

IN RE: PETITIONS FOR SPECIAL EXCEPTION * BEFORE THE
AND VARIANCE - W/S Orchard Tree Lane,
534.42' N of the c/l Joppa Road * ZONING COMMISSIONER
(8819 Orchard Tree Lane)
9th Election District * OF BALTIMORE COUNTY
4th Councilmanic District * Case No. 96-60-XA
Rampart Partnership
Petitioner * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as Petitions for Special Exception and Variance for that property known as 8819 Orchard Tree Lane, located in the vicinity of Loch Raven Boulevard in Towson. The Petitions were filed by the owner of the property, Rampart Partnership, by Paul M. Pardew, Jr., a Partner, and the Lessee, Club 101, Inc., by John Giorgilli, President, through their attorney, Edward C. Covahey, Jr., Esquire. The Petitioners seek a special exception for an after hours club on the subject property, zoned B.R., pursuant to Section 236.4 of the Baltimore County Zoning Regulations (B.C.Z.R.), and a variance from Section 236.4 of the B.C.Z.R. to permit an after hours club within 83 feet of a residence in lieu of the required distance of 1000 feet. The Petitioners also filed a Petition for Special Hearing subsequent to the initial hearing date. Pursuant to the Petition for Special Hearing, the Petitioners request that the Zoning Commissioner hold a special hearing for the following reasons: 1) to establish the subject premises as a nonconforming use and to authorize the continued existing uses of the subject site; 2) to establish that the Petitioner have "vested rights" in the property such that County Council Bill No. 85-94 and the Zoning Regulations contained therein relating to "after hours clubs" may not be enforced against Petitioners and the subject property; 3) to establish that County Council Bill No. 85-94 and the zoning regulations contained therein relating to "after

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hours clubs" may not be enforced against Petitioners and the subject property as same is unconstitutional as applied against Petitioners and the subject property; and 4) to establish that County Council Bill No. 85-94 and the zoning regulations contained therein relating to "after hours clubs" may not be enforced against Petitioners under the doctrine of estoppel. The subject property and relief sought are more particularly described on the site plan submitted which was accepted and marked into evidence as Petitioner's Exhibit 1.

As is clear from the above summary of the relief requested, this is a complex case and the matter presently under consideration represents the latest in a series of cases which have come before this office relative to the subject property. The instant case, as well as the prior cases, have familiarized this Zoning Commissioner with the property and the use thereon. The property is known as 8819 Orchard Tree Lane and is located near the intersection of Joppa Road and Loch Raven Boulevard in Towson. The property consists of 5.752 acres, more or less, zoned B.R. and is improved with a commercial building which has existed on the site for many years. The subject building is located within a large complex of existing buildings which contain mixed uses. A number of retail outlets are located nearby, as well as the Orchard Skateland. That stretch of Joppa Road located near the subject property is largely commercial. However, the communities of Loch Raven Village, Knettishall, and other residential communities are located near the subject site. These communities are stable, long-standing neighborhoods which are under pressure from the commercialization and growth which has occurred in this area over the years.

The co-Petitioner in this case, John Giorgilli, is President of Club 101, Inc., a tenant of the subject building. Several years ago, Mr.

Giorgilli recognized a lack of facilities available in Baltimore County to cater to the late-night crowd for socializing and dancing. He incorporated the business known as Club 101, Inc. and went into operation in March 1993. The nature of the Club is to operate a late night facility. The Club is open some Thursdays, and most Fridays and Saturdays from 11:00 PM to 5:00 AM. There is a dance floor and disc jockey to provide entertainment. There are also some pool tables and similar amusement devices.

Owing to the liquor laws of Baltimore County and the State which prohibit late night sales of alcohol, the facility does not have a liquor license or sell liquor; however, patrons are allowed to bring in alcoholic beverages. Moreover, food is not sold, although a small independent food vendor operates in the front of the building. An admission fee is paid by the patrons who use the facilities, socialize and listen and dance to the music provided.

Obviously, all of the late-night activity generated by Club 101 has not been well-received by the homeowners who reside nearby. They are concerned about the noise and traffic generated by this use, particularly since the facility is open during the late evening/early morning hours. The use has spawned a significant amount of litigation before this Zoning Commissioner and has also resulted in the passage of legislation by the County Council in an effort to regulate this type of activity. A review of the prior zoning history is instructive in resolving the issues presented in the instant case.

The first case which came before this office also came before this Zoning Commissioner. The case was not filed by Mr. Giorgilli and did not pertain specifically to the Club 101 property. Rather, that case (Case No. 94-290-SPH) was filed by Scott M. Culliner and William B. England, Jr.,

and a decision was rendered by this Zoning Commissioner following a public hearing, on March 29, 1994.

The issue in that case revolved around an interpretation of the activities in after hours clubs and how those activities should be defined under the B.C.Z.R. At that time, there was no definition of "after hours clubs" in the B.C.Z.R. Upon consideration of the evidence and testimony presented in that case, I held that the use described constituted a night club under the B.C.Z.R. as it existed at that time. I determined from the testimony and evidence that the operation proposed in that case most closely fit the definition of a night club in the B.C.Z.R.

Apparently, in partial response to that decision, the County Council took legislative action by enactment of Bill No. 85-94. That Bill, which became effective under law on August 8, 1994, amended the B.C.Z.R. to provide a definition of after hours clubs and regulated same. The definition added to the B.C.Z.R. defined an after hours club as a "commercial establishment whose principle business is the provision of live or recorded entertainment, with or without a dance floor, which is open primarily between 11:00 PM and 4:00 AM and which does not have a Baltimore County liquor license. An after hours club is not a night club as defined in the zoning regulations or the Building Code of Baltimore County, Maryland." The legislation then went on to regulate after hours clubs, including a provision that same were permitted in a B.R. zone only by special exception. Moreover, the Bill required that any after hours club located in a B.R. zone must be situated at least 1,000 feet from any residentially used structure.

Owing to the enactment of this legislation, the Baltimore County Office of Zoning Administration and Development Management (ZADM), as it

was then known, filed a Petition for Special Hearing in the summer of 1994. That Petition (Case No. V94-537-SPH) sought an interpretation from the Zoning Commissioner to identify the use on the site and determine if same was permissible under the B.C.Z.R. Deputy Zoning Commissioner Timothy M. Kotroco heard that case shortly thereafter and by Order issued September 7, 1994, dismissed the Petition filed by ZADM. Particularly, he held that since the Petition was filed in July 1994, prior to the effective date of Council Bill No. 85-94, the consideration of the alleged violation of the B.C.Z.R. was premature. Moreover, Deputy Commissioner Kotroco dismissed the action without prejudice, reserving to ZADM the right to file a new Petition for Special Hearing should they deem it appropriate in the future.

Following up on this advice, ZADM tried again in the latter part of 1994. Under Case No. V95-211-SPH, ZADM petitioned for consideration of two issues; namely, whether the business operation at the aforementioned property is an "after hours club" as defined in the B.C.Z.R., and if so, whether the use can continue without the benefit of a special exception and without a variance to allow same within 1,000 feet of a residentially used dwelling. That case came before me and my decision addressing those issues was rendered on March 2, 1995. As to the first issue, I answered the question in the affirmative. That is, it was easily determined that the use on the subject property was an after hours club. As to the second use, the answer was a qualified "yes". That is, I noted that the language in Bill No. 85-94 contained a sunset provision which allowed after hours clubs in existence prior to the effect date of the legislation to continue in existence for one year until August 1995. Thus, I concluded that although the use was an after hours club and would be subject to the terms of the B.C.Z.R. as amended by Bill No. 85-94, the club could continue to operate

without seeking zoning relief until August 9, 1995.

Expectedly, the Petitioners filed the Petitions now under consideration before me on August 8, 1995. As noted above, the Petitioners seek the special exception and variance relief necessary to bring the use into compliance with the terms of Bill No. 85-94. In the alternative, special hearing relief is requested to strike down the applicability of Bill No. 85-94 as unconstitutional or otherwise, illegal. The matter was scheduled for public hearing initially on September 19, 1995; however, it was postponed from that hearing date and several postponements followed. Ultimately, the case came in for hearing on April 12, 1996.

Appearing at that hearing on behalf of the Petitions were Susan Pardew, co-owner of the property, John Giorgilli, President of Club 101, Inc., Contract Lessee, Lorne Hastings, Registered Property Line Surveyor who prepared the site plan for this project, and Edward C. Covahey, Jr., Esquire, attorney for the Petitioners. Appearing as Protestants in the matter were John Harter and Shirley Chandler, nearby residents of the area, and Wayne Skinner, also a resident of the area who appeared on behalf of the Towson-Loch Raven Community Council, Inc. Mr. Skinner's group is an umbrella organization of numerous community associations which are located in the vicinity of the subject site.

It is clear based on the statements made at the subject hearing that the inherent effects of the subject use are so objectionable to the local community associations that they cannot support the long-term utilization of the property as an after hours club. Nonetheless, it is equally clear that Mr. Giorgilli has attempted to act as a good neighbor. To the extent possible, he attempts to control the noise, traffic and other effects which his business causes. Moreover, the litigants recognize the

possibility of extended appeals from any decision authored by this Zoning Commissioner and the expense and delay that those appeals would cause upon ultimate resolution of this issue.

Thus, recognizing all of these factors, the Petitioners and the Protestants have proposed a compromise settlement which they ask that this Zoning Commissioner adopt. The terms thereof, which are more fully set forth at the end of this Order, generally provide that Mr. Giorgilli can remain in business until ~~September~~ ^{November 1} 1997. Moreover, the use of the property until that time will be regulated through a number of conditions agreed to by the Petitioners and the Protestants.

In my judgment, resolution of the issues arising from this case in the manner proposed is altogether appropriate. Moreover, it is permissible pursuant to the B.C.Z.R. As to the Petition for Special Exception, same is governed by the standards of Section 502.1 of the B.C.Z.R. In this regard, I hereby find that the Petitioners have satisfied those standards and the burdens attendant thereto. Moreover, pursuant to Section 502.2, I "...shall impose such conditions, restrictions, or regulations as may be deemed necessary and advisable for the protection of surrounding or neighboring properties." That is, I hereby exercise the authority granted within Section 502.2 of the B.C.Z.R., in granting the Petition for Special Exception, to condition such grant upon the restrictions imposed hereinafter as agreed to by the parties. As to the Petition for Variance, I adopt a similar posture. I hereby find as fact that the Petitioners have complied with the provisions of Section 307 of the regulations as construed by the case law. The uniqueness of the property is found owing to its location among mixed uses and residential properties. Strict compliance with the regulations would cause practical difficulty upon the Petition-

ers. Moreover, pursuant to Section 26-127(c) of the Baltimore County Code, I hereby exercise the authority conferred therein to issue the grant of such variance with ... "such conditions or restrictions as determined appropriate by the Zoning Commissioner for the purpose of protecting the health, safety or general welfare of the surrounding community." Again, as with the special exception, relief shall be granted only as conditioned.

Finally, as to the Petition for Special Hearing, same shall be denied. I do not find County Council Bill No. 85-94 to be unconstitutional or illegal. Its provisions are effective on this property; however, the special exception and variance relief shall be granted, as conditioned.

Pursuant to the advertising, posting of the property and public hearing on these Petitions held, and for the reasons set forth above, the relief requested shall be granted in part and denied in part.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this _____ day of May, 1996 that the Petition for Special Exception to permit an after hours club on the subject property, zoned B.R., pursuant to Section 236.4 of the Baltimore County Zoning Regulations (B.C.Z.R.), in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the restrictions set forth hereinafter; and,

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from Section 236.4 of the B.C.Z.R. to permit an after hours club within 83 feet of a residence in lieu of the required distance of 1000 feet, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restrictions:

- 1) The Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the relief granted herein shall be rescinded.

2) Club 101, Inc. is permitted to continue to use the subject property as an after hours club, as defined in County Council Bill No. 85-94, until ~~September 1, 1997~~ ^{9/66 November 1} after which time, the use of the premises by Club 101 as an after hours club shall cease and terminate.

3) Club 101, Inc. and Rampart Partnership shall not lease, sublet, or assign the existing premises to any entity other than Club 101, Inc. for use as an after hours club.

4) The Petitioners and Club 101, Inc. shall not engage in or permit any free alcoholic beverages to be dispensed on the premises.

5) The Petitioners and Club 101, Inc. shall maintain the parking lot clean and free of trash and debris at all times following the use of the premises as an after hours club.

6) Club 101, Inc. may only operate its after hours club from 11:00 PM until 5:00 AM on Thursday, Friday and Saturday evenings, and ending Sunday mornings, and, from 11:00 PM on the night preceeding major holidays until 5:00 AM the morning of said holiday.

7) The Petitioners and Club 101, Inc. shall ensure that the back door to the premises which faces Green Pastures Drive shall remain closed at all times.

8) The Petitioners and Club 101, Inc. shall prohibit their patrons from loitering, gathering, or hanging out to the rear of the subject property which faces Green Pastures Drive. Further, the Applicants shall ensure that their patrons act in an orderly manner and that no debris is thrown or deposited into lawns of neighboring residential properties.

9) The Petitioners and Club 101, Inc. shall cause music levels to comport with the levels as established by the State of Maryland Noise Control Act. Further, any and all base speakers shall be lowered to comply with said Act.

10) The Petitioners and Club 101, Inc. shall ensure that loitering does not occur in the parking lot and that the parking lot is cleared of patrons in a reasonable time following the closing of the subject club.

IT IS FURTHER ORDERED that the Petition for Special Hearing seeking relief as follows: 1) to establish the subject premises as a nonconforming use and to authorize the continued existing uses of the subject

site; 2) to establish that the Petitioner have "vested rights" in the property such that County Council Bill No. 85-94 and the Zoning Regulations contained therein relating to "after hours clubs" may not be enforced against Petitioners and the subject property; 3) to establish that County Council Bill No. 85-94 and the zoning regulations contained therein relating to "after hours clubs" may not be enforced against Petitioners and the subject property as same is unconstitutional as applied against Petitioners and the subject property; and 4) to establish that County Council Bill No. 85-94 and the zoning regulations contained therein relating to "after hours clubs" may not be enforced against Petitioners under the doctrine of estoppel, be and is hereby DENIED.

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

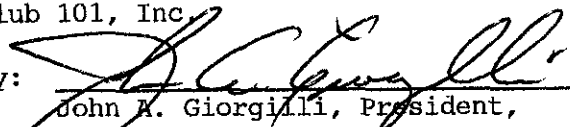
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AGREED TO AS TO CONTENT AND FORM:

Rampart Partnership

By: _____,
General Partner

Club 101, Inc.

By: 
John R. Giorgianni, President,

By: _____
Wayne M. Skinner, 1813 Edgewood Road, Baltimore, Md. 21234
Representing the Towson-Loch Raven Community Council, Inc.

By: _____
Shirley R. Chandler, 8713 Green Pastures Drive, Towson, Md. 21286

By: _____
Harry R. Thorn, 8719 Green Pastures Drive, Towson, Md. 21286

By: _____
Margaret Deviney, 8801 Green Pastures Drive, Towson, Md. 21286

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IN THE MATTER OF	*	BEFORE THE
THE APPLICATION OF		
<u>RAMPART PARTNERSHIP (CLUB 101)</u> *		COUNTY BOARD OF APPEALS
FOR SPECIAL EXCEPTION AND		
VARIANCE ON PROPERTY LOCATED	*	OF
ON THE WEST SIDE ORCHARD TREE		
LANE, 534.42' N OF C/L JOPPA	*	BALTIMORE COUNTY
ROAD (8819 ORCHARD TREE LANE)		
9TH ELECTION DISTRICT	*	CASE NO. 96-60-XA
4TH COUNCILMANIC DISTRICT		

* * * * *

O P I N I O N

This case comes to the Board of Appeals on an appeal by the Petitioner from a decision of the Zoning Commissioner in which Special Hearing, Special Exception, and Variance relief all were denied. A hearing originally set for October 7, 1997 had been postponed at Appellant's request and was reassigned for Thursday, November 20, 1997 at 10:00 a.m. On November 20, 1997, Edward C. Covahey, Jr., Esquire, and Roger Sullivan, Esquire, requested postponement due to Mr. Giorgilli's sudden illness that required emergency treatment at the Greater Baltimore Medical Center. The Board initially granted the postponement until 1:00 p.m., at which time Mr. Covahey produced a verified letter from an emergency room doctor at GMBC confirming Mr. Giorgilli's condition and that he was still under medical observation. The matter was therefore set for hearing for Friday, December 12, 1997 at 9:00 a.m.

On Friday, December 12, 1997, a public hearing was begun at 9:45 a.m. Mr. Covahey and Mr. Sullivan again appeared on behalf of the Petitioner. Ms. West represented Baltimore County, and Ms. Demilio represented the Office of People's Counsel for Baltimore County. Preliminarily, Mr. Covahey moved for sequestration. Ms. West and Ms. Demilio objected because (1) the hearing was open to the public; and (2) the rules of the Board do not cite any specific

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authority for sequestration. The Board ultimately ruled that all persons who were to testify would be sequestered, except for those parties identified in the "notice of proceeding" (Mr. Giorgilli, Wayne Skinner, Shirley Chandler, and one representative of the Baltimore County Police Department).

Mr. Covahey then moved to dismiss the filed petitions as to the special exception request and the variance request. Ms. Demilio and Ms. West agreed to the motion provided that the appeals filed were dismissed with prejudice, to which Mr. Covahey agreed.

Terry Hastings, a licensed land surveyor with 30 years' experience, was offered as the first witness for the Petitioner. He testified that he had prepared the site plan for Club 101 and the plat. He described the location as being about 1,000 ft. west of Loch Raven Boulevard, 400 ft. back from Joppa Road, located in a small commercial strip mall zoned B.R., east of the Orchard Inn. He visited the site on several occasions in 1995 and 1996, and was familiar with the general locale. There were a number of small residences nearby, with a chain-link fence going along Green Pasture Drive with considerable tree and vegetative growth. He identified the center of the club as consisting of a dance floor, roughly 60 ft. by 60 ft., surrounded by a carpeted area and a small lounge area, with tables and chairs scattered in the format usually associated with a wedding reception. A bar was visible serving non-alcoholic beverages and an area set aside for beverages brought in by the club's patrons, with a shelf under the bar and various ice chests. Also visible was a raised platform for a D.J. or a

band.

He described the building as roughly 20 years old and in relatively good condition, similar to other nearby commercial buildings. A dance studio also co-occupied the building during the daylight hours. There were both men's and ladies' rest rooms. In proximity was the Merit Athletic Club, a funeral home (with residents living above), and some additional residences.

George M. Harvey then testified as an adverse witness. A captain in the Baltimore County Police Department, with 22 years on the force, he was presently commander of Precinct 6, having served in the Towson area since May 1996. He testified to visiting the site on or about May 20, 1996 and also during the Fall/Winter of 1996 at which time the club had undergone a "search and seizure" pursuant to a search warrant. The search took place around 3:30 a.m. by uniformed officers. Captain Harvey related that the club was very crowded, with D.J. music, but the music was not particularly loud. No one was dancing, with most of the patrons sitting around various tables. Captain Harvey indicated that, to the best of his knowledge, the club was still in operation.

Mr. Kevin Connor, a Baltimore County employee in the Office of Community Affairs, also testified as an adverse witness. He identified his previous job as a Code Enforcement Officer for the County for 5 or 6 years, during which time he investigated complaints. He testified to his familiarity with the Baltimore County Zoning Regulations as well as the club's premises. He also expressed familiarity with the Kaos operation, a night club, and

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the Manhattan Club. He testified he had made two or three visits to Club 101 when the club was undergoing renovations, and described the club as a commercial establishment with a dance floor. The facility was not particularly used during the daytime, but after midnight was a very busy operation. During a visit, he observed music playing, not unusually loud, a parquet dance floor, a platform for a D.J. or band, with some patrons bringing their own liquor and others getting liquor from the customers' storage area in the club. He observed parties drinking and others socializing. There was also a pool table area, tables set up around the dance area similar to that used for wedding banquets and low level lighting. He also discussed his personal visits to the Manhattan and Kaos clubs. They were well-lit, slightly dimmed with the dance area available and patrons generally socializing.

He also described the operations of Champion Billiards in Perring Plaza, where alcohol is served with purchase by their patrons. He characterized Club 101 as a "bring your own booze" operation. He stated he was familiar with Martin's West, and it was not a night club. He indicated that most of the Club 101 customers were aware that the "action" started after midnight. His last visit occurred at 2:30 a.m. and additional customers could have been accommodated at that time. Mr. Connor stated that Kaos has several bars and a liquor license. He indicated that Club 101 did not have a liquor license.

Mr. Giorgilli testified at length concerning his involvement with Club 101. After offering information as to his educational

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and military background, he testified to his work experience, principally 5 years as general manager for Hammerjacks in Baltimore, a position he was required to vacate by reason of his having been "run over" by a drunk driver. He also had performed consulting services for operations similar in nature to Hammerjacks. He went into business for himself as president and majority stockholder around May 1993 when he opened the Club 101, with hours of operation on Friday, Saturday and Sunday from 11:00 p.m. to 5:00 a.m., and an entry fee of \$4.00 to \$8.00, depending on the time of admission. Prior thereto, he stated he had performed substantial research on such clubs, spending 3 days checking out various County departments and their regulations in Towson, hiring the law firm of Boozer & Covahey to assist with the legal requirements, and inquiring of a number of County officials concerning activities of establishments which did not sell liquor and customers only paid a cover charge for entry, bringing in their own beer /liquor supply. He did not seek a liquor license due to time restrictions; if liquor was not sold, he could stay open all night at that point in time.

Cards were issued to patrons with the date stamped thereon. Patrons brought in their own beer and liquor which the club stored for them as a convenience. The patrons could watch television, dance, play pool, or sit and socialize with one another. Mr. Giorgilli stated that he always went out of his way to accommodate the County with their requests but eventually felt Baltimore County was not favorably disposed to after-hours club operations. In

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August 1996, a letter was served by Joe Miller, special police observations, indicating such operations were now illegal. Mr. Giorgilli stated counsel informed him he was not in violation inasmuch as the newly enacted law applied only to liquor licenses. In March 1997, a new bill was passed by the Maryland General Assembly that significantly changed the manner in which he could conduct business, and he was given 90 days in which to change his format. Mr. Giorgilli stated he was then open from 9:00 p.m. to 4:00 a.m, with no alcohol available to patrons after 2:00 a.m. Under the new arrangements, 10:00 p.m. to 1:00 a.m. were his busiest times on Thursday, Friday and Saturday, but he was trying to open on Sunday.

He now describes the facility as an under-21 dance club, accompanied by a name change to "Liquids" in March 1997; and the pool tables in the club were now licensed. A new sign was erected on April 5, 1997. Under the new arrangement, patrons could continue to dance, with ice and setups being provided along with soft drinks. The club had low-level lighting, but no stage, with music played fairly loud since the younger crowd favored that volume.

Mr. Giorgilli testified he was familiar with the Code and zoning regulations and believed he was operating a valid night club that did not require a liquor license. He identified his operation as similar in nature to others, such as Champions (formerly Club Venus) and Maxwell's. Champions had billiards with a liquor license and was open 24 hours a day, serving liquor from 6:00 a.m. until 2:00 a.m. He acknowledged spending about \$150,000.00 for the

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original facility. He described the physical location of the club, noting that nearby homes were hardly visible with the chain-link fence and vegetation obscuring the properties. He stated that Mr. Wayne Skinner, one of the protestants, never actually visited the site at night; and he met Mr. Connor when he inspected the building, and that a use and occupancy license was still valid and in effect. His present lease runs from April 1, 1997 through March 30, 2000. However, if he were shut down for any legal reason, he could be released from the lease. The lease covered the entire building and he did have permission to sub-lease the property.

On cross-examination by Ms. Demilio, Mr. Giorgilli stated that in the original operation of his club he wanted to do something different, that the dance floor was always open, and only rarely was a live band present, but that most of the music was recorded and played by disc jockey. The music was a big draw for the bulk of his patrons, who were 18 years of age or slightly older. Everyone coming into the club was carded and absolutely no liquor was provided after 2:00 a.m. Mr. Giorgilli stated that this was his only occupation, that he had taken over the dance studio when the original owner's business had failed, but had contracted that operation out to a Russian immigrant and no longer had any active connection with the dance operation. Between March and April 1997, he opined that he had invested \$75,000.00 to re-do the facility, including the dance floor area, installing carpet, repainting and generally improving the heating and air conditioning systems.

Mr. Giorgilli again outlined the details known to him

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concerning a private party held on August 5, 1996, an event described as a surprise party to honor him on his birthday which was on August 6, 1996. He stated that only 100 people had been invited; however, approximately 400 to 500 people actually attended the party with liquor served until 2:00 a.m. The liquor license had been secured by the caterer.

He also described a "Cannonball Run" (road rally race from Baltimore to Ocean City); organized and run without his authorization and permission. He stated that his telephone number and the club material were inserted in the advertising matter without his permission and consent. He attempted in every way to cooperate with police authorities after he became aware of the activity. He opined that the entire event was a large nuisance with too much attention which involved considerable police attention and monitoring over the Memorial Day weekend.

He stated that he does engage security services on an "ad hoc" basis but that they are not always present. He testified that many patrons come from the Aberdeen Proving Grounds, and they must show their identification, and he is normally at the front door visually observing patrons entering the facility. He stated that he was aware of community concerns, and that he had always attempted to cooperate with the local community leaders, but the community was uncompromising and wanted everything "100 percent their way." He acknowledged that the Zoning Commissioner's opinion of March 2, 1995 identified the use of the property as an "after-hours club," and that he had not appealed that decision.

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Due to the emergency legislation enacted in Annapolis, Mr. Giorgilli changed the after-hours club to a night club format, with hours from 9:00 p.m. to 5:00 a.m. All liquor service stopped at 2:00 a.m.

Mr. John K. Mooney, 9279 Throgmorton Road, Baltimore, MD 21234, testified on behalf of the Petitioner. He is currently the manager of the Silver Diner on Pulaski Highway. Prior to that he was service manager for Champion Billiards for about a year and a half, a club in proximity to the Home Depot in a commercial area behind the Perring Shopping Center. There were no residences nearby except for those across the highway, and the club had always had a liquor license. He stated that the closest residence was about 150 feet away from the club. He described his experience at Champion's, and that it was essentially a brewery /night club. At 8:00 p.m., management removed the tables, had a D.J. present, and sold liquor until 2:00 a.m., with some food sold and dancing after 2:00 a.m. No liquor was served after 2:00 a.m. Champion's was open 24 hours a day; there was a dance floor, clearly defined low lighting, fast upbeat music and Champion's attempted to create a night club almost similar to Tully's. After 12:00 a.m. only limited food was sold.

Mr. Henry Rowland Thomas first testified for the Protestants. He stated he was 76 years old, had been retired for 15 to 20 years, and lived at 8719 Green Pasture Drive. He testified he could both hear and see the club activities from his house. The whole area essentially had changed to commercial usage over the years. He

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identified his letter to Wayne Skinner of the Towson-Loch Raven Community Association in which he complained about the operation of the club, the noise, early morning awakenings, cars racing, motors, extremely foul language, along with lovers' quarrels, and frequent urination on nearby properties. He stated he continually had problems with the club operations, in particular, crowds mulling in the early morning hours. He testified these types of problems, particularly between 2:30 a.m. and 4:00 a.m., had not existed before the club came into existence, and was quite certain that it had to be persons from the club since the skating rink closed before 2:30 a.m., and no other high-volume businesses are open in the area. He indicated the problems recently had been minimal since the Police frequently had been patrolling the area.

Ms. Penelope M. Johnson also testified. She has been working for the Community Conservation Office since July 1995 and her main focus is to coordinate community conservation activities, seeking to attract young families, promote home ownership and improve the quality of life in community conservation areas (alley reconstruction, housing services, SELP loans, and grants and methods to improve stability in the older Baltimore County neighborhoods). Based on her experience in conservation efforts, the presence of after-club activities is a negative factor for individuals contemplating a move into the general area.

Mrs. Michaela Thorne of 8719 Green Pastures Drive also testified and proffered the testimony of her husband. She was familiar with the Liquids club and stated that the excessive noise

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had to come from this particular club, since this was the only place open in the early morning hours. She works part-time at an insurance company two days a week, and testified that she had called the Police frequently because of the noise and disturbances. Since she and her husband do not have central air conditioning, it is necessary for them to open their windows and she found the loud noise very disturbing, although police efforts had produced some results during the summer of 1997. Her primary concerns were excessive noise, racing motors, car radios blasting, and numerous fights among patrons. She indicated that she had been confronted one time between the hours of 3:00 a.m. and 4:00 a.m. and called the police. She and her husband had not had any difficulties before the club opened 4 or 5 years ago, and they had never had any trouble with the existing Kaos night club.

Ms. Shirley Chandler, also of 8713 Green Pastures Drive, a 27-1/2 year resident of the area, retired for 5-1/2 years and 61 years of age, testified on behalf of the Protestants. She was familiar with the club and its activities and had formerly walked on many occasions at 5:00 in the morning for exercise and therapy, and frequently encountered men conducting themselves in a disorderly manner. She stated no problems existed before the club had opened; and it could not come from Kaos night club, since they were not open that late into the morning hours.

She stated that the club has been a constant annoyance over a period of 4 years, and while toned down, disturbances still continued. She has discontinued her morning walks since

encountering men under the influence of liquor and stated that the music she heard was not car music, but originated from Mr. Giorgilli's establishment and these conditions interfered with the peaceful enjoyment of her property.

Captain George Harvey, Commanding Officer of the Towson Police Precinct, again testified as an expert in law enforcement, identifying his awareness of the history of the facility in question by way of documentation in the files of the Police Department. These records were accepted as entries made by the prior commanding officer and also those of Captain Harvey in the ordinary course of business. He stated his observation was the operation was not a night club as defined by the Baltimore County Zoning Regulations with alcohol actually being sold and served, intolerable rest room conditions and general operations not conducted by a night club operation. He recited violations of having no permits for various machines on the club's premises. liquor bottles with the club logo on them, three pool tables not stamped and legitimized, and improper conditions in the back of the bar. He described the unsanitary conditions of the male and female rest rooms. He recited a search and seizure operation that produced money from a bucket. That same search and seizure operation involved five police officers arresting some of the patrons for public urination and narcotic usage. He recited that, since his tenure, well over 400 calls had been received and that the prior three Towson commanders also had significant problems with Mr. Giorgilli's operation.

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He testified to conversations with Mr. Giorgilli in July or August 1996, at which time Mr. Giorgilli alleged harassment, a charge denied by the police. Mr. Giorgilli was informed he was not immune from complying with the Baltimore County ordinance. At that time, Mr. Giorgilli stated that, when his lease was up around September 1997, he would attempt to relocate. He was basically looking for another type of "Hammerjacks" club, but that without liquor he essentially had no business. The witness related his experience with the "Cannonball Run" and his belief it was a decision of the Club 101, and that a portion of the Run had actually occurred, citing two vehicles stopped on Route 50 on the Eastern Shore of Maryland for excessive speeding, wherein the drivers acknowledged that they were engaged in the "Run" from Baltimore.

Captain Harvey related how the activities of the club affected his abilities to provide adequate police service in his area of responsibility with resources required to handle the multitude of problems, both inside and outside of the club. His personnel consisted in its entirety of 70 cruisers, 3 supervisors, and 2 desk personnel. When problems occurred, he was required to pull resources from other precincts and substitute officers from both the Parkville and Garrison precincts, and that was quite frequent (every Saturday night for the past 5 to 6 months). Statistics from his November 17 and November 18, 1997 reports were related to the Board concerning various operations and arrests made on January 11, 1998 when two police undercover personnel were sent to the club and

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reported that drinks were being sold to underage individuals, including the undercover agents, and it was not unusual to have liquor served to minors. This was confirmed by the other undercover personnel. On January 18, 1998, he stated three operatives also paid their entrance fee, and while looking for violations, observed "white and red cups." The red cups were purchased with the dispensing of liquor sold by the bar; and this occurred after 2:00 a.m. and before 5:00 a.m. He stated that regular patrons had a code name for liquor to be purchased ("mattress"; "black X") and tips were requested by the attending bartender. He indicated that the establishment had no trader's license for soda or food.

On cross-examination by Ms. Demilio, the Captain related other incidents called in by a number of citizens involving noise, disturbances and public urination. He stated that other businesses were reluctant to open in the area because of the club's activity and that there was always a constant flow of complaints coming in to the Towson Precinct by virtue of the club's operation, citing the noise, profanity and general loitering. Captain Harvey also indicated that other night clubs in Baltimore County had cooperated most fully with his division in curtailing activities when requested and had assisted in their various inspections, but this was not the case with Mr. Giorgilli's operation. Captain Harvey described conditions on January 17 and January 18, 1998 at which time several hundred people were on the lot, several assaults took place, and the police had to employ mace to break up the civil

disturbance. One car slammed into another, and liquor fell out of the car. Mr. Giorgilli has always indicated that what occurs outside the club is not his problem. Captain Harvey again reiterated that the activities of the club tend to disturb the peace of the neighborhood, and operation of other businesses in the general area.

On cross-examination by Mr. Covahey, Captain Harvey indicated that Skateland, a roller skating facility, was open between 8:00 p.m. and 12:30 a.m., and that Kaos was also a nearby night club which had a bar and dancing facilities. He also indicated officers had been required to contain disturbances in the Liquids parking lot. While some of the incidents could have been from the other clubs, he felt confident that the majority of the problems came from Mr. Giorgilli's facility. Captain Harvey went on to review his records and documentation relative to noise complaints which Mr. Covahey attempted to create doubts as to specifics on the club's activities. Captain Harvey indicated that he had testified in Annapolis relative to the "Bottle club law" and that it was now illegal for any after-hours club to have liquor being given to patrons after 2:00 a.m. Again Captain Harvey stated that there had been no other establishment in Towson that has caused the significant and serious problems that this operation had, and when the club was opened, additional police personnel had to be assigned in order to maintain control.

On re-direct by Ms. West, the Captain related his personal knowledge of at least 40 disturbances in a number of specific order

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and identified them as specific to the club in question, and the code identifying each one. He explained the system of how calls are received, and a code assigned to each call. He stated that while some security is employed by Mr. Giorgilli, these personnel do not work or consult with his office. Captain Harvey also described the 911 calls on the exhibit sheet (Protestants' Exhibit No. 10) and explained that Saturday night is always the most problem area.

Mr. Jeffrey Long testified on behalf of the Protestants. He is with the Office of Planning and has extensive background in the zoning /planning process with Baltimore County with both field inspection experience and in-office cycle zone planning. He was accepted by counsel as an expert in the zoning regulations of Baltimore County. Mr. Long explained that a Club 101 was permitted in certain zones; that the club was in a B.R. zone by special exception (Section 502.1). He stated that under the new regulations there must be a 1,000-foot distance between schools, and before the 502.1 zoning regulation comes into play, there must be compliance with the distance requirements; the club had to relocate. He stated that there were areas in Baltimore County that would meet this requirement. The recently passed legislation was not singular to Mr. Giorgilli's operation but applied universally to all such after-hours clubs. Mr. Long acknowledged that it would be difficult to operate such a club in the Towson area because of the restrictions; but that the restrictions imposed were reasonable and that the County Council was correct in imposing such

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restrictions because of the impact such operations cause upon the surrounding community, citing residential concerns and the intense efforts on the part of Baltimore County relating to community conservation efforts in the area. All existing clubs need to apply for special exception where requested and the time limitations for such applications. He indicated that the one-year time limitation was not unreasonable, and with the present property located in a B.R. zone, which is the most permissive zone, there was no substantive reason why the premises could not easily be rented or sold by the present owners. Mr. Long generally described the area and various current usages in the immediate vicinity of the facility. Mr. Long opined that the current facility was very definitely an after-hours club.

With Petitioner's voluntary withdrawal with prejudice of its special exception to operate an after-hours club at the subject location and dismissal of its Petition for Variance, the only issue remaining for the Board to consider and decide is the request for special hearing to determine the Petitioner's current use at the site.

Petitioner's position is that the present use is one of a nightclub. Protestants, People's Counsel, and counsel for Baltimore County contend that the current use is one of an "after-hours" club; and, as such, is subject to Bill No. 85-94, which amended the Baltimore County regulations (BCZR) and provided a definition of an after-hours club as:

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Commercial establishment whose principal business is the provision of live or recorded entertainment, with or without a dance floor, which is open primarily between 11:00 P.M. and 4:00 A.M. and which does not have a Baltimore County liquor license. An after-hours club is not a night club as defined in the zoning regulations or the building code of Baltimore County.

The County Council by legislation further provided that after-hours clubs were permitted in a B.R. (Business Roadside) zone only by special exception. Additionally, the ordinance specified that any after-hours club situated in a B.R. zone had to be located at least 1,000 feet from any structure employed as residentially used. A night club as defined by Section 101 is:

A tavern or other commercial establishment which provides live or recorded entertainment, with or without a dance floor, and which is categorized as a nightclub by the building code of Baltimore County. (Bill No. 110, 1993) (Emphasis added.)

The Building Code identifies nightclubs as entities within "Use Group A-2 structures." This use group shall include all buildings and places of public assembly, without the theatrical stage accessories designed for occupancy as a dance hall, nightclubs, and for similar purposes, including all rooms, lobbies, and other spaces connected thereto with a common means of egress and entrances.

"Occupancies included in Use Group A-2 are identified in this section. Use Group A includes occupancies in which people congregate in high densities for social entertainment such as drinking and dancing (e.g., nightclubs, dance halls, cabarets, etc.). The uniqueness of these occupancies is characterized by the following:

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- ~ No theatrical stage accessories other than a raised platform;
- ~ Low lighting levels;
- ~ Entertainment by a live band or recorded music generating above-normal sound levels;
- ~ Later-than-average operating hours;
- ~ Tables and seating arranged or positioned so as to create ill-defined aisles;
- ~ A specific area designated for dancing;
- ~ Service facilities primarily for alcoholic beverages with limited food service; and
- ~ High occupant load density.

The fire records are very clear in identifying that the characteristics listed above often cause a delayed awareness of a fire situation and confuse the appropriate response, resulting in an increased egress time and sometimes panic. Together, these factors may result in extensive life and property losses. These characteristics are only advisory in determining if Use Group A-2 is the appropriate classification. There will always be additional characteristics that are unique to a project, and these must also be taken into consideration when a classification is made."

Obviously, if, as the Petitioner contends, the Petitioner's present location is a nightclub, it cannot be, by definition, simultaneously considered as an "after-hours club." Conversely, if it is an after-hours club, it cannot remain in its present location because of legislative area location limitations; and is required to relocate as provided by statute. To arrive at a conclusion the Board is required to examine a number of issues raised by the

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litigants during the course of the hearing, and the various briefs submitted by the parties.

The Question of Res Judicata and Collateral Estoppel

In early 1995, a hearing was held before the Zoning Commissioner of Baltimore County. Petitioners and Baltimore County were active parties, and the essential issue was the type of use employed at the subject site. On March 2, 1995, the Zoning Commissioner issued a written decision. No appeal was taken by any party to the hearing.

The Commissioner, after hearing testimony and evidence, concluded that the subject property was being used as an "after-hours club" and, if so, whether said use could continue without the benefit of a special exception and variance to allow continuance within 1,000 feet of a residentially-used dwelling. The findings of the Zoning Commissioner are final and binding unless appealed. To the extent that no appeal was recorded in a timely fashion, then that Order is final and stands today. At that point in time, clearly, the subject location was an after-hours club and not a nightclub. The appeal concerning the present hearing was one from the Zoning Commissioner's Order under date of November 6, 1996, in which the subject property use was not at issue, but rather one involving special exception, variance and special hearing. The Zoning Commissioner denied the special exception request, variance and special hearing.

The Board agrees with arguments presented by People's Counsel and Counsel for Baltimore County that the legal principles of res

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judicata and collateral estoppel apply as to the property use issue when the decision was rendered by the Zoning Commissioner. The principles of res judicata and collateral estoppel have been clearly stated in many cases decided by the Maryland Courts. In Esslinger v. Baltimore City, 95 Md.App. 607 (1993), 622 A.2d 774, the Court stated that under Maryland law, the requirements of res judicata or claim preclusion are:

- 1) That the parties in the present litigation are the same or in privity with the parties to the earlier dispute;
- 2) That the claim presented in the current action is identical to the one determined in the prior adjudication; and
- 3) That there was a valid final judgement on the merits.

In Cassidy v. Board of Education, 316 Md. 50, 57, 557 A.2d 227 (1989), the Court also held that "if all three elements are present then the final judgement in the first claim bars the entire second claim." It cannot be disputed that the first, second and third elements of the property use issue of the present action are identical to the prior action. The same Petitioner is present, the claim is one of property usage, and a final judgement was issued on which no appeal was filed. Similarly, the case of Batson v. Sheflett, 325 Md. 684 (1992) also supports the principle of res judicata and collateral estoppel applying in the instant matter. Batson has defined collateral estopped and res judicata when a proceeding between parties involves the same cause of action as in previous proceedings between the same parties, the principle of res judicata applies in all matters actually litigated or that could have been litigated are conclusive in the subsequent proceeding.

