

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

10/21/88

COPIES SENT TO:

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

IN RE: PETITION SPECIAL HEARING * BEFORE THE
SE/corner of Frederick Road * ZONING COMMISSIONER
and Wade Avenue - 1st Election *
District *
Mercantile-Safe Deposit and * OF BALTIMORE COUNTY
Trust Company, * Case 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 Bibb, 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. Bibb 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. Bibb'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 random 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 Health has recently approved the continuation of the necessary permit 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 pursuant to Section 500.7, Baltimore County Zoning Regulations (BCZR).

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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. Bibb. Just as unequivocally, Mr. Bibb 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 Baltimore County, this 10th 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 restrictions which are conditions precedent to the relief granted herein:

1. 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

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

[Signature]
Zoning Commissioner of
Baltimore County

AJ/srl

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

ORDER RECEIVED FOR FILING
Date June 10, 1987
By *[Signature]*

ORDER RECEIVED FOR FILING
Date June 10, 1987
By *[Signature]*

ORDER RECEIVED FOR FILING
Date June 10, 1987
By *[Signature]*

ORDER RECEIVED FOR FILING
Date June 10, 1987
By *[Signature]*

- 4 -

In re: * BEFORE THE
Petition Special Hearing * ZONING COMMISSIONER
SE/corner of Frederick Road *
and Wade Avenue - First *
Election District * OF
MERCANTILE-SAFE DEPOSIT & * BALTIMORE COUNTY
TRUST COMPANY, * Case No. 87-465-SPH
Petitioner.

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 1 from the Order therein, 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 Bibb, 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 Duane Valley Home of Lemon-Mitchell-Weidefeld, Inc.,

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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 O-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.

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. 1975), 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

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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 discriminatorily. 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 its 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.

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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. 1985) ("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, hours 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

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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 SERVICE

I HEREBY CERTIFY that on this ____ day of January, 1988, a copy of the foregoing 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 Bibb, 1 1/2 Wade Avenue, Baltimore, Maryland 21228; and to Phyllis C. Friedman, Esquire, People's Counsel for Baltimore County, Old County Court House, Towson, Maryland 21204.

KFSME01.MEM

-7-

10 LIGHT STREET
BALTIMORE, MARYLAND 21202
401 RAY STREET
EASTON, MARYLAND 21829
1000 RANDOLPH HILLS ROAD
FAIRFAX, VIRGINIA 22030
GARY C. DUVALL
LAW OFFICES
MILES & STOCKBRIDGE
401 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
TELEPHONE 301-821-6565
CABLE MILESIDOR
TELEX 87-58
17 WEST PATRICK STREET
FREDERICK, MARYLAND 21701
248 HUNTERFORD COURT
ROCKVILLE, MARYLAND 20850
1701 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20006

January 15, 1988

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

The Hon. Thomas J. Bollinger
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 Board 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.

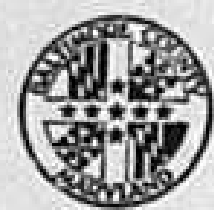
Thank you for your consideration.

Very truly yours,

Gary C. Duvall

GCD:ld

cc: Phyllis Cole Friedman, Esquire
People's Counsel for Baltimore County



Baltimore County, Maryland

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

Phyllis Cole Friedman
People's Counsel for Baltimore County

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

PCF:sh

RECEIVED
COUNTY BOARD OF APPEALS
JAN 17 1988



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
DEAR MR. BOLLINGER:

DURING OUR REBUTTAL OF MR. BIBB'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.

FOLLOWING 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 CREMATED AT ANOTHER CREMATORY AND THEREFORE ACCOUNT FOR THE DISCREPANCIES BETWEEN OUR RECORDS.

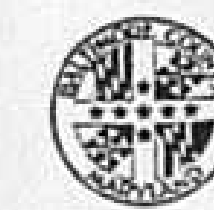
IF I CAN BE OF ANY FURTHER ASSISTANCE WITH PROVIDING THE BOARD WITH FACTUAL INFORMATION ON OUR CREMATORY, PLEASE DO NOT HESITATE TO CONTACT ME. THANK YOU.

SINCERELY,

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
Towson, 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.

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

ASSIGNED FOR:

CC: Gary C. Duvall, Esq.

