FINDINGS OF FACT AND CONCLUSIONS OF LAM

This matter comes before the Zoning Commissioner as a Petition for Special Hearing filed pursuant to Section 500.7 of the Ballimore County Zoning Regulations (B.C.Z.R.). The Settlioners are Scott M. Culiner and William B. England, Jr. They seek an interpretation that after-hours clubs, as described at the public hearing held, are permitted uses in certain zones and a determination of what zones are appropriate to permit

Appearing at the requisite public hearing held for this case were the Petitioners, Scott M. Culiner and William B. England, Jr. Also present was Lercy M. Merritt, a potential landlord for the business identified in the Petition and proposed by the Petitioners. The Petitioners were repre sented by Melvin J. Kodenski, Esquire. Appearing as interested persons in this case were representatives of several umbreila community associa tions. These included Wayne Skinner from the Towson-Loch Rayen Community Council and Paula Saltzman from the Liberty Road Community Developmen

This case presents a rather novel issue and is raised in an unusual fashion. Indeed, this Zoning Commissioner can recall of no case considered by me which does not relate to a specific property. That is, every previous case considered by me has referenced a specific property within Baltimore County and has requested zoning relief as it relates to that property

RECEIVED P

DRDER

This case is different. Messrs. Culiner and England seek only an interpretation of certain provisions of the B.C.Z.R. and question whether a particular use proposed by them might be appropriate in certain room within the County. As to this business. Mr. England testified and described the proposed operation. He indicated that he is employed full time with the Baltimore County Fire Department and on a part time basis with the Pikesville Volunteer Company. He and his partner propose opening a business which they identify as an after-hours club. They described this use as similar to other uses which presently exist in the County such as the Club 101 and the Club Manhattan

The primary focus of the after-hours club will be to serve the late night crowd. Specifically, the club will be open from 11:00 P. W. to any proximately 4:00 A.M. In addition to those who like their socializing late at night, the club will be geared towards shift workers and other individuals who work evening hours and are seeking a dining/social facility late at night after their work shift ends. The club will provide music and entertainment. It will not serve alcohol. Mr. England anticipates that the facility will be staffed by a disc jockey who will play top 40 pop/rock music generally enjoyed by the 25 to 35 year old generation Also, there would be a dance floor for use by the patrons. Mr. England also described in some detail the specific operations of the club, the intended security measures, and other aspects of the operation which are set forth within the record of this case

Also testifying was Leroy Merritt, the owner of several properties in Baltimore County. A particular property relevant to this case cemed by Mr. Merritt is located off of Washington Boulevard in an industrial park. That site is zoned M.L. Apparently, Mr. Merritt has negotiated with the Petitioners about opening an after-hours club within this park. Mr. Her

ritt noted that most of the activity within the business park is conducted during the daylight hours from 7:30 A.M. to 6:00 P.M. Thus, he feels that the proposed use during the off hours would not, in any manner, affect his other tenants or the existing uses on the site. Mr. England further noted that as a service to the employees of the business park, the proposed after-hours club will be open for the lunch trade during weekdays

Also testifying was Mr. England's partner, Scott M. Culiner. corroborated much of the testimony offered by Mr. England and compared the proposed use with similar uses which are permitted in other counties. He noted that the proposed club will fill a void which presently exists in Baltimore County and will cater to the late night crowd. He also described the specific operation of the club including security measures.

Mr. Skinner and Ms. Saltzman also made brief comments during th hearing. Although their organizations are not interested about activity at the possible Washington Boulevard location, they are concerned about the precedent which might be established in this case should the petition be granted. They fear that an after-hours club in their community would detrimentally effect their neighborhood. Specifically, concerns over rowdiness and noise, a potential increase in drunk driving and similar issues were discussed

In considering the merits of the proposed special hearing, a threshold issue need be addressed relating to the format of the Petition. A noted above, this is the first case in this Zoning Commissioner's recollection which does not relate to a specified property. Does this factor render the Petition improper? In considering this question, I have reviewed the Baltimore County Code as it relates to the authority of the Zoning Commissioner's office as set forth in Title 26. Therein, I am

RECEIVED FOR

unable to find any requirement that Petitions before the Zoning Commissioner must relate to a specific property. Moreover, Section 500 of the B.C.Z.R. governs the administrative and enforcement authority of the Zoning Commissioner and the Deputy Zoning Commissioner. Section 500.6 allows the Commissioner to conduct hearings related to noncompliance with any zoning regulations or the proper enforcement thereof. Moreover, Section 500.7 provides wide discretion to the Commissioner to conduct hearings and pass Orders as might be necessary for the proper enforcement and interpretation of the B.C.Z.R. These sections do not mandate that a specific property be identified in the Petition. Based on these authorities, I am persuaded that the Petition is properly at issue and that I may consider the Petitioners' request.