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If a proceeding between parties does not involve the same cause of action as a previous proceeding between the same parties, the principle of collateral estoppel applies and only those facts or issues actually litigated in the previous action are conclusive in the subsequent proceeding.

As was stated in the brief submitted by People's Counsel, the Batson court recognized the three-pronged test enunciated in a federal case and later upheld by the Supreme Court:

Whether an administrative agency's declaration would be given preclusive effect hinges on three factors: (1) whether the [agency] was acting in a judicial capacity; (2) whether the issue presented to the district court was actually litigated before the [agency]; and (3) whether its resolution was necessary to the [agency's] decision.
Id. 701

In this matter there is no question that the Zoning Commissioner's hearing that led to the March 2nd order does satisfy all three conditions. The Order is in itself termed a "Findings of Fact and Conclusions of Law"; the language in the Zoning Commissioner's decision describes the nature of the proceeding and the evidence presented, and additionally, it is being applied to another administrative hearing. The Petitioner was satisfied with the March 2, 1995 decision and, again, no appeal was made to the Board of Appeals for Baltimore County.

Is the Current Use of the Subject Property
an "After-Hours Club" or Nightclub?

While the Zoning Commissioner held that the Club 101 (now known as "Liquids") was an "after-hours club," he denied any further relief holding that the Petition for Variance was premature since a sunset law provision under the newly-passed legislation

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permitted a one-year period to comply with this legislation. Since Bill No. 85-94 became effective on August 8, 1994, the Zoning Commissioner held that the Petitioner would have until August 9, 1995 to comply with the requirement that any after-hours club located in the B.R. zone be situated at least 1,000 feet away from any used residential structure. In August 1995, a few months after the Zoning Commissioner's decision, the Petitioner filed their Petition for Special Exception and Variance on behalf of Club 101. A hearing date of September 19, 1995 was continued at the Petitioner's request. In October of 1995, all parties agreed to continue the matter since new issues had been raised by the Petitioners since the August 1995 original petition filing.

The Zoning Commissioner held his hearing on April 12, 1996 as to the merits of the case, but the decision was withheld by the Commissioner while the Petitioner and the community attempted to work out a negotiated settlement which ultimately failed. On November 6, 1996, the Zoning Commissioner denied relief and refused to grant the Petition for Special Hearing, Special Exception and Variance based on the testimony and evidence received on the April 12, 1996 hearing date.

Hearings on the appeal before this Board began on December 12, 1997, encompassing three days, and on February 13, 1998 was concluded. The Petitioner now contends that the current use of the subject property is one of a night club and the "after-hours" legislation cannot be enforced against the new facility known as "Liquids." Petitioner contends that with the passage of Article

2B, Section 20-101 (known as the "Bottle Bill"), the Petitioner began to change the operation of Club 101 in that the Petitioner required all alcohol to be removed by patrons from the site at 2:00 a.m. Additionally, Mr. Giorgilli began to change the hours of operation and format, opening earlier in the evening and closing earlier in the a.m. hours. He also entered into a new commercial lease in March of 1997 which specifies that the Petitioner and the landlord were attempting to change the operation of the club to a night club format. Petitioner contends that substantial funds were expended to "change over" the essence of the site. The name "Liquids" was advertised to attract the younger /non-drinking individuals; his hours changed from 9:00 p.m. to 3:00 a.m. with the largest crowd being in attendance between the hours of 10:00 p.m. and 1:00 a.m.

Petitioner contends also that the present facility clearly meets the definition of a night club because:

1. It is a commercial establishment;
2. Recorded entertainment is provided for its patrons;
3. A dance floor is present; and
4. The site should be categorized as a night club by the Baltimore County Code in that the facility has no theatrical stage access, low level lighting, later than average operating hours, a dance floor area, ill-defined aisles, and food service of a limited nature.

Because the subject site is a night club by definition, Petitioners allege that it cannot be classified also as an after-hours club. Conversely, Protestants, People's Counsel and Counsel for Baltimore County contend that the present facility has not

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changed from the time of the Zoning Commissioner's Order, and the site continues to function as an after-hours club. Mr. Giorgilli testified that the current hours of operation are from 9:00 p.m. to 3:00 a.m.; and, yet, on cross-examination, he could not produce any flyers or advertisements significantly promoting the change. On County Exhibit No. 1, a 5:00 a.m. closing time is noted. Captain Harvey, on p. 84 of the Transcript, notes that in January 1998 undercover operatives were able to purchase three to four drinks between the hours of 2:00 a.m. and 5:00 a.m. Protestants allege that the Petitioner continues to operate in the same manner presently as during the March 1995 Zoning Commissioner's decision, and the Board considers it important to note that Mr. Giorgilli alleges that he essentially wanted a facility that catered to the late-night crowd for socializing and dancing where alcohol was not promoted is, in fact, contradicted by the testimony of a number of witnesses.

Protestants allege, and the Board concurs, that the Petitioner's testimony before the Board, on p. 86 to p. 88 of the Transcript, parallels the testimony of Mr. Giorgilli and recited in the Zoning Commissioner's Order of March 2, 1995. The Board has given considerable weight to the testimony of Kevin Connor, a former Baltimore County Zoning Inspector who testified at the Board's hearing that it was his opinion that the present operation of "Liquids" met the definition of an after-hours club and not that of a night club, and also the testimony of Jeffrey Long, with the Baltimore County Planning Office that all current night clubs in

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Baltimore County do have a liquor license and close at 2:00 a.m. by regulation. Both he and Mr. Connor agreed that, while many facilities in Baltimore County had features such as low lighting, tables and chairs set up in varying patterns, dance floors, and music (such as banquet halls, community centers, and social halls, as well as the American Legion, Knights of Columbus, Moose, etc.), and share the common features of a night club, they are in fact not night clubs. While the definition of a "night club" does not require the presence of a liquor license, as Mr. Long testified, all such facilities in Baltimore County do possess a liquor license, and by regulation close at 2:00 a.m.

Despite the testimony of Mr. Giorgilli, the Board was not convinced by the weight of the testimony and evidence that the present operation of the subject site was that of a nightclub, but rather a facility which encouraged patrons to bring their own liquor, and based on the testimony of Captain Harvey, an establishment that has constantly been a source of problem areas for the police authority because of illegal liquor sales and catering to individuals who find the entertainment factor secondary to the availability of liquor. Captain Harvey's testimony was sharp, clear and convincing as to operatives being able to purchase alcoholic beverages after 2:00 a.m., up to 5:00 a.m.; various incidents involving disturbances on the parking lot, confirmed by local residents, along with racing motors, loud radio music, profanity, public urination, inordinate trash being strewn about, and while Counsel for Petitioner attempted to discredit Captain

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Harvey and local residents by suggesting that the subject facility may not have been the place of origin for such disturbances, the weight of testimony and evidence was most convincing for the Board that the problem areas stem from the Petitioner's operation and not other nearby businesses.

Again, significantly, Mr. Giorgilli stated that he had been cautioned by Captain Harvey to bring his establishment into compliance with State and local liquor laws, Mr. Giorgilli stated "without alcohol, I have no business" (T. p. 67), clearly indicates that the principal business of the facility is the alcohol factor and not entertainment. While the Appellant also stated that \$75,000.00 had been expended in the Spring of 1997 to change the club's format, accompanied by carpet change, refinishing of the dance floor, etc., no formal documentary evidence was submitted to support that claim. The Building Code is quite specific in reference to the definition of a night club, and the Appellant makes reference to same in argument to support the proposition that the current usage is that of a night club; and, yet, the Board, in finding that no real significant change occurred during the period following the 1995 Zoning Commissioner's Order, recognizes that various groupings of facilities are detailed for purposes of public health, safety and welfare -- with particular emphasis on fire safety hazards and recites fire records as identifying characteristics that cause delayed awareness of a fire situation, confused response time and increased egress time, and frequent panic. That definition goes on to state that "there will always be

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characteristics that are unique to a project; and these must be taken into consideration when a classification is made." Significantly, also the Building Code recites that "the provisions of this chapter shall not be deemed to nullify any provision of the zoning law or any other statute of the jurisdiction pertaining to the location or occupancy of buildings, except as it is specifically required by the provisions of the Code. Local zoning ordinances or other laws or statutes are not waived or set aside by the Code." (BOCA National Building Code, 1993, Commentary, Volume I)

The Board concludes from the weight of the evidence that the Appellant has not met his burden of establishing significant change in the operation of his establishment from an after-hours club to that of a night club since the time of the Zoning Commissioner's original findings; and is accordingly bound by, and subject to, the provisions of Bill 85-94 which amended the Baltimore County Zoning Regulations to provide that an after-hours club be restricted to certain zones by special exception.

Having determined that the subject site is an after-hours club,
can the legislation enacted by Bill 85-94 be enforce as to
the Petitioner's Operation?

Petitioner argues that, if the Board determines that the current usage is determined to be one of an after-hours club, enforcement is estopped by reason of the Petitioner having acquired constitutionally vested zoning rights; that is, if the Petitioner has in good faith made a substantial change in the nature of the business, or has incurred substantial obligations, then the

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governmental authority cannot deny continued use of the property. There is no question that, in Maryland, "constitutional issues, which include the constitutionality of applying statutes, can and very often must be raised and initially decided in the statutorily prescribed administrative proceedings." Insurance Commissioner v. Equitable, 339 Md. 596, 617 [1995]. Indeed, the issue can be decided within an administrative proceeding, and, in fact, the party must proceed administratively before the construction of the statute can be determined. As it was recited in POC v. the City of Baltimore, 241 Md. 303, "In this state, however, we regard it as settled law on principle and authority, that, absent most unusual circumstances,...the Court will not take jurisdiction, even though a constitutional issue is raised, until the administrative remedy is exhausted." In the instant matter, Petitioner alleges that he expended over \$150,000.00 in initial expenses to commence operation as Club 101, and an additional \$75,000.00 was also expended on renovations of carpet and dance floors. Mr. Giorgilli stated that all of these expenses were made in reliance on the use and occupancy permit issued for the site and on his ability to continue using the subject premises as an after-hours club, at that point in time. Approximately \$700.00 was also expended in advertising for the operation, based on the premise that he could be allowed to remain at the site in addition to a penalty clause of \$30,000.00 if the subject property could not be used as a night club.

As People's Counsel points out in their Brief, it is a significant factor that the Petitioner does not question the

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authority of the County Council to enact the legislation of Bill No. 85-94, which was passed on June 20, 1994 and became effective on August 8, 1994, but rather that the operation vested rights due to the substantial expenditures along with substantial building alterations, and that he should be permitted to carry on the pre-existing business, and also that the period to conform to the requirements is unreasonable. It is not the statute that is under attack, but the application to the Petitioner's location at the Orchard Tree site.

The Petitioner voluntarily dismissed the Petitions for Special Exception and Variance. The remaining special hearing petition states that "(3) established that Baltimore County Bill 85-94 and the zoning regulations contained therein relating to 'after-hours clubs' may not be enforced." In this case, Petitioner is not attacking the power or authority of the legislative body to adopt the legislation from which relief is sought, but, again, only its application. Therefore, the Petitioner must exhaust all of his administrative remedies which the Board concludes that the Petitioner has not done. Significantly, the Petitioner did not appeal the Zoning Commissioner's Order of March 2, 1995. Additionally, the Petitioner withdrew the Petition for Special Exception and Petition for Variance, and by withdrawing these and not providing the Board with the administrative authority to determine the applicability of granting relief, the Board is of the conclusion that the special hearing petition is no substitute for the legal requirement to exhaust all administrative remedies.

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We concur with the Protestants' contention that the Petitioner cannot withdraw the zoning petitions and adjudicate the constitutionality of the regulatory application, which he elected not to do. Additionally, the Board concludes that the Petitioner has not been deprived of any "vested rights" caused by the passage of Bill No. 85-94, nor did the Petitioner acquire real property rights that can be taken away by government regulation. Bill No. 85-94 created the right to operate as an after-hours club. Prior to that legislation, Petitioner had no rights as to such an operation.

The Board further concludes that the Petitioner's after-hours club cannot continue as a nonconforming use because the Petitioner's facility was never a "legal use" in the first instance. Under Section 104 of the Baltimore County Zoning Regulations, a nonconforming use is defined as a "legal use that does not conform to a use regulation for the zone in which it is located or to a special regulation applicable to such a use. A specifically named use described by the adjective 'nonconforming' is a nonconforming use." It was Bill No. 85-94 that created the right to operate an after-hours club in Baltimore County. When the Club 101 opened in May 1993, there was no zoning authority permitting such a use. The Maryland Court of Appeals has stated on many occasions that only those uses specifically provided for in the zoning regulations are permitted. If the use is not specifically included in the uses permitted by right or special exception, it is prohibited Kowalski v. Lamar, 25 Md. App. 493

(1975).

Since the only lawful authority to operate as an after-hours club originates from Bill No. 84-95, the Petitioner is required to comply with its provisions. That opportunity may have been available via the originally requested Petition for Special Exception which was withdrawn at the commencement of the hearing by the Petitioner. The Board also rejects the Petitioner's arguments as they apply to "vested rights." Here again Petitioner's arguments fail because there was no after-hours club permitted prior to the adoption of Bill No. 85-94. Therefore, Petitioner could not have been operating lawfully under that zoning; and finally the legislation as enacted did not forbid or prohibit a continuation of same. Bill No. 85-94 created the right of the Petitioner to operate an after-hours club, and in passing the legislation, the County Council sought to curtail the location of such facilities by limiting location in proximity to residentially used properties. It is obvious that the location of such clubs does possess adverse effects upon residential areas and the stability of neighborhoods. This was detailed in considerable length by the testimony of Captain Harvey, Penelope Johnson of the Community Conservation department, and the immediate residents of the area who detailed the conditions that were not conducive to their living in proximity to the club.

The legislation also had a sunset provision as compared to a grandfather clause which is not unreasonable and, as has been stated in the Brief submitted by People's Counsel, "sunset" or

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"amortization" provisions providing for future termination of uses have been upheld in nearly all jurisdictions since the 1960s as a valid means to bring conformity to zoning regulations.

The Board does not consider the Petitioner's arguments in the instant case relative to his expenditures of significance since the Petitioner voluntarily entered into a lease for one year beginning April 1, 1997, which was considerably subsequent to the Zoning Commissioner's ruling on March 2, 1995 that stated that the Petitioner's operation of his after-hours club must comply with the local statute. To that extent, the position in which Petitioner now finds himself is one which was self-created. The passage of the legislation does not create any adversity to the Petitioner or the owner of the property since, as Mr. Long testified, the site's commercial viability and the B.R. zoning, accessibility and the infrastructure surrounding development versatility of the structure and co-committed parking render the property quite suitable for any other type of business permitted within the liberality of the B.R. zoning.

For the reasons so stated, this Board concludes that the current use of 8819 Orchard Tree Lane is that of an after-hours club and not a night club and, therefore, Petitioner's special hearing request shall be denied, and will so order.

O R D E R

IT IS, THEREFORE, THIS 28th day of August, 1998, by the
County Board of Appeals of Baltimore County

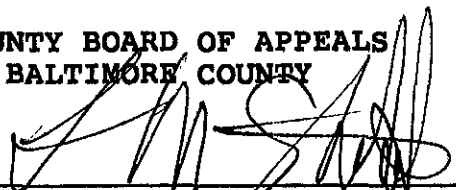
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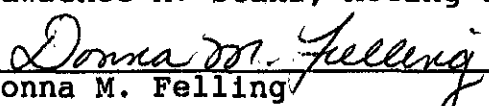
ORDERED that the appeals filed by Petitioner as to his Petition for Special Exception and Petition for Variance be and the same are hereby DISMISSED with prejudice pursuant to Petitioner's voluntary withdrawal of said Petitions; and it is further

ORDERED that Petition for Special Hearing to determine that the subject site is a night club be and the same is hereby DENIED; and that the subject site is herewith determined to be, in fact, an after-hours club.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through 7-210 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY


Lawrence M. Stahl, Acting Chairman


Donna M. Felling


Charles L. Marks

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11/02/99

Case Number: 03-C-98-009806 AE
Date Filed: 09/25/1998
Status: Closed/Active
Judge Assigned: To Be Assigned,

In The Matter of: Club 101 Inc , et al

C A S E H I S T O R Y

OTHER REFERENCE NUMBERS

Description	Number
-----	-----
Case Folder ID	C98009806V01

INVOLVED PARTIES

Type Num	Name(Last,First,Mid,Title)	Disposition Addr Start/End	Entered

PET 001	Club 101 Inc Mail: 8819 Orchard Tree Lane Towson, MD 21286	CT DO 05/12/99 09/25/98	09/25/98
	Attorney: 0014822 Covahey, Edward C Covahey & Boozer, P.A. 614 Bosley Avenue Towson, MD 21204 (410)828-9441	09/25/98	
PET 002	Giorgilli, John A Mail: 8819 Orchard Tree Lane Towson, MD 21286	CT DO 05/12/99 09/25/98	09/25/98
	Attorney: 0014822 Covahey, Edward C Covahey & Boozer, P.A. 614 Bosley Avenue	09/25/98	

MICROFILMED

Towson, MD 21204
(410)828-9441

Type Num	Name(Last,First,Mid,Title)	Disposition	Addr Start/End	Entered
ITP 001	County Board Of Appeals Of Baltimore County	CT DO	05/12/99	09/25/98
	Mail: Old Courthouse Room 49		09/25/98	
	400 Washington Avenue			
	Towson, MD 21204			

Attorney: 0013056 Barnhart, Virginia W 10/15/98
Baltimore County Office Of Law
400 Washington Ave
Old Court House, 2nd Fl
Towson, MD 21204
(410)887-4420

CALENDAR EVENTS

Date	Time	Dur	Cer	Evnt	Lvl	Atty	Jdg	Day	Of	Rslt	By	ResultDt	Jdg	T	Notice	Rec	User	ID
03/10/99	09:30A	02Q	yes	CIVI	D		TJB	01	/01				P				JD	KS

JUDGE HISTORY

JUDGE ASSIGNED	Type	Assign Date	Removal	RSN
TBA To Be Assigned,	J	09/25/98		

DOCUMENT TRACKING

Num/Seq	Description	Filed	Entered	Party	Jdg	Ruling	Closed	User	ID
0001000	Petition for Judicial Review Filed by PET001-Club 101 Inc, , PET002-Giorgilli, John A	09/25/98	09/25/98	PET001	TBA		05/12/99	KH	MR
0001001	Answer	10/14/98	10/15/98	ITP001	TBA		05/12/99	MJ	MR
0002000	Certificate of Notice	10/01/98	10/02/98	ITP001	TBA		10/02/98	DR	DR
0003000	Transcript of Record from Adm Agency *	11/25/98	11/30/98	ITP001	TBA		05/12/99	DFP	MR
0004000	Notice of Transcript of Record Sent	11/30/98	11/30/98	ITP001	TBA		11/30/98	DFP	DFP

MICROFILMED

Num/Seq	Description	Filed	Entered	Party	Jdg Ruling	Closed	User ID
0005000	Notice of Transcript of Record Sent	11/30/98	11/30/98	PET001	TBA	11/30/98	DFF DFF
0006000	Motion To Extend Time For Transmittal Of Record. Filed by PET001-Club 101 Inc. , PET002-Giorgilli, John A	11/30/98	11/30/98	PET001	TJB Granted	11/30/98	JH JH
0007000	Scheduling Order	12/08/98	12/08/98	000	TBA	12/08/98	JD JD
0008000	Legal Memorandum in Support of Petition for Judicial Review. Filed by PET001-Club 101 Inc. , PET002-Giorgilli, John A	12/28/98	12/29/98	PET001	TBA	12/29/98	JM JM
0009000	People's Counsel's Memorandum	01/28/99	01/29/99	000	TBA	01/29/99	DR DR
0010000	*Stipulation agreeing that time to file Memorandum is extended to and including 02/08/99 for Baltimore County Maryland	01/29/99	01/29/99	000	TBA	01/29/99	DR DR
0011000	Memorandum	02/09/99	02/09/99	ITP001	TBA	02/09/99	PH PH
0012000	Memorandum Affirming the decision of the Baltimore County Board of Appeals, etc.	05/12/99	05/12/99	000	TJB Affirmed	05/12/99	MR MR
0013000	Docket entries sent to BOA	05/18/99	05/18/99	000	TBA		MJ MJ

TICKLE

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type	Num	Seq
1YRT	One Year Tickle (Jud	CLOSED	09/25/99	365	no	no	DAAA	D	000	000
1ANS	1st Answer Tickle	CLOSED	10/14/98	0	no	no	DANS	D	001	001
SLTR	Set List For Trial	CANCEL	10/14/98	0	yes	no	1ANS	T	001	001
SLMR	Set List For Motions	CANCEL	12/22/98	22	no	no	MEXT	D	000	000
EXPU	Exhibit Pickup Notic	OPEN	07/11/99	30	no	no			000	000

EXHIBITS

Line #	Marked	Code	Description	SpH	Sloc	NoticeDt	Disp Dt	Dis By
000		B	RETURNED TO CBA					

MICROFILMED

DIFFERENTIATED CASE MANAGEMENT

TRACKS AND MILESTONES

Track : R1 Description: EXPEDITED APPEAL TRACK Custom: Yes
Assign Date: 12/08/98 Order Date : 12/08/98
Start Date : 12/08/98 Remove Date:

Milestone	Scheduled	Target	Actual	Status
Motions to Dismiss under MD. Rule 2-322(	12/23/98	05/12/99	CLOSED	
All Motions (excluding Motions in Limine	01/29/99	05/12/99	CLOSED	
TRIAL DATE is	03/10/99	03/08/99	05/12/99	CLOSED

MICROFILMED

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258
Maryland Toll Free Number (800) 938-5802

05/18/99

Case Number: 03-C-98-009806 AE
Date Filed: 09/25/98
Status: Closed/Active
Judge Assigned: To Be Assigned,

In The Matter of: Club 101 Inc , et al

C A S E H I S T O R Y

INVOLVED PARTIES

Type	Num	Name(Last,First,Mid,Title)	Entered
PET	001	Club 101 Inc 8819 Orchard Tree Lane Towson, MD 21286 Attorney: 0014822 Covahey, Edward C Covahey & Boozer, P.A. 614 Bosley Avenue Towson, MD 21204 (410)828-9441	CT DO 05/12/99 09/25/98 09/25/98
PET	002	Giorgilli, John A 8819 Orchard Tree Lane Towson, MD 21286 Attorney: 0014822 Covahey, Edward C Covahey & Boozer, P.A. 614 Bosley Avenue Towson, MD 21204 (410)828-9441	CT DO 05/12/99 09/25/98 09/25/98
ITP	001	County Board Of Appeals Of Baltimore County Old Courthouse Room 49 400 Washington Avenue Towson, MD 21204 Attorney:	CT DO 05/12/99 09/25/98

MICROFILMED

0013056 Barnhart, Virginia W
 Baltimore County Office Of Law
 400 Washington Ave
 Old Court House, 2nd Fl
 Towson, MD 21204
 (410)887-2420

10/15/98

CALENDAR EVENTS

Date Time Dur Cer Evnt Lvl Jdg Day Of Rslt By ResultDt Jdg T Notice Rec

 03/10/99 09:30A 02Q yes CIVI D TJB 01 /01 P

JUDGE HISTORY

JUDGE ASSIGNED Type Assign Date Removal RSN

 TBA To Be Assigned, J 09/25/98

DOCUMENT TRACKING

Num/Seq	Description	Filed	Received	Party	Routed	Ruling/ Closed	Closed	User ID	Entered
0001000	Petition for Judicial Review Filed by PET001-Club 101 Inc, , PET002-Giorgilli, John A	09/25/98	09/25/98	TBA	PET001		05/12/99	KH MR	09/25/98
0001001	Answer	10/15/98	10/14/98	TBA	ITP001		05/12/99	MJ MR	10/15/98
0002000	Certificate of Notice	10/02/98	10/01/98	TBA	ITP001		10/02/98	DR DR	10/02/98
0003000	Transcript of Record from Adm Agency *	11/30/98	11/25/98	TBA	ITP001		05/12/99	DFF MR	11/30/98
0004000	Notice of Transcript of Record Sent	11/30/98	11/30/98	TBA	ITP001	11/30/98	11/30/98	DFF DFF	11/30/98
0005000	Notice of Transcript of Record Sent	11/30/98	11/30/98	TBA	PET001	11/30/98	11/30/98	DFF DFF	11/30/98
0006000	Motion To Extend Time For Transmittal Of Record. Filed by PET001-Club 101 Inc, , PET002-Giorgilli, John A	11/30/98		TJB	PET001	Granted	11/30/98	JH JH	11/30/98
0007000	Scheduling Order	12/08/98	12/08/98	TBA	000	12/08/98	12/08/98	JD JD	12/08/98
0008000	Legal Memorandum in Support of Petition for Judicial Review. Filed by PET001-Club 101 Inc, , PET002-Giorgilli, John A	12/29/98	12/28/98	TBA	PET001		12/29/98	JM JM	12/29/98

MICROFILMED

Num/Seq	Description	Filed	Received	Party	Routed	Ruling/ Closed	Closed	User ID	Entered
0009000	People's Counsel's Memorandum	01/29/99	01/28/99	TBA	000		01/29/99	DR DR	01/29/99
0010000	*Stipulation agreeing that time to file Memorandum is extended to and including 02/08/99 for Baltimore County Maryland	01/29/99	01/29/99	TBA	000		01/29/99	DR DR	01/29/99
0011000	Memorandum	02/09/99	02/09/99	TBA	ITP001		02/09/99	PH PH	02/09/99
0012000	Memorandum Affirming the decision of the Baltimore County Board of Appeals, etc.	05/12/99	05/12/99	TJB	000	Affirmed	05/12/99	MR MR	05/12/99
0013000	Docket entries sent to BOA	05/18/99		TBA	000			MJ MJ	05/18/99

TICKLE

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type	Num	Seq
1YRT	One Year Tickle (Jud	CLOSED	09/25/99	365	no	no	DAAA	D	000	000
1ANS	1st Answer Tickle	CLOSED	10/14/98	0	no	no	DANS	D	001	001
SLTR	Set List For Trial	CANCEL	10/14/98	0	yes	no	1ANS	T	001	001
SLMR	Set List For Motions	CANCEL	12/22/98	22	no	no	MEXT	D	000	000
EXPU	Exhibit Pickup Notic	OPEN	07/11/99	30	no	no			000	000

EXHIBITS

Line #	Marked	Code	Description	SpH	Sloc	NoticeDt	Disp Dt	Dis By
000		ITP 001	County Board Of Appeals Of Ba					
		B	BOX 110/CBA TRANSC					

DIFFERENTIATED CASE MANAGEMENT

TRACKS AND MILESTONES

MICROFILMED

03-C-98-009806 Date: 05/18/99 Time: 10:20

Page: 4

Track : R1 Description: EXPEDITED APPEAL TRACK Custom: Yes
Assign Date: 12/08/98 Order Date : 12/08/98
Start Date : 12/08/98 Remove Date:

Milestone	Scheduled	Target	Actual	Status
Motions to Dismiss under MD. Rule 2-322(	12/23/98	05/12/99	CLOSED	
All Motions (excluding Motions in Limine	01/29/99	05/12/99	CLOSED	
TRIAL DATE is	03/10/99	03/08/99	05/12/99	CLOSED

MICROFILMED

RECEIVED
COUNTY BOARD OF APPEALS
99 MAY 20 AM 11:39

5-10-99
PETITION OF CLUB 101, INC.
JOHN A GIORGILLI

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY

FOR JUDICIAL REVIEW OF THE
DECISION OF THE COUNTY BOARD OF
APPEALS FOR BALTIMORE COUNTY

IN THE MATTER OF THE APPLICATION
RAMPART PARTNERSHIP (CLUB 101) FOR
A SPECIAL EXCEPTION AND VARIANCE

*
* CASE NO.: 03 C 98 9806

* * * * *

MEMORANDUM OPINION AND ORDER

This matter comes before the Court on Petition for Judicial Review regarding a decision of the Baltimore County Board of Appeals denying the Petitioner's Petition for Special Hearing. A hearing was held on March 10, 1999, at which time the Court entertained the arguments of Edward Covahey, Jr., Esquire, on behalf of the Petitioner, Carol Demilio, Esquire, Deputy People's Counsel for Baltimore County, and Nancy West, Esquire, on behalf of Baltimore County, Maryland.

The Court has carefully considered the arguments presented, the fine legal memoranda submitted by counsel, and the applicable law in rendering its decision in this matter. Accordingly, it is this 10th day of May, 1999, by the Circuit Court for Baltimore County,

ORDERED that the decision of the Baltimore County Board of Appeals in the above captioned matter is hereby **AFFIRMED**.

True Copy Test

SUZANNE MENSCH, Clerk

Per

Mary B. Ross
Assistant Clerk

Thomas J. Bollinger
THOMAS J. BOLLINGER, JUDGE

cc: All Counsel of Record

FILED MAY 18 1999

MICROFILMED

cc: Covahey & Bounheut

11 25-98
IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF:

CLUB 101, INC.
and
JOHN A. GIORGILLI
8819 Orchard Tree Lane
Towson, MD 21286

FOR JUDICIAL REVIEW OF THE DECISION OF
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
Room 49, Old Courthouse, 400 Washing-
ton Avenue, Towson, MD 21204

CIVIL
ACTION
No. 3-C-98-009806

IN THE CASE OF: IN THE MATTER
RAMPART PARTNERSHIP (CLUB 101)
FOR A SPECIAL EXCEPTION AND VARIANCE
ON PROPERTY LOCATED ON THE WESTSIDE
ORCHARD TREE LANE, 534.42' N OF C/L
JOPPA ROAD (8819 ORCHARD TREE LANE)
9TH ELECTION DISTRICT
4TH COUNCILMANIC DISTRICT
CASE NO. 96-60-XA

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

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come Lawrence M. Stahl, Charles L. Marks, and Donna Felling, constituting the County Board of Appeals of Baltimore County, and in answer to the Petition for Judicial Review directed against them in this case, herewith return the record of proceedings had in the above-entitled matter, consisting of the following certified copies or original papers on file in the Department of Permits and Development Management and the Board of Appeals of Baltimore County:

ENTRIES FROM THE DOCKET OF THE BOARD OF APPEALS AND
DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
OF BALTIMORE COUNTY

No. 96-60-XA

RECEIVED AND FILED
98 NOV 25 PM 3:33
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

Petitions for Special Exception, Special Hearing and Variance filed by Edward C. Covahey, Jr., Esquire, on behalf of Rampart Partnership; SE /after hours club; VAR /to permit an after hours club w/i 83 feet of a residence in lieu of required distance of 1000 feet.

September 1

Certificate of Publication.

MICROFILMED

September 3, 1995	Certificate of Posting.
September 13	Entry of Appearance by People's Counsel for Baltimore County. ZAC Comments.
September 19	Hearing held on Petitions for Special Exception and Variance by the Zoning Commissioner.
November 6, 1996	Order of the Zoning Commissioner in which the Petition for Special Exception was DENIED, and the Petition for Variance was DENIED.
December 5	Notice of Appeal filed by Edward C. Covahey, Jr., Esquire, on behalf of Club 101, Inc. and John A. Giorgilli, Appellants.
September 3, 1997	Entry of Appearance issued by Nancy C. West, Assistant County Attorney.
November 20	Board convened for hearing; Counsel for Appellant /Petitioner requested postponement; -Upon consideration and discussion, and as indicated on the record, the Board granted request.
January 9, 1998	Hearing Day #2 held by the Board of Appeals.
February 13	Hearing Day #3 concluded by the Board of Appeals.
March 13	Memorandum of Law filed by Edward C. Covahey, Jr., Esquire, on behalf of Club 101, Inc. Memorandum of Baltimore County, Maryland filed by Virginia W. Barnhart, County Attorney and Nancy C. West, Assistant County Attorney /Baltimore County Office of Law. People's Counsel's Memorandum filed.
April 23	Public Deliberation held by the Board of Appeals.
August 28	Opinion and Order issued by the Board of Appeals; Petition for Special Exception and Petition for Variance are DISMISSED WITH PREJUDICE; Petition for Special Hearing is DENIED.
September 25	Petition for Judicial Review filed in the Circuit Court for Baltimore County by Edward C. Covahey, Jr., Esquire, on behalf of Club 101, Inc. and John A. Giorgilli.

MICROFILMED

September 31, 1998 Copy of Petition for Judicial Review received by the Board of Appeals from the Circuit Court for Baltimore County.

October 1 Certificate of Notice sent to interested parties.

Petitioner's Exhibit Nos.

- 1-Plat of Property
- 2-Def - After Hrs. Club
- 3-Nite Club -Def
- 4-Boca Code
- 5A-F Photos
 - 5A-Beer being iced
 - 5B-Bottles on table -Dr. Pepper
 - 5C-Speakers
 - 5D-Alcohol -Liquor
 - 5E-Alcohol -Liquor
 - 5F-Set-up storage
- 6-Copy /Rampart Lease (I.D. only)
- 7-Copy of 20-101 Md. Law
- 8A-G Photos
 - 8A-Sign @ entrance
 - 8B-Foyer -card & cover
 - 8C-Front entrance to Club
 - 8D-Set up of club
 - 8E-Pool Room
 - 8F-end of nite clean-up & dance floor
 - 8G-people behind bar - 2 employ.
- 9-Petition for Special Hearing for signature comparison
- 10A-C -Photos of area adjacent to witness/ Thorn home (I.D. only)
- 11-

Baltimore County Exhibit

- #1-Ad for "Liquids"
- 2-Invitation for B'day Party
- 3-Ad done by Petitioner re: club being opened
- 4-Ad for Cannonball Run
- 5-Ltr written by Mr. Thorn 3/4/97
- 6-(Highlighted areas) G.H. Investment Summary
- 7-Tenure of Pl. Brd.
- 8-Resume of Cpt. Harvey
- 9A - 9H -Photos
 - A-behind bar area
 - B-show specific bottle stops
 - C-down shot metal bucket -U.S. currency coin
 - D-pool table not stamped
 - E-pict. back bar -bottle-lids /pourers
 - F-back of bar -bottles
 - G-Video Mach. -no stamps
 - H-Video Mach. -no stamps

MICROFILMED

MICROFILMED

10-1-98

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF:

CLUB 101, INC.
and
JOHN A. GIORGILLI
8819 Orchard Tree Lane
Towson, MD 21286

FOR JUDICIAL REVIEW OF THE DECISION OF
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
Room 49, Old Courthouse, 400 Washing-
ton Avenue, Towson, MD 21204

CIVIL
ACTION
No. 3-C-98-009806

IN THE CASE OF: IN THE MATTER
RAMPART PARTNERSHIP (CLUB 101)
FOR A SPECIAL EXCEPTION AND VARIANCE
ON PROPERTY LOCATED ON THE WESTSIDE
ORCHARD TREE LANE, 534.42' N OF C/L
JOPPA ROAD (8819 ORCHARD TREE LANE)
9TH ELECTION DISTRICT
4TH COUNCILMANIC DISTRICT
CASE NO. 96-60-XA

* * * * *

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the provisions of Rule 7-202(e) of the Maryland Rules of Procedure, Lawrence M. Stahl, Donna M. Felling, and Charles L. Marks, constituting the County Board of Appeals of Baltimore County, has given notice by mail of the filing of the Petition for Judicial Review to the representative of every party to the proceeding before it; namely, Edward C. Covahey, Jr., Esquire, and COVAHEY & BOOZER, P.A., 614 Bosley Avenue, Towson, Maryland 21204, Counsel for Petitioner; Club 101, Inc. and John A. Giorgilli, 8819 Orchard Tree Lane, Towson, Maryland 21286, Petitioner; Nancy C. West, Assistant County Attorney, Office of Law, 400 Washington Avenue, Towson, Maryland 21204; and Carole S. Demilio, Deputy, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, 400 Washington Avenue, Room 47, Towson, MD 21204.

Charlotte E. Radcliffe
Charlotte E. Radcliffe, Legal Secretary
County Board of Appeals, Room 49 -Basement
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410) 887-3180

RECEIVED AND FILED
98 OCT -1 PM 2:19

CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

MICROFILMED

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to Edward C. Covahey, Jr., Esquire, and COVAHEY & BOOZER, P.A., 614 Bosley Avenue, Towson, Maryland 21204, Counsel for Petitioner; Club 101, Inc. and John A. Giorgilli, 8819 Orchard Tree Lane, Towson, Maryland 21286, Petitioner; Nancy C. West, Assistant County Attorney, Office of Law, 400 Washington Avenue, Towson, Maryland 21204; and Carole S. Demilio, Deputy, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, 400 Washington Avenue, Room 47, Towson, Maryland 21204, this 1st day of October, 1998.

Charlotte E. Radcliffe

Charlotte E. Radcliffe, Legal Secretary
County Board of Appeals, Room 49 -Basement
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410) 887-3180

MICROFILMED



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180

October 1, 1998

Carole S. Demilio
Deputy People's Counsel
for Baltimore County
Room 47, Old Courthouse
400 Washington Avenue
Towson, MD 21204

Nancy C. West, Assistant
County Attorney
Office of Law, Old Courthouse
400 Washington Avenue
Towson, MD 21204

RE: Civil Action No. 3-C-98-09806
✓ RAMPART PARTNERSHIP (CLUB 101)

Dear Counsel:

Notice is hereby given, in accordance with the Maryland Rules of Procedure, that a Petition for Judicial Review was filed on September 25, 1998, in the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petition must file a response within 30 days after the date of this letter, pursuant to Rule 7-202(d)(2)(B).

Please note that any documents filed in this matter, including, but not limited to, any other Petition for Judicial Review, must be filed under Civil Action No. 3-C-98-09806.

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

Very truly yours,

Charlotte E. Radcliffe
Charlotte E. Radcliffe
Legal Secretary

c: Paul M. Pardew /Rampart Partnership
Wayne Skinner
Shirley Chandler
Detective Sgt. Joseph G. Miller
Arnold Jablon /PDM
Virginia W. Barnhart, Co. Atty
Pat Keller /Planning
Lawrence E. Schmidt /ZC

MICROFILMED





County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180

October 1, 1998

Edward C. Covahey, Jr.
COVAHEY & BOOZER, P.A.
614 Bosley Avenue
Towson, Maryland 21204

RE: Civil Action No. 3-C-98-009806
~~RAMPART PARTNERSHIP (CLUB 101)~~

Dear Counsel:

In accordance with Rule 7-206(c) of the Maryland Rules of Procedure, the County Board of Appeals is required to submit the record of proceedings of the petition for judicial review which you have taken to the Circuit Court for Baltimore County in the above-entitled matter within sixty days.

The cost of the transcript of the record must be paid by you. In addition, all costs incurred for certified copies of other documents necessary for the completion of the record must also be at your expense.

The cost of the transcript, plus any other documents, must be paid in time to transmit the same to the Circuit Court within sixty days, in accordance with Rule 7-206(c).

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

Very truly yours,

Charlotte E. Radcliffe

Charlotte E. Radcliffe
Legal Secretary

Enclosure

c: John A. Giorgilli, Pres.
Club 101, Inc.

MICROFILMED



9 24-98
PETITION OF

CLUB 101, INC.

and

JOHN A. GIORGILLI

8819 Orchard Tree Lane

Towson, Maryland 21286

Petitioner

*

IN THE

*

CIRCUIT COURT

*

FOR

*

BALTIMORE COUNTY

*

CASE NO.

* * * * *

PETITION FOR JUDICIAL REVIEW

Club 101, Inc., and John A. Giorgilli, Petitioners, by their attorneys, Edward C. Covahey, Jr. and Covahey & Boozer, P.A., file this Petition for Judicial Review pursuant to Maryland Rule 7-201, et. seq., and in support thereof, state as follows:

1. Your Petitioners hereby request judicial review of the August 28, 1998 Order of the Board of Appeals of Baltimore County in the matter of the Application of Rampart Partnership (Club 101/John A. Giorgilli) for Special Exception and Variance on Property Located on the West Side of Orchard Tree Lane, 534.42' N of C/L Joppa Road (8819 Orchard Tree Lane), Case No. 96-60-XA.

2. That your Petitioners were parties to the Agency proceeding.

/s/
EDWARD C. COVAHEY, JR.
Covahey & Boozer, P.A.
614 Bosley Ave.
Towson, Maryland 21204
410-828-9441
Attorneys for Petitioners

86 SEP 25 PM 4:38

RECEIVED
COUNTY BOARD OF APPEALS

MICROFILMED

*Char-
file paper
from journal*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of September, 1998, a copy of the foregoing Petition for Judicial Review was mailed first class, postage prepaid, to the County Board of Appeals of Baltimore County, Old Courthouse, Room 49, 400 Washington Avenue, Towson, Maryland 21204.