Counsel for Petitioner

Wayne Townsend

Counsel for Protestants, Lerch and Huesman

R. Douglas Jones, Esq.

Protestant

Richard Decker

Andrew Bibb

Phyllis C. Friedman, Esq.

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 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
R. Douglas Jones, Esq. Counsel for Protestants, Lerch and Huesman
Richard Decker Protestant
Andrew Bibb
Phyllis C. Friedman 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

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

Gary C. Duvall
Wayne Townsend
R. Douglas Jones
Richard Decker
Andrew Bibb
Phyllis C. Friedman
Kathleen and Ann Jackson
H. Gerber, J. Howell
J. R. Haines, Ann Nastarowicz, J. Dyer, M. duBois

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

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
		1	2	3	4	5
		0	0	2	2	0
SUNDAY 6	MONDAY 7	TUESDAY 8	WEDNESDAY 9	THURSDAY 10	FRIDAY 11	SATURDAY 12
0	1	0	1	2	3	0
SUNDAY 13	MONDAY 14	TUESDAY 15	WEDNESDAY 16	THURSDAY 17	FRIDAY 18	SATURDAY 19
0	4	2	1	3	1	0
SUNDAY 20	MONDAY 21	TUESDAY 22	WEDNESDAY 23	THURSDAY 24	FRIDAY 25	SATURDAY 26
0	2	0	0	3	1	0
SUNDAY 27	MONDAY 28	TUESDAY 29	WEDNESDAY 30	THURSDAY	FRIDAY	SATURDAY
0	0	1	3			

Total CREMATIONS 32

34 SEPT

No	NAME	DATE
2644	BEVERLY MORSE	9-3-87
2645	ROBERT HEWITT	9-3-87
2646	JOHN B. LARUE	9-4-87
2647	JOHN B. LARUE	9-4-87
2648	JOHN B. LARUE	9-5-87
2649	JOHN B. LARUE	9-7-87
2650	CHARLES E. MORGAN	9-9-87
2651	HELEN GRELL	9-10-87
2652	JEAN E. PATON	9-10-87
2653	LEO J. FISHER	9-11-87
2654	GEORGE CHUDE	9-11-87
2655	ROBT. V. TARKS	9-11-87
2656	CLARA E. CHUDE	9-12-87
2657	DAVID H. GUIDA	9-12-87
2658	LILLIAN A. HYND	9-12-87
2659	PAULINE L. GOMER	9-14-87
2660	MYLUS DAVIS	9-15-87
2661	WILLIAM A. SHILL	9-15-87
2662	ANNESTA HARGE	9-16-87
2663	WILBUR BETTON	9-17-87
2664	JOHN E. BERNARD	9-17-87
2665	GEORGE HALL	9-17-87
2666	ROBERT H. HUBB	9-18-87
2667	MADE KESSLER	9-19-87
2668	ELLA M. MURPHY	9-21-87
2669	MAURICE GIBSON	9-21-87
2670	ROBERT FINKLER	9-24-87
2671	JUNE SMITH	9-24-87
2672	BETTY DICKSON	9-24-87
2673	CARRIE L. DICKSON	9-25-87
2674	GEORGE C. HUBBARD	9-29-87
2675	ROBERT REEDER	9-30-87
2676	MARION STUBBS	9-30-87

2677 WILLIAM A. COLEMAN 9-30-87

SECURITY PROCESS INC.

301 FREDERICK ROAD
BALTIMORE, MD 21228

0902
9/14/87
\$95.00
DOLLARS
First National Bank
BALTIMORE, MARYLAND ACCOUNTING CENTER
FOR
#000902# 0052000113# 08892215# 0000009500#

SECURITY PROCESS INC.

301 FREDERICK ROAD
BALTIMORE, MD 21228

0909
9/19/87
\$95.00
DOLLARS
First National Bank
BALTIMORE, MARYLAND ACCOUNTING CENTER
FOR
#000909# 0052000113# 08892215# 0000009500#

IN THE MATTER OF THE APPLICATION OF MERCANTILE-SAFE DEPOSIT & TRUST CO. FOR SPECIAL HEARING ON PROPERTY LOCATED ON THE SOUTHEAST CORNER OF FREDERICK RD. AND WADE AVE. 1st ELECTION DISTRICT 1st COUNCILMANIC DISTRICT
IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW
PHYLLIS C. FRIEDMAN, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, AND
ANDREW BIBB, PLAINTIFFS
CG Doc. No. 53
Folio No. 280
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 HONORABLE, THE JUDGE OF SAID COURT:

And now come Thomas J. Bollinger, Arnold G. 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 other funeral homes and to remove the restriction in 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
May 8 Comments of Baltimore County Zoning Plans Advisory Committee
April 13 Comments of Baltimore County Director of Planning
May 18 At 11:00 a.m. hearing held on petition of Zoning Commissioner.
June 10 Order of Zoning Commissioner that the Petition for Special Hearing is GRANTED, subj. to restrictions.