Having made such a determination, attention is next turned to the monits of the case. Of particular note is recently passed legislation by the Baltimore County Council within Bill 110-93. This Bill, which was enacted by the Council in July of 1993, comprehensively amended the B.C.Z.R. as it related to catering hall uses, restaurant uses, night clubs and taverns. Definitions of these proposed uses were incorporated in the B.C.Z.R. as the result of the passage of this Bill. Moreover, the use regulations were amended allowing certain of the uses in given zones and prohibiting others.

Moreover, of particular note is the fact that the B.C.Z.R. does not contain any definition of an after-hours club, a social club or similar terms which the Petitioners might label their proposed business. Among the terms defined, however, is that use identified as a night club. Specifically, Section 101 of the B.C.Z.R. defines nightclub as "A tavern or other commercial establishment which provides live or recorded entertain-

ment, with or without a dance floor, and which is categorized as a night

TECENTED FOR FI

RECEIVED FOR FILING

in an H.L. zone.

club by the building code of Baltimore County." In my view, this definition fits closely with the proposed use. That is, according to the Petitioners' description of their business, it appears that they will conduct a commercial establishment which provides recorded entertainment and a dance floor. Moreover, the use appears as if it would be categorized as a night club under the building code of Baltimore County. Particularly Baltimore County has adopted the BOCA vide, a national building code used by many jurisdictions. In Section 303.3 of the BOCA Code, nightclubs are classified as A-2 structures. Characteristics of A-2 structures include these buildings/uses which have later than average operating hours, a specified area designated for dancing, high occupant load density and entertainment by recorded music generating above normal sound levels. These factors, which are common to mightclubs under ROCA, describe the Petitioners' proposed use.

The fit of this definition and the described use also appears appropriate when considering the other definitions provided within the B.C.Z.R. in Bill No. 110-93. Specifically, the proposed use is clearly not a cater ing hall; that is, a facility used regularly to feed groups which reserve the hall for banquets or gatherings. Moreover, the restaurant definition does not appear appropriate, in that the primary focus of the business in not to serve meals and beverages. Rather, the stated express purpose wa more geared to provide a social meeting place. Eastly, since ligner will not be served, the tavern definition is not appropriate. Therefore, I must conclude, based on the testimony and evidence presented, that the Petitioners' proposed business does fit the nightclub definition.

This being the case, answering the question presented within the Petition is easy. That is, a more reading of the provisions of the B.C.Z.R. will provide a list of those zones in which the use is permissiwhere nightclubs are allowed as of right or by special exception. More over, it is to be noted that Section 102.1 of the B.C.Z.R. states that land may not be used or occupied and a building cannot be erected, altered or used, except in conformity with the soning regulations. The B.C.Z.R. is written to be inclusive; only those identified uses are allowed. This language is entirely consistent with the case law. Specifically, in Kowalski v. Lemar, 25 Md. App. 493, 334 A2d. 536 (1975), the Court of Special Appeals held that any use other than those permitted by the soning ordinance and being carried on as of right or by special exception is prohibited. Thus, the Petitioners need only exemine the R.C.Z.R. to deter

mine where their nightclub way be allowed. A review of the regulation

discloses that nightclubs are not allowed in an N.L. zone. Thus, the de-

scribed operation would not be allowed at Mr. Merritt's industrial park.

ble. That is, the Petitioners' proposed business is appropriate only

mation, it appears that the Petitioners have attempted to cre ate a new use, which they label as an "after-hours club", and seek author; ty to permit that use in certain zones in Beltimore County. Despite their creativity, a new use need not be created. A nightclub by any other new is still a nightclub, under the B.C.Z.R. As importantly, it is not th role of this Zoning Commissioner to perform a legislative function. If a use known as an after-hours club is to be created, it must be done through the legislative process. Particularly, since the Council did not create this use by its passage of Bill 110-93, I will not attempt to do so within this Order. As noted in Kowalski, infra, the Baltimore County Zoning rulations are inclusive and any allowed use must be so identified an delinested. For all of these reasons, I am unable to provide the Petition ars with the relief which they request to permit their described operation

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief

THEREFORE, IT IS ORDERED by the Zoning Commissi nty this 27 day of March, that, pursuant to the Petition for Special under Section 500.6 of the B.C.Z.R., approval to permit after hours club in certain women, more particularly in an M.L. some, and for the reasons set forth shows, he and is hereby DENTED.