EDWARD C. COVAHEY, JR.

98-09-16.1dr

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258
Maryland Toll Free Number (800) 938-5802

Case Number: 03-C-98-009806

TO: COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
Old Courthouse Room 49
400 Washington Avenue
Towson, MD 21204

RECEIVED
COUNTY BOARD OF APPEALS
98 SEP 31 AM 7:41

MICROFILMED

1 IN THE MATTER OF * BEFORE THE
2 RAMPART PARTNERSHIP - * COUNTY BOARD OF APPEALS
3 Legal Owner; Club 101, Inc. * OF BALTIMORE COUNTY
4 Contract Lessee * Case No. 96-60-XA
5 (8819 Orchard Tree Lane) * February 13, 1997
6 (Special Hearing, Special *
7 Exception and Variance *
8 relief Denied.) *

9 * * * * *

10 Excerpt testimony of John Giorgilli and
11 Captain George M. Harvey, taken in the above-entitled
12 matter which came on for hearing before the County Board
13 of Appeals of Baltimore County at the Old Courthouse, Room
14 49, 400 Washington Avenue, Towson, Maryland 21204 at 10
15 a.m., February 13, 1997.

16 * * * * *

17
18
19
20 Reported by:

21 C.E. Peatt

MICROFILMED

1 BOARD MEMBERS:

2
3 LAWRENCE STAHL, Acting Chairman

4 DONNA FELLING

5 CHARLES MARKS

6
7 APPEARANCES:

8 EDWARD J. COVAHEY, JR., Esquire
9 ROGER SULLIVAN, Esquire
On behalf of Petitioner

10 CAROLE S. DEMILIO, Esquire
Deputy People's Counsel

11 NANCY C. WEST, Esquire
12 Assistant County Attorney

2 1 phone number.

2 Q. Captain Harvey, first of all, where were you
3 assigned prior to being posted to the Towson precinct?

4 A. The Training Academy.

5 Q. What did you do at the Training Academy?

6 A. Assistant Commander for the training division.

7 Q. Can you give us a brief history of your
8 background within the department prior to be assigned to
9 the Towson precinct?

10 A. My career basically went from patrol to
11 intelligence to narcotics, back to patrol, to community
12 relations, to the Towson precinct as a Corporal, Towson
13 precinct as as a Sergeant, White Marsh as a Lieutenant,
14 Patrol Captain, Operations Commander, Intelligence
15 Commander, Operations Commander, Technical Support
16 Services Division Commander, Training Academy Assistant
17 Commander, Patrol Commander and Precinct Commander at
18 Towson.

19 Q. Do you have any specialized training, Captain?

20 A. Some.

21 Q. Can you tell us what that is, please?

2 1 A. Stress injury management, crowd control, crowd
2 control activities, narcotics school, field training
3 officers school, situation leadership seminar, civil
4 violence, and crowd control.

5 Q. Let's talk about your experience as far as crowd
6 control is concerned. Can you tell us how you gained that
7 experience?

8 A. Well, I was the field commander for many of the
9 demonstrations that occurred in Baltimore County in my
10 tenure as a lieutenant and captain. I was responsible for
11 motivating and moving some 300-plus police officers in
12 crowd control situations.

13 I have trained several other jurisdictions in
14 crowd control techniques, and I'm currently a recognized
15 expert in the state of Maryland on crowd control and crowd
16 control tactics.

17 Q. Have you received any awards or accommodations
18 from the Department?

19 A. Yes, ma'am.

20 Q. Would you please share those with us?

21 A. Two-time Accommodation Ribbon, one Chief's

0 1 and I am going to let him characterize it the way he
2 wants. Captain, go ahead.

3 Q. Didn't you say there were some people that had a
4 reluctance --

5 THE CHAIRMAN: He's already said that.

6 Q. What other effect does this type operation have
7 with these occurrences?

8 A. It affects businesses both open and closed. I
9 belong to the corridor of Orchard Tree Lane and Joppa
10 Road. It affects the comings and goings of vehicular
11 traffic in the area.

12 It affects the stability of the community for
13 which people travel, both by vehicle and on foot to and
14 from that location.

15 It affects the ambulance company directly across
16 that has to put a midnight crew on to keep their property
17 from being destroyed.

18 It affects the hotel-motel, fast food stores, in
19 and around that area, to a negative concept. For the
20 greater period of time since 101/Liquids have been
21 operating, several business have chosen to close an

1 earlier time than they normally would, due to increased
2 disorderly conduct.

3 Q. You heard the testimony of several residents that
4 live in the area?

5 A. Yes, ma'am.

6 Q. Did you hear complaints similar to what they
7 testified to, separate and apart from their testimony in
8 this case?

9 A. Continuously.

10 Q. Could you describe for the Board what you mean by
11 that?

12 A. I am particularly concerned about the residential
13 neighbors to Club 101. I understand that. There's a high
14 incident of squealing wheels, skidding, excessive noise
15 extremely early in the morning. By early, I mean between
16 2 o'clock on.

17 Loud music. Profane language. Yelling and
18 screaming. An inordinate amount of trash blown up from
19 wherever it's coming from, and the like.

20 Q. Now, in your testimony -- I just want to ask you
21 some specific details about some of the testimony that you

1 weren't known by Mr. Giorgilli.

2 Q. Did that, in fact, occur?

3 A. It did.

4 Q. Can you be specific as to time and place to what
5 happened?

6 A. 1-11 and 1-17 and 1-18.

7 Q. What happened on 1-11?

8 A. 1-11 --

9 Q. Of this year, '98?

10 A. That's correct. Three operataives, one borrowed
11 and two of my own, undercovers paid a fee to get into
12 Liquids Nightclub, Liquids/101, looking for violations of
13 the law, and looking for the dispensing for sale of any
14 beverages inside the building.

15 As they were moving about the crowd, it was
16 observed that specific individuals were drinking out of
17 red cups, other individuals out of white.

18 And in conversation with some of the people that
19 had approached the bar and come away with a red cup, my
20 undercover operatives were able to determine they were
21 purchasing alcohol. And the --

7 1 Q. How did they know that?

2 A. On that particular first occasion, they were able
3 to sip from the cups of the people that bought, and
4 through their trained expertise and knowledge, determined
5 the fact it did contain alcohol.

6 Also, while they were inside, they also observed
7 the dispensing from one individual to another individual,
8 serving individuals, obviously under legal age to consume
9 alcohol, spirits, being exchanged from one to another, and
10 spirits and juice being served from behind the bar.

11 Q. Was that on the evening of the 11th of January?

12 A. It would be one night or the other, ma'am. I'm
13 not clear in my mind on the date without looking at the
14 documents.

15 Q. Do you have any recollection, Captain, as to what
16 time of the evening that Liquids was being searched?

17 A. It would be after 2 o'clock and before 5 a.m.

18 Q. Is there other additional information relevant to
19 those particular incidents, either the 11th or the 18th,
20 that this Board ought to hear about, of January 1998?

21 A. Yes, ma'am.

8 1 MR. COVAHEY: Objection. Any other information
2 he thinks the Board should hear about? That's not a
3 proper question.

4 A. I assume any information relative to Club 101.

5 MS. WEST: Talking about Club 101. If you want me
6 to say that every time --

7 THE CHAIRMAN Evidently.

8 MR. COVAHEY: That's not the basis for my
9 objection. The basis is putting a witness on the witness
10 stand and "tell your story".

11 THE CHAIRMAN: Which, as an administrative body,
12 we do all the time.

13 MS. WEST: We are trying to move things along.

14 THE CHAIRMAN: Counsel, the answer is we do that
15 all the time as part of the normal procedure with civilian
16 witnesses, with expert witnesses.

17 Q. Captain, do you have anything else you want to
18 tell us?

19 A. Undercover operatives went inside Club
20 Liquids/101 and were able to purchase directly from the
21 bar, alcoholic beverages.

8 1 The way the system works, they were told, was
2 approach and ask for a mattress. A mattress was a code
3 name for an alcoholic beverage.

4 The undercover operative was able to observe
5 large containers containing black x's on the outside to
6 condition alcohol mixtures. Large jugs with no x's
7 contained straight fruit juice.

8 They were able to purchase three to four drinks
9 between the hours after 2 o'clock and before 5 o'clock and
10 paid cash money across the bar to a person.

11 They also were advised that they were requested
12 to tip aside from the currency or cash paid for the drink
13 because the bartender said he was sitting there and
14 working for tips.

15 Based on that information, we began to develop
16 probable cause for, again, another search and seizure
17 warrant. And that's when the evening of the 17th or the
18 18th, a numerous number of arrests, et cetera, like that
19 took place at that time.

20 Q. Captain Harvey, just a few more questions.

21 MS. WEST: I appreciate the Board's indulgence.

1 puddle. Okay?

2 When I asked Mr. Giorgilli why he maced this
3 individual and left him there, he said he was assaulted,
4 but no police report was ever made.

5 We had arrested forty-one youngsters, nineteen,
6 eighteen years old, for a fight outside.

7 At the same time we were doing that, several
8 youngsters came out of the club, walked over towards Kaos,
9 that they had just been sprayed inside with mace, and they
10 were taking the water off the motor vehicles, it was a
11 mist coming down, and putting it in their eyes, because
12 they couldn't get any water inside.

13 At the same time this was going on, a fight broke
14 out between seven or eight individuals out front, caused
15 three of my officers to empty out their pepper spray cans
16 to end up that particular fight.

2 17 At each occurrence, I went to Mr. Giorgilli, told
18 him to clear the lot, get them back in their cars, do
19 something.

20 After the conclusion of the fight involving the
21 men subjects, an individual driving a motor vehicle came

2 1 around the corner, slammed into one car. As my foot
2 officer gave chase, he came around on foot, he came around
3 in the vehicle, struck another car. A half gallon bottle
4 of booze with about an inch left in the bottom fell out of
5 the car when he was arrested.

6 Then, again, Mr. Giorgilli, on the scene, was
7 given an ultimatum, which was "Clear the front of your
8 business or I am going to close you down."

9 Q. You meant outside?

10 A. Make sure the customers are either inside the
11 building or off the lot. At that particular time -- some
12 time before these things, I had occasion to be walking
13 around the ground when his security personnel were advised
14 of the fact police were on the scene.

15 And I heard a security personnel approaching
16 people in cars saying -- and this is a quote -- "Watch
17 your ass. Cops are on the ground. If you've got drugs or
18 alcohol, hide it, because the cops are here."

19 And they would go from vehicle to vehicle, and
20 that's what they would say. I heard it from three
21 different individuals.

2 1 The one particular case over there -- I will go
2 2 back to the macing of the subject by Mr. Giorgilli for an
3 3 alleged assault. Sometime before that, that subject in
4 4 the company with another individual, around six-four and
5 5 240 pounds, was seen putting a bottle of whiskey into his
6 6 pocket to enter the club. Actually, it was rum.

7 7 And when we approached the subject, advising him
8 8 of open beverage containers is against the law, cited him,
9 9 he turned out to be not nineteen like he said, but
10 10 fifteen. And when we were doing the paperwork on him, we
11 11 went -- we literally went from one case to another case to
12 12 another case.

13 13 There have been times when Mr. Giorgilli walked
14 14 up to one of my female officers and ordered her off the
15 15 lot, saying, "You have no authority on this lot." To
16 16 "Leave us."

17 17 He has gone from police officer to police officer
18 18 identifying them. And we get no cooperation from Mr.
19 19 Giorgilli. And it's his opinion the parking lot is our
20 20 problem and not his.

21 21 MR. COVAHEY: Objection. Move to strike Mr.

4 1 would that have been September of that year, or the
2 following year?

3 A. I believe the following year when he said his
4 lease would be up.

5 Q. Captain, what's your understanding as to what Mr.
6 Giorgilli meant by "teeny club."

7 MR. COVAHEY: Objection. I was going to move to
8 strike the whole line of testimony. I think I let it go
9 far enough. I object.

10 THE CHAIRMAN: Well, that part of it already came
11 in unobjected to, and it was part of the quote, so I think
12 it's relevant to explain the quote. Overruled.

13 Q. Captain?

14 A. The question again, please.

15 Q. What's your understanding as to what Mr.
16 Giorgilli meant by the using the term "teeny club"?

17 A. He explained to both the Major and myself, in
18 fact, Hammerjacks was closing down and they lost their
19 property due to the stadium, and that it was his intent to
20 open up a Hammerjacks into a particular area.

21 It was at that particular time we again requested

4 1 that he come in compliance with reference to alcohol and
2 alcohol consumption on the premises.

3 He looked me directly in the face, said, "Without
4 alcohol, I have no business."

5 At that particular time, it was decided, once Mr.
6 Giorgilli left, that again we would resume operations back
7 into and on the lot of Club 101/Liquids.

8 It was our understanding then that he would not
9 comply, even with the meetings we had.

10 Q. Captain, are you familiar with the term
11 "cannonball run"?

12 A. Yes.

13 Q. Would you please tell the Board what your
14 understanding is of that term?

15 A. Roadrace. Taken after a television or movie of
16 the same time.

17 Q. What relevance does that term "cannonball" have
18 with regard to this particular matter here before the
19 Board.

20 MR. COVAHEY: Objection. Question is relevancy.
21 It's up to the Board, not the witness.

1 A. I was there twice with my daughters.

2 MR. COVAHEY: Withdraw the objection.

3 Q. Describe what Hammerjacks is, why that would
4 cause any particular concern, if any.

5 A. It's the type of nightclub that serves alcohol to
6 patrons above the age of twenty-one, and has what they
7 call an under twenty-one crowd to look at rock shows,
8 this, that and the other.

9 However, for the juvenile side, we have noted
10 that this type club brings in runaways, brings in people
11 looking for alcohol and drugs, brings in people that prey
12 on children, brings in pedifiles, brings in a disorderly
13 conduct element due to weapons, drugs and fighting, and
14 the like.

15 Q. So when Mr. Giorgilli made that remark to you,
16 was it considered a threat, in your opinion?

17 MR. COVAHEY: Objection.

18 THE CHAIRMAN: He can say whether he
19 characterized it as a threat.

20 A. When he told me if we left him alone until
21 September --

1 Q. September of what year?

2 A. '97 -- that he would be gone, or if we continued
3 to harrass his operation, he would open up a teeny bar and
4 rock Towson, yes, I took that as a threat against the
5 peace and well-being of Towson.

6 Q. Another specific question with regard to your
7 testimony, is road racing an illegal activity?

8 A. It is.

9 Q. So any promotion of a road race activity is an
10 illegal activity in Baltimore County?

11 MR. COVAHEY: Objection. Same question.

12 THE CHAIRMAN: Overruled.

13 A Yes.

14 Q. Based on your experience and expertise as a
15 police officer, Captain Harvey, when the Towson police are
16 asked to monitor certain types of commercial
17 establishments such as nightclubs, after hours clubs,
18 bars, taverns, in order to enforce the law, do the police
19 expect a certin type cooperation from the owners of those
20 establishments?

21 A. Yes.

8 1 THE CHAIRMAN: I am assuming we are going to hear
2 that, so subject to your objection at that point.

3 MR. COVAHEY: First she said what did you find
4 out, without going into the background.

5 THE CHAIRMAN: Why don't we do it this way? Have
6 him say what he did in order to get the information he's
7 now going to give you.

8 Q. What did you do in order to get the information
9 you're now going to testify to before this Board regarding
10 the military record of the petitioner, Mr. Giorgilli?

11 A. I called the U.S. Army.

12 Q. Okay. What did you find?

13 MR. COVAHEY: Objection. Clearly hearsay.

14 THE CHAIRMAN: Overruled. Credibility.

15 Q. Captain?

16 A. Mr. Giorgilli stated, I believe, paraphrased from
17 his original transcript, that he had suffered two wounds
18 in combat service, one being a bullet wound to the back
19 and the other being damage to his leg due to a terrorist
20 attack someplace in the Middle East; that he was, in fact,
21 obtaining a disability from the U.S. government for those

18 1 wounds and that he, he fact, served with FIPPS (phonetic)
2 Special Forces group, if I remember the analogy of the
3 same.

19 4 Mr. Giorgilli, in fact, never served in a combat
5 zone, was never wounded, did not serve with FIPPS Special
6 Forces. His service record includes Ft. Lewis, Washington,
7 five-months peacekeeping in The Sinai, South Korea, and
8 his last duty station was not as a civilian at Aberdeen,
9 but a military person. He was discharged some several
10 years before Desert Storm even into effect, and currently
11 the only thing he has outstanding is a pending claim
12 against the army for his feet.

13 Q. Thank you, Captain.

14 A. You're welcome.

15 MS. WEST: If I can have just a minute? I think
16 I have just a few more questions.

17 Q. Captain Harvey, are you aware of whether or not a
18 business needs to obtain a trader's license in order to
19 sell certain goods on site?

20 A. They are.

21 Q. Isn't it true that the Liquids nightclub does

Yorktown Plaza
Shopping Center I.V. 16 A

122
Crawford



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180

August 28, 1998

Edward C. Covahey, Jr., Esquire
COVAHEY & BOOZER, P.A.
614 Bosley Avenue
Towson, MD 21204

RE: Case No. 96-60-XA
Rampart Partnership /Club 101

Dear Mr. Covahey:

Enclosed please find a copy of the final Opinion and Order issued this date by the County Board of Appeals of Baltimore County in the subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules and Procedure, with a photocopy provided to this office concurrent with filing in Circuit Court. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Charlotte E. Radcliffe for
Kathleen C. Bianco
Administrator

encl.

cc: Roger Sullivan, Esquire
Paul M. Pardew /Rampart Partnership
John Giorgilli, Pres., Club 101 Inc.
Wayne Skinner
Shirley Chandler
Detective Sgt. Joseph G. Miller
People's Counsel for Baltimore County
Pat Keller
Arnold Jablon, Director /PDM
Lawrence E. Schmidt
Virginia W. Barnhart, Co Atty
Nancy C. West, Asst. County Attorney

MICROFILMED

3-13-98

IN THE MATTER OF: : BEFORE THE
RAMPART PARTNERSHIP/ CLUB 101: COUNTY BOARD OF APPEALS
: OF BALTIMORE COUNTY
: Case No.: 96-60-XA
.....

MEMORANDUM OF BALTIMORE COUNTY, MARYLAND

Baltimore County, Maryland by Virginia W. Barnhart, County Attorney, and Nancy C. West, Assistant County Attorney, submits this Post-Hearing Memorandum in order to assist the Board of Appeals in its consideration of the issues raised in the above-entitled proceedings.

STATEMENT OF THE CASE

With the enactment of Bill No. 85-94, the County Council amended the Baltimore County Zoning Regulations (the "BCZR") to provide a definition of an after-hours club and regulation of the same. It defined an after-hours club as a

"Commercial establishment whose principal business is the provision of live or recorded entertainment, with or without a dance floor, which is open primarily between 11:00 P.M. and 4:00 A.M. and which does not have a Baltimore County liquor license. An after-hours club is not a night club as defined in the zoning regulations or the building Code of Baltimore County, Maryland."

The legislation then went on to regulate after-hours clubs and provided that they would be permitted in a B.R. (Business Roadside) zone only by special exception. Moreover, the law required that any after-hours club located in a B.R. zone must be situated at least 1,000 feet from any residentially used structure.

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file 3/13/98
@ CBA/KC.

Subsequent to the enactment of this legislation, the Office of Zoning Administration and Development Management ("ZADM"), as it was then known, filed a Petition for Special Hearing in the summer of 1994. In that proceeding, the Zoning Commissioner was presented with two issues, namely, whether the business operation then known as Club 101, Inc., (now known as "Liquids") constituted an after-hours club under the BCZR and, if so, whether the establishment could continue without the benefit of a special exception which prohibited it within 1,000 feet of a residentially used dwelling. Zoning Commissioner Lawrence E. Schmidt found that the subject business was an after-hours club. However, he denied any further relief holding that the Petition for Special Exception and Variance was premature because of a sunset provision under the law allowing a period of one year to comply with the new legislation. He opined that although Bill No. 85-94 became effective on August 8, 1994, the after-hours club would have until August 9, 1995 to either come into compliance or to cease operations. The Commissioner's Findings of Fact and Conclusions of Law were not appealed.

In August 1995, John A. Giorgilli ("Giorgilli" or the "Petitioner") filed a Petition for Special Exception and Variance on behalf of Club 101, Inc. The first hearing date of September 19, 1995 was continued at the request of the Petitioner. At the next hearing scheduled for October 1995, it was agreed by all parties that the matter should be continued because the Petitioner had injected new issues in the case since the filing of his Petition. Thereafter, Petitioner requested three additional postponements. On April 12, 1996, a hearing on the merits was held before the Zoning Commissioner but the decision was held

sub curia to allow Giorgilli to attempt to reach a voluntary settlement agreement with the community. His efforts proved unavailing. On November 6, 1996, Commissioner Schmidt issued a decision holding that the record before him was devoid of any testimony or evidence sufficient to support a grant of the requested relief. Hence, the Petitions for Special Hearing, Special Exception and Variance were all denied. Thereafter, Giorgilli filed an appeal to the Board of Appeals (the "Board"). .

The first two scheduled hearings before the Board were postponed at the request of Petitioner. The Board finally commenced proceedings in the matter on December 12, 1997, well over a year later. The hearing of the case took three full days over the next couple of months and was concluded on February 13, 1997 at which time the Board requested memoranda from all parties. It is within this context that the above entitled proceedings arose.

ISSUES PRESENTED

WHETHER THE AFTER-HOURS CLUB LEGISLATION AS ENACTED BY THE COUNTY COUNCIL IS A VALID EXERCISE OF THE POLICE POWER WHICH COMPORTS WITH CONSTITUTIONAL GUARANTEES OF EQUAL PROTECTION AND DUE PROCESS.

STATEMENT OF FACTS

In May 1993 the after-hours club known as Club 101, Inc., opened for business. The establishment is located at 8819 Orchard Tree Lane which is west of the intersection of Joppa Road and Loch Raven Boulevard in Towson. The property is zoned B.R. (Business

Roadside) and is located 83 feet from the nearest residential dwelling. John A. Giorgilli, the president and major stockholder, testified that he opened the club because he recognized a lack of facilities available in Baltimore County that catered to the late night crowd for socializing and dancing. Although the club was originally known as "Club 101, Inc.," it has recently changed its name to "Liquids."

The club, which draws hundreds of people on Thursday, Friday and Saturday nights, has become a magnet for young people. When the bars close at 2:00 a.m. the club, which is open until 5:00 a.m., is bustling with activity. The club can accommodate up to 600 people. Patrons must pay an admission charge at the door which varies from Four Dollars (\$4.00) to Eight Dollars (\$8.00) depending on the night and the time. Friday evenings are half price for women. Inside the club there is a dance floor and a disc jockey set up to provide entertainment. There are also televisions for various sporting events, some pool tables (which were not properly licensed at first) and a game room with some amusement devices. Although the club does not have a liquor license, patrons who are at least 21 years of age are allowed to bring in alcoholic beverages. Giorgilli claims that patrons are carded at the door for proof of age and given a stamp which allows them to come and go from the club.

Giorgilli testified that "patrons can bring in as much alcohol as they want, there is no limit. It is under their control." He stated that there is a bar in back of the establishment where customers can store their alcohol and dispense it as they see fit. He said that there is no sign limiting the amount of alcohol anyone can bring in. State and local laws prohibit the

late night sale of alcohol after 2:00 a.m. Giorgilli averred that "my way of operating my business is 100% exactly how I was told to do it by the Baltimore County Police Department under their interpretation of the law, because I refused to get locked up on anything anymore, which is at 2:00 a.m. . . ." And Giorgilli said that he hired an outside security company to patrol the parking lot.

Prior to incorporating his business, Giorgilli contended that he extensively investigated the legality of the proposed club and was assured of its propriety not only by his own attorney but the Liquor Board, the Fire Department, the Health Department, the Department of Zoning and Development Management and other regulatory agencies. Additionally, he claims to have spent in excess of \$150,000 for the original renovations to the club and another \$75,000 in March or April 1997 allegedly to change the club's format from an after-hours club to a nightclub. Maintenance of the building and replacing the carpeting and refinishing the dance floor cost him another \$50,000. Remarkably, Giorgilli did not produce a single receipt, canceled check or any other documentation to support his claim of expenditures.

Since it opened there have been numerous problems associated with the club. Captain George M. Harvey, Commander of the Towson Precinct and a sworn officer with over 22 years experience, testified on behalf of the County. As he stated his career has gone from "patrol to intelligence to narcotics, back to patrol, to community relations, to the Towson precinct as a Corporal, Towson precinct as a Sergeant, White Marsh as a Lieutenant, Patrol Captain, Operations Commander, Intelligence Commander, Operations Commander,

Technical Support Services Division Commander, Training Academy Assistant Commander, Patrol Commander and Precinct Commander at Towson.” (T. 6)¹ He has specialized training in the areas of stress injury management, crowd control and related activities, narcotics, field training officer school, situation leadership seminars and civil violence. (T. 7) He is a recognized expert in the State of Maryland on crowd control and crowd control tactics. He has received numerous departmental and community commendations and is a member of various fraternal organizations. An ex-marine, Captain Harvey is currently pursuing a masters degree in public administration.

The after-hours club first came to the attention of Captain Harvey when he was assigned as Patrol Commander to the Towson Precinct in June 1996. At the hearing he was armed with a five-inch high binder of police reports when he took the stand and said that the after-hours club has been draining police resources for years because of the problems inside and outside the establishment. When he transferred to the precinct, their enforcement efforts included utilizing undercover operations in addition to uniform officers on the parking lot of the club in an effort to bring Mr. Giorgilli into compliance with the disorderly house statute. Captain Harvey stated that the situation had escalated to the point where he has had to pull resources from the community and other precincts for the last five or six months. Specifically, he has had to call for back-up from traffic enforcement, DWI task force, Eastern and Western traffic, the Intelligence Unit, Detective Unit, and other patrol areas, namely, the

¹ T. refers to the transcript of the testimony of the proceedings before the Board of Appeals on the third day of hearing which was February 13, 1998.

Parkville, Garrison and Cockeysville Precincts. He testified to the deleterious effect which the continued operation of the club has on the surrounding community. He averred that it affects businesses both open and closed; it affects the comings and goings of vehicular traffic in the area; it affects the stability of the community in which people travel, both by vehicle and on foot; and it affects fast food and hotel operations in the area. Indeed, he stressed that several businesses in the area have chosen to close at an earlier time than normal due to the increased disorderly conduct related to Liquids. A nearby ambulance company has had to put a midnight crew on to protect its property. (T. 96-97)

Earlier in the proceedings Giorgilli testified that the club is open from 11:00 p.m. to about 5:00 a.m. and that by 2:00 a.m., all liquor has been removed from the site. He claimed to be vigilant in this regard. Yet, Captain Harvey reported that in January 1998 undercover operatives were able to buy between three and four alcoholic drinks between 2:00 a.m. and 5:00 a.m. At the makeshift bar in back "you ask for a mattress" which is "a code word for alcohol or beer." (T. 81-84) He then recited a litany of incidents involving mace and pepper sprays, various fights and an arrest of 41 youngsters, 18 and 19 years old, in one night alone. (T. 102-104) On the evening of January 17-18, 1998, several hundred people had congregated on the club parking lot. The situation escalated to the point where Captain Harvey ordered Mr. Giorgilli to either clear the front of his business or have the police shut it down. According to Captain Harvey, Giorgilli's security guard then started canvassing the parking lot, going from car to car advising people "Watch your ass. Cops on the ground. If you got drugs or alcohol, hide it, because the cops are here." (T. 103) He then described an

incident in which an alleged 19 year old, who actually turned out to be 15, was arrested for putting a bottle of whisky in his pocket as he was about to enter the club. At one point the recalcitrant Giorgilli approached a female police officer and ordered her off the lot saying "You have no authority on this lot." (T. 104)

Captain Harvey's testimony reiterated the concerns of the club's residential neighbors. He cited the many incidents of squealing wheels, skidding and excessive noise which occurred early in the morning from about 2:00 a.m. on. There is loud music, profane language, yelling and screaming and an inordinate amount of trash blowing around. (T. 97)

In late summer 1996 the police met with Giorgilli at his request. At that time he complained that the police were harassing him and were trying to drive him out of business. However, the police were merely trying to get Mr. Giorgilli to bring his business into compliance with Maryland law concerning the consumption and the dispensing of alcoholic beverages. Undercover detectives continued to observe flagrant violations even after repeated warnings. Specifically, Mr. Giorgilli was advised that state law prohibits a business owner from allowing members of the general public to consume alcoholic beverages in his establishment between 2:00 a.m. and 6:00 p.m. regardless of whether the owner originally sold the beverages to the patron or not. (See Article 2B §11-304 (a) of the Maryland Annotated Code and County Exhibits 13 and 14.)

At that particular time Giorgilli advised Captain Harvey that all he wanted was to operate his business until September of the following year (1995). If the police department would leave him alone until then, he would leave. And if they did not leave him alone,

Giorgilli threatened that he was "going to open a teeny club and rock Towson." Explaining a teeny club, Captain Harvey cited a former Baltimore City club known as Hammerjacks that served liquor to people twenty-one and over and attracted a younger crowd. Giorgilli stated that Hammerjacks was closing because they had lost their property to the stadium and that it was his intent to open up a Hammerjacks in the County. (T. 66)

When Captain Harvey once again insisted that Giorgilli bring his business into compliance with state and local liquor laws, Giorgilli looked him directly in the face and said "Without alcohol, I have no business." (T. 67) At that point it was clear to the police any that efforts to get Giorgilli to voluntarily comply were unavailing and that he would simply continue business as usual.

In elaborating on his concerns about Hammerjacks, Captain Harvey opined that "on the juvenile side it brought in runaways, people looking for alcohol and drugs, and people that prey on children, namely chicken hawks and pedophiles." (T. 99) Such businesses create an environment which encourages disorderly conduct because of the prevalence of weapons, drugs and fighting. (T. 99) Consequently, Giorgilli's boast that he would "open up a teeny bar and rock Towson" was construed as a threat against the peace and well-being of the citizens. (T. 100)

Next, Captain Harvey spoke about the various calls for service which the Towson Precinct received relative to 8819 Orchard Tree Lane. Between August 1994 and November 17, 1997 the police received a total of 478 calls which included incidents of disorderly conduct, under age drinking, public urination, liquor law and open container violations, code

violations, batteries and so on. (See County's Exhibit 10) On cross-examination Captain Harvey explained that not all of those incidents were attributable to activities either inside the club or its adjacent parking lot. However, he indicated that they were calls received for assistance at the Orchard Tree Lane location. He then noted that the computer print-out, (County's Exhibit 15), has a listing of calls which were directly attributable to the after-hours club.

Finally, Captain Harvey offered contradictory testimony about Giorgilli's military record. He recalled that Giorgilli had stated that he had suffered two wounds in combat, a bullet to the back and damage to his legs from a terrorist attack in the Middle East. Giorgilli also testified that he was receiving a disability from the federal government. A representative of the U.S. Army reported to Captain Harvey that Giorgilli was never in a combat zone, was never wounded, did not serve with the Special Forces as he claimed and was discharged several years before Desert Storm even took place. The only outstanding disability claim he had was for his feet. (T. 86-87) On rebuttal Giorgilli claimed that because he was on a covert mission for the army when he was wounded it would not be included in his normal service record because it would be classified information.

Penelope M. Johnson of the Office of Community Conservation and a member of the planning board for seven years testified. As a central sector coordinator, Ms. Johnson works with the residents and business merchants in the community to assure that they are all working towards a common goal. Liquids is located in the geographic area denominated by the central sector. Ms. Johnson stated that in the last two years her office has promoted the

Loch Raven area as a desirable place for families to locate and that the designated zoning is critical to preserving the integrity of the neighborhood. Liquids certainly does not contribute to this objective.

The citizens' complaints about the detrimental effects which the continued operation of Liquids has on the surrounding community continue unabated. Harry R. Thorne and his wife, Michaela Thorne, live at 8719 Green Pastures Drive which is located behind the club. He said that they were constantly being awakened at 3:00 or 4:00 in the morning due to loud music, and customers who are outside using loud, foul language and publicly urinating. They continue to endure the intrusion of loud, penetrating music from the club and cannot enjoy the comforts of their own home even with the windows closed. Mr. Thorne stated that in the twenty plus years that he and his wife have lived on Green Pastures Drive they have never had problems of this magnitude. (See County Exhibit 5)

Shirley Chandler has lived at 8713 Green Pastures Drive for 27½ years. She testified that she stopped walking in the morning hours because of encounters with drunken kids who were leaving the club. Her home is located approximately 200 yards away from the club. Likewise, she echoed the complaints of the Thornes with regard to the loud noise, traffic and other untoward behavior of club patrons.

Jeff Long, a senior planner with over twelve years experience in the Office of Planning, also testified. He was recognized as an expert in the area of land use planning and categorically stated that Liquids is an after-hours club rather than a nightclub. His opinion emphasized two critical points, namely, that all nightclubs in Baltimore County have a liquor

license and close at 2:00 a.m. as required by law. He rejected the Petitioner's argument that characteristics such as ill-defined aisles, low-lighting levels, a dance floor and music were tantamount to being considered a nightclub. There are numerous banquet halls, country clubs and fraternal organizations which have the same features and yet are not nightclubs. Finally, Mr. Long noted that there is nothing unique about phasing out incompatible uses in zoning regulations. There are numerous sites in the County which would accommodate a club in compliance with the requirements of Bill No. 85-94. With regard to the 1,000 foot distance requirement, he stated that as a planner, such requirements allow for the harmonious uses of land and are effective planning tools.

ARGUMENT

THE COUNTY COUNCIL'S ENACTMENT OF BILL NO. 85-94 WHICH AMENDED THE BALTIMORE ZONING REGULATIONS TO PROVIDE THAT AN AFTER-HOURS CLUB BE LIMITED TO CERTAIN ZONES BY SPECIAL EXCEPTION IS A VALID EXERCISE OF THE POLICE POWER WHICH PASSES CONSTITUTIONAL MUSTER.

In the response to community concerns about after-hours clubs, the County Council enacted legislation which provided a definition of an after-hours club and regulation of the same. It defined an after-hours club as a

"Commercial establishment whose principal business is the provision of live or recorded entertainment with or without a dance floor, which is open primarily between 11:00 P.M. and 4:00 A.M. and which does not have a Baltimore County liquor license. An after-hours club is not a night club as defined in the zoning regulations or the building Code of Baltimore County, Maryland."

Likewise, the legislation imposed a distance requirement. It provided that an after-hours club

must be "located at least 1,000 feet from any residentially used dwelling, residential zone line, church, park, child-care center or school existing prior to the filing of the application for Special Exception."

Bill No. 85-94 is a legitimate exercise of the police power granted to Baltimore County, Maryland, as a charter county pursuant to Article XI-A, Section 3, of the Maryland Constitution, Article 25A, Section 5(S), of the Annotated Code of Maryland, and Article III, Section 306, of the Baltimore County Charter.

Article XI-A, Section 3, of the Maryland Constitution grants Baltimore County the power to enact, repeal, or amend local laws dealing matters falling within their express powers. However, this power is subject to the general laws of the State and to the limitations embodied in the Constitution. As a charter county since 1956, Baltimore County has been granted a wide range of enumerated express powers pursuant to Article 25A of the Annotated Code of Maryland. The broadest authority for enacting local legislation exists in Section 5(S) of Article 25A, known as the general welfare clause. See, e.g., Montgomery Citizens League v. Greenhalgh, 253 Md. 151, 252 A.2d 242 (1969). Section 5(S) confers the following additional power on chartered counties:

The foregoing or other enumeration of powers in this article shall not be held to limit the power of the county council, in addition thereto, to pass all ordinances, resolutions or bylaws, not inconsistent with the provisions of this article or the laws of the State, as may be proper in executing and enforcing any of the powers enumerated in this section or elsewhere in this article, as well as such ordinances as may be deemed expedient in maintaining the peace, good government, health and welfare of the county. (Citations omitted.)

Although Section 5(S) is listed among the enumerated express powers, it has been considered an implied power because the language used is general and broad and does not grant power to chartered counties over a particular subject as do other enumerated express powers of Article 25A. The Court of Appeals in Prince George's County v. Chillum-Adelphi Volunteer Fire Dep't, 275 Md. 374, 340 A.2d 265 (1975), has expressly stated that Section 5(S) is a grant of the police power to chartered counties which "includes the power to regulate private businesses to the extent necessary to protect the public health, safety, morals, and welfare." Id. at 382, 340 A.2d at 270. Additionally, the County Council is empowered to enact public local laws by virtue of Article III, Section 306, of the Baltimore County Charter.

The Fourteenth Amendment to the federal Constitution provides that "no State shall deny to any person within its jurisdiction the equal protection of the laws." although the Maryland Constitution does not contain an express equal protection clause, that principle is embodied in Article 24 of the Declaration of Rights. State v. Good Samaritan Hospital, 299 Md. 310, 473 A.2d 892 (1984). The guaranty of equal protection of the laws applies to the right of all persons to engage in a legitimate trade, profession, or business and to the regulation thereof. However, in the exercise of its police power the government may, without denying equal protection of the laws, reasonably regulate a trade, profession, or business affected with a public interest. Massage Parlors, Inc. v. Mayor of Baltimore, 284 Md. 490, 398 A.2d 52 (1979).

The courts have applied different tests in evaluating a classification challenged as violating the equal protection clause.

When the statute or ordinance restricts a fundamental right, (such as the right to privacy, right to vote, or the right to marry) or creates an inherently suspect classification (such as race, nationality or alienage), courts employ the strict scrutiny test requiring the state to establish that the classification is necessary to promote a compelling state interest. Otherwise courts ordinarily apply the rational basis test (sometimes labelled the fair and substantial relationship test) which requires that a statutory classification bear a rational relation to or rest upon some ground of difference having a fair and substantial relation to a legitimate state objective.

Id. at 496-497, 398 A.2d at 56. There is another intermediate level of review, namely, the "heightened scrutiny" test recognized in Attorney General of Maryland v. Waldron, 289 Md. 683, 426 A.2d 929 (1981). There, the Court of Appeals held that where a statute creates a "sensitive, although not necessarily suspect criteria of classification," affects "important," although not fundamental personal rights, or works a "significant interference with liberty or a denial of a benefit vital to the individual," the courts will apply a standard more exacting than the rational basis test but less rigorous than the strict scrutiny analysis. Id. at 711, 426 A.2d at 944. Clearly, the impact of Bill No. 85-94, does not implicate a heightened scrutiny analysis, nor does it involve any fundamental right or operate to the peculiar disadvantage of a suspect class. The statute at issue herein is a form of economic regulation which traditionally has received minimal review under the rational basis test.

Under the rational basis test, a statutory classification enjoys a strong presumption of constitutionality; the party attacking it must show by clear and convincing evidence that it does not rest upon any rational basis but is essentially arbitrary. See e.g., Hornbeck v. Somerset County Bd. of Educ., 295 Md. 597, 656-657, 458 A.2d 758, 789-790 (1983). And

uniformity of treatment throughout the state is not a prerequisite to satisfying the requirements of the equal protection clause. See, e.g., Department of Transp. v. Armacost, 299 Md. 392, 408-409, 474 A.2d 191, 199 (1984). A statute enacted pursuant to the State's police power is not invalid merely because it affects counties unequally. See, e.g., Supermarkets Gen. Corp. v. State, 286 Md. 611, 621, 409 A.2d 250 (1979), appeal dismissed, 449 U.S. 801 (1980) where Sunday closing laws which prohibited certain wholesale or retail business activities on Sundays in Baltimore, Anne Arundel, and Calvert Counties and not in other jurisdictions did not deny equal protection. Finally, a statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it. McGowan v. Maryland, 366 U.S. 420, 425-426 (1961).

The due process clause of the Fourteenth Amendment protects only against arbitrary or irrational government action. The relevant issue in the substantive due process context is whether the regulation itself, rather than the classification, is rationally related to the achievement of a legitimate state purpose. The County Council has a legitimate interest in regulating the location of after-hours clubs which generate an inordinate amount of loud and boisterous behavior and otherwise interfere with the quiet enjoyment of residents who live in close proximity to such establishments. See Bowie Inn v. City of Bowie, 274 Md. 230 (1975).

