

IN RE: PETITIONS FOR SPECIAL HEARING AND SPECIAL EXCEPTION - NE/S Walker Avenue, 700' SE of the c/l of Wilkens Avenue 1st Election District 1st Councilmanic District UMBC Petitioner

ORDER OF DISMISSAL

Pursuant to receipt of a Voluntary Dismissal request to the Zoning Commissioner from Counsel for the Petitioner, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 13th day of June 1988 that the above-referenced matter be and is hereby DISMISSED without prejudice.

AMN:bjs
cc: John C. Murphy, Esquire
516 N. Charles Street, Baltimore, Md. 21201
Valerie V. Cloutier, Esquire
117 E. Montgomery Street, Baltimore, Md. 21203
Alan W. Kempke
First National Bank of Maryland
P.O. Box 1596, Baltimore, Md. 21203
People's Counsel
File

ANN M. NASTAROWICZ
Deputy Zoning Commissioner
for Baltimore County

PETITION FOR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY: 88-535-SPHX
The undersigned, UNIVERSITY OF MARYLAND, hereby petitions for a Special Exception under the Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property for A WIRELESS TRANSMITTING AND RECEIVING STRUCTURE (Tower is existing as a public use).

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 50232

DATE 5/11/88 ACCOUNT 01-115-000

RECEIVED 5/11/88

FOR 409

FROM 409

TO 409

BY 409

VALIDATION OR SIGNATURE OF CARRIER

Baltimore, Md. 21203

City and State

Attorney for Petitioner:

John C. Murphy

Signature

516 N. Charles St.

Baltimore, Md. 21201

City and State

Attorney's Telephone No.: 625-4828

NAME, ADDRESS AND PHONE NUMBER OF LEGAL OWNER, CONTRACT PURCHASER OR REPRESENTATIVE TO BE CONTACTED

Leland R. Reitel

UNBC, Room 421 Administration

Bldg. Catonsville, Md. 21228

Address

Phone No.

ORDERED BY THE Zoning Commissioner of Baltimore County, this 13th day of June 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 13th day of June 1988, at 2:00 o'clock P.M.

J. Robert Haines

Zoning Commissioner of Baltimore County

ESTIMATED LENGTH OF HEARING - 1/2 HR.

ALL MON./TUES./WED. - NEXT TWO MONTHS

REVIEWED BY: DATE 5/11/88

PETITION FOR SPECIAL HEARING

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY: 88-535-SPHX
The undersigned, UNIVERSITY OF MARYLAND, hereby petitions 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 the placement of antennas on an existing 350 foot tower owned by the University of Maryland as exempt from or not subject to the special exception (public hearing) process.

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

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.

Legal Owner(s):

UNIVERSITY OF MARYLAND-UMBC

Signature

P.O. Box 1596

Baltimore, Md. 21201

City and State

Attorney for Petitioner:

John C. Murphy

Signature

516 N. Charles St.

Baltimore, Md. 21201

City and State

Attorney's Telephone No.: 625-4828

NAME, ADDRESS AND PHONE NUMBER OF LEGAL OWNER, CONTRACT PURCHASER OR REPRESENTATIVE TO BE CONTACTED

Leland R. Reitel

UNBC, Room 421 Administration

Bldg. Catonsville, Md. 21228

Address

Phone No.

ORDERED BY THE Zoning Commissioner of Baltimore County, this 13th day of June 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 13th day of June 1988, at 2:00 o'clock P.M.

J. Robert Haines

Zoning Commissioner of Baltimore County

CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY

Towson, Maryland

District: 1st

Posted for: Special Hearing, Special Exception

Petitioner: University of Maryland - U.M.B.C.

Location of property: NE/S Walker Avenue, 700' SE of c/l of Wilkens Avenue

Location of Sign: NE/S Walker Ave. and Campus Loop Rd.

Remarks:

Posted by: J. Robert Haines

Number of Signs: 2

Date of return: June 13, 1988

"DUPLICATE" CERTIFICATE OF PUBLICATION

TOWSON, MD., June 2, 1988

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 June 2, 1988.

