adjacent as Mrs. Kelly, who stated that, although the crematory has been in operation since 1972, they first experienced problems after Mr. George McNabb, Sr., passed away and Mr. McNabb, Jr., took over the operation. Their testimony consisted of specific dates in which they experienced black smoke and odors, and on one occasion black particles coming out of the stack of the crematory. Mr. Bibo stated that really the odor did not bother you that much.

The Board has considered all of the above testimony and the exhibits and finds as a fact that the special exception granting the operation of the crematory should be granted with no restrictions. The Board believes and is impressed by the testimony of Dr. Graham and Mrs. Kelly, and finds that the operation of the crematory without restrictions does not infringe upon the community and the health, safety, and welfare of same. In addition, the operation of other crematories in Baltimore County, adjacent to and/or in the vicinity of residential areas, are without restrictions and, in view of the appellate decisions requiring uniformity in the application of zoning regulations, the Board finds that in this case the operation should be without restrictions.

ORDER

In view of the above, it is therefore this 4th day of February 1988, by the County Board of Appeals of Baltimore County ORDERED that the petition of Mercantile-Safe Deposit and Trust Company for the lessee, McNabb Funerul Home, to operate the crematory without restrictions be and the same is bereby GRANTED.

Case No. 87-465-SPH Mercantile-Safe Deposit & Trust Co.

Any appeal from this decision must be made in accordance with Rules B-1 through B-13 of the Maryland Rules of Procedure.

> COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

Memont Solling Thomas J. Bollinger, Acting Chairman

Case No. 87-465-SPH Mercantile-Safe Deposit & Trust Co.

We now turn to the merits of the instant case and note that the Petitioner initially presented for the Board's review a video tape of a cremation and the operation of a modern crematory showing the intense heat of the main burner, as well as the action and effect of the "after burner" whose purpose is to limit the debris and odors which may have a tendency to permeate the atmosphere.

The Board listened intently to the testimony of Dr. Charles R. Graham, Jr., who testified that he is an internist in the Catonsville area and has offices in the same building as the location of the crematory, that he sees approximately 15 patients a day, that he has been there since May of 1982, that he has never detected any odors nor seen any smoke, nor heard any complaints from any of his patients regarding the operation of the crematory.

Mr. Paul Rahill, who is employed by the Industrial Equipment Company of Orlando, Florida, testified as an expert in the manufacturing of crematory equipment and that his company is the manufacturer of the crematory in question. He testified as to the operation of the crematory, in detail as to the amount of heat, potential debris, odor and smoke that this particular crematory generates. This witness also presented the test results of the manufacturer on this particular piece of equipment which the Board has considered. The witness further testified that he is familiar with 21,000 funeral establishments in the United States that perform cremations in areas which are in the vicinity or adjacent to residential areas and that these operations are without the restrictions imposed in this case.

The Board received the original site plan of this crematory, a letter from the prior Zoning Commissioner regarding restrictions on the crematory, an aerial photograph of the Westview Crematory, and statistics on

Case No. 87-465-SPH Mercantile-Safe Deposit & Trust Co.

> cremation services in general throughout the United States. It also received as an exhibit the report of Air Quality Control regarding the operation of a crematory

Mr. George McNabb testified that he first received a complaint regarding the operation of the crematory in September of 1986 from Mr. Bibo. who lives two doors from the crematory, who complained of smoke and odor in his house. Mr. McNabb indicated that Mrs. Gladys Kelly lives between Mr. Bibo and the crematory. He further testified that Spring Grove State Hospital is in the area and has a waste incinerator, the operation of which is totally unlike a crematory, which he believes has on occasion exhibited infectious and obnoxious

The Board received with great delight the testimony of Mrs. Gladys Kelly, whose home is adjacent to the crematory and has lived there for 22 years. She testified she has never observed any odors, she has never been bothered by the operation of the crematory, and that she has even hung her clothes out to dry while the crematory was in operation and she has never noticed smoke, soot or particles in the air or on her clothes.

Mr. Michael Kendall, of the Baltimore County Department of Environmental Protection and Resource Management, testified that he is familiar with the crematory in question, that he has received the complaints of Mr. Bibo and Mr. Bailey. He has made unannounced inspections at the McNabb funeral establishment and he submitted into evidence his reports of air quality control as a result of these inspections, which the Board has considered. He also testified that Spring Grove State Hospital is in the area and does have an infectious waste incinerator, the operation of which is different than a crematory.



#### County Board of Appeals of Baltimore County Room 200 Court House Totoson, Maryland 21204

(301) 494-3180 October 15, 1987

#### NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). ABSOLUTELY NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE IN ACCORDANCE WITH RULE 2(c), COUNTY COUNCIL BILL #59-79.