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

July 6, 1987 Order for Appeal to the C.B. of A. from Phyllis C. Friedman, People's Counsel for Balto. County.
July 7 Order for Appeal to the C.B. of A. from Gary C. Duvall, Esq., on behalf of Petitioner.
January 7, 1988 Hearing on appeal before County Board of Appeals
February 4 Order of the County Board of Appeals that the Petition of Mercantile-Safe Deposit & Trust Co. for the lessee, McNabb Funeral Home, to operate the crematory without restrictions be GRANTED.
February 29 Order for Appeal filed in the Circuit Ct. for Baltimore County by Phyllis C. Friedman, People's Counsel for Baltimore County, and Andrew Bibb.
February 29 Petition to accompany Order for Appeal filed in the Circuit Ct. for Baltimore County.
March 1 Certificate of Notice sent to interested parties
March 25 Transcript of testimony filed
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 - Weidfield Site Plan
" " " 8 - Westview Facility Aerial photo 8.
" " " 9 - Cremation Statistics
" " " 10 - Records of Balto. Co. Inspection - Environmental Services, State of MD.

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 whomsoever institutes the request.

Respectfully submitted,

June Holmen
June Holmen
County Board of Appeals of Baltimore County

IN THE MATTER OF THE APPLICATION OF MERCANTILE-SAFE DEPOSIT & TRUST CO. FOR SPECIAL HEARING ON PROPERTY LOCATED ON THE SOUTHEAST CORNER OF FREDERICK RD. AND WADE AVE. 1st ELECTION DISTRICT 1st COUNCILMANIC DISTRICT
AT LAW
PHYLLIS C. FRIEDMAN, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, AND
ANDREW BIBO, PLAINTIFFS
CG Doc. No. 53
Folio No. 280
File No. 88-CG-1080

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.

June Holmen
June Holmen
County Board of Appeals of Baltimore County
Rm. 200, Court House, Towson, Md. 21204
494-3180

I HEREBY CERTIFY that a copy of the foregoing 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 of March, 1988.

June Holmen
June Holmen
County Board of Appeals of Baltimore County

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, and ANDREW BIBO, Appellants
AT LAW
Docket No. 53
Folio No. 280
File No. 88-CG-1080
Zoning Case No. 87-465-SPH

NOTICE OF APPEAL

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

Andrew Bibo
Andrew Bibo
1 1/2 Wade Avenue
Baltimore, MD 21228
747-7302
Phyllis C. Friedman
Phyllis C. Friedman
People's Counsel for Baltimore County
Peter Max Zimmerman
Peter Max Zimmerman
Deputy People's Counsel
Room 223, Court House
Towson, Maryland 21204
494-2188

I HEREBY CERTIFY that on this 27th day of February, 1988, a copy of the foregoing Notice of Appeal was served on the Administrative Assistant, County Board of Appeals, 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 Old Court Savings & Loan Bldg., 16 S. Calvert St., Baltimore, MD 21202.

Phyllis C. Friedman
Phyllis C. Friedman

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 cremial 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, etc., upon filing of this Petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

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:
(Type or Print Name)
Signature
Address
City and State
Attorney for Petitioner:
GARY C. DUVAL
(Type or Print Name)
Signature
401 Washington Avenue
Towson, MD 21204
City and State
Attorney's Telephone No.: 821-6565
Legal Owner(s):
MERCANTILE-SAFE DEPOSIT AND TRUST CO.
(Type or Print Name)
Trustee
Signature
LOUIS JAY ULMAN, Trustee
(Type or Print Name)
Signature
2 Hopkins Plaza
P. O. Box 2257
Baltimore, MD 21203
City and State
Name, address and phone number of legal owner, contract purchaser or representative to be contacted
WAYNE TOWNSEND
Name
2 Hopkins Plaza
Baltimore, MD 21203
Address
Phone No. 347-8282

ORDERED By The Zoning Commissioner of Baltimore County, this 30th day of March, 1988, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 18th day of May, 1988, at 11:00 o'clock A.M.