-7-

Melvin J. Kodenski, Enquire Kodenski and Canaras 10 E. Fayette Street

ite 30: Itimore, Maryland 21202

Suite 113 Courthou 400 Washington Ave Towson, MD 21204

3/29/9V

Enclosed please find the decision rendered in the above.
The Petition for Special Hearing has been denied, in

In the event any party finds the decision rendered unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this order. For further information on filing an

Very truly yours mmy & Sites

(410) 887-4386

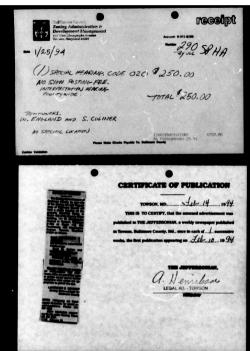
Scott M. Culiner William B. England, Jr. Mayne Skinner, Towson-Lock Raven Community Duncil Paula Saltsman, Liberty Community Development Cour

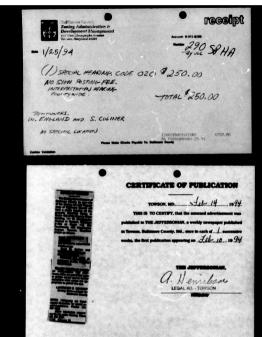


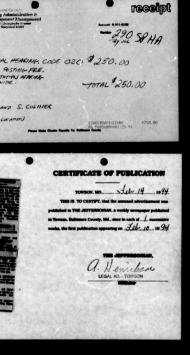
The Annies and to the off to Other d'Annie Annaerons à Devisions Minispers.

The Annies and to the other of the other devisions in the Annies and the Annies to determine what zones are appropriate to permit 500,6 of the Baltimore County Zoning Regulations.

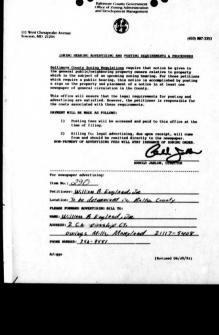
The scanners decide and offer, under the proofers of proofs, that the set the Petitioner(s) William O England, Jr William Wall 2 (perport (+ 711.711/7/6-76) Melvin J. Federiti Ourne Mill Mu 2017 Water & Kolenke Sun M Count William & England de. 2 (hompionhell transmitted 316 21/1/216261 17 E Forthe A. Sive 37 410-685-5100 31301 OFFICE UNIT ONLY ESTERATE LEMENT OF MERCHAN 125/19

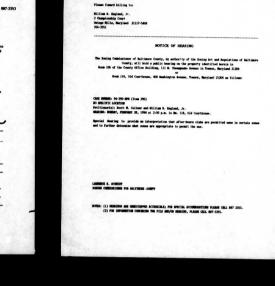














or Boom 118, Old Courthouse, 400 Mashington Sweeze, Towson, Maryland 21204 as follows:

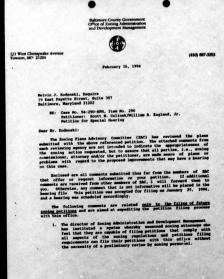
CACE REMRES: 94-299-SPH (16-m 290) SO SENCIFIC LOCKTION Politicone(y): Sort M. Caliner and William B. England, Jr. HEARIGH: REMRES, FERDINAT 28, 1994 at 2:00 p.m. in Rm. 118, Old Courthouse-Special Searing to provide an interpretation that after-bours clubs are paralited uses in certain some and to further determine that some are appropriate to paralit the use.

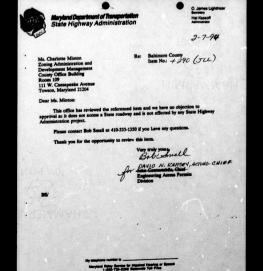
Celon

NOTES: (1) DONING SIGN & POST WHAT HE RETURNED TO HE. 104, 111 W. CHESSPERSE NUMBER OF THE RESIDENCE SHOPS.