The Court of Appeals had occasion to review the constitutionality of some zoning ordinances in Eutaw Enterprises, Inc. v. City of Baltimore, 241 Md. 686, 217 A.2d 348 (1966). In that case the Mayor and the City Council of Baltimore promulgated two

ordinances which prohibited prospective check cashing and money changing agencies in residential and office use districts. They made such uses already in existence non-conforming uses; however, they provided for a termination provision which would enable them to continue for a period of eighteen months. Prior to its enactment, Eutaw contended that it bought the check cashing business in reliance on the legal right to operate it. Further, at the time of the enactment of the ordinances it was the only such business operating in a residential and office use district. Appellants challenged the constitutionality of the ordinances on the grounds that they were discriminatory, destroyed vested rights, and sought to terminate a use which was not detrimental to the public health, safety or welfare. The Court of Appeals disagreed. Speaking for the Court, Judge Hammond opined in dicta that

Generally, a law that draws lines or makes classifications is safe from attack on the ground that it discriminates or violates the constitutional requirement of equal protection because the courts consistently have held that the legislative body ' . . . has the widest discretion in classifying those who are to be regulated and taxed. Only if the grouping is without any reasonable basis, and so entirely arbitrary, is it forbidden. . . . If any state of facts reasonably can be conceived that would sustain a classification, the existence of that state of facts as a basis for the passage of the law must be assumed. The burden is on him who assails a classification to show that it does not rest on any reasonable basis.' (Citations omitted)

Id. at 353. The Court reasoned that the City Council could reasonably and properly have believed that the operation of a check cashing business was incompatible with uses customary in residential and office use districts. Advisory bodies had informed the legislature that such operations encouraged large numbers of people to gather on the streets

in front of the business in the process of going in and coming out of such places. In Eutaw's case there was as many as 600 people a day. Additionally, it encouraged advertising and personal solicitations on the streets. Therefore, the legislature validly could have determined that check cashing agencies were detrimental to the public health, comfort and welfare in certain districts and should be excluded. The fact that some businesses which only occasionally cashed checks for customers were permitted to continue as a nonconforming use did not invalidate the ordinances. The Court held that the Appellants had no vested right in the zoning classification under which it operated and no right to expect that the classification of the property would remain unchanged indefinitely.

In Eutaw the Court of Appeals cited approvingly to Grant v. Mayor and City Council of Baltimore, 212 Md. 301, 129 A.2d 363 (1957). In Grant the Court upheld the constitutionality of a city ordinance which provided that billboards, which were nonconforming uses in residential districts and had been since the start of zoning in Baltimore, must be removed from such districts within five years. It emphasized that

“[M]any courts had held that legislatures could require that nonconforming uses cease after a reasonable and appropriate specified time. We noted that uses of property which are under the attendant circumstances detrimental to the health, comfort, safety or welfare of society may be prohibited under the police power, even though the exercise of that power causes inconvenience or loss to various individuals.”

It further opined that

“Because every zoning regulation affects property owned by someone at the time of its enactment, it brings about some curtailment of property rights either by restricting prospective

uses or prohibiting existing ones. The prohibition of existing rights may be more likely to impose greater hardship or loss upon affected individuals that the restriction of prospective uses and that is one reason why we said in *Grant* (citations omitted): 'The significance and effect of difference in degree in any given case depends on circumstances, environment and length of the period allowed for amortization.'

The holdings of Grant and Eutaw are dispositive of the issues before the Board in the case at bar. Petitioner's claim that the zoning regulation is constitutionally infirm is wholly without merit. The record is replete with testimony regarding the adverse effects of the after-hours club on the surrounding neighborhood. And Captain Harvey's testimony is compelling when he speaks of the tremendous burden it has placed on the police resources of not only the Towson Precinct but the surrounding precincts. Likewise, he stressed the effect which the continued operation has had on the stability of the community, fast-food and hotel operations, and the comings and goings of vehicular and foot traffic as well.

Giorgilli's testimony that he has done everything possible to assure that there is no liquor at the club after 2:00 a.m. is unpersuasive when viewed in light of the entire record. Multiple undercover operations over the past several months have revealed that it is all too easy to go to Liquids and get a drink after other clubs have closed. His threat to the police, that if they did not leave him alone, that he would open up a "teeny club and rock Towson" demonstrates his continued and flagrant disregard of the law. And his efforts at wanting to become the next "Hammerjacks" in Baltimore County is frightening when one considers Captain Harvey's testimony about the kind of undesirables such a club attracts, namely, people looking for alcohol and drugs and people who prey on children, such as chicken

hawks and pedophiles.

The testimony of Harry and Michaela Thorne and Shirley Chandler echoed the concerns and frustrations of the police department in its enforcement efforts. They are all homeowners of longstanding whose quiet enjoyment of their property has been seriously and adversely affected by Liquids.

Mr. Giorgilli's testimony in this matter was simply incredulous. It was replete with inconsistencies and hyperbole. He denied any participation in the "Cannonball Run" but somehow his private pager number was used in the flyer advertising the road race. Yet, he continued to maintain that he had nothing to do with it. As far as his lease is concerned he testified that he was not prohibited from assigning or subletting it and, further, that if the proposed use were determined to be illegal he could terminate the lease upon payment of four months rent to the landlord. His rambling testimony in which he often answered questions vaguely did little to advance his case. And as to those issues which were relevant he was purposively evasive. His credibility was seriously impeached by the testimony of not only County witnesses but the citizens.

CONCLUSION

Baltimore County hereby adopts, in its entirety, the Memorandum filed by the People's Counsel in these proceedings. For the reasons stated in both Memoranda, Baltimore County, Maryland respectfully prays that this Honorable Board deny the relief requested herein by the Petitioner.

Respectfully submitted,

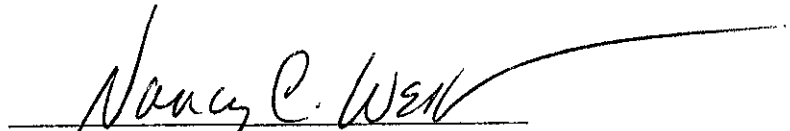
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 13th day of March, 1998, a copy of the foregoing Memorandum of Baltimore County, Maryland was mailed, postage prepaid, to: Roger J. Sullivan, Esquire and Edward C. Covahey, Jr., Esquire, Covahey and Boozer, P.A., 614 Bosley Avenue, Towson, Maryland 21204, Attorneys for Petitioner and Carole S. DeMilio, Esquire, Deputy People's Counsel, 400 Washington Avenue, Towson, Maryland 21204.


NANCY C. WEST

3-13-98

BEFORE THE COUNTY BOARD OF APPEALS
FOR BALTIMORE COUNTY

RE: PETITIONS FOR SPECIAL
EXCEPTION AND VARIANCE
8819 Orchard Tree Lane, (CLUB 101)
W/S Orchard Tree Ln, 534.42' N of c/l Joppa Rd
9th Election District, 4th Councilmanic

RAMPART PARTNERSHIP
Petitioner

Case No. 96-60-XA

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PEOPLE'S COUNSEL'S MEMORANDUM

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MICROFILMED

STATEMENT OF THE CASE

Rampart Partnership (Paul M. Pardew, Jr. owner) and Club 101, Inc. (later called "Liquids", John Giorgilli, President) (hereinafter collectively referred to as "Petitioner"), owned and operated, respectively, the premises known as 8819 Orchard Tree Lane, an after-hours club since May, 1993. At that time, there was no provision in the Baltimore County Zoning Regulations (BCZR) permitting the use. The site is zoned Business Roadside (BR).

There occurred several hearings before the Zoning Commissioner or Deputy, regarding the use of this site as described. Additionally, the Baltimore County Council, which is charged with enacting zoning ordinances, addressed the after hours club use in 1994 in Bill 85-94. (See Annotated Code of Maryland, Art. 25A, Section X, "Express Powers Act"; Baltimore County Code, Section 26-116).

A chronolgy of the administrative hearings and legislation pertinent to this use and/or this site is as follows:

March, 1993	Club 101 opened
June 20, 1994	Council passes Bill 85-94
August 8, 1994	Bill 85-94 effective
Sept. 7, 1994	DZ Commissioner ruled issue of violation of Bill 85-94 by Club 101 premature-County's Petition filed prior to

enactment of Bill 85-94

January 18, 1995 **Petitioner files Petition for
Special Hearing**

March 2, 1995 **Zoning Commis. Opinion that Club 101
is after hours club that must comply
with Bill 85-94 conditions by 8-8-95**

August 8, 1995 **Compliance with Bill 85-94 required**

August 8, 1995 **Petitioner files Petitions for
Special Exception and Variance**

November 6, 1996 **Zoning Commissioner Order denies
Petitions for Special Exception,
Variance, & Special Hearing**

December 5, 1996 **Petitioner appeals 11-6-96 Order to
CBA**

June, 1997 **Bottle Club Law prohibiting
possession of alcohol after 2:00 a.m.**

December 12, 1997 **First day of CBA testimony**

Petitioner sought and received five postponements of the hearings before the zoning commissioner and CBA. He delayed issuance of the November 6, 1996 Order of the Zoning Commissioner, alleging a settlement with the neighborhood.

Petitioner seeks, under the Petitions for Special Exception and Variance, to operate an after hours club at 8819 Orchard Tree Lane and to operate within 83 feet of a residence, in lieu of the required 1000 feet. Alternatively, the Petition for Special Hearing seeks non-conforming use status, vested rights for an

existing use, a declaration that Bill 85-94 is unconstitutional as applied to Petitioner, or cannot be enforced against the Petitioner under the doctrine of estoppel.

The matter is before the CBA on Petitioner's appeal of the Zoning Commissioner's November 6, 1996 decision. The exact pertinent language of the Order can be found in the CBA file which is part of the record.

On the first day of the hearing before the CBA, Petitioner withdrew with prejudice its Petitions for Special Exception and Variance. The CBA proceeded on the Petition for Special Hearing.

The Petitioner produced three witnesses. Baltimore County produced five witnesses. The Office of People's Counsel produced one witness.

The hearing proceeded on three separate dates, December 12, 1997, January 19, 1998 and February 13, 1998, not counting the first scheduled date, November 20, 1997, when Petitioner did not appear.

(Rather than address the facts of the hearing in a separate section, aware of the lengthy issues before the CBA, and mindful that the CBA will have two other Memoranda before it, People's Counsel's Memorandum will refer to the facts and the transcript, as appropriate, in the "Argument" sections). Additionally, People's Counsel adopts the facts of the Memorandum of the Baltimore County Office of Law as pertinent to the Arguments.

QUESTIONS

1. IS THE PETITIONER PRECLUDED FROM CHALLENGING ITS STATUS AS AN AFTER HOURS CLUB BY FAILING TO APPEAL THE MARCH 2, 1995 DECISION OF THE DEPUTY ZONING COMMISSIONER?
2. DOES THE PETITIONER'S USE COMPORT WITH THE DEFINITION OF AN AFTER HOURS CLUB?
3. BY WITHDRAWING WITH PREJUDICE ITS PETITION FOR SPECIAL EXCEPTION AND PETITION FOR VARIANCE, HAS THE PETITIONER FAILED TO EXHAUST ITS ADMINISTRATIVE REMEDIES AS REQUIRED?
4. IS THE PETITIONER'S USE OF 8819 ORCHARD TREE LANE "NONCONFORMING" AS THAT TERM IS DEFINED AND APPLIED BY THE BALTIMORE COUNTY ZONING REGULATIONS?
5. IS THE AFTER HOURS CLUB LEGISLATION A VALID EXERCISE OF THE POLICE POWERS?
6. CAN PETITIONER CLAIM "VESTED RIGHTS" UNDER LEGISLATION HAVING A TERMINATION DATE IN A DE NOVO APPEAL BEFORE THE CBA?
7. DOES THE DOCTRINE OF ESTOPPEL APPLY TO ZONING REGULATIONS IN GENERAL, OR TO THE UNAUTHORIZED USE OF 8819 ORCHARD TREE LANE BY PETITIONER AS AN AFTER HOURS CLUB; IN OTHER WORDS IS THE PETITIONER'S USE BEYOND REGULATION BY THE BALTIMORE COUNTY COUNCIL IN THE EXERCISE OF ITS ZONING POWERS?
8. IS THE AFTER HOURS CLUB LEGISLATION UNCONSTITUTIONAL IN ITS APPLLICATION TO PETITIONER? DOES THE LEGISLATION VIOLATE (A) DUE PROCESS OR (B) EQUAL PROTECTION?
9. DID PETITIONER PROVIDE EVIDENCE TO OVERCOME THE PRESUMPTION OF VALIDITY OF THE STATUTE AND OTHERWISE SATISFY HIS BURDEN OF PROOF?

ARGUMENT

1. The Petitioner's failure to appeal the March 2, 1995 decision of the Zoning Commissioner which established Club 101 (Liquids) as an after hours club, precludes reconsideration of the issue by the CBA in this case.

The Petitioner and his counsel presented evidence before the Zoning Commissioner in a hearing in early 1995. The Petitioner and Baltimore County were the parties. At issue was the type of use conducted at the subject site. Mr. Giorgelli testified to the nature of his operation - a description of the premises, the days and hours of operations, the type of activity and entertainment, the refreshments provided by either the club or the patrons, the lack of a liquor license by the Petitioner, the parking facilities. As a result of the evidence and testimony provided, the Zoning Commissioner issued a written decision on March 2, 1995. (People's Counsel Exhibit 1).

It is undisputed that no appeal from this decision was taken by any party. The finding of the Zoning Commissioner is final and binding. It is not the basis for this appeal to the CBA. It cannot be attacked collaterally in this proceeding.

In his opinion dated March 2, 1995, the Commissioner stated the issues before him: " . . . whether the business operation at the aforementioned property is an "After Hours Club" as defined in . . . BCZR and, if so, whether said use may continue without the benefit of a special exception and a variance to allow same within 1000 ft. of a residentially used dwelling."

The Opinion stated Mr. Giorgelli testified that "he recognized the lack of facilities available in Baltimore County to cater to the late night crowd for socializing and dancing. . . . The nature of the club is to operate a late night facility. The Club is open some Thursdays and most Fridays and Saturdays from 11:00 P.M. to 5:00 A.M. There is a dance floor and a disc jockey set up to provide entertainment. There are also some pool tables and similar amusement devices. . . . the facility does not have a liquor license or sell liquor. Moreover, food is not sold, although a small independent food vendor operates in the front of the building. An admission fee is paid by the patrons who use the facility to socialize and listen and dance to the music provided. Patrons are allowed to bring in alcoholic beverages." This testimony parallels exactly the Petitioner's testimony before the CBA on pages 86-88 of the Transcript.(See Appendix 1).

The Opinion also set forth Mr. Giorgelli's detailed testimony about his alleged investigations with various agencies and departments to ascertain if he could operate. The Petitioners's testimony before the Zoning Commissioner and his testimony here before the Board are virtually identical in factual descriptions.

The Zoning Commissioner then concluded: "In answer to the first question; namely, Is the subject property being used as an after hours club?, it is manifestly apparent that the answer must be in the affirmative. . . . The facility, as described by Mr. Giorgelli and Mr. Connor, [Kevin Connor, Baltimore County Zoning Inspector who also testified in the CBA hearing] fits precisely the

new definition of an after hours club."

Petitioner's testimony in the instant case describing his operation parallels his description at the aforementioned 1995 zoning hearing. Nothing has changed. Additionally, the same parties, Petitioner and Baltimore County, are parties to the instant case.

In this appeal, Petitioner wants to relitigate a decision he does not like. The type of use is not an issue. This CBA appeal is from the Zoning Commissioner's order dated November 6, 1996 denying Special Exception, Variance and Special Hearing. The determination of the use was not an issue - only whether a Special Exception was warranted. Petitioner cannot now challenge that finding and claim to be a nightclub. In its decision, the Zoning Commissioner recognized that Club 101 is not a nightclub, and the after hours club legislation applied.

The legal doctrines of collateral estoppel and res judicata apply to the facts of this case. A 1992 Maryland Court of Appeals decision provides a thorough discussion of Maryland law on this issue.

Batson v. Shiflett, 325 Md. 684 (1992), involved a common law tort action for defamation and intentional infliction of mental distress in a labor union dispute. In Batson the Court of Appeals (1) discussed collateral estoppel and res judicata in general and (2) addressed the application of these issues in an administrative hearing.

(1) The Batson court defined **collateral estoppel and res**

judicata:

"[I]f a proceeding between parties involves the same cause of action as a previous proceeding between the same parties, the principle of res judicata applies and all matters actually litigated or that could have been litigated are conclusive in the subsequent proceeding. If a proceeding between parties does not involve the same cause of action as a previous proceeding between the same parties, the principle of collateral estoppel applies, and only those facts or issues actually litigated in the previous action are conclusive in the subsequent proceeding."

(2) There is no doubt the doctrines of res judicata and colleteral estoppel apply to the administrative hearings in this case. The Batson court recognized the three prong test enunciated in a federal case and later upheld by the Supreme Court:

"Whether an administrative agency's declaration would be given preclusive effect hinges on three factors: (1) whether the [agency] was acting in a judicial capacity; (2) whether the issue presented to the district court was actually litigated before the [agency]; and (3) whether its resolution was necessary to the [agency's] decision." Id. 701.

Here, the Zoning Commissioner's hearing precipitating the March 2nd Order, satisfies all three conditions. The order is actually termed "Findings of Fact and Conclusions of Law"; the language itself in the decision describes the nature of the proceeding and evidence presented. Moreover, it is being applied to another administrative hearing.

Batson referred to the language of the Supreme Court in United States v. Utah Constr. Co., 384 U.S. 394, 422 (1966):

"When an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, the courts have not hesitated to apply *res judicata* to enforce repose."

The Petitioner was satisfied with the March 2, 1995 decision - even his attorney stated at the CBA hearing that they "won" the Zoning Commissioner case.

The Petitioner is barred by res judicata. The same issues and the same parties appeared in a contested zoning commissioner case to determine the use at the site. At the very least, if it is determined that the zoning commissioner case was a separate cause of action, collateral estoppel applies. The zoning commissioner had to determine the use in order to reach his decision; the nature of the uses was actually litigated.

The Petitioner's disguised appeal of the March 2, 1995 decision is well beyond the 30 day appeal period. It comes too late to the CBA.

2. The Petitioner cannot be reborn as a nightclub.

Even if the determination of the use is before the CBA, the Petitioner's operation conforms precisely with the definition of an after hours club. It is not a nightclub as defined and applied in BCZR.

For the first time in the long history of this zoning case, Petitioner attempts to change his stripes. In prior cases before

the Zoning Commissioner, Petitioner portrayed himself as an after hours club with a certain pride in his business venture. Likewise, at the CBA hearing, he boasted of this idea as unlike anything in Baltimore County. He cannot now circumvent the plain language of the after hours club legislation by calling himself a "nightclub" and avoid the provisions of Bill 85-94. (Appendix 2).

On the first day of his testimony, December 12, 1997, Mr. Giorgelli claimed the use has changed since the March, 1995 zoning Order, suggesting he sometimes closes at 2:00 a.m. He failed to produce flyers or advertisements announcing the change. On the contrary, he advertises a 5:00 a.m. closing. (See Baltimore County's Exhibit 1). In fact, **Captain Harvey** visited the site in January, 1998 and it was open at 4:00 a.m. (Appendix 3). In truth, the club has continued to operate in the same manner since 1993. The state statute prohibiting liquor in bottle clubs after 2:00 a.m. does not affect the zoning regulations nor Petitioner's status. (Appendix 4). The ability of patrons to take alcohol to an after hours club was never a part of the definition nor required for the use. Petitioner continues to provide the same services described in the definition regardless of the presence of alcohol. Ironically, Petitioner claimed one purpose to open his operation was to provide a place where alcohol was not promoted, unlike bars and nightclubs. (Appendix 5).

Mr. Jeff Long testified unequivocally that the use is an after hours club and not a nightclub. He made two important points of distinction: all nightclubs in Baltimore County have a liquor

license and close at 2:00 a.m. by regulation. He refuted that low lighting, an array of tables and chairs, a dance floor and music are dispositive. He pointed out that many banquet halls, country clubs, social halls, fraternal organizations, and hotels share these features but are not nightclubs. Mr Long testified that shared characteristics do not open up the process to a choice by the applicant. **Mr. Kevin Connor**, a zoning inspector who inspected the club during operation, agreed with Mr. Long.

According to Mr. Long, all the evidence describes an after hours club. It is a commercial establishment, providing music entertainment and a dance floor, open primarily between 11:00 p.m. and 4:00 a.m. with no liquor license. As the witness pointed out, an after hours club cannot be a nightclub, under the explicit language in the definition: "An after hours club is not a nightclub as defined in the zoning regulations or the Building Code of Baltimore County, Maryland." (BCZR, Section 101). This language prevents the exact distortion of the regulations promoted by Petitioner.

(The Petitioner constantly referred to the Building Code. The purpose of the Code is to prevent occupancy hazards such as fires; it cannot and does not zone properties. The language of the Building Code confirms this: **"301.2 Application of other laws:** The provisions of this chapter shall not be deemed to nullify any provisions of the zoning law or any other statute of the jurisdiction pertaining to the location or occupancy of buildings, except as is specifically required by the provisions of this code.

Local zoning ordinances and other laws or statutes are not waived or set aside by the code." It also notes that more restrictive zoning ordinances prevail over the code. (The BOCA National Building Code/1993, Commentary, Volume 1).

Similar characteristics among uses is to be expected. Still, uses are clearly and specifically defined and categorized. A property owner or developer cannot slide in and out of uses to his own liking. It is not for the property owner to make a choice.

Additionally, provisions of a zoning ordinance must be considered as an entirety to apply clear meaning and intent. In Smith v. Miller, 249 Md. 390 (1968), a property owner in an agricultural zone, claimed his sawmill operation was a special exception agricultural use for "processing . . . farm products"-timber. A sawmill was specifically listed as a permitted use in the M-2 district. The court denied the property owner's interpretation and stated: "The provisions of the Ordinance must be considered as an entirety, and we do not think the Board could rely on a conditional use provision to permit in an agricultural district a use which the Ordinance manifestly intended to confine to a general industrial district." Id. 393. In the case at hand, a nightclub and an after hours club are two distinct uses that must be interpreted and applied accordingly.

The legislative body is charged with promoting the health, safety, and welfare of its citizens. To that effect, zoning regulations define and classify a use in harmony with the surrounding community. A property owner or developer cannot

undermine the plan for his own purposes.

The Petitioner skirts the obvious identification of his use to avoid the conditions. Zoning laws are not a potpourri from which to select. The County Council is charged with defining and classifying uses, not the Petitioner.

3. The Petitioner cannot raise the claim that the after hours club legislation is unconstitutional until his administrative remedies are exhausted.

Caselaw is quite specific on the proper procedure in cases where constitutional issues are raised. We do not dispute that in certain cases, the CBA may rule on constitutional issues in the course of an administrative hearing for specific zoning relief. Here, this is not the case. There is no zoning relief before the CBA, the Petitioner having withdrawn the Special Exception and Variance Petitions. The Special Hearing Petition does not seek zoning relief. It is used by Petitioner to raise the constitutional issues and their corollary matters as Petitioner views them. Furthermore, even Petitioner's counsel stated at the start of the CBA hearing that the case now involves constitutional issues, not zoning relief.

The case law on this issue is unmistakable. A 1995 Maryland Court of Appeals case reaffirms its prior holdings on constitutional issues in administrative proceedings:

" . . . over the past fifty years, when many statutes have provided for quasi-judicial administrative proceedings to resolve the innumerable controversies

and problems associated with our modern age, this Court has consistently taken the position that constitutional issues, including the constitutionality of applying particular statutes, can and often must be raised and initially decided in the statutorily prescribed administrative proceedings." Insurance Commissioner v. Equitable, 339 Md. 596, 617 (1995).

Not only can the issue be decided within an administrative proceeding, the party must proceed administratively before the constitutionality of a statute can be determined.

"In this state, however, we regard it as settled law on principle and authority that, absent most unusual circumstances, . . . the court will not take jurisdiction even though a constitutional issue is raised, until the administrative remedy has been exhausted." Id. quoting Poe v. City of Baltimore, 241 Md. 303, 311 (1966).

"In accord with the Seabolt and Poe cases, where a party is not challenging the validity of a statute as a whole, but is arguing that the statute as applied in a particular situation is unconstitutional, and where the legislature has provided an administrative remedy, this Court has regularly held that the constitutional issue must be raised and decided in the statutorily prescribed administrative and judicial review proceedings." Id. 619. (Citations omitted).

The Court in Equitable, supra went on to declare the recognized exception to the normal rule with the language in Harbor Island Marina v. Calvert Co., 286 Md. 303, 303-308 (1979): "[T]he "constitutional exception" to which we have just alluded permits a judicial determination without administrative exhaustion when there is a direct attack upon the power or authority (including whether it was validly enacted) of the legislative body to adopt the legislation from which relief is sought. . . .

In the present declaratory judgment action (emphasis added) the basic attack being launched by the appellant is upon the power or authority vel non of the [legislative body] to adopt the ordinance"

"This "exception" is a narrow one." Id. 621. The attack must be made to the constitutionality of the statute as a whole and not merely as to how the statute has been applied." Id. (Citations omitted).

Here, Petitioner does not challenge the County Council's authority to enact the after hours club legislation, nor the statute as a whole, but only its application at the Orchard Tree Lane site. All the evidence in Petitioner's case focuses on operating a club at that location. Appropriate constitutional issues raised by Petitioner could be decided by the CBA in the course of deciding the Special Exception and Variance relief. However, the Petitioner cannot withdraw the zoning petitions, and adjudicate the constitutionality of the regulation's application. He must exhaust his administrative remedies, which Petitioner

failed to do.

The Special Hearing Petition is clear. It states the issue: "(3) establishing that Baltimore County Bill No. 85-94 and the Zoning Regulations contained therein relating to "after hours clubs" may not be enforced against the Petitioners and the subject premises as same is unconstitutional as applied against Petitioners and the subject premises;" (emphasis added).

In essence, Petitioner disguises declaratory relief in the form of a Special Hearing Petition appealed to the CBA. The Special Hearing Petition is no substitute for the requirement to exhaust administrative remedies.

The law on this is clear. If a party claims the application of the regulation is unconstitutional, he must do so in the course of or subsequent to seeking administrative relief. This makes perfect sense - if an applicant is granted the zoning relief, there is no complaint with the statute. On the other hand if a party claims authority to issue the regulation is lacking, or the regulation as a whole is unconstitutional regardless of application, he can seek declaratory relief in the Circuit Court or administratively, without seeking separate zoning relief.

A party cannot interchange these established principles of law and create a hybrid proceeding.

In the case at hand, Petitioner challenges the application of the after hours legislation to him at the specific site. At no time, and in no pleading, does he attack the County Council's authority, or the statute as a whole.

Petitioner appears to have made two fatal errors. First, he failed to appeal the March 2, 1995 Order which found his operation to be an after hours club. Second, he withdrew the special exception and variance, effectively foreclosing the only forum to hear his constitutional issues.

4. The operation of Petitioner's after hours club is not a nonconforming use under the definitions of BCZR and caselaw.

The Petitioner confuses the traditional nonconforming uses with the specific restrictions in the after hours club legislation. The statutory language is unambiguous and must be applied in this case. It may be helpful at this time to review nonconforming uses.

BCZR provides for nonconforming uses in Section 104. A nonconforming use is defined in BCZR 101:

"Nonconforming Use: A legal use that does not conform to a use regulation for the zone in which it is located or to a special regulation applicable to such a use. A specifically named use described by the adjective "nonconforming" is a nonconforming use."

The Petitioner's club was never a "legal use". When he opened in May, 1993, **no zoning regulation** authorized the use. If a use is not specifically stated in the Regulations, it is prohibited. The law is well settled on this issue. Kowalski v. Lamar, 25 Md. App. 493 (1975) is the prevailing case. Only those uses specifically provided for in the zoning regulations are permitted. A use not specifically included in the uses permitted by right or special exception is prohibited.

Additionally, no zoning opinion granted him the authority to operate.

Petitioner's claim of nonconforming use status must fail. The only authority to operate an after hours club is derived from Bill 84-95, and he must abide by its provisions.

Petitioner forfeited the opportunity to comply when he withdrew his Petition for Special Exception. Petitioner boldly ignores the statute by setting up an illegal use, and then claims protection as nonconforming.

Nonconforming uses disrupt comprehensive zoning, and are looked upon with disfavor. They are permitted, but cannot be expanded or changed. The nonconforming use status is not intended to be manipulated as Petitioner proposes.

5. The after hours club legislation, including its restrictions, is a valid exercise of the police power.

The authority of the Council Council to enact zoning laws cannot be disputed.

Historically, the Supreme Court established the constitutionality of zoning to restrict specific uses. See Reinman v. Little Rock, 237 U.S. 371 (stables); Cusack Co. v. City of Chicago, 212 U.S. 526 (signs); Hadacheck v. Sabatian, 239 U.S. 394 (brick manufacturing). The Court sustained comprehensive zoning to protect residential areas in Euclid v. Amber Realty Co., 272 U.S. 365. Later Supreme Court cases include Village of Belle Terre v. Boraas, 416 U.S.1 (rooming houses); and Penn Central Transp. Co. v. City of New York, 438 U.S. 104 (landmark restrictions).

The Maryland Court of Appeals has likewise sustained zoning as an exercise of the police power. Tighe v. Osborne 150 Md. 452 (1926), Jack Lewis, Inc. v. Baltimore 164 Md. 146 (1933), Grant v. City of Baltimore 212 Md. 301 (1957), City of Baltimore v. Borinsky 239 Md. 611 (1965).

Separation of uses into specific zones in the comprehensive zoning process has been a basic tenet of Baltimore County zoning for over 50 years. In furtherance of this purpose, the County Council limits and restricts uses and their location.

The restrictions contained in the after hours club law have been enforced in other zoning regulations and upheld by the courts.

"Sunset" or "amortization" provisions providing for future termination of uses have been upheld in nearly all jurisdiction since the 1960's as a valid means to bring conformity to zoning regulations.

A comprehensive review of this subject is addressed in Anderson's American Land Planning Law, Section 11606, p 255. There it is stated that "Once New York shifted, [in upholding nearly forty years ago, "sunset" provisions] other states fell in line rapidly . . . ; and so the authority in favor of the general principle of amortization is now strong. . . The courts have rejected the usual arguments based on the First Amendment, the equal protection clause, and the adequacy of the standards provided in the statute." Id. at 261.

Cases upholding one year termination periods are noted throughout Anderson. It also notes that since 1960, only three

states have handed down definitive opinions disapproving the principle of amortization. Id. p. 264.

Maryland is not among the three, and, in fact, was one of the early states to recognize the validity of amortization clauses in statutes. See Grant v. City of Baltimore, 212 Md. 301 (1956).

Again, in Shifflett v. Baltimore County, 247 Md.151 (1967), the Court stated, "The principal is firmly established . . .that legislative bodies can require that nonconforming uses cease after a reasonable and appropriate specified time." There is no requirement for compensation.

In upholding removal of billboards in the Oldtown district of Baltimore City as part of a plan to remove slums and blight from the city, the court again reiterated in Donnelly Adv. Corp. v. City of Balto., 279 Md. 660, 671 (1977) that "Phase-out periods have been held to be appropriately employed in the exercise of the police power." In Donnelly, aesthetic concerns and revitalization justified prohibition altogether of a use otherwise permitted in the city. The Court allowed phasing out the use without compensation - neither the owner of the property nor the sign company tenant were deprived of all beneficial use of their property.

Furthermore, at the CBA hearing, the testimony of **Mr. Jeff Long** confirmed the relevance of these restrictions to the purpose of zoning.

As a tenant and not owner, the Petitioner's arguments in the instant case pertaining to his expenditures are particularly

cheeky. He entered into a Lease for one year beginning April 1, 1997, (Petitioner's Exhibit 6) well after the Zoning Commissioner ruled on March, 2, 1995 his operation of after hours club must comply with the statute. Prior to this, a written lease with the owner was not required. As if to further entrench himself in this location, Petitioner claims he expended significant funds for improvements to the property (but after March, 1997). Surprisingly, Petitioner did not produce a single receipt or cancelled check for the improvements.

Petitioner's financial decisions are either cunning or foolish. Either way, they have no significant merit to the issues to be decided by this Board. By every account, his circumstances are self-created.

Fortunately, courts do not accede to these arguments; they are not tempted by suggestions of sympathetic economic circumstances to reward a flagrant violation of zoning laws. An Arkansas case concerning removal of billboard under an amortization period is particularly apropos.

In Fisher Buick, Inc. v. City of Fayetteville, 286 Ark 49 (1985), it was noted that "the leasor of the sign space, was without the right to complain about the amortization period since he had renewed his lease with the full knowledge that the amortization period had already lapsed." Id. at 268.

The opinion goes on: "The sole economic issue is whether there is some use of the property in compliance with zoning regulations; the legislature has no pact with property owners and developers for

maximum profit and financial rewards.

Similarly, the court stated in Donnelly supra at 671 in dismissing a claim for a taking and compensation: "Neither party is, however, deprived of all beneficial use of its property. Donnelly [tenant] can relocate its structures. . . There was testimony the Flacomios [Owners-Landlords] could use their land for a parking lot. **As long as there is some reasonable use for the properties, that they may be less valuable and the owners may suffer some loss in revenue is not controlling.**" (Emphasis added).

In the instant case, People's Counsel's witness, **Mr. Jeff Long**, emphasized the site's commercial viability: the BR zone which permits all the commercial uses, accessibility and the infrastructure, surrounding development, versatility of the structure and concomitant parking, efforts of Community Conservation.

This testimony was not disputed. Petitioner's surveyor conceded unremarkable topography, a sound structure, a stable neighborhood.

Mr. Giorgelli acknowledged the site operates daily as a dance studio. The owner, Mr. Rampart, never appeared claiming lack of reasonable use.

Additionally, Petitioner produced no evidence precluding relocation of the club. Mr. Giorgelli admitted many improvements could be removed. There was no evidence that the grace period in the statute poses undue hardship or is unreasonable for the Petitioner.

In fact, the one year amortization period is in step with similar zoning provisions in Maryland and other jurisdictions.

In Eutaw Enterprises, Inc. v. City of Baltimore, 241 Md. 686 (1966), the court upheld a grace period of 18 months as well within judicially approved time periods. The court cited other cases upholding both immediate and one year cessations.

Mr. Giorgelli has continuously operated at the site since the the law was passed in August, 1994. He is in his 6th year of operation. Petitioner has skirted or ignored the one year compliance period; he cannot claim unfairness in the application of the statute to him or his operation.

The Eutaw case involved similar facts. The court noted at page 355, "In the present case the reasonableness of the 18 months period of grace need not be passed on as a basis of decision. Because of the length of time the litigation has dragged on, during which Stan's [Tenant] has continued uninterruptedly to cash checks, Eutaw and the Church [the Landlord] have had some five and one half years [from] . . . when Ordinance 465 was passed to enjoy and profit from Eutaw's [Tenant's] operation. . . Since Eutaw has had the five-year period it claimed was necessary and has fully depreciated its investment, their termination provisions of [the ordinance] cannot be said to have been unreasonable or invalid in application to Eutaw."

Mr. Jeff Long also provided expert testimony on amortization provisions. He noted the other uses in the County which contain similar restrictions. There is nothing unique about phasing out

incompatible uses in zoning regulations.

In reality, Mr. Giorgelli has operated his club in a rented, conventional- looking commercial structure since 1993. He installed few, if any, permanent fixtures. Even the sound system is removable. **Captain Harvey** found nothing inside particularly attractive, opulent or grand. In fact, he noted the flimsy plywood bar and unkempt restrooms. (Appendix 6).

Similarly, **distance standards** are not uncommon in zoning regulations. (In this case, 1,000 feet from residences, and similar uses). They prevent or minimize negative impacts on the neighbors.

In Holmberg v. City of Ramsey, 12 F.3d 140 (8th Cir. 1993), an adult-only bookstore was located within 1000 feet of residential property, a church and a daycare. The business was the first of its kind in the City, which had no Ordinance dealing with sexually oriented businesses when Holmberg started to to operate. Subsequently, an ordinance was passed permitting these businesses in two commercial zones, providing they were 1000 feet from residentially zoned property, day care centers, educational facilities, public libraries and parks, churches, on-site sales of liquor and other sexually oriented businesses. A grace period was given to relocate.

The court in Holmberg pointed out that other sites that complied were available. The Court refuted the owner's argument that the cost of relocating effectively puts him out of business. The opinion referred to similar holdings in other cases in finding that no violation exists merely because the owner must "fend for

[himself] in the real estate market, on an equal footing with other prospective purchasers and lessees." Id. at 144 (citations omitted). The court rejected the argument that equal protection rights are violated because sexually oriented businesses are treated differently than other non-conforming uses. "The zoning ordinance utilizes separation restrictions to accomplish the City's stated goal of protecting the quality of life in the community, while at the same time makes some areas of the City available for sexually oriented businesses and their patrons." Id. The court recognized the important government purpose for the zoning statute even though First Amendment constitutional interests were raised.

Likewise, the 1000 foot distance restriction was also found reasonable in an adult bookstore case in Maryland, Annapolis Road v. Anne Arundel County 113 Md. App. 104 (1996), involving First Amendment issues of free speech in an injunction case. The court found the zoning regulation served an important government interest, and pointed out that relocation was feasible.

An after hours club is not protected by the First Amendment. The elements of free speech and right to privacy are not involved. Correspondingly, courts in other jurisdictions have ruled that massage parlors are considered separately from other forms of adult entertainment since free speech is not an issue. Young, American Law of Zoning Section 17.04.

A New York federal appellate court concurred that the First Amendment rights to privacy and association were not violated in sustaining an ordinance prohibiting adult physical culture

establishments. Wigginess, Inc. v. Fruchtman, 482 F Supp 681 (1979, SD NY).

In the instant case, Mr. Jeff Long testified of numerous sites in the County, along such corridors as Pulaski Highway, York Road and Reistertown Road, as examples, that could accomodate a club in compliance with the statute's conditions. Furthermore, Mr. Long recited numerous other uses in Baltimore County that maintain a distance requirement above and beyond the general setback requirements for the zone. He stated that as a Planner, such requirements allowed for harmonious uses of the land and are effective planning tools.

Addressing Petitioner's inference of unfairness that an after hours club is only permitted by special exception, Mr. Long stated numerous uses in Baltimore County are permitted by special exception only.

Mr. Long's expert opinion provides substantial reasons for the sunset provisions and the distance requirements in the after hours club legislation. His testimony was underscored by the factual accounts of the neighbors and the police department. The Petitioner provided no evidence to refute the testimony. All these factors collaborate to sustain the legislation as a proper exercise of the police power.

6. "Vested rights" do not apply in the instant case; a Petitioner who operates without legal authority in disregard of zoning laws cannot claim his illegal actions are somehow inviolable.

In Sycamore Realty v. People's Counsel, 344 Md. 57 (1996), the

Court of Appeals recognized that "vested rights is derived from principles of common and constitutional law and focuses upon "whether the owner acquired real property rights which cannot be taken away by government regulation" (Citations omitted).

Petitioner possessed no such rights.

In order to claim this defense, Petitioner would have to prove: (1) the zoning in place prior to adoption of the after hours legislation permitted Club 101; (2) Petitioner was operating lawfully under that zoning; and (3) the after hours legislation itself does not prohibit continuance of the use.

Petitioner satisfied none of the requirements: (1) BCZR never permitted after hours clubs in the BR zone; (2) Club 101 was never legal; (3) the legislation contains a "sunset" provision, not a "grandfather" provision.

Bill 85-94 **created** the right to operate an after hours club; Petitioner had no rights prior to enactment of the statute.

If, in this case, Petitioner has a "vested right" to operate, anyone in Baltimore County would be able to carry on a use in any manner and at any location, and then claim protection under "vested rights" when cited for violation or noncompliance. Zoning laws would be futile.

The doctrine of vested rights protects legal uses which become illegal after a zoning change. However, it is rarely applied because Baltimore County zoning laws either recognize lawful nonconforming uses, or include "sunset" provisions in the legislation to phase out the use. (It has been discussed that

Petitioner in this case does not have a nonconforming use.)

Rather, vested rights may apply in those rare transition cases where a use permitted by law is contemplated, but not in place when the law is changed prohibiting the use. In those instances, the facts are carefully scrutinized to determine existence of a building permit and substantial construction. (Baltimore County Code, Section 26-216 (c)).

Here, the Petitioner operates without zoning authority, invests recklessly in the property, signs a lease at his risk; he seeks to sanction all under the guise of "vested rights". It is a mockery of the zoning process and an affront to citizens who abide by the law.

7. There is no "zoning estoppel" theory in Maryland which prohibits enactment and enforcement of the after hours legislation.

When confronted with claims of "zoning estoppel", the Court of Appeals has repeatedly declined to adopt it. (Richmond Corp. v. Bd. of Co. Comm'rs., 254 Md. 244 (1969); County Council v. Offen, 334 Md. 499 (1994); Sycamore Realty, supra. The court is steadfast in its confidence that the doctrine of "vested rights" provides adequate protection to property owners from governmental interference: "We have never adopted zoning estoppel in Maryland. Instead, we, like all of the other courts that have declined to adopt zoning estoppel "recognize a legal defense cast in terms of whether the property owner acquired "vested rights" to use his land without government interference." Sycamore, supra. (Citations omitted).