Robert J. Johnson
Zoning Commissioner of Baltimore County.

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.

PETITION FOR SPECIAL HEARING
1st Election District
Case No. 87-465-SPH
LOCATION: Southeast Corner Frederick Road and Wade Avenue
DATE AND TIME: Monday, May 18, 1988 at 11:00 A.M.
PUBLIC HEARING: Room 200 County Office Building, 171 West Chesapeake Avenue, Towson, Md.
The Zoning Commissioner of Baltimore County, by authority of the Zoning Law and Regulations of Baltimore County, will hold a public hearing.
Petition for Special Hearing to amend the order in Case No. 71-243-X so as to specifically permit cremation of cremial from other funeral homes and to remove the restriction in said order prohibiting such cremation.
Being the property of Mercantile-Safe Deposit and Trust Co., as shown on the plat filed with the Zoning Office.
In the event that this Petition is granted, a "zoning permit" may be issued within the next 200 day appeal period. The Zoning Commission will, however, consider any request for a stay of the issuance of said permit during the period for said public hearing. Such request must be received in writing by the date of the hearing set above or made at the hearing.
BY ORDER OF
ARNOLD J. JARSON
ZONING COMMISSIONER
OF BALTIMORE COUNTY
604-CAP-35

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

was inserted in the following:
☒ Catonsville Times \$24.79
☒ Arbutus Times
weekly newspapers published in Baltimore County, Maryland once a week for one successive weeks before the 2 day of May, 1988, that is to say, the same was inserted in the issues of

April 30, 1987

PATUXENT PUBLISHING CORP.
By *[Signature]*

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY, IN EQUITY
Plaintiff
VS.
Defendant
CERTIFICATE OF PUBLICATION OF

RE: PETITION FOR SPECIAL HEARING : BEFORE THE ZONING COMMISSIONER
SE Corner Frederick Rd. and Wade Ave., 1st District : OF BALTIMORE COUNTY
MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, Petitioner : Case No. 87-465-SPH

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned 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 Cole Friedman
Phyllis Cole Friedman
People's Counsel for Baltimore County

Peter Max Zimmerman
Peter Max 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.

Peter Max Zimmerman
Peter Max Zimmerman

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District 1st
Posted for: Special Hearing
Petitioner: Mercantile-Safe Deposit and Trust Co.
Location of property: SE/Corner of Frederick Road and Wade Ave.
Location of Sign: Sign on SE/Corner of Frederick Road and Wade Ave. and 1 sign SW/Corner of Frederick Road and Wade Ave.
Remarks: S. J. Carter
Date of return: May 8-87
Number of Signs: 2

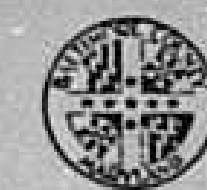
CERTIFICATE OF PUBLICATION

TOWSON, MD. April 30, 1987.
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, 1987.

THE JEFFERSONIAN,

Susan Shuler O'Brien
Publisher

32-17



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

ARNOLD JABLON
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:

This is to advise you that \$86.96 is due for advertising and posting of the above property. This fee must be paid before an 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

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE-REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 35858

DATE 5/18/87 ACCOUNT 8-01-615-000
RETURNED 2 SIGNS & POSTS AMOUNT \$ 86.96
RECEIVED FROM Miles & Stockbridge, 461 Washington Ave., Towson, Md. 21204
ADVERTISING & POSTING COSTS IN CASE #87-465-SPH
FOR: 8 8867*****886812 8108F
VALIDATION OR SIGNATURE OF CASHIER

PETITION FOR SPECIAL HEARING

1st Election District - 1st Councilmanic District
Case No. 87-465-SPH

LOCATION: Southeast Corner Frederick Road and Wade Avenue

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

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

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing:

Petition for Special Hearing to amend the order in Case No. 71-243-X so as to specifically permit cremation of cialental from other funeral homes and to remove the restriction in said order prohibiting such cremation

Trust Co.

Being the property of Mercantile-Safe Deposit and / as shown on plat plan filed with the Zoning Office.