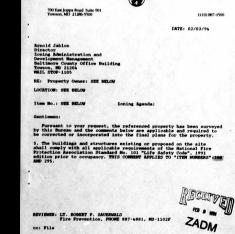
(2) REALINGS HAS REMODELATED TO SECURITY FOR SPECIAL ECCURROCATIONS PARMED CALL 507-3553.

(3) THE PROSECULATION CONTRACTOR TO SECURITY HER SHAPEN MEMBERS, CONTRACT THESE SPECIAL FOR STATEMENT OF SECURITY THE SHAPE MEMBERS, CONTRACT THESE SPECIAL FOR STATEMENT OF SECURITY THE STATEMENT OF SECURITY THE SHAPE SH





Mailing Address: P.O. Box 717 - Bollmann, MD 21808-0717 and Address: 707 Horth Colvert Street - Bellinson, Marriad 2100



₩ ____

CHORE COUNTY, HARYLAND

70:	Armold Jablon, Director
	Zoning Administration &
	Development Management

FROM: Pat Keller, Deputy Director Office of Flanning and Zon.



SUBJECT:	No	Specific	Locat	105
INFORMATI	ON:			

Pet it ioner:

Property Size Zoning N.A

Remested Action: Hearing Date:

SUMMARY OF RECOMMENDATIONS

The applicant has requested that an interpretation be provided regarding what zones would permit after-hours clubs.

This case has fairly vide implications from a land use perspective and certainly earnests community input and comment from other County agencies who do not foully comment on Chesin Petricans. It stems of the insert requirement of the control of t

Based upon a review of the scant information provided, staff feels that this matter would be more spropriately addressed through the legislative process which would essentially quarantee greater public understanding of the issues and provide more opportunity for public imput. Therefore, saff atroughy uses the Zoning Commissioner to deepy the applicant's respect.

Prepared by: Hyry W. Long Cary L. lern

ZAC.290/PZONE/ZAC1

COLNET COUNCIL OF BALTIMORE COUNTY, HARYLAND LEGT TIVE SESSION 1993, LEGISLATIVE NO. 14 BILL NO. 110-93

MR. C. A. DUTCH RUPPERSBERGER, COUNCILMAN By Request of the County Executive

BY THE COUNTY COUNCIL, JULY 6, 1993

A BILL ENTITLED

AN ACT concerning

FOR the purpose of amending the Baltimore County Zoning Regulations in order to define various types of restaurants and other food or entertainment facilities; authorizing certain types of restaurents and other foed or entertainment facilities to be located in certain zones of the County, either by right or by Special Exception; specifying the parking requirements for restaurants and other food or entertainment facilities; and generally relating to zoning requirements for restaurants and other food or entertainment facilities in Baltimore County.

BY edding

Section 101 - Definitions, the definitions of Catering Hall, Standard Restaurant, Fast Food Restaurant, Fast Food, Drive-Through Only Restaurant, Carry-Out Restaurant, Nightclub, and Tavern, alphabetically. Baltimore County Zoning Regulations, as amended.

BY repealing and re-enacting, with amendments

EDFLANKTION: CAPTRAS TRUTCHE WATTER AUGUS TO EXISTING LAW.
[Brackets] indicate matter stricten from estating law.
Service-ond indicates accordant from bill.
Underlining indicates amendments to bill.

BEFORE THE PETITION FOR SPECIAL HEARING ZONING COMMISSIONE OF BALTIMORE COUNTY

CASE NO: 94-290-SPH Item 290

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or



Pola Mes Berneman Peter Max Zimmerman People's Counsel for Baltimore County

Ci. 65Vent

I HEREBY CERTIFY THAT on this 39" day of 20/200000, 1994, a copy of the foregoing Entry of Appearance was mailed to Melvin J. Kodenski. Esquire, 19 E. Favette Street, Suite 207, Baltimore, MD, 21202.

Melvin J. Kodenski, Esquire 10 East Payette Street Baltimore, Maryland 21202

RE: Case No. 94-290-SPH, Item No.290 Petition for Special Hearing

111 West Chesapeake Avenue Towson, MD 21204

0

Enclosed are copies of comments received from Baltimore County Fire Department, Fire Prevention Section,on February 26, 1994 for the above-referenced case.