CASE NO. 87-465-SPH

MERCANTILE-SAFE DEPOSIT AND TRUST CO.

SE/corner Frederick Rd. and Wade Ave.

1st Election District

SPH-Amnd. Order Case 71-243-X, to permit cremations from other establishments

6/10/87 - Z.C. Order - that the Petition for Special Hearing is GRANTED subject to restrictions.

ASSIGNED FOR:

THURSDAY, JANUARY 7, 1988, at 10 a.m.

CC: Gary C. Duvall, Esq.

Counsel for Petitioner

Wayne Townsend

Counsel for Protestants, Lerch and Huesman

Richard Decker

R. Douglas Jones, Esq.

Protestant

People's Counsel

Andrew Bibo

Phyllis C. Friedman

Kathleen and Ann M. Jackson

Norman E. Gerber James Hoswell J. Robert Haines Ann M. Nastarowicz James E. Dyer Margaret E. duBois

ZONING OFFICE

June Holmen, Secretary

Baltimore County Zoning Commissioner Office of Planning & Zoning Towson, Maryland 21204 494-3353

Arnold Jablon Zoning Commissioner July 14, 1987

Towson, Maryland 21204 RE: Petition for Special Hearing SE/cor. Frederick Road and Wade Avenue Mercantile-Safe Deposit and Trust Company - Petitioner

Baltimore County Board of Appeals

Case No. 87-465-SPH

Old Courthouse, Room 1205

Dear Board:

Please be advised that on July 6 and 8, 1987 appeals of the decision rendered in the above-referenced case were filed by both People's Counsel for Baltimore County and Gary C. Duvall, Esquire, Attorney for Petitioner.

Please notify all parties to the case of the appeal hearing date and time when it has been scheduled. If you have any questions concerning this matter, please do not hesitate to contact this office.

Very truly yours,

Zoning Commissioner

AJ:bjs

cc: Gary C. Duvell, Esquire 401 Washington Avenue, Towson, Md. 21204

Mr. Wayne Townsend 2 Hopkins Plaza, Baltimore, Md. 21203

R. Douglas Jones, Esquire Lerch & Huesman, 504 Old Court Bldg., 16 S. Calvert St., Balto., Md. 21202

Mr. Andrew Bibo 1 and 1/2 Wade Avenue, Baltimore, Md. 21228

Phyllis Cole Friedman, Esquire People's Counsel for Baltimore County Old Courthouse, Rm. 223, Towson, Maryland 21204

IN RE: PETITION SPECIAL HEARING SE/corner of Frederick Road and Wade Avenue-1st Election District

> Mercantile-Safe Deposit and Trust Company,

Petitioner

SE Corner of Frederick Rd.

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, Petitioner

Please note an appeal from your decision in the above-captioned matter, under date of June 10, 1987, to the County Board of Appeals and forward all

**ZONING OFFICE** 

Phyllfs Cole Friedman People's Counsel for Baltimore County

Peter Max Zimmerman Deputy People's Counsel Towson, Maryland 21204

I HEREBY CERTIFY that on this that of July, 1987, a copy of the foregoing Notice of Appeal was mailed to Gary C. Duvall, Esquire, 401 Washington Ave., Towson, MD 21204; and R. Douglas Jones, Esquire, 504 Old Court Savings & Loan Bldg., 16 S. Calvert St., Baltimore, MD 21202.

Peter Max Zimmerman

RE: PETITION FOR SPECIAL HEARING and Wade Ave., 1st District

OF BALTIMORE COUNTY : Case No. 87-465-SPH

: BEFORE THE ZONING COMMISSIONER

A DOUGLAS JONES

:::::: NOTICE OF APPEAL

papers in connection therewith to the Board for hearing.

Room 223, Court House 494-2188

I will be back to you by June 18, 1987 to see if a satisfactory resolution can be worked out among the active participants to this case.

Thank you for your continued cooperation in this regard.

GCD/tlh

cc: Douglas Jones, Esquire Mr. Andrew Bibo Mr. George S. MacNabb Richard Payne, Esquire

BUTTE BO4

RDJ/ds

Gary C. Duvall, Esquire Richard Payne, Esquire Richard Decker, Esquire

> LAW OFFICES RICHARD D. PAYNE LOYOLA FEDERAL BUILDING 22 W. PENNSYLVANIA AVENUE TOWRON, MARYLAND 21204

> > May 28, 1987

ZONING OFFICE

828-8990

Arnold Jablon, Esquire Zoning Commissioner for Baltimore County County Courts Building Towson, Maryland 21204

Re: MacNabb Funeral Home

Dear Mr. Jablon:

47-465-SPH DEPOSIT & TRUE CO.

On behalf of myself and the other protestants, I felt that in view of Mr. Downes recent letter to you I should respond.