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 hearing set above or made at the hearing.

BY ORDER OF
ARNOLD JABLON
ZONING COMMISSIONER
OF BALTIMORE COUNTY

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

TIME: 11:00 a.m.

DATE: Monday, May 18, 1987

PLACE: Room 301, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland

B. Duvall
Zoning Commissioner
of Baltimore County

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE-REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 32421

DATE 5/10/87 ACCOUNT 81-615
AMOUNT \$ 100.00
RECEIVED FROM Gary C. Duvall
FOR: Final Fee For Variance Item 389
8 8869*****10000FR 8108F
MERCANTILE - PETITIONER (McNAB)
VALIDATION OR SIGNATURE OF CASHIER

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, ANDREW BIDO, Appellants
v. MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, Appellee
Zoning Case No. 87-465-SPH

PETITION ON APPEAL

The People's Counsel for Baltimore County, and Andrew Bido, 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 petition 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.

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 Board of Appeals is arbitrary, 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 Bido
Andrew Bido
1 1/2 Wade Avenue
Baltimore, MD 21228
747-7302

Phyllis Cole Friedman
Phyllis Cole Friedman
People's Counsel for Baltimore County
Peter Max Zimmerman
Peter Max Zimmerman
Deputy People's Counsel
Room 223, Court House
Towson, Maryland 21204
494-2188

STATEMENT OF POINTS AND AUTHORITIES

Baltimore County Zoning Regulations Section 203.3 (uses permitted in an R.O. zone); Section 1901.1CB (uses permitted by special exception in a D.R. zone); and Section 101 (definition of accessory use).

National Memorial Park, Inc. v. Board of Zoning Appeals of Fairfax County, 348 S.E.2d 248 (Va. 1986); Joe Perry v. City of Bellingham, 706 P.2d 1103 (Wash.App. 1985); Richard Kowalski v.

John Lamac, et al., 25 Md. App. 493 (1975); and Acumdel Supply Corporation, et al. v. Casco, et al., 265 Md. 371 (1972). Copies of the above cases are attached.

Phyllis Cole Friedman
Phyllis Cole Friedman

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 Appeals, 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 Old Court Savings & Loan Bldg., 16 S. Calvert St., Baltimore, MD 21202.

Phyllis Cole Friedman
Phyllis Cole Friedman

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.

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.

Very truly yours,

Richard D. Payne
Richard D. Payne

RDP/bdy
cc: Gary C. Duvall, Esquire
Mr. Andrew Bibb
Holmehurst Improvement Association

HOLMEHURST COMMUNITY ASSOCIATION
10 Holmehurst Avenue, Catonsville, MD 21228

RECEIVED
MAY 27 1987
ZONING OFFICE

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

Directors:
R. Payne
C. Higdon
D. Jones
J. Rubin

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. Bibb about the activities of McNabb. Now in view of the fact that both Mr. Bibb and myself will be out of the country for a period 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. Bibb 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 admits to breaking the law should, I would think, give proper cause to call a stop to his activities until the full disclosure of the facts are made.

I hope that you will give this approach some consideration.

Sincerely,

Richard Decker
Richard Decker

RECEIVED
MAY 21 1987
ZONING OFFICE

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

TELEPHONE 202-82-8888
CABLE MILESBRIDGE
TELEX 87-81

May 21, 1987

HAND - DELIVERED

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 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. Bibb'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. Bibb'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 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 Mr. Bibb expressed at the hearing.

Thereafter, I will consult with Mr. Bibb 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. Bibb 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. Bibb 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.

Very truly yours,

Gary C. Duvall
Gary C. Duvall

GCD/tlh

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

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

Arnold Jablon
TO: Zoning Commissioner
FROM: Norman E. Gerber, AICP, Director
Office of Planning and Zoning
SUBJECT: Zoning Petitions No. 87-465-SPH, 87-469-SPH and 87-470-SPH

Date: April 13, 1987

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

Norman E. Gerber
Norman E. Gerber, AICP
Director

NEG:JGH:slb

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

May 8, 1987

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

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

RE: Item No. 359 - Case No. 87-465-SPH
Petitioners: 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 petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

Very truly yours,

James E. Dyer
JAMES E. DYER
Chairman
Zoning Plans Advisory Committee

JED:kbb

Enclosures

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

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.

CERTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE COUNTY Towson, Maryland

87-465-SPH

District: *1st*
Posted for: *Special Hearing*
Petitioner: *Mercantile-Safe Deposit and Trust Co.*
Location of property: *S.E. Corner of Frederick Road and Wade Ave.*
Location of Sign: *Sign on S.E. Corner of Frederick Road and Wade Ave. and Sign on S.W. Corner of Frederick Road and Wade Ave.*
Remarks: *See above*
Posted by: *A. J. Anta*
Number of Sign: *2*

Date of Posting: *May 2 - 87*

Date of return: *May 8 - 87*

BALTIMORE COUNTY OFFICE OF PLANNING & ZONING

County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Your petition has been received and accepted for filing this
30th day of *March*, 1987.

Arnold Jablon
ARNOLD JABLON
Zoning Commissioner

Petitioner: *Mercantile-Safe Deposit and Trust Co.*
Petitioner's Attorney: *Gary C. Duvall, Esquire*
Received by: *James E. Dyer*
Chairman, Zoning Plans Advisory Committee

RECEIVED
APR 14 1987
ZONING OFFICE



Maryland Department of Transportation
State Highway Administration

RECEIVED
APR 2 1987

ZONING OFFICE

William K. Hellmann
Secretary
Paul Kassoff
Administrator

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.

Very truly yours,

Charles Lee

Charles Lee, Chief
Bureau of Engineering
Access Permits

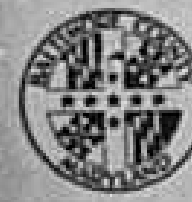
By: George Wittman

CL:GW:maw

cc: Mr. J. Ogle

My telephone number is (301) 333-1350

Teletypewriter 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



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

STRENGTHENED
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,

Michael S. Flanigan
Michael S. Flanigan
Traffic Engineer Associate II

MSF:lt



BALTIMORE COUNTY
FIRE DEPARTMENT
TOWSON, MARYLAND 21204-2586
494-4500

PAUL H. RENCKE
CHIEF

March 19, 1987

Mr. Arnold Jablon
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towson, Maryland 21204

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

Location: SE/C Frederick Rd. and Wade Avenue

Item No.: 359

Zoning Agenda: Meeting of 3/24/87

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: *John F. O'Neill*
Planning Group
Special Inspection Division

Noted and
Approved:

Fire Prevention Bureau

/mb

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

To: Zoning Advisory Committee Chairperson Date: April 16, 1987
FROM: C. E. Burnham - Chief Building Plans Review - Department Permits & Licenses

SUBJECT: Zoning Advisory Committee 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
Item #366	See Comments
Item #240 Revised	No further comment.

CEB:bac

PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY, et al

Appellants

Vs.

MERCANTILE-SAFE DEPOSIT
AND TRUST COMPANY

Appellee

IN THE

CIRCUIT COURT

FOR BALTIMORE COUNTY

CASE NO. 88 CG 1080

ZONING CASE NO. 87-465-SPH

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, 1986, 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 Com-
missioner 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
LEONARD S. JACOBSON, JUDGE

Date signed *10/21/88*

COPIES SENT TO:

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

UPON RECEIPT OF THIS NOTICE, Counsel shall contact each other immediately to confer and calculate. Claim of not receiving notice will not
constitute reason for postponement.

RE: NON-JURY - 88CG-1080 - PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, ET AL, VS. MERCANTILE-SAFE DEPOSIT AND TRUST CO.
HEARING DATE: WEDNESDAY, JULY 13, 1988 @ 9:30 A.M.
ON THE FOLLOWING: APPEAL: 3/4 to 1 HOUR

Please see the below notation.

April 26, 1988

CIRCUIT COURT FOR BALTIMORE COUNTY

ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 Boley Avenue
P.O. Box 6754
Towson, Maryland 21285-6764

John Adams - 494-2680
Chief Assignment Commissioner
Salem Court
Marie Escobedo - 494-2682
Assistant Assignment Clerk
Medical Records
Phyllis Cole Friedman, Esq.
Peter Max Zimmerman, Esq.
Andrew Bibo, Esq.
County Board of Appeals
Gary C. Duvall, Esq.