If there are any questions, please do not hemitate to call me at 887-3391.

Charlotte Minton



(410) 887.4500

DETE: 02/03/96

Arnold Jablon Director Loning Administration and

700 East Joppa Road Suite 90 Townon, MD 21286-5500

LOCATION: SEE BELOW

Item No.: SEE BELOW Zoning Asenda

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final pla's for the property.

5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the Mational Fire Protection Association Standard Mo. 101 "Life Safety Code", 1991 edition prior to occupancy. THIS COMMENT APPLIES TO "ITEM MARMERS" 1896

ZADM

REVIEWER: LT. ROBERT P. SAUERWALD Fire Prevention, PHONE 887-4881, MS-1102F

March 10 1 ***

Lawrence F. Schmidt 400 Washington Ave Towson, MD 21204



I am writing to clarify a few of the points discussed at the Zoning Hearing (#94-290-SPH) held on February 28, 1994. I believe some things may have been left unclear

I know that we could have simply applied for an occupancy permit without ever discussing hours of operation. Because of known concerns, we chose to be open and honest about our operation with Arnold Jablon. Because of this openness, Mr Jablon said he would not issue a permit without a hearing to define our operation.

As you know, many restaurants in Baltimore County, zoned as restaurants, currently offer As you know, many restaurants in Baltimore's Counts, zoned as restaurants, currently often music and dismony. We would like an occupancy permit as restaurant is A restaurant is allowed by right in Mt.-IM zoning without posting or am special exception. Virtually, everyone with whom this was discussed, including Zoning personnel, area residents, and the landlord it erws Merritt agree that Mt. zoning is very suitable to this operation, even preferable over Bind or IRR zoning.

Please contact me or Bill England (887-4551 or 356-3551) with any concerns that we can address. Thank you for your consideration on this matter.

PETITIONER(S) SIGN-IN SHEET

3 Champarthe (Olany May, MA 2111)

2066 Ford Ball Dan 2019

Sincerely (1-Soon M. Culmer

PLEASE PRINT CLEARLY Schm Com

Property of September 14

Laylow B England Ja

Scott M. Culiner 3 Championship Ct. Owings Mills, Mb. 21117 (410)356-3601

-32 years old

-Lifetime resident of Baltimore County

-Bachelor of Science degree, Towson State University -Currently own home in Baltimore County

-15 year member of the Pikesville Volu-teer Fire Company. In charge of Emergency Nedical Services for one year

-Certified Financial Planner, 7 years experience in Financial Planning Business -Currently employed full-time by Baltimore County Fire Department, rank of Paramedic, 11 years service

William B. England, Jr. 2 Championship Ct. Owings Wills, ND. 21117 (410) 356-3551

-Lifetime resident of Beltimore County

-Graduate of Catonsville Community College, now attending University of Maryland, University College -Currently own 2 residential properties in Baltimore County

-Served on Boards of Directors of 2 condominium associations -16 year member of Pikesville Volunteer Fire Company

-Licensed Maryland Real Estate Salesperson for 10 years. Experience in Business and Commercial Real Estate -Currently employed full-time by Baltimore County Fire Department, rank of Fire Specialist, 14 years service.

PLEASE PRINT CLEARLY

CITIZEN SIGN-IN SHEET

WAYNE KINNER	TIRCC
	THIS EDUCATION AND AND

Batter T. Canadas

KODENSKI AND CANARAS 19 E / AVETTE STREET BUTES 301 BALTIMORE, MARYLAND 21202

Merch 25, 1994

Commissioner Larry Schmidt Old Courthouse 400 Washington Avenue Towson, Maryland 21204

RE: Zoning Case No.: My Clients: 94-290-SPM, Item No. 290 William England Scott Culiner

Dear Commissioner Schmidt:

I have received several calls from my clients concerning your Decision in the above-referenced matter. I know that it has been almost a month now end I would appreciate it if we could be advised as to when we may expect to receive a Bocision, or if a Bocision has been made, I would approciate receiving a copy of same.

Thank you in advance for your kind cooperation.

Very truly yours.

MJK/e1k oc: William England

PLEASE PRINT CLEARLY

PROTESTANT (S) SIGN-IN SHEET

	ACCRESS
PRUL SACTEMENT L	5 De 9940 LIBERTY ID ROLLING
-	
-	
-	
No. of the last of	
35	