THE JEFFERSONIAN,

S. Zabo Wilson

Publisher

NOTICE OF HEARING
The Zoning Commission of Baltimore County, by authority of the Zoning Law and Zoning Regulations of Baltimore County, will hold a public hearing on the herein described property for a Special Exception under the Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property for A WIRELESS TRANSMITTING AND RECEIVING STRUCTURE (Tower is existing as a public use).

Office of PATUXENT Publishing Company

10700 Little Patuxent Pkwy.

Columbia, MD 21044

June 14 19 88

THIS IS TO CERTIFY, that the annexed advertisement of

NOTICE OF HEARING

88-535-SPHX

was inserted in the following:

Arbutus Times

Reporter Weekly

Booster Weekly

Owings Mills Flier

Towson Flier

weekly newspapers published in Baltimore County, Maryland

once a week for one successive weeks before

the 4 day of June 19 88 that is to

say, the same was inserted in the issues of

June 2, 1988

PATUXENT PUBLISHING COMPANY

By

RECEIVED

JUN 15 1988

ZONING OFFICE

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
494-3353
J. Robert Haines
Zoning Commissioner

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland as follows:

Petitioner for Special Exception and Special Hearing
CASE NUMBER: 88-535-SPHX
NE/S Walker Avenue, 700' SE of c/l of Wilkens Avenue
1st Election District - 1st Councilmanic
Petitioner(s): University of Maryland - UMBC
HEARING SCHEDULED: FRIDAY, JUNE 24, 1988 at 2:00 p.m.

Special Exception: A wireless transmitting and receiving structure (tower is existing as a public use)
Special Hearing: The placement of antennas on and use of an existing 350 foot tower owned by the University of Maryland as exempt from or not subject to the special exception (public hearing) process.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commission 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 in writing and received in this office by the date of the hearing set above or presented at the hearing.

J. ROBERT HAINES
Zoning Commissioner of
Baltimore County

cc: Alan W. Kempke/First National Bank of Maryland
Leland R. Reitel/University of Maryland - UMBC
John C. Murphy, Esq.
File

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
494-3353
J. Robert Haines
Zoning Commissioner

Date: 4/15/88

Re: Leland R. Reitel
Administration, Room 421
University of Maryland - Baltimore County
Catonsville, Maryland 21228

Re: Petitioner for Special Exception and Special Hearing
CASE NUMBER: 88-535-SPHX
NE/S Walker Avenue, 700' SE of c/l of Wilkens Avenue
1st Election District - 1st Councilmanic
Petitioner(s): University of Maryland - UMBC
HEARING SCHEDULED: FRIDAY, JUNE 24, 1988 at 2:00 p.m.

Dear Mr. Reitel:

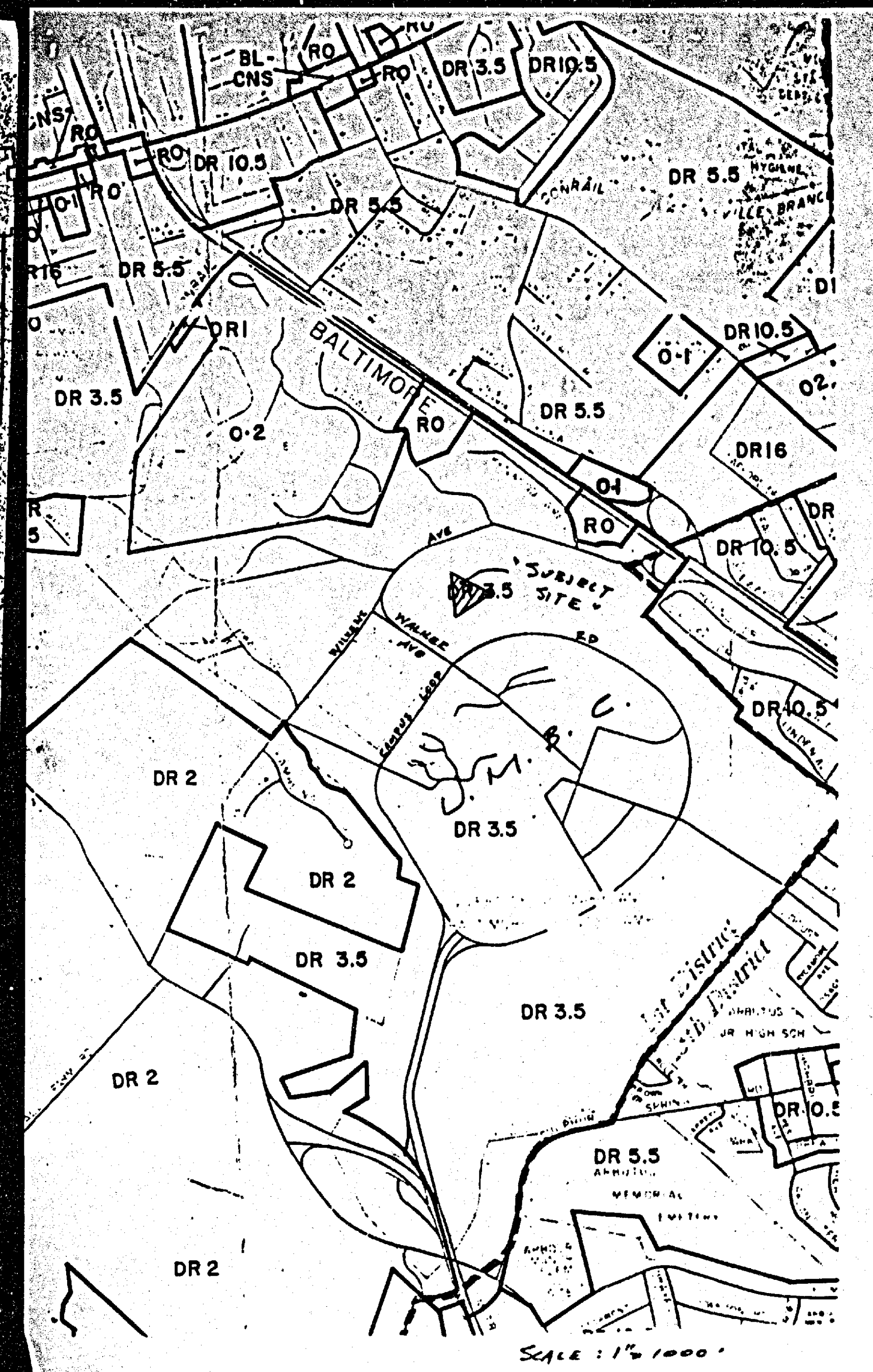
Please be advised that \$106.35 is due for advertising and posting of the above-referenced property. All fees must be paid prior to the hearing. Do not remove the sign and post set(s) from the property from the time it is posted by this office until the day of the hearing itself.

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

Please make your check payable to Baltimore County, Maryland and bring it along with the sign(s) and post(s) to the Zoning Office, County Office Building, Room 111, Towson, Maryland 21204 fifteen (15) minutes before your hearing is scheduled to begin.

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 52699
DATE June 21, 1988 ACCOUNT 01-115-000
AMOUNT \$ 106.35
RECEIVED FROM John C. Murphy Esq. / UMBC
FOR Patuxent
B 017*****106351 22135
X-535-SPHX
VALIDATION OR SIGNATURE OF CARRIER





Apart from the State issue, we are talking about three antennas, six to ten feet wide, to be erected on an existing tower of over 320 feet. In relationship to the size of the tower, the

addition proposed is miniscule. The placement of the antennas on the towers is for the convenience or necessity of UMBC, as a part of their academic program in communications. These facts qualify the antennas as accessory to the principal structure, the tower. See Section 101 of the BCZR, accessory use or structure. Receiving or transmitting facilities are accessory uses in the DR zones (where UMBC is located). See 1B01.1A.14, BCZR. The regulations, e.g. Section 426, make a distinction between antennas and wireless transmitting or receiving structures. It is the structures which must obtain a special exception if they are above a certain height. Here the structure already exist. The antenna is accessory to the structure.