I represented the Holmchurst Improvement Association in the former hearing and we felt that the decision of Commissioner DiNenna was correct and imminently fair to both sides. A funeral home is a local service allowed in a substantially residential zone to provide the needs of the community, and Commissioner DiNenna expanded this use to allow Mr. MacNabb to provide crematory services for the people in his community.

Although we do not agree that a crematory is an auxiliary use of a funeral home, and I think there is substantial authority for this, we still felt that to try to cooperate with Mr. MacNabb it would be a reasonable use of his building; however, this is still substantially a residential zone in this community and the uses should conform to that over-all concept of the use along Frederick Road of services to the community of Catonsville.

We feel it almost ludicrous to reward Mr. MacNabb, who cannot plead ignorance of the existence of the ruling of the Zoning Commissioner, for violating these rules for some 10 or 12 years, and only coming in when he got caught. We think that, at the very best. Mr. MacNabb should abide by Commissioner DiNenna's prior ruling and that it should be sustained. You expressed some desire to expand the operation, but it certainly in no way could be considered a community operation if he is bringing bodies in at the rate of 400 per year from all over the State of Maryland, and even from out of state, for all the undertakers, the morgue, etc., and certainly even with his own operation for destroying bodies for those that he takes care of the hours should be limited to those that will not interfer with the residential character of the

JOSEPH L HUESMAN

RICHARD H. LERCH

GERARD F. MILES

LERCH AND HUESMAN

IS SOUTH CALVERY STREET BALTIMORE, MARYLAND 21202

June 9, 1987

Mr. Arnold Jablon Zoning Commissioner County Office Building 111 W. Chesapeake Avenue Towson, Maryland 21204

> Item #359, Case No. 87-465-SPH Petitioner - Mercantile-Safe Deposit and Trust Company

Dear Mr. Jablon:

I am in receipt of Mr. Duvall's letter dated June 5th relating to captioned case. It is correct that we have been unable to reach any agreement with Mr. Duvall and his client concerning Mr. MacNabb's continued importation of cadavers from other funeral establishments. In fact, there is not a "wide divergence of opinion" among Holmehurst Association members regarding this matter; instead, I would characterize it as an unanimity of opposition to the MacNabb Funeral establishment importing any cadavers for cremation purposes.

We continue to maintain the position taken at the recent hearing, that being that the MacNabb Funeral Home should be required to abide by the terms of the September 29, 1971, Order (which they have never done) before consideration could be given to modification of that Order. Holmehurst Community Association is specifically opposed to Mr. Duvall's suggestion that the only limitation on his client should be the hours of operation rather than the volume of business. Such an order would not prevent expansion of MacNabb's physical facilities for cremations.

In summary, the Association stands by the Resolution which was introduced into evidence at the time of the most recent hearing.

Thank you for your consideration of this matter.

Sinterely yours,

cc: Douglas Jones, Esquire Mr. Andrew Bibo Mr. Ceorge E. MacNabb Richard Payne, Esquire

look forward to your Order.

10 LIGHT STREET

BALTIMORE, MARYLAND ARROW

HOLENT STREET

EASTON, MARYLAND SHOOL

11050 RANDON BILLS ROAD

FAIRFAX, VIRGINIA BROOK

DARY C. DUVALL

HAND-DELIVERED

Mr. Arnold Jablon

Dear Mr. Jablon:

through Saturday.

GCD/tlh

Zoning Commissioner

County Office Building

111 W. Chesapeake Avenue

Towson, Maryland 21204

Arnold Jablon, Esquire May 28, 1987 Page 2

neighborhood that he is located in. This would certainly be no more than five (5) days per week during the hours of 9 AM to 3 PM because it would take another two (2) hours for the unit to cool down and eliminate the odors from the environment, and eliminate weekends and holidays and that there could be no more than one (1) unit located in the crematorium.

LAW OFFICES

MILES & STOCKBRIDGE

401 WASHINGTON AVENUE

TOWSON, MARYLAND 2120-1

TELEPHONE DOL-801-6065

CABLE MILBRIDGE

TELEX 87-541

June 5, 1987

RE: Item #359, Case #87-465-SPH

Trust Company

Yesterday I spoke with Douglas Jones, Esquire, to see if

above-captioned Petition. Unfortunately, there appears to be

Association that they are more inclined to leave it to you to

decide. I have discussed this with my client and he would simply

Further, if you limit the hours of operation of necessity,

limitation on the hours of operation, he would appreciate it if

you would set the hours between 8:00 a.m. and 4:00 p.m. Monday

Mr. MacNabb is going to have to limit the business he accepts.

on the business that Mr. MacNabb accepts if, in fact, you are

Therefore, we would ask that you consider not placing any limits

Thank you for your courtesy in allowing the parties to

attempt to work this out amicably, but since that has failed, we

some sort of compromise could be worked out on the

going to set limits on the hours of operation.

such a wide divergence of opinion among the Holmehurst

like me to input the fact that if you are considering a

Petitioner: Mercantile Safe Deposit and

BY WEST PATRICE STREET

PHEDENICE, MANYLAND MYOL

349 RUNGERFORD COURT

ING PENESTLVANIA AVENUE, N. W.