"Estoppel" is an equitable principle which "courts are loath to impose . . . against the government when it is acting in a governmental capacity." Id. quoting Salisbury Beauty Schools v. St. Bd., 268 Md 32,63-64 (1973).

There is no "zoning estoppel" doctrine in Maryland to prohibit enforcement of Baltimore County zoning regulations, including the after hours legislation, against the Petitioner.

In a Florida federal court zoning case, applicant's sympathetic arguments of "equitable estoppel" were unsuccessful. Specialty Malls of Tampa v. City of Tampa, Fla., 916 F. Supp.1222 (M.D.Fla. 1996). There, the applicant was denied a special use permit to operate an exotic dance club. The ordinance required a 500 foot distance from a residential or an office district, and 1000 foot from another adult use. Applicant's property complied with the 500 foot restriction to the north. To the east and west, the contiguous property was zoned "Planned Development" (PD), for office and commercial use. The PD district was not classified as an office or a residential zone at the time the applicant sought a letter of interpretation from the zoning office. He had not yet purchased the site. The response from the zoning agency reiterated the distance requirements for office and residential but did not mention the PD zone. Applicant entered into a contract to buy the site. Two months later, the zoning code was amended to classify "PD" as an office or residential zone, which then benefitted from the distance requirement in the statute.

The court stated, "Plaintiffs argue that the Ordinance is

unconstitutional and is barred by the doctrine of equitable estoppel. Plaintiffs assert that they reasonably relied in good faith on the acts of the City and made a substantial change in position and incurred such extensive obligations and expenses that it would be highly inequitable and unjust to destroy the rights acquired by the Plaintiffs when they purchased the subject property. . . . Plaintiffs equitable estoppel argument must fail because Plaintiffs were free to appeal the denial of their special use application. . Plaintiffs, however, did not utilize this procedure and, therefore, failed to exhaust their administrative remedies. . . . Plaintiffs's claim of equitable estoppel also fails because they cannot show that they relied in good faith, which is an essential element of estoppel. . . Plaintiffs were aware of the proposed text amendment [PD zone] prior to closing on the property. There is no evidence that if the Plaintiffs did not follow through on the contract. . . that there would be subsequent ramifications. . ." Id. 1228-1229.

8.A. The after hours club legislation does not violate Constitutional due process.

The enactment and application of zoning laws do not violate the Fourteenth Amendment.

The due process clause of the Fourteenth Amendment, and similar provisions in state constitutions, prohibit the government to deprive a person of life, liberty or property without due process of law. Caselaw has developed two elements of due process - procedural and substantive. In certain limited circumstances, and

properly preserved, either element may be raised in zoning cases, in the proper forum. See generally Williams, American Law of Zoning, 4th Edition, Section 3.01).

"Procedural" due process is concerned with notice and a fair hearing. In the instant case Petitioner filed the appeal to the CBA, had the opportunity to present evidence and testimony in his case, and did so. There is, and can be, no evidence that procedural due process was violated.

"Substantive" due process requires that both the enactment and effect of a zoning regulation advance a legitimate government purpose. The promotion of the health, safety, morals and general welfare, as an exercise of the police power, is a legitimate government purpose. Courts have broadly interpreted the power of the legislature to regulate land use and determine the public need. Thus a Petitioner who claims a violation of substantive due process, must prove the zoning regulation is arbitrary and capricious, and fails to promote the purpose of the legislation.

Cases in Maryland and other jurisdictions have repeatedly articulated these principles.

"The test for constitutionality under the Due Process Clause is whether a statute, as an exercise of the state's police power, bears a real and substantial relation to the public health, morals, safety, and welfare of the citizens of this state." Bowie Inn v. City of Bowie 274 Md. 230 at 236 (1975). (Citations omitted). "The exercise by the Legislature [County Council] will not be interfered with unless it is shown to be exercised arbitrarily, oppressively

or unreasonably." Id. (Citations omitted). "The wisdom or expediency of a law adopted in the exercise of the police power of a state is not subject to judicial review, and the law will not be held void if there are any considerations relating to the public welfare by which it can be supported." Id. (citations omitted).

"A statute enacted under the police powers carries with it a strong presumption of constitutionality and the party attacking it has the burden of affirmatively and clearly establishing its invalidity; a reasonable doubt as to its constitutionality is sufffficient to sustain it. .. In other words, the legislature is presumed to have acted within constitutional limits so that if any state of facts reasonably can be conceived that would sustain the constitutionality of the statute, the existence of that state of facts as a basis for the the passage of the law must be assumed." Supermarkets Gen. Corp. v. State, 286 Md. 611(1979) quoting Edgewood Nursing Home v. Maxwell, 282 Md 422,427(1978).

The testimony of the expert land planner, Mr. Jeff Long, is pertinent. A use open until dawn, with a high volume of people in a party mood coming and going, generates an inordinate amount of noise, boisterous behavior, and other disturbances to residential neighbors expecting, and deserving, uninterrupted rest and quiet. Uses with topsy-turvy schedules (open nights/closed day should not be in close proximity. Such conflicts are less apparent if the noises and other activities of an after hours club are further from residences. These observations and the purpose of the statute are reasonable. Additionally, the testimony of the neighbors, the

Community Conservation representative, and the police captain validate Mr. Long's testimony and the rationale of the statute. (Appendix 7).

Despite the many hours of testimony in the Petitioner's case, it is remarkably apparent he offered not a scintilla of evidence to refute the testimony of Mr. Long, Captain Harvey and Ms. Johnson. Additionally, the neighbors were steadfast in their testimony and complaints.

The Petitioner's claim of unconstitutionality is hollow. He presents no evidence that the club cannot operate in the permitted zones in Baltimore County; he presents no evidence that the law prohibits his business, only that he cannot operate where he pleases; his claim of monetary damages is contrived at best because he admits he entered into his lease and made the improvements **after** the Zoning Commissioner denied his Petitions; he presents no evidence that the County Council, in the exercise of its police powers, cannot zone an after hours club use; he presents no evidence that the zoning regulation is unreasonable.

Petitioner's entire case centers around the bald assertion that his idea for a commercial venture should not be subject to zoning restrictions. He operated with impunity for five years. He demonstrated no concern for the effect of the club on the community. Captain Harvey testified he was threatening and menacing in their meetings. (Appendix 8). The police cannot expect Mr. Giorgelli's cooperation. (Appendix 9). Mr. Giorgelli's business presents the single most consistent law enforcement

problem in Towson. (Appendix 10).

8.B. The after hours club legislation does not violate equal protection.

The concept of "equal protection" under federal and state constitutions has been explained in numerous judicial opinions.

Massage Parlors, Inc. v. City of Baltimore, 284 Md. 490,496 (1979) states the fundamentals:

"As a threshold proposition we note that the equal protection clause guarantees that similar persons will be treated in a similar manner by the state. However, it does not deny to a state or local government the power to treat different classes of persons differently, provided those classifications are based upon permissible criteria and are not arbitrarily used to burden a group of individuals. If the government classification relates to a legitimate governmental purpose the classification will be permitted. . . .

The Supreme Court and this Court have applied different tests when evaluating a classification challenged as violating the equal protection clause. When the statute or ordinance restricts a fundamental right, (such as the right to privacy, right to vote or the right to marry) or creates an inherently suspect classification (such as race, nationality, or alienage) courts employ the strict scrutiny test requiring the state to establish that the classification is necessary to promote a compelling state interest. Otherwise courts ordinarily apply the rational basis test (sometimes labeled the fair and substantial relationship test)

which requires that a statutory classification bear a rational relation to or rest upon some ground of difference having a fair and substantial relation to a legitimate state objective." (citations omitted).

The operation of an after hours club is not a fundamental right nor its operator part of a protected class. If there is a rational basis and legitimate government objective to permitting after hours clubs in the BR zone by special exception 1,000 feet from a residence, the statute does not violate Petitioner's right to equal protection of the laws.

As noted in Argument 6A, the Council's authority to zone is undisputed. Many uses in the County require a special exception. Several uses have distance requirements beyond the bulk regulations in the zone. "Sunset" provisions have been applied to other uses in the County and upheld by many courts. Other sites in the County can accomodate an after hours club.

We believe the evidence presented by Baltimore County and People's Counsel clearly supports constitutionality. The testimony of Mr. Long, the planning expert, has been discussed. The testimony of the neighbors depicts the effects the Council attempted to avoid with a conditional use designation - noise, fear, trespassing, loitering, property destruction, indecent exposure, harrassment.

Captain Harvey's descriptions represent the governmental interest in restricting the use - substance abuse, traffic violations, disturbance of the peace, reckless endangerment,

disorderly conduct, assault and battery, possession of illegal weapons, narcotics, and alcohol. Captain Harvey explained the difficulty enforcing the law and protecting the public at the site, particularly without the cooperation of the owner/tenant. The effect of the criminal activity is exacerbated when residences are nearby. (Appendix 8).

Most certainly, the after hours club regulation must be upheld under the language of Supermarkets General Corp. v. State of Maryland, 286 Md. 611 (1979):

Equal protection "means that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in the same place and under like circumstances. . . . (citations omitted) To summarize, we agree that the territorial classifications, as decisions of this Court indicate, [footnote omitted] must have a rational basis. But, "a rational basis, and thus constitutionality for equal protection purposes, will be presumed unless a clear and convincing showing by the party assailing the legislative classification [proves] that it does not rest upon any reasonable basis, but is essentially arbitrary.'" (citations omitted).

Uniformity of zoning laws within a state is not required to secure equal protection.

"The Fourteenth Amendment does not profess to secure to all persons in the United States the benefit of the same laws and the same remedies. . . . If diversities of laws and judicial proceedings may exist in the several States without violating the

equality clause in the Fourteenth Amendment, there is no solid reason why there may not be such diversities in different parts of the same State." Id. 623. (citations omitted).

". . . the fact that persons in different areas of the State have different desires and needs with respect to the extent of business activity in their areas does not create unreasonable classifications." Id. 624.

"There is no such clear conflict here any more than there is in the differing requirements as to sales of alcoholic beverages in various counties and cities." Id. 622.

Moreover, equal protection does not require the same regulations for different uses. A nightclub can be treated differently than an after hours club.

"It is that "the Fourteenth Amendment permits the States a wide scope of discretion in enacting laws which affect some groups of citizens differently than others. The constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective. State legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality. A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it." Id. 617 (citations omitted). This statement is in practical effect an iteration of the rational basis test used in equal protection analysis, and the Supreme Court's application of it to Sunday closing laws serves as clear indication that such laws

do not involve a fundamental right nor do they operate to the peculiar disadvantage of a suspect class." Id.

Additionally, the Petitioner's business plans and financial expectations do not supercede the concerns for the community at large.

"We have held that the right of an individual to engage in a lawful business is entitled to protection under the Due Process and Equal Protection Clauses of the fourteenth amendment and by Article 23 of the [Maryland] Declaration of Rights. (citations omitted). This right, however, is subject to the lawful exercise of the police powers by the state and it may regulate or restrict the freedom of the individual to act when such regulation is essential to the protection of the public health, morals, safety and welfare." Id. 502. (citations omitted).

Equal protection is similarly viewed by the Supreme Court.

The case of Haves v. City of Miami 52 F.3rd 918 (11th Cir. 1995) involves allegation of equal protection violations in application of a zoning ordinance. It references a recent Supreme Court case on point: ". . . absent such allegations, ("suspect classifications" - race, alienage, national origin, gender, or illegitimacy - and "fundamental rights" - privacy and travel), zoning ordinances should be tested under the "rational basis" standard. . . . The rational-basis standard requires that classifications made by the challenged statutes or ordinances be rationally related to the achievement of some legitimate government purpose. . . . The first step in determining whether legislation

survives rational-basis scrutiny is identifying a legitimate government purpose - a goal-which the enacting government body could have been pursuing. The actual motivations of the enacting government body are entirely irrelevant. . . . Moreover, the Equal Protection Clause does not require government decision makers to articulate any reason for their actions, nor does it require any second evidence of a legitimate purpose. . . .(citations omitted). The second step of rational-basis scrutiny asks whether a rational basis exists for the enacting government to believe that the legislation would further the hypothesized purpose. "The proper inquiry is concerned with the existence of a conceivably rational basis, not whether the basis was actually considered by the legislative body. . . . As long as the reasons for the legislative classification may have been considered to be true, and the relationship between the classification and the goal "is not so attenuated as to render the distinction arbitrary or irrational" the legislation survives rational-basis scrutiny. . . . (citations omitted). In sum, "those attacking the rationality of the legislative classification have the burden "to negate every conceivable basis which might support it." FCC v. Beach Communications, Inc., 113 S.Ct 2096 (1995).(citations omitted).

The constitutional issues (due process and equal protection) require similar evidence. Petitioner's failed burden on one issue jeopardizes his burden on the other.

"Thus, the companion contentions of equal protection and due process mesh. There is no practical distinction between the

grounds on which the two contentions are argued, and determination of one will resolve the other." Supermarkets, supra at 618.

The Petitioner's business is permitted in three zones - BR, BM, and ML. He is treated similarly to hundreds of uses restricted to commercial and manufacturing zones. Many uses are limited to one or two zones. Many uses are permitted by special exception only. The government purpose for the legislation was presented at the hearing and discussed heretofore. Many buildings in the BR, BM, and ML zones can accommodate a club. It is a business that can easily relocate. It need not operate near other specific uses to succeed. There are no compelling reasons to operate within 1000 feet of residences. The justifications for the 1000 foot distance are overwhelming. The after hours club has not been singled-out in location or restrictions.

The burden on the Petitioner is heavy. Here, **Jeff Long, Captain Harvey and Penelope Johnson** provided important expert or professional testimony on the reasonableness of the regulation and the need for consistent application. The neighbors provided the important practical explanations for the restrictions.

9. The Petitioner's testimony lacked probative value, credibility, consistency.

In a de novo appeal, Petitioner has the burden of proof. Additionally, in this case Petitioner has to overcome the presumption of validity of the statute. Petitioner failed his burden.

Petitioner offered no rebuttal testimony to the expert opinion

of Mr. Long, and to the fact witnesses in opposition. The Petitioner's surveyor found nothing unusual about the site. The testimony of the former employee of a billards hall has no probative value and is irrelevant to the issues in this case. Petitioner essentially relied on his own testimony.

Zoning decisions are reached, in the context of the applicable law, after weighing the testimony and evidence concerning the site and the use. The characteristics of the property owner or developer are customarily not relevant to the issues. Here, Mr. Giorgelli so closely identified himself with the nature of the use that it is appropriate to review his credibility as a witness.

Over three days of testimony, Mr. Giorgelli made unsubstantiated statements concerning his business. Significantly, he produced no documentary or other corroborating evidence easily available. He claimed to have been given \$80,000, \$35,000, and \$20,000 by a "backer" for improvements to the club, but produced no verification or the lender himself. He produced no ads showing a "changed format" or different opening and closing times. He mentioned security guards but produced no contract. One would expect more verification and substantiation in light of the affronted manner in which he testified.

Mr. Giorgelli typically answered questions vaguely, and evasively. "It varies" and "and so forth" were common phrases he used. Many times, he never answered a question but rambled on incoherently. He never seemed interested in having the true facts told to the CBA, but only wanted his version presented. His

responses were confusing.

He was never specific on matters one would expect a conscience businessman to know exactly - number of employees and work hours, admission charges, hours of operation, costs of improvements, specific improvements made, costs and place of ads.

Some of his answers were incredulous - landlord gives him carte blanche for substantial alterations to the premises in 1993 when he said was only a subtenant, and for subsequent alterations in 1997, (Appendix 11), his private pager number was somehow used on the "cannoball run" road race and he had nothing to do with it, he is given over \$140,000 for alterations at the site, as a favor and on a handshake, (Appendix 12), state and local laws adversely affected his business, yet over 300 people were at the club on New Year's Eve, he now closes at 2:00 a.m., yet the police verified he was open at 4:00 a.m. on their calls to the club in 1998.

Mr. Giorgelli attempted to make his character and motives the dominant feature of the Club's operation and finances. His testimony was replete with inconsistencies, distortions and exaggerations. Mr. Giorgelli did not adequately explain his own conflicting testimony, and challenging testimony, concerning his military record, participation in the "cannonball run", amount and nature of expenditures for improvements (he claimed to have spent over \$75,000, in 1997, but only accounted for \$15,000, all of which also benefitted the daytime dance studio use), circumstances under which his lease could be terminated, cooperation with the police to prevent illegal activities, closing time for the Club, dispensing

alcohol inside the Club after 2:00 a.m., selling liquor in the Club, changing the "format" (the only true change was the name which has no relation to the use), his demeanor with the police.

The Petitioner failed to provide the pertinent evidence; he failed to overcome the presumption of validity of the statute. He never refuted the testimony of the neighbors and the police. He provided no evidence whatsoever that he could not relocate.

For all of these reasons, the Special Hearing must be denied.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of March, 1998, a copy of the foregoing People's Counsel's Memorandum was mailed to Edward C. Covahey, Jr., Esq., Covahey & Boozer, P.A., 614 Bosley Avenue, Towson, MD 21204, attorney for Petitioner, and to Nancy C. West, Esq., Assistant County Attorney, Baltimore County Office of Law, 400 Washington Avenue, Towson, MD 21204.



PETER MAX ZIMMERMAN

17 1 A. At previous dates, yes, I did.

2 Q. That's all I am asking you. You testified before
3 the Zoning Commissioner at a previous time?

4 A. Previous times, yes. But not at the time this
5 was rendered.

6 Q. No, not on this date, but on times previous to
7 this when he heard the hearing?

8 A. Yes.

9 Q. I said that hearing generated this opinion?

10 A. At that hearing, I did not testify.

11 Q. But did you testify before the Zoning
12 Commissioner? You don't dispute his language in here?

*13 [You testified that approximately two years ago,
14 you recognized the lack of facilities available in
15 Baltimore County?

16 A. It was all true.

17 Q. So did you testify to that?

18 A. On dates previous, yes, I did.

19 Q. And because of that, you incorporated your
20 business known as Club 101? You described all that to the
21 Zoning Commissioner at a previous date?

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17 1 A. Yes, I did.

2 Q. You described what the operation of your business
3 was at that time, or how you intended to operate your
4 business, did you not?

5 A. Once again, at a previous date, yes, I did.

6 Q. You described the premises, you testified there's
7 a dance floor and disk jockey setup to provide better
8 entertainment, also pool tables and similar amusement
9 devices?

10 A. That's my previous statement.

11 Q. That s not your facility today? Does it not
12 still have a dance floor and disk jockies to provide
13 entertainment?

14 A. Yes.

15 Q. The pool tables, you say, are now legal, or
16 authorized?

17 A. Yes, ma'am.

18 Q. And you're open Thursday, most Fridays and
19 Saturdays for socializing and dancing?

20 A. Yes, ma'am.

21 Q. Then you also testified, according to his

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17 1 opinion, at length about how you, prior to going into
2 business, how you investigated the propriety of this use,
3 did you not?

4 A. I made that statement at previous zoning
5 hearings, yes.

6 Q. You described in detail much the same testimony
7 you gave today of the different agencies or boards that
8 you contacted to see if you could operate legally?

9 A. Yes, ma'am, I did.

10 Q. Similar to what, or the same, actually, to what
11 you testified to today?

12 A. In many ways, the same.

13 Q. That wasn't changed?

14 A. Yes.

15 Q. What you did then, what you told the Zoning
16 Commissioner, now you're telling the Board the same thing?

17 A. Yes, ma'am.

18 Q. You also told the Zoning Commissioner that you
19 were in business and operating Club 101?

20 That's the way it was described, you were already
21 in business?

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INTRODUCED 5/15/94
PASSED 6/1/94

EFFECTIVE 8/08/94

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND

LEGISLATIVE SESSION 1994, LEGISLATIVE DAY NO. 10

BILL NO. 85-94

MR. DOUGLAS B. RILEY, COUNCILMAN

BY THE COUNTY COUNCIL, MAY 16, 1994

A BILL

ENTITLED

AN ACT concerning

After-Hours Clubs

FOR the purpose of defining after-hours clubs; providing that

after-hours clubs are permitted by Special Exception in certain
zones; and permitting existing uses to continue under certain
conditions for a certain period of time.

BY adding

Section 101 - Definitions, the definition of After-Hours Club,
alphabetically

Baltimore County Zoning Regulations, as amended

BY repealing and re-enacting, with amendments,

Sections 233.4, 236.4 and 253.2.D.

Baltimore County Zoning Regulations, as amended

1. SECTION 1. BE IT ENACTED BY THE COUNTY COUNCIL OF BALTIMORE
2. COUNTY, MARYLAND, that the definition of After-Hours Club be and it is
3. hereby added alphabetically to Section 101 - Definitions, of the
4. Baltimore County Zoning Regulations, as amended, to read as follows:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter stricken from existing law.
~~Strike-out~~ indicates matter stricken from bill.
Underlining indicates amendments to bill.

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Appendix 2

1. Section 101 - Definitions

2. AFTER-HOURS CLUB: A COMMERCIAL ESTABLISHMENT WHOSE PRINCIPAL
3. BUSINESS IS THE PROVISION OF LIVE OR RECORDED ENTERTAINMENT, WITH OR
4. WITHOUT A DANCE FLOOR, WHICH IS OPEN PRIMARILY IN THE EARLY MORNING
5. HOURS AFTER TAVERNS AND NIGHTCLUBS HAVE CLOSED BETWEEN 11:00 P.M.
6. AND 4:00 A.M., AND WHICH DOES NOT HAVE A BALTIMORE COUNTY LIQUOR
7. LICENSE. AN AFTER-HOURS CLUB IS NOT A NIGHTCLUB AS DEFINED IN THE
8. ZONING REGULATIONS OR THE BOGA 608E BUILDING CODE OF BALTIMORE
9. COUNTY, MARYLAND.

10. SECTION 2. AND BE IT FURTHER ENACTED, that Sections 233.4,
11. 236.4 and 253.2.D. of the Baltimore County Zoning Regulations, as
12. amended, be and they are hereby repealed and re-enacted, with
13. amendments, to read as follows:

14. B.M. Zone - Business, Major

15. Section 233 - Use Regulations

16. 233.4 - Special Exceptions - The following uses when permitted
17. as special exceptions (see Sections 270 and 502):

18. AFTER-HOURS CLUB, PROVIDED THAT IT IS LOCATED AT LEAST 1000 FEET
19. FROM ANY DWELLING RESIDENTIALLY USED DWELLING, RESIDENTIAL ZONE
20. LINE, CHURCH, PARK, CHILD CARE CENTER OR SCHOOL EXISTING ON THE
21. EFFECTIVE DATE OF THIS LEGISLATION PRIOR TO THE FILING OF THE
22. APPLICATION FOR SPECIAL EXCEPTION.

1. B.R. Zone - Business, Roadside

2. Section 236 - Use Regulations

3. 236.4 - Special Exceptions - The following uses when permitted
4. as special exceptions (see Sections 270 and 502):

5. AFTER-HOURS CLUB, PROVIDED THAT IT IS LOCATED AT LEAST 1000 FEET
6. FROM ANY DWELLING RESIDENTIALLY USED DWELLING, RESIDENTIAL ZONE
7. LINE, CHURCH, PARK, CHILD CARE CENTER OR SCHOOL EXISTING ON THE
8. EFFECTIVE DATE OF THIS LEGISLATION PRIOR TO THE FILING OF THE
9. APPLICATION FOR SPECIAL EXCEPTION.

10. M.L. Zone - Manufacturing, Light

11. Section 253 - Use Regulations

12. 253.2-Uses Permitted by Special Exception. The uses listed in
13. this subsection are permitted by special exception only (see Section
14. 502).

15. D. The following miscellaneous uses:

16. 3. AFTER-HOURS CLUB, PROVIDED THAT IT IS LOCATED AT
17. LEAST 1000 FEET FROM ANY DWELLING RESIDENTIALLY USED DWELLING,
18. RESIDENTIAL ZONE LINE, CHURCH, PARK, CHILD CARE CENTER OR SCHOOL
19. EXISTING ON THE EFFECTIVE DATE OF THIS LEGISLATION PRIOR TO THE
20. FILING OF THE APPLICATION FOR SPECIAL EXCEPTION.

21. SECTION 3. AND BE IT FURTHER ENACTED, that an after-hours club
22. lawfully operating prior to the effective date of this act which is in
23. violation of the requirements contained herein shall be permitted to
24. continue for a period not to exceed one year, unless sooner terminated

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1. for any reason, or unless within such one year period the use is
2. brought into compliance with the requirements herein.

3. Section 4. And be it further enacted, that this Act shall take
4. effect forty-five days from the date of its enactment.

B08594/BILLS94

1 weren't known by Mr. Giorgilli.

2 Q. Did that, in fact, occur?

3 A. It did.

4 Q. Can you be specific as to time and place to what
5 happened?

6 A. 1-11 and 1-17 and 1-18.

7 Q. What happened on 1-11?

8 A. 1-11 --

9 Q. Of this year, '98?

10 A. That's correct. Three operataives, one borrowed
11 and two of my own, undercovers paid a fee to get into
12 Liquids Nightclub, Liquids/101, looking for violations of
13 the law, and looking for the dispensing for sale of any
14 beverages inside the building.

15 As they were moving about the crowd, it was
16 observed that specific individuals were drinking out of
17 red cups, other individuals out of white.

18 And in conversation with some of the people that
19 had approached the bar and come away with a red cup, my
20 undercover operatives were able to determine they were
21 purchasing alcohol. And the --

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17 1 Q. How did they know that?

2 A. On that particular first occasion, they were able
3 to sip from the cups of the people that bought, and
4 through their trained expertise and knowledge, determined
5 the fact it did contain alcohol.

6 Also, while they were inside, they also observed
7 the dispensing from one individual to another individual,
8 serving individuals, obviously under legal age to consume
9 alcohol, spirits, being exchanged from one to another, and
10 spirits and juice being served from behind the bar.

11 Q. Was that on the evening of the 11th of January?

12 A. It would be one night or the other, ma'am. I'm
13 not clear in my mind on the date without looking at the
14 documents.

* 15 Q. Do you have any recollection, Captain, as to what *
16 time of the evening that Liquids was being searched?

17 A. It would be after 2 o'clock and before 5 a.m.

18 Q. Is there other additional information relevant to
19 those particular incidents, either the 11th or the 18th,
20 that this Board ought to hear about, of January 1998?

21 A. Yes, ma'am.

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18 1 MR. COVAHEY: Objection. Any other information
2 he thinks the Board should hear about? That's not a
3 proper question.

4 A. I assume any information relative to Club 101.

5 MS. WEST: Talking about Club 101. If you want me
6 to say that every time --

7 THE CHAIRMAN Evidently.

8 MR. COVAHEY: That's not the basis for my
9 objection. The basis is putting a witness on the witness
10 stand and "tell your story".

11 THE CHAIRMAN: Which, as an administrative body,
12 we do all the time.

13 MS. WEST: We are trying to move things along.

14 THE CHAIRMAN: Counsel, the answer is we do that
15 all the time as part of the normal procedure with civilian
16 witnesses, with expert witnesses.

17 Q. Captain, do you have anything else you want to
18 tell us?

19 A. Undercover operatives went inside Club
20 Liquids/101 and were able to purchase directly from the
21 bar, alcoholic beverages.

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1 The way the system works, they were told, was
2 approach and ask for a mattress. A mattress was a code
3 name for an alcoholic beverage.

4 The undercover operative was able to observe
5 large containers containing black x's on the outside to
6 condition alcohol mixtures. Large jugs with no x's
7 contained straight fruit juice.

8 They were able to purchase three to four drinks
9 between the hours after 2 o'clock and before 5 o'clock and
10 paid cash money across the bar to a person.

11 They also were advised that they were requested
12 to tip aside from the currency or cash paid for the drink
13 because the bartender said he was sitting there and
14 working for tips.

15 Based on that information, we began to develop
16 probable cause for, again, another search and seizure
17 warrant. And that's when the evening of the 17th or the
18 18th, a numerous number of arrests, et cetera, like that
19 took place at that time.

20 Q. Captain Harvey, just a few more questions.

21 MS. WEST: I appreciate the Board's indulgence.

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§ 16-508. Expungement of violation.

(a) *Applicability.* — This section applies only in Kent County.

(b) *Expungement by Board after 7 years.* — A past violation of this article or of any regulations adopted under it shall be expunged by the Board of License Commissioners after 7 years from the date the violation occurred. (1997, ch. 431.)

Editor's note. — Section 2, ch. 431, Acts 1997, provides that the act shall take effect Oct. 1, 1997.

TITLE 18. ALCOHOLIC BEVERAGES IN THE COUNTIES.

Subtitle 1. General Provisions

§ 18-103. Reports of legislative enactments.

A copy of any legislative enactment concerning alcoholic beverages by the local governing body under the authority of this subtitle shall be sent to the Department of Legislative Services, 90 State Circle, Annapolis, Maryland 21401. (1986, ch. 216; 1989, ch. 5, § 15; 1997, ch. 635, § 9; ch. 636, § 9.)

Editor's note. — Section 9 chs. 635 and 636, Acts 1997, effective July 1, 1997, provides that "any reference in the Annotated Code rendered obsolete by this Act shall be corrected by the publisher of the Annotated Code, the Michie Company, in consultation with the Executive Director of the Department of Legisla-

tive Services, with no further action required by the General Assembly. The Michie Company shall adequately describe any such correction in an editor's note following the section affected." Pursuant to § 9 of chs. 635 and 636, appropriate changes have been made in this section.

TITLE 20. PLACES OF PUBLIC ENTERTAINMENT.

§ 20-101. Baltimore County.

(a) *"Bottle club" defined.* — (1) In this section, "bottle club" means any club that serves, gives, or allows alcoholic beverages to be consumed by patrons after legal closing hours for establishments licensed under § 11-303 of this article from supplies that the patrons previously purchased or reserved.

(2) "Bottle club" does not include any establishment if a license for the premises had been issued under the provisions of this article.

(b) *Applicability.* — This section applies only in Baltimore County.

(c) *Restrictions.* — A bottle club may not give, serve, dispense, keep, or allow to be consumed on its premises, or on premises under its control or possession, any alcoholic beverages, setups, or other component parts or mixed alcoholic drinks after legal closing hours for establishments under § 11-303 of this article.

(d) *Violations.* — A violation of this section is a misdemeanor and a fine of up to \$10,000 or imprisonment for up to 2 years, or both, may be imposed. (1997, ch. 661, § 2.)

3 1 or did you envision you would like to open?

* 2 A. As I previously stated, I was the victim of a
3 drink driving accident. I knew the nightclub business
4 like the back of my hand, but after being a victim of a
5 drunk driver, I didn't want to be in a club atmosphere
6 that basically made its income from pushing alcohol on
7 people.

8 So I had an idea of setting up a club that will,
9 one, would pay a cover charge at the front door, and
10 people would decide themselves whether they wanted to
11 drink or not drink.

12 When I set the club up, it was -- which it is
13 still to this day -- sodas, coffee, juice for free.
14 There's a food vender out front that sells food. I set it
15 up as that.

16 One of the things in doing my research and
17 homework, I found out that -- I didn't want a liquor
18 license. I didn't want to derive an income from selling
19 alcohol. And one of the things of not having a liquor
20 license, not selling alcohol, I found out that you're able
21 to stay open twenty-four hours a day.

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3 1 There's no law that says what your hours of
2 2 operation have to be or allow people to be inside your
3 3 establishment dancing, or whatever.

4 4 It gave me, because of that uniqueness, me being
5 5 one or the first to recognize this, it gave me a unique
6 6 edge over other people.

7 Q. Before you opened up, did you solicit any other
8 8 advice with respect to whether or not there were any legal
9 9 impediments to being open?

10 A. I spent approximately three countless days
11 11 upstairs in the Circuit Court building in the library
12 12 looking up laws, as well as a depth of information, books,
13 13 and then I hired the law firm of Covahey and Boozer to
14 14 investigate, once I felt confident everything was fine, to
15 15 do the investigation of what I was interested in doing.

16 Q. And based on your investigation and your
17 17 research, did you determine whether there was any legal
18 18 impediments at that time to prevent you from opening the
19 19 business that you opened?

20 A. There was absolutely none.

21 Q. And with respect to the premises, what's the

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14 1 would that have been September of that year, or the
2 following year?

3 A. I believe the following year when he said his
4 lease would be up.

5 Q. Captain, what's your understanding as to what Mr.
6 Giorgilli meant by "teeny club."

7 MR. COVAHEY: Objection. I was going to move to
8 strike the whole line of testimony. I think I let it go
9 far enough. I object.

10 THE CHAIRMAN: Well, that part of it already came
11 in unobjected to, and it was part of the quote, so I think
12 it's relevant to explain the quote. Overruled.

13 Q. Captain?

14 A. The question again, please.

15 Q. What's your understanding as to what Mr.
16 Giorgilli meant by the using the term "teeny club"?

17 A. He explained to both the Major and myself, in
18 fact, Hammerjacks was closing down and they lost their
19 property due to the stadium, and that it was his intent to
20 open up a Hammerjacks into a particular area.

* 21 It was at that particular time we again requested *

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14 1 that he come in compliance with reference to alcohol and
2 alcohol consumption on the premises.

3 He looked me directly in the face, said, "Without
4 alcohol, I have no business."

5 At that particular time, it was decided, once Mr.
6 Giorgilli left, that again we would resume operations back
7 into and on the lot of Club 101/Liquids.

8 It was our understanding then that he would not
9 comply, even with the meetings we had.

10 Q. Captain, are you familiar with the term
11 "cannonball run"?

12 A. Yes.

13 Q. Would you please tell the Board what your
14 understanding is of that term?

15 A. Roadrace. Taken after a television or movie of
16 the same time.

15 17 Q. What relevance does that term "cannonball" have
18 with regard to this particular matter here before the
19 Board.

20 MR. COVAHEY: Objection. Question is relevancy.
21 It's up to the Board, not the witness.

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7 1 THE CHAIRMAN: I am informed by the reporter
2 she's not getting all the conversation regarding the
3 pictures, so keep your voices up.

4 MS. FELLING: 9Fis some pourers with logos?

5 THE WITNESS: Yes, ma'am.

6 THE CHAIRMAN: A through F.

7 MS. FELLING: That's 9F.

8 Q. The next one would be 9G.

9 A. It's the video machine.

10 Q. Does this have a stamp?

11 A. No, ma'am.

12 Q. H?

13 A. That's all I have.

* 14 [Q. Okay. Have you described the conditions of the
15 restroom that evening, Captain?

16 A. Ma'am?

17 Q. Would you please describe the condition of the
18 restrooms that evening?

19 A. Yes, ma'am. The ladys restroom was under water.
20 It had used toiletries on the floor and used sanitary
21 items, female hygiene items on the floor, and there was

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7 1 vomit on the floor and on one of the walls.

2 And on the male side, basically the same
3 condition, maybe minus the vomit. I don't remember seeing
4 vomit in the male men's room.

5 Q. Did you have occasion that evening to speak with
6 Mr. Giorgilli, or anyone else?

7 A. I spoke, briefly, very, very short conversation,
8 with Mr. Giorgilli, as he was arrested. He just asked
9 what he was arrested for, and he was told subject to a
10 search and seizure warrant, and that was all the
11 conversation I had with him.

12 Q. Did you speak to anyone else in the club that
13 evening?

14 A. Not personally, no.

15 Q. What, if anything, was seized that evening?

16 MR. COVAHEY: Objection. It was all seized
17 illegally, because it was a false arrest, because he was
18 found not guilty.

19 I move all this testimony should be stricken for
20 an additional reasonable, which is that's a criminal case
21 and the burden of proof --

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1 gave on direct examination.

*2 [You used the term a makeshift bar inside the
3 club. What do you mean by that?

4 A. It's not a very fancy bar, looks like it was put
5 together with plywood and laminae.

6 Q. You also testified that in your meetings with Mr.
7 Giorgilli, he indicated Hammerjacks was closing and he was
8 going to open up something similar to that in Baltimore
9 County.

10 What does the idea of opening up a, quote,
11 Hammerjacks, denote to you as a police officer?

12 A. Juveniles, juvenile problems, because they are
13 associated with it.

14 Q. Can you describe to the Board what is
15 "Hammerjacks"?

16 A. Hammerjacks was a nightclub.

17 MR. COVAHEY: Objection. Has he ever been there?

18 THE CHAIRMAN: He can testify from his own
19 knowledge what he believes Hammerjacks is.

20 And if he's totally wrong and off the wall, you
21 can certainly bring that up on cross-examination.

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1 A. It sounds close.

2 Q. What is the procedure in which the police would
3 be called on that type of complaint?

4 A. It would be based on a complaint either on view
5 from the officer or a telephone call from a citizen.

6 Q. Some of the other arrests or police incidents at
7 Club 101, I believe you testified or referred to incidents
8 that have occurred in the parking lot?

9 A. Yes, ma'am.

10 Q. So that would be outside of the actual building
11 of Club 101?

12 A. Correct.

13 Q. Would those have included the public urination
14 you have referred to?

15 A. Yes, ma'am.

16 Q. Now, a law enforcement point. What effect, if
17 any, would all these occurrences that you described at
18 Club 101 have on the surrounding residential community?

19 A. Well, in this particular case here, we have got
20 some people that have shown a reluctance to come in and
21 testify for fear --

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20 1 MR. COVAHEY: Objection. Move to strike.

2 A. We have --

3 THE CHAIRMAN: Whoa, whoa. He said, "Objection."
4 You stop.

5 MR. COVAHEY: Move to strike.

6 MS. DEMILIO: I'm asking what effect it has on
7 the surrounding residential community.

8 He can tell us what he knows. I'm not asking him
9 to tell us what they say.

10 This is his impression from a law enforcement
11 standpoint, what effect this kind of operation and these
12 activities have on the surrounding residential community.

13 MR. COVAHEY: That's not what his answer was.

14 MS. DEMILIO: He can answer any way he chooses.

15 MR. COVAHEY: Not so. He has to answer the
16 question.

17 THE CHAIRMAN: He needs to answer the question,
18 Mr. Covahey, but his question is of necessity a broad one,
19 and if he chooses to phrase it in a certain way, it's
20 still just his opinion as to the effect -- as the Captain
21 of the police in that precinct, of what effect it has had,

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1 and I am going to let him characterize it the way he
2 wants. Captain, go ahead.

3 Q. Didn't you say there were some people that had a
4 reluctance --

5 THE CHAIRMAN: He's already said that.

6 Q. What other effect does this type operation have
7 with these occurrences?

8 A. It affects businesses both open and closed. I
9 belong to the corridor of Orchard Tree Lane and Joppa
10 Road. It affects the comings and goings of vehicular
11 traffic in the area.

12 It affects the stability of the community for
13 which people travel, both by vehicle and on foot to and
14 from that location.

15 It affects the ambulance company directly across
16 that has to put a midnight crew on to keep their property
17 from being destroyed.

18 It affects the hotel-motel, fast food stores, in
19 and around that area, to a negative concept. For the
20 greater period of time since 101/Liquids have been
21 operating, several business have chosen to close an

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20 1 earlier time than they normally would, due to increased
2 disorderly conduct.

3 Q. You heard the testimony of several residents that
4 live in the area?

5 A. Yes, ma'am.

6 Q. Did you hear complaints similar to what they
7 testified to, separate and apart from their testimony in
8 this case?

9 A. Continuously.

10 Q. Could you describe for the Board what you mean by
11 that?

12 A. I am particularly concerned about the residential
13 neighbors to Club 101. I understand that. There's a high
14 incident of squealing wheels, skidding, excessive noise
15 extremely early in the morning. By early, I mean between
16 2 o'clock on.

17 Loud music. Profane language. Yelling and
18 screaming. An inordinate amount of trash blown up from
19 wherever it's coming from, and the like.

20 Q. Now, in your testimony -- I just want to ask you
21 some specific details about some of the testimony that you

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10 1 THE CHAIRMAN: You have to go slower, Captain.
2 Mr. Covahey needs to be able to write it down, and the
3 reporter and us.

4 MR. COVAHEY: Date?

5 THE CHAIRMAN: Slow down.

6 A. From the 17th to the 18th --

7 Q. (MR. COVAHEY) '98?

8 A. Of '98. Twelve alcohol violations, three public
9 urinations, one disorderly conduct, four assault on police
10 for resisting arrest, one common law assault, three drug
11 violations. Those were for adults.

12 For juveniles, alcohol violations, five. Assault
13 on police, two. Simple assault, three. Resisting arrest,
14 one. Attached to the document is a breakdown by unit and
15 by arrest.

16 Q. Captain, would these statistic be strictly for
17 the evening --

18 A. Just that evening.

19 Q. -- of the 18th?

20 A. That's correct. Would you like me to continue
21 for the evening of the 18th?

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1 gave on direct examination.

2 You used the term a makeshift bar inside the
3 club. What do you mean by that?

4 A. It's not a very fancy bar, looks like it was put
5 together with plywood and laminae.

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7 Giorgilli, he indicated Hammerjacks was closing and he was
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11 Hammerjacks, denote to you as a police officer?