A final thought is that there is no way that you could hold an intelligent special exception hearing for the placement of antennas on a structure which already exists. It is clearly the structure which needs the special exception, not the antennas. You might hold a special exception hearing on a State antenna which was proposed to be converted to private use. But that is not the case here. The existing State use continues, the same as before, and it will even be intensified when the State utilizes the new antennas. As a practical matter, therefore, there is nothing to hold a special exception hearing about. Considering the size of the antennas, it would be almost like holding a special exception hearing on the placement of three Coke machines on a college campus.

I am very grateful for your careful consideration of this matter.

Sincerely,

JCM/vb

cc: Ms. Valerie Cloutier,
Assistant Attorney General

Mr. James E. Dyer
Zoning Supervisor

John C. Meyer

STATEMENT OF SACIN
Attorney General
ELLI AKEN M. CAREY
Through Attorney General
PAUL T. STRAIN
Deputy Attorney General

OFFICE OF THE ATTORNEY GENERAL



EDUCATIONAL AFFAIRS DIVISION

Munsey Building
Seven North Calvert Street
Baltimore, Maryland 21202
(301) 576-6450

TTY for Deaf
Bldg. Room 303-7335
D.C. Metro 366-0451

March 2, 1984

Mrs. Eunice Alper
Executive Director
State Board of Cosmetologists
Department of Licensing and Regulation
501 St. Paul Place
Baltimore, Maryland 21202

Re: Carmen DiSabatino d/b/a/ Stairway to Hair;
Towson State University hair salon

Dear Mrs. Alper:

This letter is written to confirm the position of this office and my client, Towson State University, regarding the anticipated application of Carmen DiSabatino, doing business as Stairway to Hair, for a license to operate a beauty salon in the University Union on Towson State's campus.

The position expressed here is stated in cognizance of COMAR 09.22.01.04D, which provides in pertinent part:

"All applications for an owner's or owner-manager's [beauty salon] license shall be submitted with proper zoning certification or other written authorization from the appropriate agency of the political subdivision in which the premises are to be located."

Towson State University is located in Baltimore County, but it is our position that the county's zoning regulations cannot control the conduct of a service obtained through contract by a State agency in furtherance of the agency's purposes. Towson State University provides a community setting for up to 2,922

ANDREW M. MILLER
11-11-77
11-11-77
ELLEN M. MILLER
Deputy
Educational Affairs Division
MICHAEL A. ANSIL
SUSAN N. WILSON
JAMES J. MATTHEWS
JAMES J. KAGAN
FREDERICK G. SAVA
CHRISTINE STEINER
PETER W. TALLAFERRO
Assistant Attorneys General

Mrs. Eunice Alper
March 2, 1984
Page 2

resident students and a full time enrollment of 10,200 students, not to mention its faculty and administrative staff. The university has contracted with Mr. DiSabatino for the operation of a hair salon in its student union as an amenity of this community environment. Significantly, the student union, dormitories, and several other facilities on the campus are required by State budget standards to be self-supporting. Operation of a hair salon and other essentially retail activities to serve the university community is thus in furtherance of the university's duties. (See the enclosed letter to me from Terrence C. Smith, Assistant Vice President for Towson State's Auxiliary Enterprises).