Kathy Rushton - 494-2520
Assignment - Jury - Motions
Marcia Fennell
Assistant Clerk Typist
Irene Summers - 494-2681
Assignment - Non-Jury - Motions
Fredrick Grove
Assistant Clerk Typist

IN THE MATTER OF : IN THE
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. :
1st ELECTION DISTRICT :
1st COUNCILMANIC DISTRICT :
AT LAW
PHYLLIS C. FRIEDMAN, PEOPLE'S :
COUNSEL FOR BALTIMORE COUNTY, :
AND :
ANDREW BIBO, PLAINTIFFS :
CG Doc. No. 53
Folio No. 280
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 HONORABLE, 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
other funeral homes and to remove the restriction in
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

May 8

Comments of Baltimore County Zoning Plans Advisory
Committee

April 13

Comments of Baltimore County Director of Planning

May 18

At 11:00 a.m. hearing held on petition of Zoning
Commissioner.

June 10

Order of Zoning Commissioner that the Petition for Special
Hearing is GRANTED, subj. to restrictions.

RECEIVED
CBA



County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180
February 4, 1986

RECEIVED
FEB 5 1986
ZONING OFFICE

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

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

Dear Mr. Duvall:

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

Sincerely,

Kathleen C. Weidenhammer
Kathleen C. Weidenhammer
Administrative Secretary

Encl.

cc: Mr. Wayne Townsend
R. Douglas Jones, Esq.
Mr. Richard Decker
Mr. Andrew Bibb
Phyllis Cole Friedman, Esquire
Kathleen Jackson
Michael Kendall
P. David Fields
James G. Hoswell
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
Hobyn Clark
Arnold Jablon, County Attorney

IN THE MATTER OF
THE APPLICATION OF
MERCANTILE-SAFE DEPOSIT & TRUST CO.
FOR SPECIAL HEARING ON PROPERTY
LOCATED ON THE SOUTHEAST CORNER OF
FREDERICK ROAD AND WADE AVENUE
1st ELECTION DISTRICT
1st COUNCILMANIC DISTRICT

BEFORE
COUNTY BOARD OF APPEALS
OF
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 denied. The Board need not address the motion of People's
Counsel because the Board did not consider, read, or review the material sub-
mitted 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.

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. Bibb,
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. Bibb 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
odors.

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. Bibb 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.

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. Bibb 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. Bibb
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 opera-
tion 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 regula-
tions, 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
Funeral Home, to operate the crematory without restrictions be and the same
is hereby 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

Thomas J. Bollinger
Thomas J. Bollinger, Acting Chairman

Arnold G. Foreman
Arnold G. Foreman

Lawrence E. Schmidt
Lawrence E. Schmidt



County Board of Appeals of Baltimore County

Room 200 Court House
Towson, 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

R. Douglas Jones, Esq.

Counsel for Protestants, Lerch and Huesman

Richard Decker

Protestant

Andrew Bibb

Phyllis C. Friedman

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

RECEIVED
OCT 20 1987
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

Baltimore County Board of Appeals
Old Courthouse, Room 2205
Towson, Maryland 21204

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 mat-
ter, please do not hesitate to contact this office.

Very truly yours,

Arnold Jablon
ARNOLD JABLON
Zoning Commissioner

AJ:bjs

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

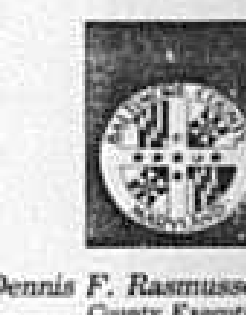
Mr. Wayne Townsend
2 Hopkins Plaza, Baltimore, Md. 21203

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

Mr. Andrew Bibb
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



Dennis F. Rasmussen
County Executive

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

Mercantile-Safe Deposit and
Trust Company,

Petitioner

BEFORE THE JUL 8 1987

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
day of June, 1987.

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

Attorneys for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 7th day of July, 1987, a copy of

No. 33121

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

DATE 7/14/87 ACCOUNT R-01-615-000

AMOUNT \$105.00

RECEIVED FROM Gary C. Duvall, Esquire, Miles & Stockbridge,
401 Washington Ave., Towson, Md. 21204

FOR: Appeal Filing & Posting Fee - Case No. 87-465-SPH
Mercantile-Safe Deposit and Trust Company
\$ 013 *****1050012 0146F

VALIDATION OR SIGNATURE OF CASHIER

RECEIVED
JUN 1 1987

ZONING OFFICE

GARY C. DUVAL

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

TELEPHONE 301-821-6565
CABLE MILEBRIDGE
TELEX 87-5H

May 29, 1987

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:

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. Bibb 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.