WASHINGTON, D. C. 20000

ROCKVILLE, MARYLAND BOSSO

To reiterate, we do not feel that an expanded commercial use of burning of bodies from all over the State of Maryland and increasing of operation on an unlimited basis is in the spirit of zoning for a service which is supposed to be supplied a community need to the local community in which it is located.

cc: Gary C. Duvall, Esquire

Mr. Andrew Bibo Holmehurst Improvement Association

Please note an appeal, on behalf of the Petitioner in the above-captioned matter, to the Board of Appeals for Baltimore

County from the Decision of the Zoning Commissioner on the 10th

day of June, 1987.

Gary Q. Duvall MILES & STOCKBRIDGE 12th Floor 401 Washington Avenue Towsen, MD 21204 (301) 821-6565

BEFORE THE JUL 8 1987

\* OF BALTIMORE COUNTY

\* Case #37-465-SPH

ORDER OF APPEAL

ZONING ZONING OFFICE

Attorneys for Pctitioner

ilding, 16 South

Mr. Andrew Bibo, 15

CERTIFICATE OF SERVICE

No. 33121

I HEREBY CERTIFY that on the 7 day of July, 1987, a copy of to R. Douglas Jones,

BALTIMORE COUNTY, MARYLAND OFFICE OF FINANCE - REVENUE DIVISION MISCELLANEOUS CASH RECEIPT

Gary C. Duvall, Esquire, Miles & Stockbridge,

401 Washington Ave., Towson, Md. 21204 pound Filling & Posting Fee - Case No. 87-465-SPH Mercantile-Safe Deposit and Trust Company B B B13\*\*\*\*\* 10500:4 5148F

VALIDATION OR SIGNATURE OF CASHIER

ZONING OFFICE

OARY C. DUVALL

Mr. Arnold Jablon Zoning Commissioner County Office Building 111 W. Chesapeake Avenue Towson, Maryland 21204

RE: Item #359, Case #87-465-SPH Trust Company

Dear Mr. Jablon:

crematorium is now in place and in operation. Inasmuch as we had been informed, prior to the filing of our Petition for Special Hearing, that air quality would not be an issue at our request to remove the restriction in the 1971 Special Exception, we were unprepared to meet the air quality testimony that was permitted to come in at the time of the hearing. Accordingly, with the new stack now in place, we have requested the Baltimore County Health Department's Division of Air Pollution Control to come out and monitor the facility with the new stack. As I indicated in my May 21st letter, we will operate for two weeks and see if we can meet with Mr. Bibo and Mr. Jones to reach a satisfactory resolution which can be presented to you.

Since we had believed that air quality and emissions would not be an issue at the hearing on May 18th, the only possible issue which could have been raised with regards to the removal of Restriction No. 1 was traffic. Since the air quality issue was permitted to be addressed and you indicated that you might impose restrictions on the operation as to hours and sources of business, if the parties cannot reach an amicable resolution, we would request a reopening of the hearing to address those issues. I don't think this is an unfair request in light of our reliance on the representations of your office that the air quality issues would not be addressed at the hearing.

As I am sure all parties to this case would agree, it is important that all issues and facts be brought to the attention of you before you make any final ruling.

MILES & STOCKBRIDGE

Mr. Arnold Jablon May 29, 1987 Page 2

IFOR PENNSTENANTA AVENUE, N. W.

IO LIGHT STREET

B4 NORTH WEST STREET

HANTON, MARYLAND DIROL

THE RUNGERPORD COURT

SOCKVILLE MANYLAND SOSSO

BALTIMORE, MARYLAND BEOG

May 29, 1987

Petitioner: Mercantile-Safe Deposit and

LAW OFFICES

MILES & STOCKBRIDGE

401 WASHINGTON AVENUE

TOWSON, MARYLAND 21204

TELEPHONE DOI-828-8866

CABLE MILBRIDGE

TELEX 67-50

Please be advised that the new stack for my client's

Arnold Jablon Zoning Commissioner

27 May 1987 Mr. Richard Decker

Holmehurst Community Association 10 Holmehurst Ave. Catonsville, Maryland 21228

Re: Case No. 87-465SPH

Dear Mr. Decker,

I am in receipt of your letter dated 22 May 1987.