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13 associated with it.

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15 "Hammerjacks"?

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17 MR. COVAHEY: Objection. Has he ever been there?

18 THE CHAIRMAN: He can testify from his own
19 knowledge what he believes Hammerjacks is.

20 And if he's totally wrong and off the wall, you
21 can certainly bring that up on cross-examination.

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1 A. I was there twice with my daughters.

2 MR. COVAHEY: Withdraw the objection.

* 3 [Q. Describe what Hammerjacks is, why that would
4 cause any particular concern, if any.

5 A. It's the type of nightclub that serves alcohol to
6 patrons above the age of twenty-one, and has what they
7 call an under twenty-one crowd to look at rock shows,
8 this, that and the other.

9 However, for the juvenile side, we have noted
10 that this type club brings in runaways, brings in people
11 looking for alcohol and drugs, brings in people that prey
12 on children, brings in pedifiles, brings in a disorderly
13 conduct element due to weapons, drugs and fighting, and
14 the like.

15 * [Q. So when Mr. Giorgilli made that remark to you,
16 was it considered a threat, in your opinion?

17 MR. COVAHEY: Objection.

* 18 THE CHAIRMAN: He can say whether he
19 characterized it as a threat.

20 A. When he told me if we left him alone until
21 September --

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1 Q. September of what year?

* 2 [A. '97 -- that he would be gone, or if we continued
3 to harrass his operation, he would open up a teeny bar and
4 rock Towson, yes, I took that as a threat against the
5 peace and well-being of Towson.

6 Q. Another specific question with regard to your
7 testimony, is road racing an illegal activity?

8 A. It is.

9 Q. So any promotion of a road race activity is an
10 illegal activity in Baltimore County?

11 MR. COVAHEY: Objection. Same question.

12 THE CHAIRMAN: Overruled.

13 A Yes.

14 Q. Based on your experience and expertise as a
15 police officer, Captain Harvey, when the Towson police are
16 asked to monitor certain types of commercial
17 establishments such as nightclubs, after hours clubs,
18 bars, taverns, in order to enforce the law, do the police
19 expect a certin type cooperation from the owners of those
20 establishments?

21 A. Yes.

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3 1 police need the cooperation of owners of these
2 establishments.

3 THE CHAIRMAN: But nothing you said has changed
4 what I said. It's just too broad. I am not going to
5 allow it. You win one, Mr. Covahey.

6 MR. COVAHEY: Finally.

7 Q. Captain Harvey, when the activities you
8 described, including all the arrests or police incidents
9 that Club 101 incurred, are the police required in those
10 incidents to give any special protection to the community
11 or neighborhood surrounding this club?

12 A. Yes, ma'am.

13 Q. Would you describe what kind?

14 A. Other than normal patrols, when that club is open
15 and operating, we are forced to put uniformed patrol
16 officers additionally in close proximity to the vehicular
17 traffic and foot traffic, both coming to and leaving that
18 club, and the damage they cause to the stores and
19 residences and the motoring public around that area.

20 MS. DEMILIO: Thank you. I have no further
21 questions.

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1 Q. What fashion -- can you tell the Board what is
2 expected of the owners of those establishments?

3 A. Well, owners' cooperation would be to curtail
4 some activities, to offer to up admission into the
5 business, to be able to check license and permits, to walk
6 around the parking lots with impunity, et cetera, et
7 cetera.

8 Q Do the police rely on that for law enforcement,
9 that kind of cooperation?

10 A. Yes, ma'am.

* 11 [Q. In your opinion, based on your experience with
12 Mr. Giorgilli and Club 101, can the Towson precinct expect
13 that kind of cooperation from Mr. Giorgilli?

* 14 [A. No.

15 Q. Can you explain to the Board what's the basis of
16 that opinion?

17 A. Yes. Again, I will go back and use my most
18 recent experience where, on the 17th into the 18th, there
19 were several hundred people congregated on the front of
20 Club 101 lot, based on the fact Mr. Giorgilli had just
21 maced an individual and the maced individual was in a mud

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1 puddle. Okay?

2 When I asked Mr. Giorgilli why he maced this
3 individual and left him there, he said he was assaulted,
4 but no police report was ever made.

5 We had arrested forty-one youngsters, nineteen,
6 eighteen years old, for a fight outside.

7 At the same time we were doing that, several
8 youngsters came out of the club, walked over towards Kaos,
9 that they had just been sprayed inside with mace, and they
10 were taking the water off the motor vehicles, it was a
11 mist coming down, and putting it in their eyes, because
12 they couldn't get any water inside.

13 At the same time this was going on, a fight broke
14 out between seven or eight individuals out front, caused
15 three of my officers to empty out their pepper spray cans
16 to end up that particular fight.

17 At each occurrence, I went to Mr. Giorgilli, told
18 him to clear the lot, get them back in their cars, do
19 something.

20 After the conclusion of the fight involving the
21 men subjects, an individual driving a motor vehicle came

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2 1 around the corner, slammed into one car. As my foot
2 officer gave chase, he came around on foot, he came around
3 in the vehicle, struck another car. A half gallon bottle
4 of booze with about an inch left in the bottom fell out of
5 the car when he was arrested.

6 Then, again, Mr. Giorgilli, on the scene, was
7 given an ultimatum, which was "Clear the front of your
8 business or I am going to close you down."

9 Q. You meant outside?

10 A. Make sure the customers are either inside the
11 building or off the lot. At that particular time -- some
12 time before these things, I had occasion to be walking
13 around the ground when his security personnel were advised
14 of the fact police were on the scene.

15 And I heard a security personnel approaching
16 people in cars saying -- and this is a quote -- "Watch
17 your ass. Cops are on the ground. If you've got drugs or
18 alcohol, hide it, because the cops are here."

19 And they would go from vehicle to vehicle, and
20 that's what they would say. I heard it from three
21 different individuals.

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2 1 in your opinion as a law enforcement officer, do all these
2 activities tend to disturb the peace to the harm of the
3 nearby residences?

4 A. And businesses, yes.

5 Q. And all the residents as well?

6 A. Yes, ma'am.

* 7 Q. Since you have been a precinct captain, has any
8 other establishment in Baltimore County, in the Towson
9 precinct of Baltimore County, caused you to devote this
10 much attention of police resources consistently?

11 A. No.

12 Q. Captain Harvey, in your role as a precinct
13 commander, have you ever received any reports of police
14 investigations or searches of Mr. Giorgilli personally, or
15 his residence?

16 A. Yes.

17 Q. Can you describe those, for the Board?

18 MR. COVAHEY: Objection.

19 THE CHAIRMAN: I will hear from you as to why
20 something that happens at his residence --

21 MS. DEMILIO: I think Mr. Giorgilli clearly put

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1 well as they had the opportunity to peruse it.

2 THE CHAIRMAN: My understanding, it had been
3 identified and, as you have set forth, it had not yet been
4 admitted, subject to cross-examination.

5 At this time, there being no objection from --

6 MS. DEMILIO: No objection.

7 THE CHAIRMAN: There being no objection, we'll
8 assign it the exhibit number which it was given for
9 identification, which is No. 6.

10 Q. Let me just ask a couple more questions about the
11 lease, Mr. Giorgilli.

* 12 * Did you, in fact, obtain the landlord's consent
13 when you made alterations to the premises?

14 A. Yes, ma'am.

15 Q. Did you just call him up, or did you have to get
16 his written consent?

17 A. Basically, no. I am a perfectionist, so anything
18 I do is above and beyond looking bad.

19 In the first place, he knows anything I do is
20 going to be an improvement, so he trusts my judgment. In
21 fact, he's given me permission to do things around the

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4 1 stocks to business ideas to business concepts, so forth.

5 2 I have known him for years prior to going into
3 soliciting him for my business, and I mean that's all I
4 can explain. I don't know his portfolio.

5 Q. Do you have any loan agreements with him for
6 repayment?

*[7 A. I have -- I had in the past. Right now it's just
8 verbally. He's helped me out so many times, we don't even
9 draw up documents anymore.

10 Q. So it's just a matter of a gentlemen's agreement,
11 a handshake?

12 A. Basically.

13 Q. Based on your past experience --

14 A. When we did business at first, it was all done on
15 paperwork. But we have done so many different -- he's
16 helped me out of a bind so many times, I basically can
17 call him up, say, "Hi, I need a favor," and he's there
18 for me, and has been. He's a very good man.

19 Q. What's the bind he's helped you out of?

20 A. Just a financial bind.

21 Q. Related to what, business?

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5 1 A. Yes, ma'am.

2 Q. Personal matters as well?

3 A. Well, business or personal.

4 Q. But, today, he's given you approximately \$80,000?

5 A. That's what he gave me initially.

6 Q. What has he given you since that time?

7 A. Let me approximate. \$35,000 one other time.

8 Q. When was that?

9 A. About a year ago, a year and a half ago. Another
10 time --

11 Q. What was that for?

12 A. For the purpose of some -- changing some lighting
13 in my club. He lent me about \$20,000.

14 Q. Was that in addition to the \$35,000?

15 A. Yes.

16 Q. Do you have any idea what you have spent to date
17 since you have opened the club, on advertising?

18 A. No, ma'am, I don't have an idea to date. Being a
19 sole proprietor, I really didn't have to basically keep --

20 Q. Mr. Giorgilli --

21 A. Let me explain. When I first opened, besides

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IN THE MATTER OF	*	BEFORE THE
RAMPART PARTNERSHIP/	*	COUNTY BOARD OF APPEALS
CLUB 101	*	OF BALTIMORE COUNTY
	*	CASE NO. 96-60-XA

* * * * *

MEMORANDUM OF LAW

Club 101, Inc., Petitioner, by and through its undersigned attorneys, files this Memorandum of Law in support of its Petition and in accordance with the instructions of this Board.

STATEMENT OF FACTS

The testimony and evidence adduced before the Board unequivocally established that the Petitioner has been operating a business enterprise at 8819 Orchard Tree Lane, Towson, Maryland, since May, 1993. The testimony clearly established that when the subject premises was first opened, that it functioned as a dance hall/nightclub/after-hours entertainment venue. Testimony established that when first opened, the premises, trading as "Club 101," was open primarily from 11:00 p.m. until approximately 5:00 a.m. on Thursday, Friday and Saturdays, and, on some occasions, staying open until 6:00 a.m.

The testimony further established that with the pending legislation before the Maryland General Assembly (which

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legislation was later enacted as the "Bottle Bill" at Article 2B, § 20-101), Petitioner's practice of allowing patrons to bring in alcohol and consume same on site after 2:00 a.m. would be required to be abated. The testimony unequivocally established that with the passage of the "Bottle Bill," that the Petitioner thereafter required all alcohol to be removed by patrons from the premises at 2:00 a.m. The testimony further established that with the passage of the "After-Hours Club" legislation by Baltimore County, that the Petitioner likewise began to alter the hours of the operation and its general format. Specifically, the Petitioner's owner, John Giorgilli, testified that the hours of operation were scaled back such that the locale opened earlier in the evening, and closed earlier in the morning hours. Specifically, he testified that they currently open at approximately 9:00 p.m. and close at approximately 3:00 a.m. This testimony was uncontradicted with the exception that on occasion (Example: New Year's Eve), they stayed open a little later. This testimony confirmed that even if the premises at one time could have been determined an "after-hours" club, its use at the time of this hearing, was that of a nightclub. Significantly, several of the witnesses called by Baltimore County also testified that beginning with the summer of 1997, they noticed far fewer disturbances and

police calls at the subject site. To this effect, the Board is referred to the testimony of Mrs. Thorn and Mrs. Chandler. This evidence further established that the hours of operation were changed, as was the format of the operation of the Club.

Additionally, Petitioner's Exhibit 6, the commercial lease for the location, executed in March, 1997, specifically provides that its use was to be for a nightclub or after-hours club. Thus, it is evident that both Tenant (Petitioner) and Landlord were cognizant of the fact that the use was going to change from an After-Hours Club to a nightclub; a use which was conclusively established by the evidence adduced.

At the beginning of the Petitioner's case, Petitioner voluntarily dismissed its Petition for a special exception to operate an after-hours club at this location, and, in addition, dismissed its Petition for a variance in accordance with same. Thus, the only issues remaining before the Board during the pendency of this Petition were the Petitioner's request for a special hearing to continue Petitioner's use at this site. This in turn requires a determination of exactly what that use is. It is Petitioner's position that the current use is that of a nightclub. Also included in Petitioner's request for a special hearing were the constitutional issues raised in the event that this Honorable Board determined the Petitioner's use

to be that of an after- hours club, and specifically, whether the after-hours club legislation could be enforced against this particular Petitioner.

LEGAL ARGUMENT

1. WHETHER PETITIONER'S USE OF THE SUBJECT SITE IS THAT OF A NIGHTCLUB.

Petitioner's first request, pursuant to the Petition for Special Hearing, was to continue the existing use of the subject premises. This requires an analysis of what that use is.

The testimony and evidence adduced before this Board conclusively established that the Petitioner is in fact operating a nightclub at this location. Introduced into evidence in this case was the Baltimore County Zoning Regulations definition of nightclub, which definition is set forth as follows:

Nightclub: A tavern or other commercial establishment which provides live or recorded entertainment, with or without a dance floor, and which is categorized as a nightclub by the Building Code of Baltimore County.

It is beyond cavil that the above-referenced definition of nightclub fits the Petitioner's use of the subject site with precision. Going through the definition word by word, and line by line, reveals that this is so.

It was the testimony in this case, by witnesses for both the Petitioner and for Baltimore County, that the subject site is in fact a commercial establishment.

Likewise, the testimony before the Board from witnesses for both parties, was unequivocal that the subject site provides recorded entertainment for its patrons. Similarly, the testimony before the Board, again from witnesses for both parties, was unequivocal that the establishment contained a dance floor. To this effect, the Board is referred to the testimony of Mr. Giorgilli, Captain Harvey, Mr. Connor, and the photographs of the subject site which were introduced into evidence by both parties.

Finally, the testimony elicited from these various witnesses likewise confirms that the subject site should be categorized as a nightclub by the Building Code of Baltimore County. To make this determination, it is necessary to review the Building Code for Baltimore County itself. The relevant portion of the Building Code for Baltimore County related to nightclubs was introduced into evidence as Petitioner's Exhibit No. 4.

A review of the individual items which define a nightclub by the Building Code definitions likewise fits the Petitioner's use of the property with precision. Specifically,

the testimony established by numerous witnesses, including the above referenced, established that the subject site had: (1) no theatrical stage accessories; (2) low level lighting; (3) later than average operating hours; (4) a segregated area for dancing (dance floor); (5) ill-defined aisles; and (6) limited food service. These are the exact criteria set forth in the Baltimore County Building Code as indicia of a nightclub. Petitioner's site meets every such determination.

Accordingly, Petitioner's use of the subject premises constitutes a nightclub by virtue of meeting all of the established criteria for such an enterprise as set forth in both the Building Code and Zoning Regulations for Baltimore County. It is difficult to imagine what more Petitioner could have presented to the Board to establish that the use of the subject premises is in fact a nightclub. A review of the above-referenced definition of nightclub establishes that each and every element of that definition is fulfilled by Petitioner's use of the subject premises.

Because Petitioner's location is a nightclub, it cannot, by definition, simultaneously be an after-hours club. This is so by virtue of the language found in the after-hours club definition of the Baltimore County Zoning Regulations. Specifically, that definition provides:

After-Hours Club: A commercial establishment whose principal business is the provision of live or recorded entertainment with or without a dance floor, which is open primarily between 11:00 p.m. and 4:00 a.m. and which does not have a Baltimore County liquor license. An after-hours club is not a nightclub as defined in the Zoning Regulations or the Building Code of Baltimore County, Maryland.

Therefore, because Petitioner has unequivocally established that the use of the subject site is that of a nightclub, this Board must so find. By virtue of the last sentence in the definition of "after-hours club," and in light of the evidence in this case, Petitioner cannot qualify as an after-hours club, and this Board should render a decision in conformance with same. If any establishment in Baltimore County is determined to be a nightclub, by its very definition, it cannot also be an after-hours club; due to the very precise language found in the after-hours club definition. For this Board to determine that the subject site is an after-hours club would be contrary to the evidence adduced before it, and would be absolutely contrary to both of the definitions as set forth above.

Assuming, arguendo, that this Board finds that the use of the subject site was initially an after-hours club, it is beyond cavil that commencing in early 1997, the nature and use of the site was changed to reflect the passage and requirements

of the new Bottle Bill law. This change ensured that the site would operate as a nightclub rather than an after-hours club. In fact, the testimony and other evidence before the Board established that at all times during which this Board heard testimony, Petitioner had already enacted these changes and was operating the premises as a nightclub and not as an after-hours club. On this issue, the Board is again referred to the testimony of Mr. Giorgilli who testified that with the passage of the Bottle Bill and the recognition that said Bill and the Baltimore County after-hours club legislation was designed to curtail the type of operation which he had originally operated, he altered the format of the subject premises. Specifically, his testimony included information related to monies expended to "make over" the establishment, to re-advertise under the trade name of "Liquids," to target the younger and non-drinking crowd, and to significantly alter the hours of operation. As to the hours of operation, Mr. Giorgilli testified that the current hours are typically 9:00 a.m. to 3:00 a.m. with the busiest time being 10:00 p.m. to 1:00 a.m. This particular change is crucial in analyzing Petitioner's use of the property. It provides additional, uncontradicted evidence that Petitioner's use does not qualify as an After Hours Club. Its

current primary hours of operation are at variance with the primary hours of operation of an After Hours Club.

2. PETITIONER IS NOT COLLATERALLY ESTOPPED
OR BARRED BY THE DOCTRINE OF RES
JUDICATA FROM PURSUING ITS PETITION
BEFORE THIS BOARD.

Argument was set forth during the course of the hearing by both Baltimore County and the People's Counsel that the Petitioner was collaterally estopped from seeking a determination by this Board that the use of the subject premises constituted a nightclub, by virtue of this issue having already been raised, and decided, by the Zoning Commissioner for Baltimore County pursuant to a March 2, 1995 decision in Case No. V 95-211-SPH. This argument fails for two reasons. First, the argument was made that in order to escape being bound by the findings of that prior opinion, Petitioner was required to have appealed from same. This argument ignores the reality that Petitioner prevailed in that hearing and that same was brought by Baltimore County for the purpose of attempting to close Mr. Giorgilli's establishment for failure to have obtained a special exception and variance to operate an after-hours club. The Zoning Commissioner in that case (which was introduced into evidence as Baltimore County's Exhibit No. 1), found that at that time [emphasis added] the premises was

being used as an after-hours club, but that the after-hours club legislation would not be binding on any property owner until August 9, 1995. Because the decision was rendered March 2, 1995, no enforcement action could be taken against Mr. Giorgilli at that point in time, and accordingly, there was no determination from which to appeal.

Second, and more importantly, the issue before the Board in this case is different from the issue before the Zoning Commissioner in Case No. V 95-211-SPH. Specifically, the issue before this Board is whether or not, at the time the Board heard this case, the use of the premises is that of a nightclub. This case was the result of the new Petition for Special Hearing filed by the Petitioner in this case. One of the issues before the Board is: "What is the current use of the subject site?" Testimony conclusively established that the instant use is that of a nightclub. What the Zoning Commissioner found to be a factual matter three (3) years ago has no relevancy to the status of the use today or the ability of this Board to make its own determination based on present facts.

The hearing before this Board, as the Board is well aware, is a de novo hearing. It is a de novo hearing from Petitioner's own case which was previously heard before the

Zoning Commissioner. Neither Petitioner nor this Board are bound by any decisions rendered by the Zoning Commissioner in any other prior proceeding, especially where that decision is in excess of three (3) years old. Property uses and designation are dynamic and ever-changing. By way of example, a prior factual finding in a given case that the intersections of Dulaney Valley, Joppa and York Roads in Baltimore County are characterized by multiple traffic signals would have no bearing on this Board in a case today. Factually, that site is now a traffic circle bearing no traffic lights. Similarly, a factual finding in a given case that the building located on the north side of the intersection of York Road and Fairmount Avenue in Towson is being operated as a Howard Johnson's Restaurant would not be binding upon this Board at any subsequent hearing. Clearly, that building is currently being used as a CVS Pharmacy. Thus, it is manifestly clear that property uses and designations change with great regularity and speed. Such is the case in this matter. Accordingly, neither Petitioner nor this Board are bound by the factual findings rendered by Zoning Commissioner Lawrence Schmidt with respect to the nature of the use at the subject site.

This issue has been raised and decided by the Maryland Court of Special Appeals. In Board of County Commissioner's of

Cecil County v. Ellwood Racine, 24 Md.App. 435 (1975), the Court held that the doctrine of res judicata does not bar the subsequent consideration of an issue previously heard where there has been a substantial change in condition. As the testimony in this case revealed, the nature and format of the use has substantially changed from what it was three (3) years ago, and accordingly, the issues raised herein are properly before this Board. In addition, the Maryland Courts have been reluctant to strictly apply the doctrine of res judicata to administrative bodies. Application of that doctrine is more appropriately applied to Courts of competent jurisdiction. See generally Fertitta v. Brown, 252 Md. 594 (1969) and White v. Prince George's County, 282 Md. 641 (1978). In the White case, the Court held that the principles of public policy underlying res judicata were applicable to some administrative agencies performing quasi-judicial functions. In that case, the quasi-judicial functions were performed by the Maryland Tax Court. In White, the Court looked for indicia which was recognized as part of a quasi-judicial function, and held that same included: Power to issue subpoenas, that proceedings be conducted in a manner similar to courts of equity, and that its orders are final and conclusive. None of these factors are present in a hearing before the Zoning Commissioner for Baltimore County.

Thus, this doctrine is not applicable to hearings held before the Zoning Commissioner for Baltimore County.

3. IN THE EVENT THE BOARD DETERMINES THE SUBJECT SITE TO BE AN AFTER HOURS CLUB, THE PROVISIONS OF THE AFTER HOURS CLUB LEGISLATION CANNOT BE ENFORCED AGAINST THE PETITIONER.

Even if this Board determines the subject site to be an after-hours club (a position which Petitioner maintains would be a finding in contravention of the law and facts in this instance), the after-hours club legislation cannot be enforced against this Petitioner by virtue of the Petitioner having constitutionally vested zoning rights.

A land owner will be held to have acquired a vested right to continue the construction of a building or structure and to initiate and continue a use despite a restriction contained in an ordinance where, prior to the effective date of the ordinance, in reliance upon a permit theretofore validly issued, he has, in good faith, made a substantial change of position in relation to the land, made substantial expenditures, or has incurred substantial obligations. Steuart Petroleum Co. v. Board of County Commissioners of St. Mary's County, Et Al, 276 Md. 435, 443, 1975 (emphasis added).

In this case, Petitioner, through Mr. Giorgilli, testified that it had expended over \$150,000.00 in initial expenses to commence use of the subject premises. He further testified that in addition, he had spent over \$75,000.00 on renovation and maintenance of the club. On cross examination by both Baltimore County and People's Counsel, Mr. Giorgilli was able to provide various itemizations substantiating these expenditures. Specifically, he testified that the carpeting and dance floors needed to be replaced on a periodic basis, the costs for these items being \$4,000.00 and \$6,000.00, respectively. He further testified that he had had a foyer built in at the location (thereby reducing the fire occupancy from 720 patrons to 600 patrons) and had made other improvements to the real property. He additionally testified that the premises required periodic re-paintings at a cost of \$4,000.00-\$5,000.00. All of these expenditures were done, as testified by Mr. Giorgilli, in reliance on the use and occupancy permit issued for the site and on his ability to continue using the subject premises as an after hours club (at that point in time).

In addition to the foregoing costs, Petitioner also testified that he expended in excess of \$700.00 per week on advertising for the subject site (publications in local

newspapers such as the City Paper, handbills, etc.). Several of these forms of advertisements were introduced as exhibits by both Baltimore County and People's Counsel. Again, these were costs incurred by Petitioner in reliance on his belief that it would be permitted to continue use of the subject premises.

In addition to the foregoing, Petitioner was also a signatory to the commercial lease to the subject site. Although the lease does contain a provision to allow Petitioner out of the lease if he cannot continue using the premises as envisioned, there is a \$30,000.00 penalty to be paid by the Petitioner if that right is exercised. Such a payment constitutes an additional substantial obligation as envisioned by Steuart Petroleum.

A competing interest against Petitioner's constitutionally vested zoning right is that a legislative body can provide amortization provisions to ameliorate the affects of that legislation. However, the constitutionality depends on overall reasonableness, and on the importance of the public gain in relation to the private loss. Gough v. Board of Zoning Appeals, 21 Md. App. 697, (1974). In Gough, the Court held that "True amortization provisions almost if not universally call for a termination of non-conforming uses after the lapse

of a reasonable specified period in order that the owner may amortize his investment". Id. at 707.

However, where the amortization period is unreasonable, the statutes requiring termination of non-conforming uses have been held unconstitutional. Harris v. City of Baltimore, 35 Md. App. 572, 580, (1977).

Here, the amortization period for cessation of an after hours club was one year. Given the expenditures by the Petitioner as partially outlined above, and as more fully set forth by Mr. Giorgilli's testimony, a one year amortization period is grossly insufficient. In addition to the foregoing expenditures and reliance by Petitioner, he also testified that since the inception of Petitioner's use of the subject premises, Petitioner has pursued no other vocation, has dedicated all of its time and resources to this enterprise on a full time basis, and that same is the sole source of support for Mr. Giorgilli and his minor daughter. When these additional facts are weighed against the one year amortization period, the unreasonableness of the amortization period is accentuated.

An argument was put forth during the hearing itself by Baltimore County that in reality, Petitioner has remained open to this very date and therefore, as to Petitioner, the

amortization period was not one year, but was in excess of three years. This argument does not provide a basis upon which the Board could enforce the amortization schedule. In other words, this Board can find, based on the facts presented to it that the one year amortization period is unreasonable, and as such cannot be enforced against Petitioner. However, having once so found, it is thereafter up to the legislature (Baltimore County Council) to cure the defect in the statute and provide a reasonable amortization period, which, in turn, would then be applied against Petitioner.

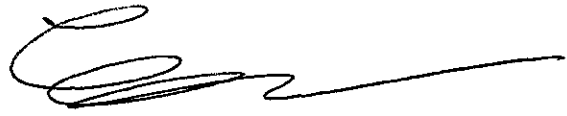
Alternatively, Petitioner also argues that even a four year amortization period is unreasonable in light of the expenditures made by Petitioner and the extreme reliance which Petitioner made on the original use and occupancy permit and its prior ability to operate the location as an after hours venue. By way of example, the Board is referred to the recent comprehensive sign legislation passed by Baltimore County. That legislation, found in Baltimore County Bill #89-97 provides for a fifteen year amortization for signs. Where, as here the interest is in the continued use of real property, and not merely for advertisement purposes, the needs and rights of the property owner are that much greater. Accordingly, the reasonable amortization period for discontinuance of such use

in this matter should be equal to or exceed the time period set forth in the Baltimore County sign legislation.

CONCLUSION

After three full days of testimony, this Board was presented with much evidence related to the use of the subject premises. Much of the evidence presented by Baltimore County and People's Counsel was objected to as irrelevant to the proceedings before this Board (number of police calls, citizen complaints, noise, loitering, etc.). These issues, while matters of important public concern, are not germane to the analysis before this Board, which is a determination of what the subject site is. Such testimony is the proverbial legal red herring. This Board must not be swayed by public opinion or the complaints emanating from the Baltimore County Police Department.

When this Board properly considers the evidence adduced before it and applies that evidence to the issues before it, the only conclusion which can be reached is that the current use of 8819 Orchard Tree Lane is that of a night club. To reach a contrary conclusion would be against the weight of the evidence and the applicable zoning regulations and definitions in this matter.



EDWARD C. COVAHEY, JR.



ROGER J. SULLIVAN
Covahey & Boozer, P.A.
614 Bosley Avenue
Towson, Maryland 21204
410-828-9441
Attorney for Petitioner

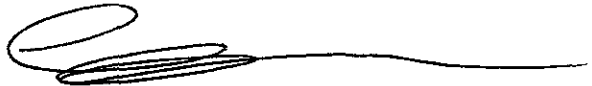
CERTIFICATION OF MAILING

I HEREBY CERTIFY, that on this 13th day of March, 1998, a copy of the foregoing Memorandum of Law was mailed, first class mail, postage prepaid, to:

People's Counsel
c/o Carole S. Demilio, Esquire
400 Washington Avenue
Towson, MD 21204

and

Baltimore County Office of Law
c/o Nancy C. West, Asst. States Attorney
400 Washington Avenue
Towson, MD 21204



EDWARD C. COVAHEY, JR.

COVAHEY & BOOZER, P. A.

ATTORNEYS AT LAW
614 BOSLEY AVENUE
TOWSON, MARYLAND 21204
AREA CODE 410
828-9441

EDWARD C. COVAHEY, JR.
F. VERNON BOOZER *
MARK S. DEVAN
ANTHONY J. DiPAULA *
THOMAS P. DORE
ROGER J. SULLIVAN

FAX 410-823-7530

ANNEX OFFICE
SUITE 302
606 BALTIMORE AVE.
TOWSON, MD. 21204

* ALSO ADMITTED TO D. C. BAR

March 13, 1998

Hand Delivered

Ms. Kathleen C. Bianco
Administrator
County Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

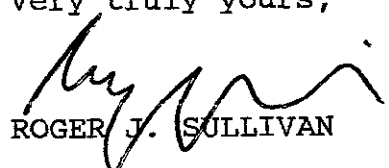
RE: In the Matter of
Rampart Partnership/Club 101
Case No. 96-60-XA

Dear Ms. Bianco:

Enclosed please find original and three (3) copies of the
Petitioner's Memorandum of Law in the above matter.

Thank you for your attention to this matter.

Very truly yours,


ROGER J. SULLIVAN

RJS/gab
Enclosures
cc: People's Counsel
Baltimore County Office of Law
13`gab.10

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RECEIVED
COUNTY BOARD OF APPEALS
98 MAR 13 PM 4:02

12-5-96

CLUB 101, INC.	*	BEFORE THE
and		
JOHN A. GIORGILLI	*	BALTIMORE COUNTY
Appellants	*	BOARD OF APPEALS
v.	*	
BALTIMORE COUNTY, MARYLAND	*	APPEAL NO. _____
Appellee	*	

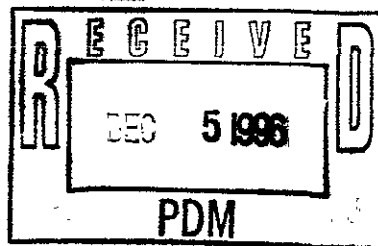
* * * * *

NOTICE OF APPEAL

CLUB 101, INC. and JOHN A. GIORGILLI, Appellants, by their attorneys, Edward C. Covahey, Jr. and Covahey & Boozer, P.A., pursuant to Section 26-132 of the Baltimore County Code, files this Appeal from the November 6, 1996 Order of the Zoning Commissioner of Baltimore County in Case No. 96-60-XA wherein all relief requested by Appellants herein was denied, and in support thereof, states as follows:

1. That Appellants did file for a Special Exception for an after-hours club at 8819 Orchard Tree Lane pursuant to Section 236.4 of the Baltimore County Zoning Regulations and, in addition, applied for a Variance from Section 236.4 of the BCZR with respect to the afterhours club's proximity to a residence.

2. That the use of the subject property as an afterhours club is permitted in its current zoning designation as a special exception.



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3. That the property should be authorized for use as an afterhours club because the use of same in that manner will not:

A. Be detrimental to the health, safety or general welfare of the locality involved.

B. Tend to create congestion of roads, streets or alleys therein.

C. Create a potential hazard from fire, panic or other dangers.

D. Tend to overcrowd land or cause undue concentration of population.

E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation, or other public requirements, conveniences, or improvements.

F. Interfere with adequate light and air.

G. Be inconsistent with the purpose of the property's zoning classification, nor in any other way, be inconsistent with the spirit and intent of the Baltimore County Zoning Regulations.

H. Be inconsistent with the impermeable surface and vegetative retention provisions of the Baltimore County Zoning Regulations.

4. That the variance requested should be granted in that special circumstances or conditions exist which are peculiar to the land or structure which is the subject of the variance request and that strict compliance with the Baltimore County Zoning Regulations would result in practical difficulty or unreasonable hardship to the Appellants.

5. That the special exception and variances should be granted in that the Appellants can comply with all of the requirements imposed upon same by the BCZR, and in particular, Sections 502 and 307.1.

6. That the use of the subject property as an afterhours club should be approved by this Board because the property is a non-conforming use and may continue as a non-conforming use in accordance with Sections 101 and 104 of the Baltimore County Zoning Regulations.

7. That the property should be permitted to be used as an afterhours club because the Appellants have "vested rights" in the property and the provisions of County Council Bill No. 85-94 and the Amendment of the Zoning Regulations relating to "afterhours clubs" may not be enforced against the Appellants for the subject property.

8. That the use of the subject premises as an afterhours club should be permitted because the provisions of

County Council Bill No. 85-94 and the Amendment of the Zoning Regulations relating to "afterhours clubs" is unconstitutional.

9. That the subject premises should be permitted to be used as an afterhours club because County Council Bill No. 85-94 and the Zoning Regulations contained therein relating to "afterhours clubs" may not be enforced against Appellants under the doctrine of estoppel.

10. That the special exception and the variances should be granted for such other and further reasons to be assigned at the hearing on this Appeal.

WHEREFORE, Appellants pray that this Honorable Board pass an Order:

A. Authorizing the use of 8819 Orchard Tree Lane (Club 101) for use as an afterhours club;

B. Granting variance from Section 236.4 of the Baltimore County Zoning Regulations to permit an afterhours club to be located within 83 feet of a residence in lieu of the required distance of 1,000 feet;

C. Determining that the property is a non-conforming use and may continue as a non-conforming use in accordance with Sections 101 and 104 of the Baltimore County Zoning Regulations;

D. That the Appellants have "vested rights" in the property and that the provisions of County Council Bill No. 85-94 and the Amendment of the Zoning Regulations relating to "afterhours clubs" may not be enforced against the Appellants or the subject property;

E. That the provisions of County Council Bill NO. 85-94 and the Amendment of the Zoning Regulations relating to "afterhours clubs" is unconstitutional;

F. That the County Council Bill No. 85-94 and the Zoning Regulations contained therein relating to "afterhours clubs" may not be enforced against Appellants under the doctrine of estoppel;

G. Granting unto them such other and further relief as the nature of their cause may require.



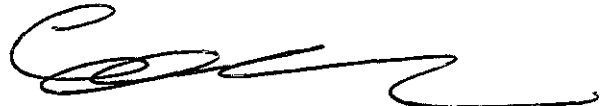
EDWARD C. COVAHEY, JR.
Covahey and Boozer, P.A.
614 Bosley Avenue
Towson, Maryland 21204
(410) 828-9441
Attorney for Appellants

CERTIFICATION OF MAILING

I HEREBY CERTIFY, that on this 5th day of December, 1996, a copy of the foregoing Notice of Appeal was mailed, first class mail, to:

Virginia W. Barnhart, Esquire
Baltimore County Office of Law
400 Washington Avenue
Towson, Maryland 21204

Mr. Wayne Skinner
Towson/Loch Raven Community Council, Inc.
P. O. Box 27682
Towson, Maryland 21285-7682
Protestant



EDWARD C. COVAHEY, JR.

96-11-53.gab

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Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

December 18, 1996

Mr. Wayne Skinner
1813 Edgewood Road
Baltimore, MD 21234

RE: Petition for Special
Exception and Variance
W/S Orchard Tree Lane,
534.42' N of the c/l Joppa
Road
(8819 Orchard Tree Lane)
9th Election District
4th Councilmanic District
Rampart Partnership
- Petitioner
Case No. 96-60-XA

Dear Mr. Skinner:

Please be advised that an appeal of the above-referenced case was filed in this office on December 5, 1996 by Edward C. Covahey, Jr., Esquire on behalf of Club 101, Inc. and John A. Giorgilli. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

If you have any questions concerning this matter, please do not hesitate to call 887-3180.

Sincerely,

ARNOLD JABLON
Director

AJ:rye

c: Mr. Scott Culliner
Ms. Shirley Chandler
Det. Sgt. Joseph G. Miller
People's Counsel

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Baltimore County
Zoning Commissioner
Office of Planning and Zoning

Suite 112, Courthouse
400 Washington Avenue
Towson, Maryland 21204
(410) 887-4386

November 21, 1996

Edward C. Covahey, Jr., Esquire
614 Bosley Avenue
Towson, Maryland 21204

RE: PETITIONS FOR SPECIAL EXCEPTION & VARIANCE
8819 Orchard Tree Lane (Club 101)
Case No. 96-60-XA

Dear Mr. Covahey:

I am in receipt of your letter dated November 7, 1996 with the original rough-draft opinion prepared in this matter attached thereto and signed by John Giorgilli, President of Rampart Partnership, owner of the subject property. I am also in receipt of your letter dated November 12, 1996, accompanied by a copy of that first opinion. As you are aware, a final opinion was issued in the above-captioned matter on November 6, 1996 and copies were forwarded to all parties in interest.

Based upon my ultimate decision in this matter, and the fact that there apparently was no formal agreement reached between your client and the Protestants in this case, I am not inclined to entertain any requests for reconsideration in this matter. Therefore, it is suggested that in the event your client wishes to pursue this matter, he must do so through the appeal process. As you may already know, appeals must be entered within thirty (30) days of the date of the Order with the Department of Permits and Development Management (DPDM).

Should you have any further questions on the subject, please feel free to contact me.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Lawrence E. Schmidt", is written over a horizontal line.

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Mr. Wayne Skinner, Towson-Loch Raven Community Council, Inc.
P.O. Box 27682, Towson, Md. 21285-7682

✓ Case File

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COVAHEY & BOOZER, P. A.

ATTORNEYS AT LAW

614 BOSLEY AVENUE

TOWSON, MARYLAND 21204

AREA CODE 410

828-9441

FAX 410-823-7530

EDWARD C. COVAHEY, JR.

F. VERNON BOOZER *

MARK S. DEVAN

ANTHONY J. DIPAULA *

THOMAS P. DORE

ROGER J. SULLIVAN

ANNEX OFFICE

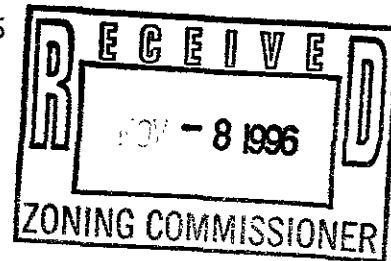
SUITE 302

606 BALTIMORE AVE.

TOWSON, MD. 21204

November 7, 1996

* ALSO ADMITTED TO D. C. BAR



HAND-DELIVERED

Lawrence E. Schmidt, Zoning Commissioner
for Baltimore County
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Property: 8819 Orchard Tree Lane
Case No.: 96-60-SPHXA

Dear Mr. Schmidt:

Enclosed please find the original of the Findings of Fact and Conclusions of Law in the above as executed by John Giorgilli. Mr. Giorgilli came in my offices when I was not present, and against my advice, unilaterally changed the date of the Order.

HELP!

Very truly yours,

Edward C. Covahey, Jr.

ECC,Jr./ldr
Enclosure
07ldr.08

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IN RE: PETITIONS FOR SPECIAL EXCEPTION * BEFORE THE
AND VARIANCE - W/S Orchard Tree Lane,
534.42' N of the c/l Joppa Road * ZONING COMMISSIONER
(8819 Orchard Tree Lane)
9th Election District * OF BALTIMORE COUNTY
4th Councilmanic District * Case No. 96-60-XA
Rampart Partnership
Petitioner * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as Petitions for Special Hearing, Special Exception and Variance for that property known as 8819 Orchard Tree Lane, located in the vicinity of Loch Raven Boulevard in Towson. The Petitions were filed by the owner of the property, Rampart Partnership, by Paul M. Pardew, Jr., a Partner, and the Lessee, Club 101, Inc., by John Giorgilli, President, through their attorney, Edward C. Covahey, Jr., Esquire. The Petitioners seek a special exception for an after hours club on the subject property, zoned B.R., pursuant to Section 236.4 of the Baltimore County Zoning Regulations (B.C.Z.R.), and a variance from Section 236.4 of the B.C.Z.R. to permit an after hours club within 83 feet of a residence in lieu of the required distance of 1000 feet. The Petitioners also filed a request for special hearing relief subsequent to the initial hearing date. Pursuant to the Petition for Special Hearing, the Petitioners request that the Zoning Commissioner approve the use on the subject property based on the following: 1) that the use is nonconforming and may continue in accordance with Sections 101 and 104 of the B.C.Z.R.; 2) that the Petitioner has "vested rights" in the property and that the provisions of County Council Bill No. 85-94 and the amendment of the Zoning Regulations relating to "after hours clubs" may not be enforced against the Petitioners and the subject property; 3) that the provisions of County Council Bill No. 85-94 and the amendment of the

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ORDER RECEIVED FOR FILING
Date 11/16/96
By [Signature]

zoning regulations relating to "after hours clubs" is unconstitutional; and, 4) that County Council Bill No. 85-94 and the zoning regulations contained therein relating to "after hours clubs" may not be enforced against Petitioners under the doctrine of estoppel. The subject property and relief sought are more particularly described on the site plan submitted which was accepted and marked into evidence as Petitioner's Exhibit 1.

