

IN RE: PETITION FOR SPECIAL HEARING * BEFORE THE
No Specific Location * ZONING COMMISSIONER
OF BALTIMORE COUNTY
Scott M. Culiner and * Case No. 94-290-SPH
William B. England, Jr. * Petitioners

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as a Petition for Special Hearing filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.). The Petitioners 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 such uses.

Appearing at the requisite public hearing held for this case were the Petitioners, Scott M. Culiner and William B. England, Jr. Also present was Leroy M. Merritt, a potential landlord for the business identified in the Petition and proposed by the Petitioners. The Petitioners were represented by Melvin J. Kodenski, Esquire. Appearing as interested persons in this case were representatives of several umbrella community associations. These included Wayne Skinner from the Towson-Lock Haven Community Council and Paula Saltzman from the Liberty Road Community Development Council.

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.

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 zones 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.M. to approximately 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 owned 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. Merritt

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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. He 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, etc.

Mr. Skinner and Mr. Saltzman also made brief comments during the 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 affect their neighborhood. Specifically, concerns over loudness 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. As noted above, this is the first case in this Zoning Commissioner's recollection which does not relate to a specific 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 Commission's office as set forth in Title 26. Therein, I am

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unable to find any requirement that Petitions before the Zoning Commissioner must relate to a specific property. Moreover, Section 500.6 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 merits 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 entertainment, with or without a dance floor, and which is categorized as a night

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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 code, 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 nightclubs under BOCA, 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 catering 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 is not to serve meals and beverages. Rather, the stated express purpose was more geared to provide a social meeting place. Lastly, since liquor 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 mere reading of the provisions of the B.C.Z.R. will provide a list of those zones in which the use is permissi-

ble. That is, the Petitioners' proposed business is appropriate only where nightclubs are allowed as of right or by special exception. Moreover, 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 zoning 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. Lamer*, 25 Md. App. 493, 334 A.2d 536 (1975), the Court of Special Appeals held that any use other than those permitted by the zoning ordinance and being carried on as of right or by special exception is prohibited. Thus, the Petitioners need only examine the B.C.Z.R. to determine where their nightclub may be allowed. A review of the regulations discloses that nightclubs are not allowed in an M.L. zone. Thus, the described operation would not be allowed at Mr. Merritt's industrial park.

In summation, it appears that the Petitioners have attempted to create a new use, which they label as an "after-hours club", and seek authority to permit that use in certain zones in Baltimore County. Despite their creativity, a new use need not be created. A nightclub by any other name is still a nightclub, under the B.C.Z.R. As importantly, it is not the 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 Regulations are inclusive and any allowed use must be so identified and delineated. For all of these reasons, I am unable to provide the Petitioners with the relief which they request to permit their described operation in an M.L. zone.

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

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 27th day of March, that, pursuant to the Petition for Special Hearing, under Section 500.6 of the B.C.Z.R., approval to permit after-hours club in certain zones, more particularly in an M.L. zone, and for the reasons set forth above, be and is hereby DENIED.

LES/mm

James E. Merritt
Zoning Commissioner
for Baltimore County

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Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning

Suite 113 Courthouse
400 Washington Avenue
Towson, MD 21204

March 28, 1994

(410) 887-4396

Melvin J. Kodenski, Esquire
Kodenski and Canas
10 E. Fayette Street
Suite 307
Baltimore, Maryland 21202

RE: Case No. 94-290-SPH
Petition for Special Hearing
William England and Scott Culiner, Petitioners

Dear Mr. Kodenski:

Enclosed please find the decision rendered in the above captioned case. The Petition for Special Hearing has been denied, in accordance with the attached Order.

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 appeal, please contact the Appeals Clerk at 887-3391.

Very truly yours,

James E. Merritt
Zoning Commissioner
for Baltimore County

LES:mm
cc: Mr. Scott M. Culiner
Mr. William B. England, Jr.
cc: Mr. Wayne Skinner, Towson-Lock Haven Community Council
Mr. Paula Saltzman, Liberty Community Development Council

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By Th. Hark

Scott M. Culiner

Championship Ct.
Dulington Hills, MD 21117

March 10, 1994

Lawrence I. Schmidt
400 Washington Ave
Towson, MD 21204

Dear Commissioner Schmidt:

I am writing to clarify a few of the points discussed at the Zoning Hearing (1994-290-SPI) 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 the 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 music and dancing. We would like an occupancy permit as a restaurant. A restaurant is allowed by right in ML (M) zoning without posting or any special exception. Virtually everyone with whom this was discussed, including Zoning personnel, area residents, and the landlord (James Merrett) agree that ML zoning is very suitable to this operation, even preferable over BM or BR 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.

Sincerely,

Scott M. Culiner
Scott M. Culiner



Scott M. Culiner
3 Championship Ct.
Dulington Hills, MD 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 Pikeville Volunteer Fire Company. In charge of Emergency Medical 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.
Dulington Hills, MD 21117
(410) 356-3551

-34 years old

-Lifetime resident of Baltimore 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 Pikeville 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.

LEE BRIDGES
KODENSKI AND CANARAS
10 & JANEY STREET
SUITE 201
BALTIMORE, MARYLAND 21204
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PROFESSIONAL OFFICE
410 & WASHINGTON AVENUE
BALTIMORE, MARYLAND 21204
PHONE 352-5500

March 25, 1994

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

RE: Zoning Case No. 94-290-SPI, Item No. 290
My Client: 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 and I would appreciate it if we could be advised as to when we may expect to receive a Decision, or if a Decision has been made, I would appreciate receiving a copy of same.

Thank you in advance for your kind cooperation.

Very truly yours,

William England
William England

MJR/sjk

cc: William England
Scott Culiner



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EXHIBITION(S) SIGN-IN SHEET

NAME

ADDRESS

Donna Santoro - 1026
John Liberty, 10 Paul H. H. H.

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EXHIBITION(S) SIGN-IN SHEET

NAME

ADDRESS

Scott M. Culiner
William B. England, Jr.
James M. Merrett

2 Championship Ct. Dulington Hills 21117
2 Championship Ct. Dulington Hills 21117
2665 2nd Ball Dr. 8089

PLEASE PRINT CLEARLY

CITIZEN SIGN-IN SHEET

NAME

ADDRESS

William B. England, Jr.
TRECE
1017 ELMWOOD RD. 21047