EE YELLOW PAGES INDEX

Green Spring Farms Lamerate 331-7878 Funeral Directors-

426-2705

Please be advised that I will review your letter and the letter from Mr. Duvall very carefully, and will render a decision in appropriate fashion. Copies of the decision will be forwarded to you, Mr. Jones and to Mr. Bibo.

Inasmuch as your letter does not indicate that you copied Mr. Duvall, I will forward to him copies of your letter and this response.

Sincerely.

Arnold Jablon

AJ/aj

WE OL I CUSTOMERS MINCE 1860" EXQUISITE

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Lespont Fr. 4 = Dundals Esses
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total No. 2 = 5817 Dogwood Rd

A Padison 3: 55 ft Smallwood Rd -- 789-9631

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MRaisir g Counselors

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Directors: R. Payne C. Higdon

D. Jones

J. Rubin

28

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R. W. Decker, President

K. Fe., enbach, V. Pres.

G. Dickler, Trea.

L. Makowske, Sec.

W. L. Hawkins, Past President

Arnold Jablon, Zoning Commissioner May 22,1987 County Office Building 111 W. Chesapeake Ave. Towson, MD 21204

Dear Sir

I have just been handed a copy of a letter from Mr. Duvall to you. I have also just had a conversation with Mr. Bibo about the activities of McNabb. Now in view of the fact that both Mr. Bibo and myself will be out of the country for a peroid of time I am worried that justice and fairness may not be served. Hopefully I am wrong.

I think that it has been admitted that the law was broken and I think something should be done on that score first. Should the District Attorney be involved at this point?

Also, Mr. Bibo feels that McNabb is burning at all hours now, and from many sources. We worry that the material being burned is not what McNabb says it is, and in view of the obvious disagreement on the facts I think a full investigation should be made. The fact that Mr. McNabb admitts to breaking the law should, I would think gives proper cause to call a stop to his activities until the full declosure of the facts are made.

I hope that you will give this approach some consideration.

Sincerely,

RESOLUTION

from the Minutes of the General Membership meeting of the Holmehurst Improvement Association, held on the 12th day of May, 1987. This meeting being a duly called meeting at which a quorum

opposed to any amendment to the Restrictions imposed in Case No. 71-243X of:

properties is to be done only in conjunction with funerals emanating from the Petitioner's funeral establishment and not used, leased or rented, and in any other manner to any other funeral director, funeral establishment or cemetery.

Office of Planning and Zoning.

AND that the restrictions be strictly enforced and that the Zoning Commissioner determine if the crematorium is a permitted use in conjunction with a funeral establishment.

ATTEST:

HOLMEHURST IMPROVEMENT ASSOCIATION

Tilly 8. Trakowske BY: Packer President

Simple and the second manager with WE HEREBY CERTIFY that the following Resolution was taken

was present. The following is a full, true and correct copy of a Resolution which was "nanimously adopted, and that the same has not been altered, amended or repealed and is now in full force and

RESOLVED: That the Holmehurst Improvement Assocation is effect.

1. That calcination or cremation on the subject

2. That the site plan is subject to approval by the State Highway Administration, the Bureau of Public Services and the

GARY C. DUVALL

LAW OFFICES MILES & STOCKBRIDGE 401 WASHINGTON ATENUE TOWSON, MARYLAND 21204

TELEPHONE 304-821-6565 CABLE MILBRIDGE TELEX 87-BH

May 21, 1987

10 LIGHT STREET BALFINGRE, MARYLAND PINCE

B4 NORTH WEST STREET EASTON, MARYLAND MISCH DAM HUNGERPORD COURT

PENNETTVANT AVENTE, N. W.

HOCKVILLE, NAWYLAND BORRO

Mr. Arnold Jablon Zoning Commissioner County Office Building 111 W. Chesapeake Avenue Towson, Maryland 21204

RE: Item #359, Case #87-465-SPH Petitioner: Mercantile Safe Deposit and Trust Company

11:2187

Dear Mr. Jablon:

HAND - DELIVERED

My client has asked that I bring to your attention several items which were not presented at the hearing on Monday. As you are aware, the petition which we have filed only requests the removal of Restriction No. 1 of the 1971 Order granting the special exception. There has never been any restriction imposed on the hours of operation. My client wanted me to bring to your attention that State law requires him not to cremate any bodies until 12 hours after time of death. Crematoriums in the area do not provide refrigeration facilities to store bodies for subsequent disposal. Accordingly, bodies are usually disposed of promptly. As Mr. MacNabb indicated at the hearing, the minimum time required for disposition of a body is usually three hours. No one knows when bodies will be received since unfortunately, death is not that predictable. Logistically, you can see the problems of placing a limitation on the hours of operation in that the Petitioner would not know when bodies are going to be received; how long he would have to hold them; and how long it would take to dispose of the bodies. In other words, an hours of operation limitation would pose a definite problem on prompt disposition of bodies.