This matter was originally scheduled for a public hearing before me in September, 1995. However, there were multiple requests for postponements of the hearing, and ultimately, the matter did not come before me until April 12, 1996. Appearing at that hearing on behalf of the Petitions was John Giorgilli, President of Club 101, Inc., owner of the property. Mr. Giorgilli was represented by Edward C. Covahey, Jr., Esquire. Warren Hastings, the property line surveyor who prepared the site plan for the property, and Susan Pardew, also appeared in support of the Petitions.

Several residents from the surrounding community appeared in opposition. They included Wayne Skinner, a representative of the Towson-Loch Raven Community Council, Inc., John Harter and Shirley Chandler, nearby residents.

After-hours clubs, in general, and this site in particular, have a significant zoning history in Baltimore County. The treatment of this land use by the B.C.Z.R. was first considered by the Zoning Commissioner in Case 94-290-SPH. That case was filed by Scott M. Culliner and William B. Englund, Jr., and sought a clarification of the use from a zoning perspective. At that time, a definition of after-hours clubs did not exist in the B.C.Z.R., and, for the reasons set forth within the opinion, the use was deemed to be similar to a "night club." Night clubs are defined activities in the B.C.Z.R.

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The second case on this issue directly related to the subject property and was heard by Deputy Zoning Commissioner Timothy M. Kotroco in September 1994. That case was initiated by Baltimore County (Office of Zoning and Administration) and sought a finding that the use was illegal. By his Order dated September 7, 1994, Deputy Commissioner Kotroco dismissed the Petition and concluded that the issue presented was premature for consideration (See 94-537-SPH).

The third case on this topic also involved the subject property (Case 95-211-SPH). In an opinion rendered by this Zoning Commissioner in that matter, it was held that the use on the property was an after-hours club (pursuant to the language in the newly adopted Bill No. 85-94) and that the club could lawfully operate until August 8, 1996. In adopting that Bill, the County Council provided a sunset provision that allowed existing after hours clubs to continue in operation until August 8, 1996. Thereafter, any such businesses must comply with the provisions of Bill No. 85-94. The instant case (Case 96-60-XA) was filed in an effort to comply with those provisions.

The record of the hearing held in the instant case will clearly show that there was insufficient testimony and evidence offered to support a grant of the Petitions filed. The Petitioner did not offer testimony that the use can be conducted without detriment to the health, safety and general welfare of the surrounding locale, as more fully specified in Section 502.1 of the B.C.Z.R. Moreover, testimony was not offered in support of the variance in order to comply with the provisions of Section 307 of the B.C.Z.R. as construed by the case law. There was no evidence or testimony offered in support of the Petition for Special Hearing.

ORDER RECEIVED FOR FILING

Date

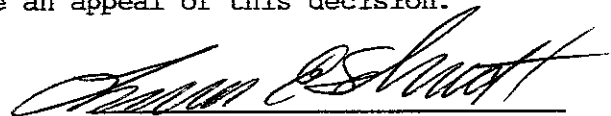
By

based on the following: 1) that the use is nonconforming and may continue in accordance with Sections 101 and 104 of the B.C.Z.R.; 2) that the Petitioner has "vested rights" in the property and that the provisions of County Council Bill No. 85-94 and the amendment of the Zoning Regulations relating to "after hours clubs" may not be enforced against the Petitioners and the subject property; 3) that the provisions of County Council Bill No. 85-94 and the amendment of the zoning regulations relating to "after hours clubs" is unconstitutional; and 4) and that County Council Bill No. 85-94 and the zoning regulations contained therein relating to "after hours clubs" may not be enforced against Petitioners under the doctrine of estoppel, be and is hereby DENIED; and,

IT IS FURTHER ORDERED that the Petition for Special Exception to permit an after hours club on the subject property, zoned B.R., pursuant to Section 236.4 of the Baltimore County Zoning Regulations (B.C.Z.R.), in accordance with Petitioner's Exhibit 1, be and is hereby DENIED; and,

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from Section 236.4 of the B.C.Z.R. to permit an after hours club within 83 feet of a residence in lieu of the required distance of 1000 feet, in accordance with Petitioner's Exhibit 1, be and is hereby DENIED.

IT IS FURTHER ORDERED that the Petitioners shall have thirty (30) days from the date of this Order to file an appeal of this decision.



LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

ORDER RECEIVED FOR FILING
Date 11/16/86
By [Signature]



Baltimore County
Zoning Commissioner
Office of Planning and Zoning

Suite 112, Courthouse
400 Washington Avenue
Towson, Maryland 21204
(410) 887-4386

November 6, 1996

Edward C. Covahey, Jr., Esquire
614 Bosley Avenue
Towson, Maryland 21204

RE: PETITIONS FOR SPECIAL EXCEPTION AND VARIANCE
W/S Orchard Tree Lane, 534.42' N of the c/l Joppa Road
(8819 Orchard Tree Lane)
9th Election District - 4th Councilmanic District
Rampart Partnership - Petitioner
Case No. 96-60-XA

Dear Mr. Covahey:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petitions for Special Hearing, Special Exception and Variance have been denied in accordance with the attached Order.

In the event any party finds the decision rendered is 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 Zoning Administration and Development Management office at 887-3391.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Lawrence E. Schmidt".

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Mr. Paul M. Pardew, Rampart Partnership
828 Warren Road, Cockeysville, Md. 21030

Mr. John Giorgilli, President, Club 101, Inc.
5126 Trumps Mill Road, Baltimore, Md. 21206

Mr. Wayne Skinner, 1813 Edgewood Road, Baltimore, Md. 21234
Mr. Scott Culliner, 3 Championship Court, Owings Mills, Md. 21117
Ms. Shirley Chandler, 8713 Green Pastures Drive, Towson, Md. 21286
Det. Sgt. Joseph G. Miller, Baltimore County Police Dept. - Towson
People's Counsel; Case File

MICROFILMED



IN RE: PETITION FOR	*	BEFORE THE
SPECIAL EXCEPTION VARIANCE		
SPECIAL HEARING	*	ZONING COMMISSIONER
8819 Orchard Tree Lane		
9th Election District	*	OF BALTIMORE COUNTY
4th Councilmanic District		
Rampart Partnership, Property	*	CASE NO. 96-60-SPHXA
Owner		
Club 101, Inc.	*	

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came before the Zoning Commissioner on applicant's petition to establish the premises located at 8819 Orchard Tree Lane, Towson, Maryland, as a non-conforming use for an After Hours Club and on a petition for special exception for an After Hours Club and variance to allow same within one thousand (1,000) feet of a residentially used building. Appearing at the public hearing held for this case was John A. Giorgilli, President of Club 101, Inc., and his counsel. The protestants present at the hearing were Wayne M. Skinner on behalf of the Towson-Loch Raven Community Council, and Margaret Deviney who resides at 8801 Green Pastures Drive, Towson, Maryland 21286.

This Commissioner, on March 2, 1995, by written Opinion, determined that the business conducted by the applicant on the subject premises is an After Hours Club as defined in Baltimore County Council Bill No. 85-94 and "fits precisely the new definition of an After Hours Club." This

MICROFILMED

Commissioner further held in said opinion that the applicant's After Hours Club was "'lawfully operating' prior to the effective date of the Act."

In the instant matter, the applicant and the protestants agreed, on the record, that it was appropriate to grant the Petition for Special Exception and Variance subject to conditions as hereinafter enumerated in this Order. The protestants and applicant recognized, on the record, that future legal proceedings related to the issues presented to this Commissioner were likely to continue relative to the present After Hours operation, and accordingly, it was agreed by both sides that it would be appropriate to terminate the existing non-conforming After Hours Club use at a definitive date.

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and for the reasons above cited, Petition for Special Exception and Variance shall be granted subject to the conditions hereinafter set forth, and therefore, it is

ORDERED, by the Zoning Commissioner of Baltimore County this _____ day of _____, 1996, that pursuant to the Petition for Special Exception and Variance, same are hereby granted, and the Petition for Special Hearing

is granted to the extent that the continued use, subject to the limitations hereinafter set forth, of the premises as an After Hours Club is authorized, as same constitutes a validly existing non-conforming use. The granting of the Petition for Special Exception and Variance is subject to the following conditions and restrictions which are imposed pursuant to § 502.2 of the Baltimore County Zoning Regulations; that is:

1. Applicant, Club 101, Inc., is permitted to continue to use the premises for conducting thereon an After Hours Club as defined in County Council Bill No. 85-94 until September 1, 1997, and at that time, the use of the premises for conducting thereon an After Hours Club is absolutely prohibited.

2. Applicants, Club 101, Inc., and Rampart Partnership shall not lease, sub-let, or assign the existing premises to any entity other than Club 101, Inc. for the use of an After Hours Club.

3. Applicants will not engage in or permit any free alcoholic beverages to be dispensed on the premises.

4. Applicants shall cause the parking lot to be cleaned of trash and debris on the mornings following the nights when the subject premises are operated as an After Hours Club.

5. The After Hours Club may only operate on Thursday night through Friday morning, Friday night through Saturday morning, Saturday night through Sunday morning, and on major holidays.

6. Applicants shall ensure that the back door to the premises which faces Green Pastures Drive shall remain closed.

7. Applicants will prohibit their patrons from loitering, gathering, or hanging out to the rear of the premises which faces Green Pastures Drive and shall ensure that they act in an orderly manner and that no debris is thrown or deposited into lawns of neighboring residential properties.

8. Applicants shall cause music levels to comport with the levels as established by the State of Maryland Noise Control Act, and further, applicants' base speakers shall be lowered to comply with said Act.

9. Applicants shall ensure that loitering does not occur in the parking lot and that the parking lot is cleared of patrons in a reasonable time following the closing of the subject club.

AGREED TO AS TO CONTENT AND FORM:

RAMPART PARTNERSHIP

By: _____, General Partner

CLUB 101, INC.

By: John A. Giorgilli, President

WAYNE M. SKINNER
1813 Edgewood Road
Baltimore, Maryland 21234
for Towson-Loch Raven Community
Council, Inc.

SHIRLEY R. CHANDLER
8713 Green Pastures Drive
Towson, Maryland 21286

HARRY R. THORN
8719 Green Pastures Drive
Towson, Maryland 21286

MARGARET DEVINEY
8801 Green Pastures Drive
Towson, Maryland 21286

96-04-13.1dr

Casett

4/12

96-60-57AKA

Club 104

Carlo Daddario

PO Box 1003

Timonium Md

21094

sent copy of draft
opinion 6/3/96. Bp

COVAHEY & BOOZER, P. A.

ATTORNEYS AT LAW
614 BOSLEY AVENUE
TOWSON, MARYLAND 21204
AREA CODE 410
828-9441

EDWARD C. COVAHEY, JR.
F. VERNON BOOZER *
MARK S. DEVAN
ANTHONY J. DIPAULA *
THOMAS P. DORE
ROGER J. SULLIVAN

ANNEX OFFICE
SUITE 302
606 BALTIMORE AVE.
TOWSON, MD. 21204

FAX 410-823-7530

* ALSO ADMITTED TO D. C. BAR

April 15, 1996

Lawrence E. Schmidt, Zoning Commissioner
for Baltimore County
111 W. Chesapeake Avenue
Towson, Maryland 21204



Re: Property: 8819 Orchard Tree Lane
Case No.: 96-60-SPHXA

Dear Commissioner Schmidt:

Enclosed please find draft of Order that I believe generally comports with the discussion we held at the hearing re: the above on April 12, 1996.

Please contact me with respect to any criticisms, suggestions, etc. Your indulgence and patience is appreciated.

Very truly yours,

Edward C. Covahey, Jr.

ECC,Jr./ldr
Enclosure
15ldr.07

MICROFILMED

RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
PETITION FOR VARIANCE		
8819 Orchard Tree Lane (Club 101), W/S	*	ZONING COMMISSIONER
Orchard Tree La, 534.42"+/- N of c/l Joppa		
Rd, 9th Election Dist., 4th Councilmanic	*	OF BALTIMORE COUNTY
Legal Owner: Rampart Partnership	*	CASE NO. 96-60-XA
Contract Purchaser: Club 101, Inc.		
Petitioners	*	
* * * * *		

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 final Order.

Peter Max Zimmerman
PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio
CAROLE S. DEMILIO
Deputy People's Counsel
Room 47, Courthouse
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of September, 1995, a copy of the foregoing Entry of Appearance was mailed to Edward C. Covahey, Jr., Esquire, 614 Bosley Avenue, Towson, MD 21204, attorney for Petitioners.

Peter Max Zimmerman
PETER MAX ZIMMERMAN

10/10/95



Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 8819 Orchard Tree Lane

which is presently zoned BR

This Petition shall be filed with the Office of Zoning Administration & Development Management.

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 Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

See Attached

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

I, or we, agree to pay expenses of 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

Contract Purchaser/Lessee:

CLUB 101, INC.

(Type or Print Name)

Signature John Giorgilli, President

5126 Trumps Mill Road

Address

Baltimore, MD 21206

City

State

Zipcode

Legal Owner(s):

RAMPART PARTNERSHIP

(Type or Print Name)

Signature

(Type or Print Name)

Signature

828 Warren Road

Address

Phone No.

Cockeysville, MD 21030

City

State

Zipcode

Name, Address and phone number of legal owner, contract purchaser or representative to be contacted.

Edward C. Covahey, Jr., Esquire

Name

614 Bosley Ave., Towson, MD 21204 (410) 828-

Address

Phone No.

9441

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

unavailable for Hearing

the following dates _____ Next Two Months

ALL _____ OTHER _____

REVIEWED BY: RJP DATE 1-18-95

Attorney for Petitioner

EDWARD C. COVAHEY, JR.

(Type or Print Name)

Signature

614 Bosley Avenue (410) 828-9441

Address

Phone No.

Towson, MD 21204

City

State

Zipcode

ORDER RECEIVED FOR FILING

Date

By



MICROFILMED

ATTACHMENT TO PETITION FOR SPECIAL HEARING

Petitioner's request that the Zoning Commissioner hold a Special Hearing for the purpose of:

(1) establishing the subject premises as a non-conforming use and to authorize the continued existing uses of the subject premises;

(2) establishing that Petitioners have "vested rights" in the property such that County Bill No. 85-94 and the Zoning Regulations contained therein relating to "after hours clubs" may not be enforced against Petitioners and the subject premises;

(3) establishing that Baltimore County Bill No. 85-94 and the Zoning Regulations contained therein relating to "after hours clubs" may not be enforced against Petitioners and the subject premises as same is unconstitutional as applied against Petitioners and the subject premises;

(4) establishing that Baltimore County Bill No. 85-94 and the Zoning Regulations contained therein relating to "after hours clubs" may not be enforced against Petitioners under the doctrine of estoppel.

ORDER RECEIVED FOR FILING

Date

By

95-10-56.gab

MICROFILMED



Petition for Special Exception

96-60-XA

to the Zoning Commissioner of Baltimore County

for the property located at

8819 Orchard Tree Lane

which is presently zoned

B.R.

This Petition shall be filed with the Office of Zoning Administration & Development Management.

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 Exception under the Zoning Regulations of Baltimore County, to use the herein described property for

an after hours club pursuant to § 236.4 of the Zoning Regulations of Baltimore County.

*Accepted
for filing
8/8/95 R.T.*

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

I, or we, agree to pay expenses of above Special Exception 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

Contract Purchaser/Lessee.

Legal Owner(s):

Club 101, Inc.
(Type or Print Name)

By: [Signature]
Signature John Giorgilli, President

5126 Trumps Mill Road
Address

Baltimore, MD 21206
City State Zipcode

Rampart Partnership
(Type or Print Name)

[Signature]
Signature

Paul M. Pardew Jr (owner)
(Type or Print Name)

Signature

Attorney for Petitioner

828 Warren Road 410.666.8921
Address Phone No.

Edward C. Covahey, Jr.
(Type or Print Name)

[Signature]
Signature

614 Bosley Ave. 828-9441
Address Phone No.

Towson, MD 21204
City State Zipcode

Cockeysville, MD 21030
City State Zipcode
Name, Address and phone number of legal owner, contract purchaser or representative to be contacted.

Edward C. Covahey, Jr.
Name
614 Bosley Ave.
Towson, MD 21204 828-9441
Address Phone No.

OFFICE USE ONLY
ESTIMATED LENGTH OF HEARING
unavailable for Hearing

the following dates _____ Next Two Months
ALL _____ OTHER _____
REVIEWED BY: R.T. DATE 8/8/95



ORDER RECEIVED FOR FILING

Date 8/8/95
By [Signature]

ITEM #59

MICROFILMED



Petition for Variance

96-60-KA
to the Zoning Commissioner of Baltimore County

for the property located at

8819 Orchard Tree Lane

which is presently zoned

B. R.

This Petition shall be filed with the Office of Zoning Administration & Development Management.

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 Variance from Section(s)

Section 236.4

To permit an after hours club within 83 feet of a residence in lieu of 1000 feet.

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County, for the following reasons: (indicate hardship or practical difficulty)

Unusual and unique features of lot make compliance with the above referenced zoning regulation an undue hardship or a practical difficulty and for such other and further reasons to be assigned at the hearing.

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

I, or we, agree to pay expenses of above Variance 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

Contract Purchaser/Lessee

Club 101, Inc.

(Type or Print Name)

By:

Signature

John Giorgilli, President

5126 Trumps Mill Road

Address

Baltimore, MD 21206

City

State

Zipcode

Attorney for Petitioner

Edward C. Covahey, Jr.

(Type or Print Name)

Signature

614 Bosley Avenue

(410) 828-9441

Address

Phone No

Towson, MD 21204

City

State

Zipcode

Legal Owners:

Rampart Partnership

(Type or Print Name)

Signature

Paul M. Randle Jr. (owner)

Signature

828 Warren Road

410-666-8921

Address

Phone No

Cockeysville, MD 21030

City

State

Zipcode

Name, Address and phone number of legal owner, contract purchaser or representative to be contacted.

Edward C. Covahey, Jr.

Name

614 Bosley Ave.

Address

Towson, MD 21204

(410) 828-9441

Phone No

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

unavailable for Hearing

the following dates

Next Two Months

ALL

OTHER

REVIEWED BY:

R.T.

DATE

8/8/95

ITEM # 59

MICROFILMED

ORDER RECEIVED FOR FILING

Date

By

Lorne T. Hastings R.L.S.
41 Eastship Road
Balto. MD 21222

96-60-XA

**Zoning Property Description to
Accompany Special Exception of
8819 Orchard Tree Lane**

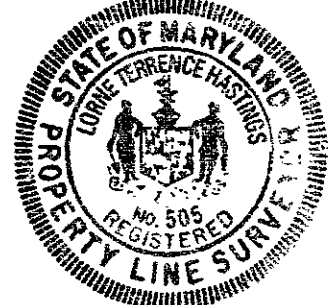
NOT FOR RECORDING PURPOSES

Beginning for the same at a point on the West side of a 30'
Right of Way known as Orchard Tree Lane, said point being
N 8 29'07"W 534.42' from the North side of Joppa Road.
Thence;

N 8 29'07"W	150.00',
S 81 30'53"W	70.00',
N 8 29'07"W	451.79',
N 64 43'53"E	623.25',
S 17 56'53"W	876.90',
S 82 57'53"W	136.56' to the P.O.B.

Containing 5.752 acres +/-

NOT FOR RECORDING



PURPOSES

MICROFILMED

ITEM # 59

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

96-ED-XA

District 4th Date of Posting 9/29/95
Posted for: Special Exemption of Variance
Petitioner: Remount Portmoreship - Club 101
Location of property: 8819 Orchard Tree Lane

Location of Signs: Posting road sign on property being zoned

Remarks: _____
Posted by W. H. Hardy Date of return: 10/6/95
Signature
Number of Signs: 1 MICROFILMED



CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

96-60-XH

District: 9th Date of Posting: 9/3/95

Posted for: Special Election to have

Petitioner: Norman Port Lenthers

Location of property: 8819 Orchard Tree Lane

Location of Signs: Along road by Orchard Tree Lane &

Remarks: _____

Posted by: W. H. Kelly Date of return: 9/8/95

Number of Signs: 1

MICROFILMED



NOTICE OF HEARING

The Zoning Commission 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 108 of the County Office Building, located at 111 - W. Chesapeake Avenue in Towson, Maryland, 21204, or Room 118 - Old Courthouse, 400 - Washington Avenue, Towson, Maryland, 21204 as follows:

Case Number:
96-60-XA (Item 39)
8819 Orchard Tree Lane
Club 101
W/S Orchard Tree Lane
534.42' +/- N
of c/o Joppa Road
9th Election District
4th Councilmanic
Legal Owner(s):
Rampart Partnership
Contract Purchaser:
Club 101
HEARING: TUESDAY,
SEPTEMBER 19, 1995 at
2:00 p.m. in Rm. 118, Old
Courthouse.

Special Exception: for an
after hours club. Variance to
permit an after hours club within
83 feet of a residence in lieu of
1,000 feet.

LAWRENCE E. SCHMIDT,
Zoning Commissioner for
Baltimore County

NOTES: (1) Hearings are Hand-
icapped accessible; for special
accommodations Please Call
887-3353.

(2) For informa-
tion concerning the File and/or
Hearing, Please Call 887-3381.

8/3/95 August 31.

CERTIFICATE OF PUBLICATION

TOWSON, MD., 9/1, 1995

THIS IS TO CERTIFY, that the annexed advertisement was
published in THE JEFFERSONIAN, a weekly newspaper published
in Towson, Baltimore County, Md., once in each of 1 successive
weeks, the first publication appearing on 8/31, 1995.

THE JEFFERSONIAN,

A. H. Enid
LEGAL AD. - TOWSON

MICROFILMED

PETITION OF: Club 101, Inc. and J. Giorgilli

CIVIL ACTION # 3-C-98-009806

IN THE MATTER OF Rampart Partnership (Club
101)

RECEIVED FROM THE COUNTY BOARD OF
APPEALS EXHIBITS, BOARD'S RECORD
EXTRACT & TRANSCRIPT FILED IN THE
ABOVE-ENTITLED CASE, AND ZONING
COMMISSIONER'S FILE AND EXHIBITS

R. Pfau
Clerk's Office

L e: 11/25/98

MICROFILMED

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

ITEM # 571
R.T.D. 3/1/78

DATE 7/15/78 ACCOUNT R-001-6150

C20-VARIANCE \$ 250.00
050-SPX \$ 310.00

080-2 SKINS \$ 70.00
RECEIVED FROM: TOTAL \$ 630.00

96-60-XA

FOR: VARIANCE & SPX

MICROFILMED

VALIDATION OR SIGNATURE OF CASHIER

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

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

029848

DATE 12/5/96 ACCOUNT R-001-6150

AMOUNT \$ 460.00

RECEIVED FROM:

FOR: Appeal Case # 96-60-XA

MICROFILMED

03A71#0155KICHRD 9460.00
SA 0003:15PN12-05-96

VALIDATION OR SIGNATURE OF CASHIER

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

Baltimore County Government
Office of Zoning Administration
and Development Management



111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

ZONING HEARING ADVERTISING AND POSTING REQUIREMENTS & PROCEDURES

Baltimore County Zoning Regulations require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property and placement of a notice in at least one newspaper of general circulation in the County.

This office will ensure that the legal requirements for posting and advertising are satisfied. However, the petitioner is responsible for the costs associated with these requirements.

PAYMENT WILL BE MADE AS FOLLOWS:

- 1) Posting fees will be accessed and paid to this office at the time of filing.
 - 2) Billing for legal advertising, due upon receipt, will come from and should be remitted directly to the newspaper.
- NON-PAYMENT OF ADVERTISING FEES WILL STAY ISSUANCE OF ZONING ORDER.

ARNOLD JABLON, DIRECTOR

For newspaper advertising:

Item No.: 59

Petitioner: ~~101~~ 101 JMC La. Chs 101

Location: 8819 Orchard Tree Lane Towson Md

PLEASE FORWARD ADVERTISING BILL TO:

NAME: John A. Giorgilli

ADDRESS: P.O. Box 43565

Balto Md. 21236

PHONE NUMBER: (410) 256-0059 / 750-5332

AJ:ggs

MICROFILMED

(Revised 04/09/93)



TO: PUTUXENT PUBLISHING COMPANY

August 31, 1995 Issue - Jeffersonian

Please forward billing to:

John Giorgilli

P. O. Box 43565

Baltimore MD 21236

256-0059

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, 111 W. Chesapeake Avenue in Towson, Maryland 21204

or

Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 96-60-XA (Item 59)

8819 Orchard Tree Lane - Club 101

W/S Orchard Tree Lane, 534.42' +/- N of c/l Joppa Road

9th Election District - 4th Councilmanic

Legal Owner: Rampart Partnership

Contract Purchaser: Club 101

HEARING: TUESDAY, SEPTEMBER 19, 1995 at 2:00 p.m. in Room 118, Old Courthouse.

Special Exception for an after hours club.

Variance to permit an after hours club within 83 feet of a residence in lieu of 1,000 feet.

LAWRENCE E. SCHMIDT

ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.

(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, PLEASE CALL 887-3391.

MICROFILMED



Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

August 25, 1995

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, 111 W. Chesapeake Avenue in Towson, Maryland 21204 or Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 96-60-XA (Item 59)
8819 Orchard Tree Lane - Club 101
W/S Orchard Tree Lane, 534.42[±] +/- N of c/l Joppa Road
9th Election District - 4th Councilmanic
Legal Owner: Rampart Partnership
Contract Purchaser: Club 101
HEARING: TUESDAY, SEPTEMBER 19, 1995 at 2:00 p.m. in Room 118, Old Courthouse.

Special Exception for an after hours club.

Variance to permit an after hours club within 83 feet of a residence in lieu of 1,000 feet.

Arnold Jablon
Director

cc: Rampart Partnership
Edward C. Covahey, Jr., Esq.
Club 101, Inc.

- NOTES: (1) ZONING SIGN & POST MUST BE RETURNED TO RM. 104, 111 W. CHESAPEAKE AVENUE ON THE HEARING DATE.
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 887-3391.

MICROFILMED



COVAHEY & BOOZER, P. A.

ATTORNEYS AT LAW
614 BOSLEY AVENUE
TOWSON, MARYLAND 21204
AREA CODE 410
828-9441

EDWARD C. COVAHEY, JR.
F. VERNON BOOZER *
MARK S. DEVAN
ANTHONY J. DiPAULA *
THOMAS P. DORE
ROGER J. SULLIVAN

FAX 410-823-7530

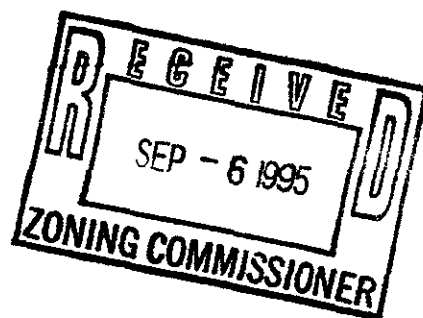
ANNEX OFFICE
SUITE 101
606 BALTIMORE AVE.
TOWSON, MD. 21204

* ALSO ADMITTED TO D. C. BAR

September 1, 1995

Lawrence Schmidt, Zoning Commissioner
Baltimore County Office of Zoning
111 W. Chesapeake Ave.
Towson, Maryland 21204

Re: Case No. 96-60-XA (Item 59)
8819 Orchard Tree Lane - Club 101



Dear Mr. Schmidt:

Please be advised that on August 28, 1995, I received notice setting the above-captioned matter in for a hearing on September 19, 1995 at 2:00 p.m. Unfortunately, I have a scheduling conflict in that I am the Court-appointed Trustee in foreclosure sales set at the Courthouse in Prince George's County that date. Accordingly, it is respectfully requested that this matter be continued. This is an extremely important case to my client, and the client desires that I personally represent the applicant at the hearing.

Thank you for your consideration in this matter.

Very truly yours,

Edward C. Covahey, Jr.

ECC,Jr./ldr
01ldr.01

MICROFILMED

COVAHEY & BOOZER, P. A.

ATTORNEYS AT LAW

614 BOSLEY AVENUE

TOWSON, MARYLAND 21204

*2/16/78
JHP
MCL*

LAWRENCE SCHMIDT, ZONING COMMISSIONER
BALTIMORE COUNTY OFFICE OF ZONING
111 W. CHESAPEAKE AVENUE
TOWSON, MD 21204



Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

September 20, 1995

NOTICE OF REASSIGNMENT

Rescheduled from 9/19/95
CASE NUMBER: 96-60-XA (Item 59)
8819 Orchard Tree Lane - Club 101
W/S Orchard Tree Lane, 534.42"+/- N of c/l Joppa Road
9th Election District - 4th Councilmanic
Legal Owner: Rampart Partnership
Contract Purchaser: Club 101

Special Exception for an after hours club.
Variance to permit an after hours club within 83 feet of a residence in
lieu of 1,000 feet.

HEARING: THURSDAY, OCTOBER 19, 1995 at 9:00 a.m. in Room 106, County
Office Building, 111 W. Chesapeake Avenue, Towson MD.

A handwritten signature in black ink, appearing to read "Arnold Jablon". The signature is stylized with a large, sweeping "A" and "J".

ARNOLD JABLON
DIRECTOR

cc: Rampart Partnership
Edward C. Covahey, Jr., Esq.
Club 101, Inc.
Lou Hepler

MICROFILMED





Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

March 7, 1996

NOTICE OF REASSIGNMENT

Rescheduled from 9/19/95 and 10/19/95
CASE NUMBER: 96-60-SPHXA (Item 59)
8819 Orchard Tree Lane - Club 101
W/S Orchard Tree Lane, 534'+/- N of c/l Joppa Road
9th Election District - 4th Councilmanic
Legal Owner: Rampart Partnership
Contract Purchaser: Club 101

Special Exception for an after hours club.

Variance to permit an after hours club within 83 feet of a residence in lieu of 1,000 feet.

Special Hearing to establish the subject premises an a non-conforming use and to authorize continued existing uses; to establish that Petitioners have "vested right" in the property such that County Bill No. 85-94 and the BCZR contained therein relating to "after hours clubs" may not be enforced against Petitioners and the subject premises; to establish that Baltimore County Bill No. 85-94 and the BCZR contained therein relating to "after hours clubs" may not be enforced against Petitioners and the subject premises as same is unconstitutional as applied against Petitioners and the subject premises; and to establish that Baltimore County Bill No. 85-94 and the BCZR contained therein relating to "after hours clubs" may not be enforced against Petitioners under the doctrine of estoppel.

HEARING: TUESDAY, APRIL 2, 1996 at 9:00 a.m. in Room 118, Old Courthouse, 400 Washington Avenue, Towson Maryland.

ARNOLD JABLON
DIRECTOR

cc: Rampart Partnership
Club 101, Inc./John Giorgilli
Edward C. Covahey, Jr., Esq.
Nancy Jones
Susan Pardew
Lorne Hastings
Wayne Skinner
Code Enforcement

MICROFILMED



COVAHEY & BOOZER, P. A.

ATTORNEYS AT LAW
614 BOSLEY AVENUE
TOWSON, MARYLAND 21204
AREA CODE 410
828-9441

FAX 410-823-7530

EDWARD C. COVAHEY, JR.
F. VERNON BOOZER *
MARK S. DEVAN
ANTHONY J. DIPAULA *
THOMAS P. DORE
ROGER J. SULLIVAN

ANNEX OFFICE
SUITE 302
606 BALTIMORE AVE
TOWSON, MD. 21204

* ALSO ADMITTED TO D. C. BAR

March 12, 1996

Arnold Jablon, Director
Baltimore County
Department of Permits and
Development Management
111 W. Chesapeake Avenue
Towson, MD 21204

Attn: Gwen Stevens

Re: Case No. 96-60-SPHXA (Item 59)
8819 Orchard Tree Lane - Club 101

Dear Mr. Jablon and Ms. Stevens:

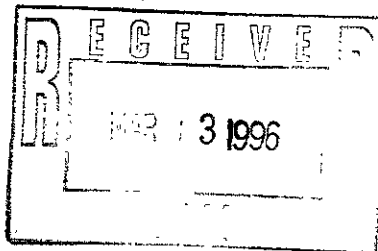
Please be advised I have received notice setting the above-captioned in for hearing on Tuesday, April 2, 1996 at 9:00 a.m. in Room 118 of the Old Courthouse. Unfortunately, I am a trustee in court-ordered judicial sales set for the Circuit Courts for Somerset, Wicomico, and Queen Anne's Counties that date. Accordingly, it is respectfully requested that this matter be continued.

Per my discussion with Gwen, I am available and have so noted my calendar for Friday, April 12, 1996 subject to the availability of the Zoning Commissioner and others involved. It would be appreciated if the rescheduling of this matter could be confirmed. Your indulgence is appreciated.

Very truly yours,

Edward C. Covahey, Jr.

ECC,Jr./ldr
12ldr.13



MICROFILMED



Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

March 12, 1996

NOTICE OF REASSIGNMENT

Rescheduled from 9/19/95 and 10/19/95 and 4/2/96
CASE NUMBER: 96-60-SPHXA (Item 59)
8819 Orchard Tree Lane - Club 101
W/S Orchard Tree Lane, 534' +/- N of c/l Joppa Road
9th Election District - 4th Councilmanic
Legal Owner: Rampart Partnership
Contract Purchaser: Club 101

Special Exception for an after hours club.

Variance to permit an after hours club within 83 feet of a residence in lieu of 1,000 feet.

Special Hearing to establish the subject premises an a non-conforming use and to authorize continued existing uses; to establish that Petitioners have "vested right" in the property such that County Bill No. 85-94 and the BCZR contained therein relating to "after hours clubs" may not be enforced against Petitioners and the subject premises; to establish that Baltimore County Bill No. 85-94 and the BCZR contained therein relating to "after hours clubs" may not be enforced against Petitioners and the subject premises as same is unconstitutional as applied against Petitioners and the subject premises; and to establish that Baltimore County Bill No. 85-94 and the BCZR contained therein relating to "after hours clubs" may not be enforced against Petitioners under the doctrine of estoppel.

HEARING: FRIDAY, APRIL 12, 1996 at 9:00 a.m. in Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland.

A handwritten signature in cursive script, appearing to read "Arnold Jablon".

ARNOLD JABLON
DIRECTOR

cc: Rampart Partnership
Club 101, Inc./John Giorgilli
Edward C. Covahey, Jr., Esq.
Nancy Jones
Susan Pardew
Lorne Hastings
Wayne Skinner
Code Enforcement

MICROFILMED



COVAHEY & BOOZER, P. A.

ATTORNEYS AT LAW
614 BOSLEY AVENUE
TOWSON, MARYLAND 21204
AREA CODE 410
828-9441

EDWARD C. COVAHEY, JR.
F. VERNON BOOZER *
MARK S. DEVAN
ANTHONY J. DiPAULA *
THOMAS P. DORE
ROGER J. SULLIVAN

FAX 410-823-7530

ANNEX OFFICE
SUITE 302
606 BALTIMORE AVE.
TOWSON, MD. 21204

April 3, 1997

* ALSO ADMITTED TO D. C. BAR

Kathleen C. Bianco, Legal Administrator
County Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

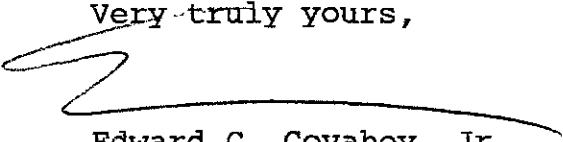
Re: Case No. 96-60-XA
Rampart Partnership
Club 101, Inc.
8819 Orchard Tree Lane, 9th E; 4th C
Hearing Date: June 5, 1997 at 10:00 a.m.

Dear Ms. Bianco:

Please reschedule the above-captioned from June 5, 1997 in that undersigned counsel has the case of State v. Dax Spriggs set for the District Court for Carroll County the same date, all in accordance with notice, a copy of which is attached.

The Board's indulgence is greatly appreciated.

Very truly yours,


Edward C. Covahey, Jr.

ECC,Jr./ldr
Enclosure
03ldr.15

cc: Paul M. Pardew, Rampart Partnership
John Giorgilli, Pres., Club 101, Inc.
Wayne Skinner, Petitioner
Scott Culliner
Shirley Chandler
Detective Sgt. Joseph G. Miller
Peter Max Zimmerman, People's Counsel
Carole S. Demilio, Deputy People's Counsel
Pat Keller
Arnold Jablon, Director/PDM
Lawrence E. Schmidt, Zoning Commissioner
Virginia W. Barnhart, County Attorney

120-1-0015
MICROFILMED

Reassign To 5/27/97



1002

DISTRICT COURT OF MARYLAND FOR CARROLL COUNTY
55 NORTH COURT ST
WESTMINSTER MD 21157-5156



CITATION: OT087490

TO: COVAHEY, EDWARD C
614 BOSLEY AVE
TOWSON MD 21204

STATE OF MARYLAND VS. SPRIGGS, DAX WILLIAM

DATE: 03/01/97

NOTICE OF POSTPONEMENT AND NEW TRIAL DATE

YOU ARE HEREBY NOTIFIED THAT THE TRIAL DATE OF MAY 01, 1997,
FOR THE CHARGE LISTED ON THE CITATION IDENTIFIED ABOVE, HAS BEEN
POSTPONED. THE NEW TRIAL DATE IS JUNE 05, 1997, AT 08:45 AM,
ROOM , 55 NORTH COURT ST , WESTMINSTER ,
MD 21157-5156.

CHARGE: TA21801.1
EXCEED MAX. SPEED

BY ORDER OF MARTHA F. RASIN, CHIEF JUDGE
OF THE DISTRICT COURT OF MARYLAND

FOR QUESTIONS CONCERNING THIS DOCUMENT, TELEPHONE (301) 261-8325 FROM
THE WASHINGTON D.C. AREA, (410) 974-7177 FROM THE BALTIMORE AREA,
1-800-492-2656 FROM OTHER MARYLAND AREAS, OR (410) 974-7179 FROM OUT
OF STATE.

HEARING/SPEECH IMPAIRED CALLERS ONLY, TELEPHONE TTY/TT 1-800-925-9690 OR
1-800-492-2656 (VOICE) THROUGH MARYLAND RELAY SERVICE AT 1-800-735-2258.

ANY REASONABLE ACCOMMODATION FOR PERSONS WITH DISABILITIES SHOULD BE
REQUESTED BY CONTACTING THE COURT IMMEDIATELY.

R2
012635A

MICROFILMED

COVAHEY & BOOZER, P. A.

ATTORNEYS AT LAW
614 BOSLEY AVENUE
TOWSON, MARYLAND 21204
AREA CODE 410
828-9441

EDWARD C. COVAHEY, JR.
F. VERNON BOOZER *
MARK S. DEVAN
ANTHONY J. DiPAULA *
THOMAS P. DORE
ROGER J. SULLIVAN

FAX 410-823-7530

ANNEX OFFICE
SUITE 302
606 BALTIMORE AVE.
TOWSON, MD. 21204

May 9, 1997

* ALSO ADMITTED TO D. C. BAR

Kathleen C. Bianco, Legal Administrator
County Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

Re: Case No. 96-60-XA
Rampart Partnership
Club 101, Inc.
8819 Orchard Tree Lane, 9th E; 4th C
Hearing Date: May 27, 1997 at 10:00 a.m.

Dear Ms. Bianco:

Thank you for rescheduling the above-captioned matter, however, undersigned counsel also has a conflict with the new hearing date of May 27, 1997 in that I have the case of State v. Licari set for the District Court for Baltimore County the same date and time as per the attached notice from Court. Therefore, it is respectfully requested that the May 27th date be postponed. Perhaps if you would call my office, a new date mutually agreeable to all parties may be scheduled.

The Board's indulgence is greatly appreciated.

Very truly yours,

Edward C. Covahey, Jr.