Repeated formal opinions the Attorney General have determined that State agencies are immune from county zoning and licensing requirements. 19 Op.A.G. 406 (1934), (Baltimore County building permit not required for work on State buildings); 23 Op.A.G. 400 (1938), (Baltimore County plumbing code inapplicable to State institutions); 35 Op.A.G. 273 (1950), (State property not subject to county zoning ordinance); 38 Op.A.G. 221 (1951), (County electrical code inapplicable to State buildings); 46 Op.A.G. 156 (1961), (Anne Arundel County plumbing permit not required for construction of State building); 51 Op.A.G. 85 (1966), (Baltimore County licensed electricians need not be employed by State agency); 62 Op.A.G. 45 (1977), (City of Salisbury zoning requirements inapplicable on State land leased to Wicomico County); 62 Op.A.G. 941 (1977), (Baltimore City zoning code inapplicable to property owned or leased by the State). The basis for these opinions has been (1) that it is improper for county government to use licensing and zoning standards to increase the cost of operating State government, and, more fundamentally, (2) that State sovereignty precludes application of local ordinances and regulations to property owned by, or programs undertaken by, the State or a State agency. These opinions are supported by judicial rulings. Fontain v. Ravenek, 58 U.S. 369 (1854); United States v. Thompson, 98 U.S. 486 (1878); Mayor and City Council of Baltimore v. Maryland, 251 Md. 217 (1977); City of Baltimore v. State Department of Health and Mental Hygiene, 38 Md. App. 579 (1978).

Baltimore County's Zoning Commissioner has indicated that the county may not grant Mr. DiSabatino a permit to operate a hair salon on the Towson State campus because the salon will be a proprietary, rather than State, function, and such a function cannot be operated in the residential zone in which the campus is located. We strongly disagree with the position.

It is the State, not the county, that determines what is a function of a State agency. Beyond this, academic institutions have long been recognized to have particularly broad discretion

Mrs. Eunice Alper
March 2, 1984
Page 3

In formulating and defining the components of their programs. Thus it is inappropriate for a division of county government to determine what is or is not an appropriate component of the program of a State educational institution. In fact, we do not concede that the county has any authority to zone the Towson State University campus.

It is worth noting that the decision in Youngstown Cartage Co. v. North Point Peninsula Community, 24 Md. App. 624 (1975) has no bearing on the instant case. There, the State Highway Administration had acquired a tract of land for eventual use in a highway program. Because the State had no immediate use for the property, it leased the entire tract to Youngstown Cartage Co. for use as a trucking terminal, and was so used. The land was held to be subject to Baltimore county zoning because no public use was being made of it. It cannot be said, however, that the Towson State student union hair salon will not be devoted to public use, given the State's goal of providing an auxiliary service in a contained setting in its student union serving the university community. The trucking terminal in Youngstown was in no way integrated into any State program. Mr. DiSabatino's hair salon, on the other hand, will be an integral component of the student union program.

Much more instructive is the case of City of Baltimore v. State Department of Health and Mental Hygiene, supra. There, a State agency leased property it owned to a private organization for the purpose of that organization's operation of a home for children in need of supervision in furtherance of one of the State agency's programs. The Court of Special Appeals distinguished this situation from the Youngstown case and held that Baltimore City was without jurisdiction to use its zoning authority to interfere with the private organization's activities in furtherance of the State agency's purpose. Similarly, at Towson State, because provision of a hair salon to the university community is reasonably within the institution's purpose of providing auxiliary service to enhance its campus community environment, Baltimore County is without jurisdiction to use its zoning authority to control the operation of such a hair salon.

In sum, it is our position that because Baltimore County has no authority to regulate the use of State property in this instance, the provision of COMAR 09.22.01.04D dealing with zoning certification or authorization from the appropriate agency of the political subdivision in which the premises are to be located has no bearing on Mr. DiSabatino's application. Zoning approval from Baltimore County should not, in our view, be prerequisite to your Board's issuance of a license to operate a beauty salon in the

Mrs. Eunice Alper
March 2, 1984
Page 4

University Union on the Towson State University campus serving the community of that institution.

Very truly yours,

Peter W. Tallafarro
Peter W. Tallafarro
Assistant Attorney General
Counsel to Towson State University

PWT:krhb

Enclosure

cc: John C. Cooper, III, Esquire
Malcolm F. Spicer, Jr., Esquire
S. Eric DiNenna, Esquire
Mr. Donald N. McCulloh
Mr. Terrence C. Smith