It was our understanding that the hearing would not address the issues of air quality and emissions since that had been already investigated and resolved in favor of the Petitioner by the Baltimore County Health Department's Division of Air Pollution Control. Therefore, we were unprepared to respond to Mr. Bibo's charges of "smoke and other emissions" emanating from the facility by providing to the Commissioner the Report of Observation of Visible Emissions prepared in the regular course of business by the State Department of Health and Mental Hygiene. As Mr. MacNabb indicated, the State permit has been renewed for the crematorium after thorough investigation of Mr. Bibo's complaints.

Mr. Arnold Jablon May 21, 1987 Page 2

> Nevertheless, my client and I would like to suggest that the Commissioner delay the issuance of any Order on our petition until the installation of the new stack at the crematorium which Mr. MacNabb testified to. This stack is being delivered today and will hopefully be ins alled within the week. We would like to operate for a two week period after the installation of the new stack to see if this eliminates the complaints and concerns Mr. Bibo expressed at the hearing.

> Thereafter, I will consult with Mr. Bibo and Mr. Jones to see if a satisfactory resolution can be worked out among all parties, so that my client does not have to face the possibility of losing his business nor does the community association and Mr. Bibo have to face the possibility of being dissatisfied with your decision and incurring the expense of appealing the same.

> In conclusion, I would like to request that you postpone the issuance of any Order and allow the installation of the new stack with subsequent operation for a two week period. I will then take it upon myself to contact Mr. Bibo and Mr. Jones to see if this installation proves satisfactory to them. Thereafter, I will report to you and inform you whether or not a resolution can be reached or whether we should reopen the proceedings for additional evidence so that the matter can be fully heard before the Zoning Commissioner.

Thank you for your anticipated cooperation.

MILES & STOCKBRIDGE

GCD/tlh

cc: Douglas Jones, Esquire Mr. Andrew Bibo Mr. George S. MacNabb

10 Holmehurst Avenue, Catonsville, MD 2122

R. W. Decker, President W. L. Hawkins, Past President K. Fehrenbach, V. Pres. G. Dickler, Trea. L. Makowske, Sec.

Arnold Jablon, Zoning Commissioner Baltimore County District Court 111 Alleghany Avenue Baltimore MD 21204

May 15 1987

R. Payne D. Jones J. Rubin

Dear Sirt

Re: Case # 71-243 X

Attached is a resolution adopted last week by the Holmehurst Community Assn. As background, I thought I would include by personal notes.

About 15 years ago, Ed McNabb, Sr., came to me to enlist my help in allowing a Crematory to be installed in his establishment. The neighborhood was up in arms against the action, mostly for enotional reasons associated with burning bodies. Also, most were riraid of the safety of breathing the the fumes and the odors. As a physicist and a registered Professional Engineer the comunity association agreed that I should investigate the cremation process.

I determined that for the number of bodies Ed McNabb Sr. was talking about (25-30 per year), and with a proper time cycle operational proceedure, we would not Know it was there. If the system is cycled too rapidly, fumes, smoke and odors will result. With this presentation, the community agreed to the installation with the restrictions as noted.

I live upwind from the site and have not (knowingly) been subjected to any very bad consquences. Mowever I have heard the complaints of the closer and down-wind residents for some time. I suggested that they complain to the authorities, which I understand, they have done from time to time.

The present situation is this: According to wearge McNabb, the present owner, his father, Ed. Sr., has always broken the law, doing not 25-30 cremations, but hundreds from where ever he could sell the service. George is cut from the same cloth. He tells me that he cremaces 200-400 bodies from other locations without regard for the restrictions imposed by law,

It makes me anyry to have someone profit at the communities expense and by breaking the law. In effect, thumbing his mose at the neighbors, the law and in particular, your office.

I strongly feel that the right thing to do is penalize him in some manner and to re-enforce the restrictions that were agreed to in 1971 and not permit this illegal commercialization of the neighborhood to continue.

Your attention and assistance in this matter would be greatly appreciated.

Richard W. Decker, President, Holmehurst Community 10 Holmehurst Avenue Catonsville Maryland 21223 201-744-6938

GERARD E MILES

JOSEPH L HUESMAN RICHARD H. LERCH R. DOUGLAS JONES

LERCH AND HUESMAN SON OLD COURT SAVINGS & LOAN CUILDING IS SOUTH CALVERY STREET BALTIMORE, MARYLAND 21202

AREA CODE 301 539-0/55

18, 1987

1/19/57

111 W. Chesapeake Avenue Towson, Maryland 21204 27-465-SPH MERCANTILE - SAFE DEPOSIT & Case No. 71-243-X TRUST CD.

McNabb Funeral Home (Mercantile-Safe Deposit & Trust Co.)