Mr. Arnold Jablon
May 29, 1987
Page 2

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 truly yours,

Gary C. Duvall
Gary C. Duvall

GCD/tlh

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

MILES & STOCKBRIDGE

Mr. Arnold Jablon
May 29, 1987
Page 2

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GCD/tlh

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MILES & STOCKBRIDGE

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Gary C. Duvall

GCD/tlh

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Richard Payne, Esquire

MILES & STOCKBRIDGE

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MILES & STOCKBRIDGE

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Gary C. Duvall

GCD/tlh

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MILES & STOCKBRIDGE

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Gary C. Duvall

GCD/tlh

cc: Douglas Jones, Esquire
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Richard Payne, Esquire

MILES & STOCKBRIDGE

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May 29, 1987
Page 2

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Gary C. Duvall

GCD/tlh

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Richard Payne, Esquire

MILES & STOCKBRIDGE

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May 29, 1987
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Gary C. Duvall

GCD/tlh

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MILES & STOCKBRIDGE

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Gary C. Duvall

GCD/tlh

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Richard Payne, Esquire

MILES & STOCKBRIDGE

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GCD/tlh

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Mr. George S. MacNabb
Richard Payne, Esquire

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THE DAILY RECORD, BALTIMORE, FRIDAY, AUGUST 6, 1977



EDWARD MacNABB Discusses The Difference Between CREMATION and 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 cremation with none of the undesirable aspects. Calcination exactly meets the requirements of many thoughtful, considerate persons.

*Calcination is an exclusive process offered only by Edward MacNabb in the Greater Baltimore Area.

MacNabb Funeral Home
301 Frederick Road in Catonsville

When the Baltimore Beltway East 13 and Frederick Rd. meet.
747-4770
A Family of Funeral Directors for over One Hundred Years.



MAIL
CLIPPING
TODAY!

PROTESTANT'S
EXHIBIT 3

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

May 8, 1987

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

Chairman

MEMBERS

Bureau of Engineering
Department of Traffic Engineering
State Roads Commission
Bureau of Fire Prevention
Health Department
Project Planning
Building Department
Board of Education
Zoning Administration
Industrial Development

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

RE: Item No. 359 - Case No. 87-465-SFH
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 petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

Very truly yours,

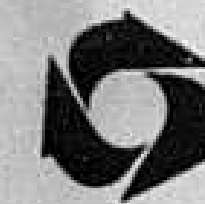
James E. Dyer
JAMES E. DYER

Chairman
Zoning Plans Advisory Committee

JED:kbb

Enclosures

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



Maryland Department of Transportation

State Highway Administration

William K. Hellmann
Secretary
Hal Kassoff
Administrator

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.

Very truly yours,

Charles Lee
Charles Lee, Chief
Bureau of Engineering
Access Permits

By: George Wittman

CL:GW:maw

cc: Mr. J. Ogle

My telephone number is (301) 333-1350

Teletypewriter 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



BALTIMORE COUNTY
FIRE DEPARTMENT
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, Maryland 21204

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

Location: SE/C Frederick Rd. and Wade Avenue

Item No.: 359

Zoning Agenda: Meeting of 3/24/87

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: *John F. O'Neill*
Planning Group
Special Inspection Division

Noted and Approved:

Fire Prevention Bureau

/mb

RECEIVED
MAR 27 1987

ZONING OFFICE

March 25, 1987

Mr. 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 MacNabb 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 nuisance odors other than a sporadic natural gas type odor which does 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. MacNabb 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. Melvin Cola
ADMINISTRATIVE OFFICER

BMC:kbb

cc: Dr. Donald Roop, Health Officer
Arnold Jablon, Zoning Commissioner

RECEIVED
MAR 12 1987

MILES & STOCKBRIDGE
401 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

TELEPHONE 301-822-0000
CABLE MILESBRIDGE
TELEX 87-251

March 11, 1987

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 C. Duvall
Gary C. Duvall

GCD:ld

cc: Mr. George E. MacNabb, Jr.

Edwin J. Kirby & Associates
21 COURT STREET
WESTMINSTER, MD. 21157
Case No. Date Jan. 20, 1971