Dear Mr. Jablon:

Arnold Jablon, Esquire

County Office Building

Zoning Commissioner

Room 109

Enclosed is a photocopy of one of the Exhibits which was submitted today at the hearing in captioned case.

I would appreciate it if a copy of your decision could be sent to me at the above address.

Thank you for your consideration in this matter.

Sincergly yours,

R. Douglas Jones

RDJ/ds-encs.

JOHN BURNS' SONS Holins & S Passiston Sta. \$29-6131 Crach Funeral Services Co 1303 Derry Rd -583-1378 SPIG RAN: FUND RAISING OF TOWSON CVACH-ROSEDALE FUNERAL HOME \_\_\_\_879-4176 Funeral Directors ESTABLISHED 1887 SESSOCIATION INC. ULTENBURG POST C FUNERAL HOME Martin Edward Burns SIGNAT HASHING FOR ALL SIGNAT HONS - HOUSEN FRES-BY ITEMS CANDY - JEWELRY - ETC A FAMILY TRADITION OF SERVICE SINCE 1879 Successor Cremation Service Available CREMATION SERVICES AVAILABLE ROBERT C. ALTENBURG 8121 Lock Raven Sive Towns --- 668-2300 ALL INQUIRIES ANSWERED PROMPTLY FUNERAL HOME INC. BURNSIDE JAMES F IN BURNSIDE JAMES F JR 682-2467 BURNSIDE JAMES F JR

attention for the first part of the first par DEDICATED TO PERSONALIZED THE PLANT PRODUCTS + ETC. ATTENTION IN THE 972-6400 DABROWSKI BERHARD A & SON MARYLAND TRADITION CAIN JOHN 8 377-8300 PUNERAL HOME 276-7756
CARROLL IRVIN FUNERAL HOME DABROWSKI WALTER G CREMATION SERVICES TIPRING CARMS AVAILABLE AD RAISH 3 PROGRAMS - ALL KT. S SLACK - SOUT ORGANIZATIC IS ATURE - OFITH ... PLUS - ASK US 426-4162 **Graceland Park Funeral Chapel** CHARLTON-SCHWERGER FUNERAL 6005 HARFORD PO AMPLE PARKING ON / DJACENT LOT (SOUTH OF BELTWAY EXIT 31) Private Parking FELLS POINT - EAST BALTIMORE 24-HOUR PERSONALIZED FAMILY SERVICE AT LOWEST POSSIBLE COST the habi of shopping with the ALSO OFFERING GENTLE CREMATION (Continued Nest Page)

THE DAILY RECORD, BALTIMORE, FRIDAY, AUGUST 6, 1971



EDWARD MacNABB **Discusses The Difference** Between CALCINATION\*

We have had so many requests for information concerning our exclusive calcination process, I thought I would explain it-briefly. Calcination is a modern scientific process and MacNabb is the only mortuary in Baltimore able to offer this exclusive service. Simply stated, calcination is the newest way that man is returned to his basic elements without the use of flame or chemicals. Calcination has all the many desirable features of crema-tion with none of the undesirable aspects. Calcination exactly meets the requirements of many thoughtful, considerate per-

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EXHIDIT 3

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

May 8, 1987

COUNTY OFFICE BLDG. 111 W. Chemapeake Ave. Towson, Maryland 21204

Chairman

HEMBERS

Bureau of Engineering Department of

Traffic Engineering State Roads Commission Fire Prevention Boalth Department

Project Planning Building Department poard of Education Coning Administration Industrial

Development.

Gary C. Duvall, Esquire 401 Washington Avenue Towson, Maryland 21204

RE: Item No. 359 - Case No. 87-465-SPH Petitioner: Mercantile-Safe Deposit and Trust Co. Petition for Special Hearing

Dear Mr. Duvall:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above-referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. The Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This patition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

Very truly yours,

ames & Dyen / KEB

JED: kkb

Zoning Plans Advisory Committee

Enclosures

cc: Mr. Wayne Townsend 2 Hopkins Plaza Baltimore, Maryland 21203

Hr. Andrew Bibo 1-1/2 Wade Avenue Baltimore, Maryland 21228

Dear Mr. Bibo:

I am writing in regard to your recent telephone call to my office concerning the Hackabb Funeral Home. After hearing of your concerns, I asked Dr. Donald Roop, Baltimore County Health Officer to conduct a thorough investigation of the situation. He informs me that all complaints regarding smoke and/or odors from the crematorium were investigated. On none of those occasions did the inspectors confirm the presence of muisance odors other than a sporedic natural gas type odor which doss not constitute a nuisance or health threat. Field personnel are maintaining periodic surveillance to assure compliance with air quality regulations is maintained.

I have been advised that Mr. MacMabb has petitioned the County for a revision to the special zoning exception granted in 1971, and a hearing on the matter will be held. I would suggest you bring your concerns regarding the presence of the crematorium in your community to the Zoning Office for consideration under the revised exception.

I hope this information will be of some help to you in resolving this matter.

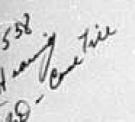
Sincerely.

B. Melvir Cole ADMINISTRATIVE OFFICER

BMC: kb

cer Dr. Donald Roop, Health Officer Arnold Jablon, Zoning Commissioner

OASTY C. DUVALL



MILES & STOCKBRIDGE

401 WASHINGTON AVENUES 118 TOWSON, MARYLAND SEL

> TELEPHONE DOI-821-6565 CABLE MILBUIDGE

TELEX 67-5H

D49 HUNOERPORD COURT BOCKVILLE, MANTLAND BOSSO

March 11, 1987

STOS PENNSYSNANIA AVENUE, N. W.

TO LIGHT STREET

BALTIMORE, MARYLAND MUOQ

Arnold Jablon, Esquire Zoning Commissioner County Office Building Towson, MD 21204

RE: Item No. 359 Petitioner: Mercantile Safe Deposit and Trust Company, Trustee and Louis J. Ulman 299 Frederick Road Edward S. MacNabb Sons, Inc. Crematorium

Dear Mr. Jablon:

I believe you are familiar with the above-captioned situation regarding the crematorium located at 299 Frederick Road. We previously discussed the existing zoning violations which have prompted the filing of the above-referenced Petition for Special Hearing.

As I indicated in my letter of February 3rd to my client, carbon copied to you as well as my letter to you of February 9th, the referral of crematory business is causing an extreme economic hardship to my client. My client is the son of the former operator and was unaware of the restrictions on the acceptance of bodies from other funeral homes for cremation.

Given the fact that my client has operated the current facility for fifteen (15) years without complaint until recently and that complaint being from one individual, I would greatly appreciate it if you would consider this a case of hardship so as not to further impinge upon my client's business. Any early hearing date that could be scheduled would be greatly appreciated.

Thank you for your consideration of this request.

Very truly yours Gary J. Duvall

GCD:ld cc: Mr. George E. MacNabb, Jr.



William K. Hellmann Hal Kassell

March 30, 1987

Mr. A. Jablon Zoning Commissioner County Office Building Towson, Maryland 21204

Att: Mr. J. Dyer

Re: ZAC Meeting of 3-24-87 ITEM: #359. Property Owner: Mercantile-Safe Deposit and Trust Company, Trustee Location: SE/C Frederick Road Route 144, and Wade Avenue Existing Zoning: R-O Proposed Zoning: Special Hearing to approve an amendment to the order in Case No. 71-243-X to remove Restriction No. 1 Area: 0.236 Acres District: 1st Election District

Dear Mr. Jablon:

On review of the submittal of 1-20-71, the State Highway Administration finds all access to the site generally acceptable.

My telephone number is\_\_\_ (301) 333-1350 Teletype-writer for Impaired Hearing or Speech 383-7555 Baltimore Metro — 565-0451 D.C. Metro — 1-800-492-5062 Statewide Toll Free P.O. Box 717 / 707 North Calvert St., Baltimore, Maryland 21203 - 0717

Very truly yours,

Chewl Le Charles Lee, Chief Bureau of Engineering Access Permits

CL:GW:maw

cc: Mr. J. Ogle

By: George Wittman

Special Inspection Division

BALTIMORE COUNTY
FIRE CEPARTMENT
TOWSON, MARYLAND 21204-2586—
494-4500

PAUL H. REINCKE CHIEF

March 19, 1987

Mr. Arnold Jablon Zoning Commissioner Office of Planning and Zoning Baltimore County Office Building Towson "aryland 21204

RE: Property Owner: Mercantile Safe Deposit and Trust Co., Trustee

Location: SE/C Frederick Rd. and Wade Avenue

Zoning Agenda: Meeting of 3/24/87 Item No.: 359

Gentlemen:

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

- ( ) 1. Fire hydrants for the referenced property are required and shall be located at intervals or \_\_\_\_\_\_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

EXCEEDS the maximum allowed by the Fire Department.

- ( ) 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.
- (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. 101 "Life Safety Code", 1976 edition prior to occupancy. --
- ) 6. Site plans are approved, as drawn.
- ) 7. The Fire Prevention Bureau has no comments, at this time.

REVIEWER: Catt-1 - Approved: Noted and Delico & C'Neck