ECC,Jr./ldr
Enclosure
03ldr.15

cc: Paul M. Pardew, Rampart Partnership
John Giorgilli, Pres., Club 101, Inc.
Wayne Skinner, Petitioner
Scott Culliner
Shirley Chandler
Detective Sgt. Joseph G. Miller
Peter Max Zimmerman, People's Counsel
Carole S. Demilio, Deputy People's Counsel
Pat Keller
Arnold Jablon, Director/PDM
Lawrence E. Schmidt, Zoning Commissioner
Virginia W. Barnhart, County Attorney

RECEIVED
COUNTY BOARD OF APPEALS
MAY 12 AM 10:02

MICROFILMED



0804

DISTRICT COURT OF MARYLAND FOR BALTIMORE COUNTY
120 E. CHESAPEAKE AVENUE
TOWSON MD 21286-5307



CITATION: 0Q477611

TO: COVAHEY, EDWARD C
614 BOSLEY AVE
TOWSON MD 21204

STATE OF MARYLAND VS. LICARI, ROBERT JASON

DATE: 01/29/97

NOTICE OF TRIAL DATE

YOU ARE HEREBY NOTIFIED THAT THE TRIAL OF THE CHARGE LISTED ON THE
CITATION IDENTIFIED ABOVE, WILL BE ON MAY 27, 1997, AT 08:45
AM. THE LOCATION OF THE TRIAL IS ROOM 04 ,
120 E. CHESAPEAKE AVENUE , TOWSON , MD 21286-5307.

CHARGE: TA21902
DR. WHILE INTOX., UNDER THE INFLU. OF ALCOHOL OR D
RUGS OR DRUGS&ALCOHOL OR CONTROLLED DANG.SUBSTANCE

BY ORDER OF MARTHA F. RASIN, CHIEF JUDGE
OF THE DISTRICT COURT OF MARYLAND

FOR QUESTIONS CONCERNING THIS DOCUMENT, TELEPHONE (301) 261-8325 FROM
THE WASHINGTON D.C. AREA, (410) 974-7177 FROM THE BALTIMORE AREA,
1-800-492-2656 FROM OTHER MARYLAND AREAS, OR (410) 974-7179 FROM OUT
OF STATE.

HEARING/SPEECH IMPAIRED CALLERS ONLY, TELEPHONE TTY/TT 1-800-925-9690 OR
1-800-492-2656 (VOICE) THROUGH MARYLAND RELAY SERVICE AT 1-800-735-2258.

ANY REASONABLE ACCOMMODATION FOR PERSONS WITH DISABILITIES SHOULD BE
REQUESTED BY CONTACTING THE COURT IMMEDIATELY.

T3
002118A

MICROFILMED

COVAHEY & BOOZER, P. A.

ATTORNEYS AT LAW

614 BOSLEY AVENUE

TOWSON, MARYLAND 21204

AREA CODE 410

828-9441

FAX 410-823-7530

ANNEX OFFICE

SUITE 302

606 BALTIMORE AVE.

TOWSON, MD. 21204

EDWARD C. COVAHEY, JR.

F. VERNON BOOZER *

MARK S. DEVAN

ANTHONY J. DiPAULA *

THOMAS P. DORE

ROGER J. SULLIVAN

September 11, 1997

* ALSO ADMITTED TO D. C. BAR

Kathleen C. Bianco, Legal Administrator
County Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

Re: Case No. 96-60-XA
Rampart Partnership
Club 101, Inc.
8819 Orchard Tree Lane, 9th E; 4th C
Hearing Date: October 7, 1997 at 10:00 a.m.

Dear Ms. Bianco:

I am requesting a postponement in the above-captioned as the District Court for Baltimore City has specially assigned a criminal case for trial on the morning of October 7. It is a long, complicated trial, and it will take at least one-half day; that is why same is specially set, all in accordance with notice, a copy of which is attached.

It would be appreciated if I could be contacted and the above matter be rescheduled at the convenience of the Board.

Very truly yours,

Edward C. Covahey, Jr.

ECC,Jr./ldr

Enclosure

11ldr.12

cc: Paul M. Pardew, Rampart Partnership
John Giorgilli, Pres., Club 101, Inc.
Wayne Skinner, Petitioner
Scott Culliner
Shirley Chandler
Detective Sgt. Joseph G. Miller
Peter Max Zimmerman, People's Counsel
Carole S. Demilio, Deputy People's Counsel
Pat Keller
Arnold Jablon, Director/PDM
Lawrence E. Schmidt, Zoning Commissioner
Virginia W. Barnhart, County Attorney

97 SEP 11 PM 3:48

RECEIVED
COUNTY BOARD OF APPEALS

MICROFILMED



DISTRICT COURT OF MARYLAND FOR BALTIMORE CITY
1400 E. NORTH AVE (C)
BALTIMORE MD 21213-1400

0103

CASE NUMBER: 0B00199101

TO: COVAHEY, EDWARD C JR
614 BOSLEY AVENUE

TOWSON

MD 21204

STATE OF MARYLAND VS. REDDING, BRIAN J

CHANGE OF TRIAL DATE

YOU ARE HEREBY NOTIFIED THAT THE TRIAL DATE OF AUGUST 19, 1997
AT 08:30 FOR THE ABOVE CASE HAS BEEN CHANGED.

THE TRIAL HAS BEEN RESCHEDULED FOR OCTOBER 07, 1997, AT
08:30 AM. THE LOCATION OF THE TRIAL IS ROOM 6 ,
1400 E. NORTH AVE BALTIMORE , MD.

BY: LONNIE P. FERGUSON
(CLERK)

DATE: 08/19/97

FOR QUESTIONS CONCERNING THIS DOCUMENT TELEPHONE (410) 974-7177.

HEARING/SPEECH IMPAIRED CALLERS ONLY, TELEPHONE TTY/TT 1-800-925-9690 OR
(410) 974-7177 (VOICE) THRU MARYLAND RELAY SERVICE AT 1-800-735-2258.

ANY REASONABLE ACCOMMODATION FOR PERSONS WITH DISABILITIES SHOULD
BE REQUESTED BY CONTACTING THE COURT IMMEDIATELY.



Baltimore County
Office of Law

400 Washington Avenue
Towson, Maryland 21204
(410) 887-4420
Fax: (410) 296-0931

September 17, 1997

Kristine K. Howanski, Chairman
Board of Appeals
400 Washington Avenue, Room 49
Towson, Maryland 21204

Re: Rampart Partnership (Club 101, Inc.)
Case No. CBA-96-60-XA
Hearing Date: October 7, 1997; 10:00 a.m.

Dear Chairman Howanski:

We are in receipt of a request for postponement from Edward C. Covahey, Jr., Esquire, counsel for the Appellant in the above-referenced matter. While normally we would not object to such a request, we are concerned that this matter has been pending since late 1996 and was previously postponed from a hearing date last spring. Further, the establishment continues to operate without the benefit of a special exception and a variance. I have spoken with Peter Max Zimmerman, People's Counsel, and he shares our concerns.

Because Ms. Kathleen Bianco of your staff has advised that this matter can be rescheduled promptly, we will not object to this second postponement request. However, it is our understanding that there will be no further continuances and that the hearing will proceed when next scheduled by the Board.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Nancy C. West". The signature is fluid and cursive, with a long horizontal stroke at the end.

Nancy C. West
Assistant County Attorney

NCW:raj

- c: . Edward C. Covahey, Jr., Esq.
 . Peter Max Zimmerman, People's Counsel
 . Captain George Harvey
 . Councilman Douglas B. Riley
 . Pat Keller
 . Wayne Skinner

RECEIVED
COUNTY BOARD OF APPEALS
SEP 18 AM 9:17

MICROFILMED



TRANSMISSION VERIFICATION REPORT

TIME: 09/16/1997 14:54
NAME: BOARD OF APPEALS
FAX : 4108873182
TEL : 4108873180

DATE, TIME
FAX NO./NAME
DURATION
PAGE(S)
RESULT
MODE

09/16 14:53
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OK
STANDARD
ECM

*Maner's
Copy of PB reg 101
Remount*

MICROFILMED



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue

September 18, 1997

SECOND NOTICE OF POSTPONEMENT & REASSIGNMENT

CASE #: 96-60-XA

IN THE MATTER OF: RAMPART PARTNERSHIP -Legal Owner;
Club 101, Inc. -Contract Lessee /Petitioners
(8819 Orchard Tree Lane) 9th E; 4th C

(Special Hearing, Special Exception and Variance
relief DENIED.)

which was scheduled for hearing on 10/07/97 has been POSTPONED at the request
of Counsel for Appellant /Petitioner due to court schedule conflict; and has
been

REASSIGNED FOR: THURSDAY, NOVEMBER 20, 1997 at 10:00 a.m.

PLEASE NOTE: There will be no further postponements of this matter.

NOTICE: This appeal is an evidentiary hearing; therefore, parties should
consider the advisability of retaining an attorney. For further
information, see Board's Rules of Practice & Procedure, Appendix
C, Baltimore County Code.

*PP'd on
the record and
must be
filed by 12/12/97
@ 9:00 am
(special sit)*
Kathleen C. Bianco
Legal Administrator

cc: Counsel for Appellant /Petitioner: Edward C. Covahey, Jr., Esquire
Appellant /Petitioner : Paul M. Pardew /Rampart Partnership
John Giorgilli, Pres., Club 101 Inc.

Protestants : Wayne Skinner
Shirley Chandler

Detective Sgt. Joseph G. Miller

People's Counsel for Baltimore County
Pat Keller
Lawrence E. Schmidt
Nancy C. West, Asst. County Attorney

Arnold Jablon, Director /PDM
Virginia W. Barnhart, Co Atty



CHARLES EMERGENCY PHYSICIANS, P.A.
6701 N. Charles Street Baltimore, Maryland 21204
(410) 828-2226 828-2527

ELIAS ABRAS, M.D.

Name: _____

Address: _____

To whom it may concern:

Mr. John GiorSelli
is in the Emergency Dept.
came in to her 11/20/97 at 9³⁰ am

May fill with Generic
equivalent unless
checked _____

Signed: _____

M.D.

DEA NO. AA1743334

Refill: _____

Date: 11/20/97

MICROFILMED



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue

November 20, 1997

THIRD NOTICE OF POSTPONEMENT & REASSIGNMENT

CASE #: 96-60-XA

**IN THE MATTER OF: RAMPART PARTNERSHIP -Legal Owner;
Club 101, Inc. -Contract Lessee /Petitioners
(8819 Orchard Tree Lane) 9th E; 4th C**

**(Special Hearing, Special Exception and Variance
relief DENIED.)**

which was scheduled for hearing on 11/20/97 was POSTPONED on the record at the request of Counsel for Appellant /Petitioner; and has been specially set by the Board for hearing; and has been

REASSIGNED FOR: FRIDAY, DECEMBER 12, 1997 at 9:00 a.m.

PLEASE NOTE: As indicated on the record 11/20/97, this case will be heard on this specially set date as scheduled.

NOTICE: This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney. For further information, see Board's Rules of Practice & Procedure, Appendix C, Baltimore County Code.

**Kathleen C. Bianco
Administrator**

**cc: Counsel for Appellant /Petitioner: Edward C. Covahey, Jr., Esquire
Roger Sullivan, Esquire
Appellant /Petitioner : Paul M. Pardew /Rampart Partnership
John Giorgilli, Pres., Club 101 Inc.**

**Protestants : Wayne Skinner
Shirley Chandler**

Detective Sgt. Joseph G. Miller

**People's Counsel for Baltimore County
Pat Keller
Lawrence E. Schmidt
Nancy C. West, Asst. County Attorney**

**Arnold Jablon, Director /PDM
Virginia W. Barnhart, Co Atty**

MICROFILMED





County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue

December 15, 1997

NOTICE OF ASSIGNMENT /Hearing Day #2

CASE #: 96-60-XA

IN THE MATTER OF: RAMPART PARTNERSHIP -Legal Owner;
Club 101, Inc. -Contract Lessee /Petitioners
(8819 Orchard Tree Lane) 9th E; 4th C

Hearing Day #2;
from 12/12/97

(Special Hearing, Special Exception and Variance
relief DENIED.)

ASSIGNED FOR: FRIDAY, JANUARY 9, 1998 at 10:00 a.m. /Day #2

NOTICE: This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney. For further information, see Board's Rules of Practice & Procedure, Appendix C, Baltimore County Code.

Kathleen C. Bianco
Administrator

cc: Counsel for Appellant /Petitioner: Edward C. Covahey, Jr., Esquire
Roger Sullivan, Esquire
Appellant /Petitioner : Paul M. Pardew /Rampart Partnership
John Giorgilli, Pres., Club 101 Inc.

Protestants : Wayne Skinner
Shirley Chandler

Detective Sgt. Joseph G. Miller

People's Counsel for Baltimore County
Pat Keller Arnold Jablon, Director /PDM
Lawrence E. Schmidt Virginia W. Barnhart, Co Atty
Nancy C. West, Asst. County Attorney

MICROFILMED





County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue

January 12, 1998

NOTICE OF ASSIGNMENT /Hearing Day #3

CASE #: 96-60-XA

IN THE MATTER OF: RAMPART PARTNERSHIP -Legal Owner;
Club 101, Inc. -Contract Lessee /Petitioners
(8819 Orchard Tree Lane) 9th E; 4th C

Hearing Day #3;
from 1/09/98

(Special Hearing, Special Exception and Variance
relief DENIED.)

ASSIGNED FOR: FRIDAY, FEBRUARY 13, 1998 at 10:00 a.m. /Day #3

NOTICE: This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney. For further information, see Board's Rules of Practice & Procedure, Appendix C, Baltimore County Code.

Kathleen C. Bianco
Administrator

cc: Counsel for Appellant /Petitioner: Edward C. Covahey, Jr., Esquire
Roger Sullivan, Esquire
Appellant /Petitioner : Paul M. Pardew /Rampart Partnership
John Giorgilli, Pres., Club 101 Inc.

Protestants : Wayne Skinner
Shirley Chandler

Detective Sgt. Joseph G. Miller

People's Counsel for Baltimore County
Pat Keller
Lawrence E. Schmidt
Nancy C. West, Asst. County Attorney

Arnold Jablon, Director /PDM
Virginia W. Barnhart, Co Atty





March 4, 1998

IN THE MATTER OF: RAMPART PARTNERSHIP /CLUB 101
 CASE NO. 96-60-XA



Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

September 13, 1995

Edward C. Covahey, Jr., Esquire
614 Bosley Avenue
Towson, Maryland 21204

RE: Item No.: 59
Case No.: 96-60-XA
Petitioner: Rampart Partnership

Dear Mr. Covahey:

The Zoning Advisory Committee (ZAC), which consists of representatives from Baltimore County approval agencies, has reviewed the plans submitted with the above referenced petition, which was accepted for processing by Permits and Development Management (PDM), Zoning Review, on August 8, 1995.

Any comments submitted thus far from the members of ZAC that offer or request information on your petition are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. Only those comments that are informative will be forwarded to you; those that are not informative will be placed in the permanent case file.

If you need further information or have any questions regarding these comments, please do not hesitate to contact the commenting agency or Joyce Watson in the zoning office (887-3391).

Sincerely,

W. Carl Richards, Jr.
W. Carl Richards, Jr.
Zoning Supervisor

WCR/jw
Attachment(s)

MICROFILMED



BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director, PDM

DATE: September 1, 1995

FROM: Pat Keller, Director, OP 

SUBJECT: 8819 Orchard Tree Lane

INFORMATION:

Item Number: 59

Petitioner: Rampart Partnership

Property Size: _____

Zoning: BR

Requested Action: Special Exception and Variance

Hearing Date: ____/____/____

SUMMARY OF RECOMMENDATIONS:

The applicant requests a special exception for an after hours club pursuant to Section 236.4 of the Baltimore County Zoning Regulations. In addition, a variance is requested to permit an after hours club within 83 feet of a residence in lieu of the required 1000 feet.

The applicant's site is situated within a commercial area, which is located just north of the Joppa Road commercial corridor. Commercial uses include various retail businesses, the Kaos Night Club and Skateland.

The subject site is located within the boundaries of the Towson Community Plan and is designated in the Plan as an Urban Center/Employment Area. The nearby residential communities of Knettishall and Loch Raven Village are designated as Community Conservation Area, Outer Neighborhoods.

Based upon a review of the information provided, staff believes that an after hours club at this particular location would be detrimental to the health, safety and welfare of the communities in the vicinity. Due to the proximity of residentially used properties, the subject site is not desirable for the intended use. In fact, a review of Section 236.4 (Special Exception) of the B.C.Z.R. indicates that after hours club are permitted by special exception provided, "that it is located at least 1,000 feet from any residentially used dwelling, residential zone line, church, park, child care center or school existing prior to the filing of the application for special exception.

Since the 1,000 feet requirement is contained in the use portion of the regulation, it cannot be considered a height or area requirement; therefore, no provision exists to variance this requirement. Accordingly, staff recommends that the applicant's request be denied.

MICROFILMED

Prepared by:

Jeffrey W. Long

Division Chief:

Gary L. Kerns

PK/JL

MICROFILMED

BALTIMORE COUNTY, MARYLAND
I N T E R O F F I C E C O R R E S P O N D E N C E

TO: Arnold Jablon, Director DATE: Aug. 28, 1995
Zoning Administration and Development Management

FROM:  Robert W. Bowling, P.E., Chief
Development Plans Review Division

RE: Zoning Advisory Committee Meeting
for August 28, 1995
Item 059

The Development Plans Review Division has reviewed the subject zoning item. If granted, the open space between the club and the east property line should be extensively buffered and fenced off to prevent access.

RWB:sw

MICROFILMED

A5

Baltimore County Government
Fire Department



700 East Joppa Road Suite 901
Towson, MD 21286-5500

(410) 887-4500

DATE: 08/23/95

Arnold Jablon
Director
Zoning Administration and
Development Management
Baltimore County Office Building
Towson, MD 21204
MAIL STOP-1105

RE: Property Owner: RAMPART PARTNERSHIP

LOCATION: W/S ORCHARD LA. 534.42' +/- N OF CENTERLINE JOPPA RD.
(8819 ORCHARD TREE LA.-CLUB 101)

Item No.: 059

Zoning Agenda: SPECIAL EXCEPTION
VARIANCE

Gentlemen:

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 plans for the property.

4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.

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", 1991 edition prior to occupancy.

MICROFILMED

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

cc: File



RECEIVED

AUG 24 1995

ZADM



Maryland Department of Transportation
State Highway Administration

David L. Winstead
Secretary
Hal Kassoﬀ
Administrator

8-16-95

Ms. Joyce Watson
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
Towson, Maryland 21204

RE: Baltimore County
Item No. 059 (RT)

Dear Ms. Watson:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not affected by any State Highway Administration projects.

Please contact Bob Small at 410-333-1350 if you have any questions.

Thank you for the opportunity to review this item.

Very truly yours,

for *Bob Small*
Ronald Burns, Chief
Engineering Access Permits
Division

BS/es

MICROFILMED

My telephone number is _____

Maryland Relay Service for Impaired Hearing or Speech
1-800-735-2258 Statewide Toll Free

Mailing Address: P.O. Box 717 • Baltimore, MD 21203-0717
Street Address: 707 North Calvert Street • Baltimore, Maryland 21202



Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

December 18, 1996

Mr. Wayne Skinner
1813 Edgewood Road
Baltimore, MD 21234

RE: Petition for Special
Exception and Variance
W/S Orchard Tree Lane,
534.42' N of the c/l Joppa
Road
(8819 Orchard Tree Lane)
9th Election District
4th Councilmanic District
Rampart Partnership
- Petitioner
Case No. 96-60-XA

Dear Mr. Skinner:

Please be advised that an appeal of the above-referenced case was filed in this office on December 5, 1996 by Edward C. Covahey, Jr., Esquire on behalf of Club 101, Inc. and John A. Giorgilli. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

If you have any questions concerning this matter, please do not hesitate to call 887-3180.

Sincerely,

A handwritten signature in cursive script, appearing to read "Arnold Jablon".

ARNOLD JABLON
Director

AJ:rye

c: Mr. Scott Culliner
Ms. Shirley Chandler
Det. Sgt. Joseph G. Miller
People's Counsel

MICROFILMED



APPEAL

Petitions for Special Exception and Variance
W/S Orchard Tree Lane, 534.42' N of c/l Joppa Road
(8819 Orchard Tree Lane)
9th Election District - 4th Councilmanic District
Rampart Partnership - Petitioner
Case No. 96-60-XA

Petitions for Special Exception, Variance and Special Hearing

Description of Property

Two Certificates of Posting

Certificate of Publication

Entry of Appearance of People's Counsel

Zoning Advisory Committee Comments

Petitioners, Protestants and Citizens Sign-In Sheets

Petitioners' Exhibit: 1 - Site Plan to Accompany Special Exception and Variance

Three Zoning Violations Filed by the Police Department

Seventeen Miscellaneous Correspondences

Findings of Fact and Conclusion of Law from the Zoning Commissioner of Baltimore County for Case #95-211-SPH dated March 2, 1995 (Denied in Part, Granted in Part)

Zoning Commissioner's Order dated November 6, 1996 (Denied)

Notice of Appeal received on December 5, 1996 from Edward C. Covahey, Jr., Esquire on behalf of Club 101, Inc. and John A. Giorgilli

c: Edward C. Covahey, Jr., Esquire, 614 Bosley Ave., Towson, MD 21204
Mr. Paul M. Pardew, Rampart Partnership, 828 Warren Road, Cockeysville, MD 21030
Mr. John Giorgilli, President, Club 101, Inc., 5126 Trumps Mill Road, Baltimore, MD 21206
Mr. Wayne Skinner, 1813 Edgewood Road, Baltimore, MD 21234
Mr. Scott Culliner, 3 Championship Court, Owings Mills, MD 21117
Ms. Shirley Chandler, 8713 Green Pastures Drive, Towson, MD 21286
Det. Sgt. Joseph G. Miller, Baltimore County Police Dept.-Towson
People's Counsel of Baltimore County, M.S. 2010

Request Notification: Lawrence Schmidt, Zoning Commissioner
Arnold Jablon, Director of PDM

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APPEAL

Petitions for Special Exception and Variance
W/S Orchard Tree Lane, 534.42' N of c/l Joppa Road
(8819 Orchard Tree Lane)
9th Election District - 4th Councilmanic District
Rampart Partnership - Petitioner
Case No. 96-60-XA

- ✓ Petitions for Special Exception, Variance and Special Hearing
- ✓ Description of Property
- ✓ Two Certificates of Posting
- ✓ Certificate of Publication
- ✓ Entry of Appearance of People's Counsel
- ✓ Zoning Advisory Committee Comments
- ✓ Petitioners, Protestants and Citizens Sign-In Sheets
- ✓ Petitioners' Exhibit: 1 - Site Plan to Accompany Special Exception and Variance
- ✓ Three Zoning Violations Filed by the Police Department
- ✓ Seventeen Miscellaneous Correspondences
- ✓ Findings of Fact and Conclusion of Law from the Zoning Commissioner of Baltimore County for Case #95-211-SPH dated March 2, 1995 (Denied in Part, Granted in Part)
- ✓ Zoning Commissioner's Order dated November 6, 1996 (Denied)
- ✓ Notice of Appeal received on December 5, 1996 from Edward C. Covahey, Jr., Esquire on behalf of Club 101 Inc. and John A. Giorgilli ✓ E
and Roger Sullivan, Esquire
c: ~~Edward C. Covahey, Jr., Esquire~~, 614 Bosley Ave., Towson, MD 21204
Mr. Paul M. Pardew, Rampart Partnership, 828 Warren Road, Cockeysville, MD 21030
Mr. John Giorgilli, President, Club 101, Inc., 5126 Trumps Mill Road, Baltimore, MD 21206
Mr. Wayne Skinner, 1813 Edgewood Road, Baltimore, MD 21234
~~Mr. Scott Culliner, 3 Championship Court, Owings Mills, MD 21117~~
Ms. Shirley Chandler, 8713 Green Pastures Drive, Towson, MD 21286
Det. Sgt. Joseph G. Miller, Baltimore County Police Dept.-Towson
People's Counsel of Baltimore County, M.S. 2010

Request Notification: Lawrence Schmidt, Zoning Commissioner
Arnold Jablon, Director of PDM

Nancy C. West, Asst. Co. Atty.
(on behalf of Balto. Co., MD)

Copy of Order to:
Barbara S. Gavin, Esquire
303 Allegheny Avenue, Suite 2001
Baltimore, MD 21204

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January 18, 1995 Petitions for Special Exception, Special Hearing and Variance filed by Edward C. Covahey, Jr., Esquire, on behalf of Rampart Partnership; SE /after hours club; VAR /to permit an after hours club w/i 83 feet of a residence in lieu of required distance of 1000 feet.

September 1 Certificate of Publication.

September 3 Certificate of Posting.

September 13 Entry of Appearance by People's Counsel for Baltimore County.
ZAC Comments.

September 19 Hearing held on Petitions for Special Exception and Variance by the Zoning Commissioner.

November 6, 1996 Order of the Zoning Commissioner in which the Petition for Special Exception was DENIED, and the Petition for Variance was DENIED.

December 5 Notice of Appeal filed by Edward C. Covahey, Jr., Esquire, on behalf of Club 101, Inc. and John A. Giorgilli, Appellants.

September 3, 1997 Entry of Appearance issued by Nancy C. West, Assistant County Attorney.

November 20 Board convened for hearing; Counsel for Appellant /Petitioner requested postponement; -Upon consideration and discussion, and as indicated on the record, the Board granted request.

January 9, 1998 Hearing Day #2 held by the Board of Appeals.

February 13 Hearing Day #3 concluded by the Board of Appeals.

March 13 Memorandum of Law filed by Edward C. Covahey, Jr., Esquire, on behalf of Club 101, Inc.

Memorandum of Baltimore County, Maryland filed by Virginia W. Barnhart, County Attorney and Nancy C. West, Assistant County Attorney /Baltimore County Office of Law.

People's Counsel's Memorandum filed.

April 23 Public Deliberation held by the Board of Appeals.

August 28 Opinion and Order issued by the Board of Appeals; Petition for Special Exception and Petition for Variance are DISMISSED WITH PREJUDICE; Petition for Special Hearing is DENIED.

September 25 Petition for Judicial Review filed in the Circuit Court for Baltimore County by Edward C. Covahey, Jr., Esquire, on behalf of Club 101, Inc. and John A. Giorgilli.

Sep. 31, 1998 Copy of Petition for Judicial Review received by the Board of Appeals from the Circuit Court for Baltimore County.

October 1 Certificate of Notice sent to interested parties.

November 24, 1998 Transcript of testimony and Record of Proceedings filed in the Circuit Court for Baltimore County.

May 12, 1999 / Memorandum Opinion and Order issued by the CCT; decision of the CBA is AFFIRMED (Thomas Bollinger, J).

MICROFILMED

Case No. 96-60-XA

SPH -to approve use based on nonconforming use, vested rights, "after hours club" legislation is unconstitutional, doctrine of estoppel, etc.; SE - after hours club on property zoned B.R.; and VAR - after hours club within 83' of residence in lieu of required distance of 1000'
11/06/96 -Deputy Zoning Commissioner's Order in which requested relief was DENIED.

3/27/97 -Notice of Assignment for hearing scheduled for Thursday, June 5, 1997 at 10:00 a.m. sent to following:

Edward C. Covahey, Jr., Esquire
Paul M. Pardew /Rampart Partnership
John Giorgilli, Pres., Club 101 Inc.
Wayne Skinner
Scott Culliner
Shirley Chandler
Detective Sgt. Joseph G. Miller
People's Counsel for Baltimore County
Pat Keller
Lawrence E. Schmidt

Arnold Jablon, Director /PDM
Virginia W. Barnhart, Co Atty

4/04/97 -Letter from Edward Covahey, Esquire -- requesting rescheduling of this matter from 6/05/97 due to conflict with previously assigned District Court case in Carroll County.

4/25/97 -Notice of Reassignment sent to parties; case reassigned from 6/05/97 to Tuesday, May 27, 1997 at 10:00 a.m.

5/12/97 -Request for PP from E. Covahey; conflict w/previously scheduled court matter. Upon confirmation with PC, PP to be granted and reassigned to date post-Labor Day.

5/15/97 -Notice of PP Assignment sent to parties; matter rescheduled to Tuesday, October 7, 1997 at 10:00 a.m.

9/03/97 -Entry of Appearance filed by Nancy C. West, Assistant County Attorney, on behalf of Baltimore County, Maryland.

9/11/97 -Request for postponement filed by Edward Covahey on behalf of Petitioner due to conflict in District Court for Baltimore City

9/18/97 -Letter from N. West; concerned that matter has been pending since late 1996; will not object to this second postponement; however, understand that it will be rescheduled promptly, with no further continuances. People's Counsel shares the concerns of the Office of Law.

9/18/97 -Second Notice of PP and Reassignment sent to parties; matter reassigned to Thursday, November 20, 1997 at 10:00 a.m.; no further postponements to be granted.

11/20/97 -Board convened for hearing; Counsel for Appellant /Petitioner requested postponement /his client felt ill and had gone to GBMC; objection to same by both PC and N. West.

-Upon consideration and discussion, and as indicated on the record, the Board granted this request and specially set this matter for hearing on Friday, December 12, 1997 at 9:00 a.m.

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11/20/97 -Third Notice of PP and Reassignment sent to parties; case scheduled and specially set for Friday, December 12, 1997 at 9:00 a.m.

12/12/97 -This day concluded and specially set for second day of hearing, upon confirmation of availability of parties, to Friday, January 9, 1998 at 10:00 a.m. Notice to be sent. (L.C.F.)

12/15/97 -Notice of Assignment/ Day #2 sent to parties; scheduled for Friday, January 9, 1998 at 10:00 a.m. Courtesy copy to L.C.F. for calender.

1/09/98 -Hearing Day #2 concluded; additional day needed for conclusion of testimony; upon confirmation of availability of all counsel and necessary witnesses, third day specially assigned for Friday, February 13, 1998 at 10:00 a.m.; notice to be sent.

1/12/98 -Notice of Assignment /Day #3 sent to parties; scheduled for Friday, February 13, 1998 at 10:00 a.m. /copy of notice to CBA panel /FYI /L.C.F.

2/13/98 -Hearing concluded as to testimony and evidence; deliberation scheduled for Tuesday, April 14, 1998 at 2:00 p.m.; memos due from Counsel on Friday, March 13, 1998.

2/18/98 -Notice of Deliberation sent to parties; scheduled for Tuesday, April 14, 1998 at 2:00 p.m. Copy to L.C.F.

2/27/98 - letter from N. West /returned County Exhibit 15 (placed in file with exhibits this date).

3/03/98 -Notice of Reassignment for deliberation sent to parties; deliberation reassigned to Thursday, April 23, 1998 at 2:00 p.m. due to unavailability of a panel member (out of country until 4/19/98).

3/13/98 -Requested memos filed by: Covahey
Demilio
N. West

✓
✓
✓

Copies to L.C.F.

4/23/98 -Deliberation concluded. SPH denied; determined that facility is an after-hours club and not a night club.

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BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director, PDM

DATE: September 1, 1995

FROM: Pat Keller, Director, OP 

SUBJECT: 8819 Orchard Tree Lane

INFORMATION:

Item Number: 59

Petitioner: Rampart Partnership

Property Size: _____

Zoning: BR

Requested Action: Special Exception and Variance

Hearing Date: _____ / _____ / _____

SUMMARY OF RECOMMENDATIONS:

The applicant requests a special exception for an after hours club pursuant to Section 236.4 of the Baltimore County Zoning Regulations. In addition, a variance is requested to permit an after hours club within 83 feet of a residence in lieu of the required 1000 feet.

The applicant's site is situated within a commercial area, which is located just north of the Joppa Road commercial corridor. Commercial uses include various retail businesses, the Kaos Night Club and Skateland.

The subject site is located within the boundaries of the Towson Community Plan and is designated in the Plan as an Urban Center/Employment Area. The nearby residential communities of Knettishall and Loch Raven Village are designated as Community Conservation Area, Outer Neighborhoods.

Based upon a review of the information provided, staff believes that an after hours club at this particular location would be detrimental to the health, safety and welfare of the communities in the vicinity. Due to the proximity of residentially used properties, the subject site is not desirable for the intended use. In fact, a review of Section 236.4 (Special Exception) of the B.C.Z.R. indicates that after hours club are permitted by special exception provided, "that it is located at least 1,000 feet from any residentially used dwelling, residential zone line, church, park, child care center or school existing prior to the filing of the application for special exception.

Since the 1,000 feet requirement is contained in the use portion of the regulation, it cannot be considered a height or area requirement; therefore, no provision exists to variance this requirement. Accordingly, staff recommends that the applicant's request be denied.

MICROFILMED

Prepared by:

Jeffrey W Long

Division Chief:

Carol L. Kerns

PK/JL

MICROFILMED

BALTIMORE COUNTY, MARYLAND
Inter-office Correspondence

TO: Case file

DATE: April 15, 1996

FROM: Lawrence E. Schmidt
Zoning Commissioner

SUBJECT: 96-60-XA, Club 101

This matter came in for public hearing for the fourth time on April 12, 1996. The case was filed as Petitions for Special Exception and Zoning Variance. (There is also a Petition for Special Hearing in file) and was originally scheduled for hearing on September 19, 1995. The case was postponed from that date to October 19, 1995; postponed again to April 2, 1996; and a third time to April 12, 1996.

Appearing at the hearing was John Giorgilli, President of Club 101, Inc. and his attorney, Ed Covahey. Present in opposition to the request was Wayne Skinner, President of Towson-Loch Raven Comm. Council. Several other neighbors from the vicinity were present, including John Harter and Shirley Chandler who lives nearby.

This case has a significant history and has come before the Zoning Commissioner. Tim Kotroco had an earlier case which was dismissed by the granting of a preliminary Motion. I had the second case No. 95-211-SPH which held that the property was used as an After Hours Club (pursuant to the new definition of same under the BCZR, and that the club could exist lawfully until August 8, 1995. I held that, after that date, the Petitioner would have to obtain special exception and variance relief; thus, the instant Petition in Case No. 96-60-XA.

Apparently, there has been a significant amount of behind the scenes negotiations between the community and Mr. Giorgilli relating to the property. The community wants the club to be out by a definitive and Giorgilli does not want to lose the financial investment which he has made. Both parties recognize that no matter what Order I would issue, it is subject to appeal and the case could drag on through the Board of Appeals and the Court process for some time.

Thus, the parties have come to a compromise which they wish me to adopt. It is agreed that the special exception and variance relief will be granted to allow the Club to operate until 9/1/97. No later than that date, however, the Club will shut down. Moreover, there are a series of restrictions on the operation of the Club which will be binding until 9/1/97. These restrictions are mainly to control noise, people and activity.

I advised both parties that although willing to incorporate their agreement, it could be difficult to enforce and the legality of such an Order was in question. Nonetheless, all of the parties agreed that this was the fairest and best resolution and appeared sincerely interested in resolving the issue in this fashion.

I, therefore, directed that Ed Covahey should prepare an Order incorporating the terms and conditions to which the parties would agree. I told Mr. Covahey, Mr. Skinner and the three most affected residential neighbors, who all live within 1,000 ft. of the site, should sign the Order and submit it to me for consideration. Upon receipt of same, I will sign the Order and the case will be concluded in that fashion.

MICROFILMED

B A L T I M O R E C O U N T Y, M A R Y L A N D

INTER-OFFICE CORRESPONDENCE

DATE: November 29, 1996

TO: Lee S. Thomson
Office of Law

FROM: James H. Thompson
Code Enforcement

RE: Case No. 96-60-XA
8819 Orchard Tree Lane
9th Election District

Enclosed you will find a copy of the order signed by Zoning Commissioner Lawrence E. Schmidt on November 6, 1996, denying the Petitions for Special Hearing, Special Exception and Variance against the use of the subject property for an "after hours club".

Director Arnold Jablon is requesting that the Office of Law file injunction action against the property owner, Rampart Partnership and the Lessee, Club 101, Incorporated since this operation continues to operate.

For your benefit, I have enclosed a copy of two police reports dated November 23, 1996 and November 24, 1996 that indicate the referenced activity.

If additional material is necessary for this undertaking, please so advice.

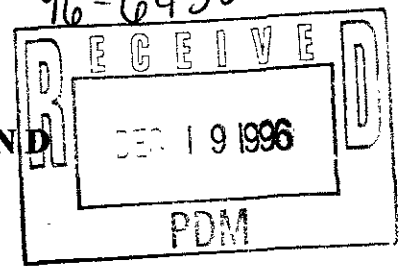
C: Councilman Douglas B. Riley
Detective Sergeant Joseph G. Miller
Towson Precinct, 308 Washington Ave., Towson, Md. 21204

Wayne Skinner, Towson, Loch Raven Com. Council, Inc
P.O. Box 27682, Towson, Md. 21285-7632

JHT:bb

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12/19/96
8
BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE



TO: James Thompson
Code Enforcement

DATE: December 18, 1996

FROM: Lee S. Thompson
Office of Law

SUBJECT: 8819 Orchard Tree Lane

Your memorandum of November 29, 1996 relating to the above captioned property was received here on December 4, 1996. I have since had an opportunity to review the items attached to your memo as well as the definition of an "After-Hours Club" and the provisions of Section 236.4 of the BCZR relating to such a use. Of particular interest was the decision and Order of Zoning Commissioner Lawrence E. Schmidt, dated November 6, 1996, wherein he denied certain relief sought by the owner and occupant of the property. As I read the proceedings it appears that while the Petitioner, on the face of their petitions, sought the Variance and Special Exception which would permit them to use subject property for an after hours club, they did not pursue those forms of relief by presenting the necessary evidence to the Zoning Commissioner, but rather seemed to focus their case on a legal challenge to the County's efforts to regulate the current use.

For these reasons, I anticipate that litigation related to this matter will be comprehensive and hard fought and that an effort will be made to exploit any perceived technical deficiencies in the County's case.

To assist me in the preparation and filing of a petition in this case, and for my file and information generally, will you kindly provide me with the following documents and information:

1. A certified copy of the Deed to the property;
2. Copies of any leases which may have been placed in evidence before the Zoning Commissioner in the above referenced case, or which may otherwise be in your possession;
3. A copy of the site plan introduced as Petitioner's Exhibit No. 1 before the Zoning Commissioner;
4. Copies of prior proceedings before the Zoning Commissioner relating to this property and/or this topic as referenced on Pages 2 and 3 of Zoning

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96-6430

Commissioner Schmidt's Order;

5. Please advise whether or not the Petitioners have entered an appeal to the Board of Appeals from the Order of November 6, 1996 and, if so, what the status of the appeal is at this point.

In the preparation of a Petition for Code Enforcement I will intend to allege that inspections occurring on November 23, 1996 and November 24, 1996 have revealed that the property is being used as an after hours club without a Special Exception having been obtained for such use. These two dates would be the subject of testimony from police officers. From Commissioner Schmidt's Order it would appear that the use of the property was grandfathered through August 8, 1996. Is there any other available testimony with respect to the use of the property prior to the November 23th inspection. If you know, I would like to know how long the property has been used in this fashion, when the use began, is the ownership the same, etc. In short, to the extent possible, please let me know everything you know.

I will need to have particularly the description of the subject property and to that end, I will need to have the Deed and the site plan filed with the zoning case prior to the preparation and filing of the Petition. I would therefore suggest that you get those two items to me as promptly as possible, together with your advice regarding an appeal, with the remainder of the request and information, if any, to follow at a later date.

LST/ile

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Balto County, Dept
of Revenue & Dev.

7365/301 to 303

CERTIFIED

App. No. 122144

THIS DEED, is made this 22nd day of December in the year
 one thousand nine hundred and eighty-six by and between
 ✓ PAUL M. PARDEW, party of the first part, RAMPART, a Maryland
 General Partnership, party of the second part, and JAMES P.
 PARDEW, party of the third part (the said parties of the first,
 second, and third parts being hereinafter collectively referred
 to as the "Grantor"); and OLD CARRIAGE ASSOCIATES, a Maryland
 General Partnership (the "Grantee").

WITNESSETH that in consideration of the sum of \$5.00
 and other good and valuable considerations, the receipt of which
 is hereby acknowledged, and in further consideration of Grantee
 causing third parties to transfer to Grantor certain lots or
 parcels of land, the actual consideration as certified by the
 Grantor and Grantee being \$1,000,000.00, the Grantor doth grant,
 and convey unto the Grantee, all that lot of ground situate in
 Baltimore County, State of Maryland, and being more particularly
 described as follows, that is to say:

BEING KNOWN AND DESIGNATED as Lot No. 2 as depicted on
 that certain subdivision plat entitled, "Plat of Property
 of Paul McL. Pardew" which Plat is duly recorded among the
 Land Records of Baltimore County in Plat Book EHK Jr. No.
 53, folio 106. The improvements thereon being known as
 Nos. 8841-55 Orchard Tree Lane.

TOGETHER WITH the right of use in common with other
 entitled thereto of that certain thirty (30) foot
 right-of-way as created in Deed dated February 14, 1955
 and recorded as aforesaid in Liber GLB No. 2647, folio 546
 from Gerald V. Emge, Trustee to Paul McL. Pardew and wife.

SUBJECT TO AND TOGETHER WITH easements for drainage and
 utilities, sanitary sewer, and parking and vehicular
 access, all as depicted on the plat aforesaid.

FOR TITLE OF THE GRANTOR SEE:

Deeds dated October 28, 1981 and recorded among the Land
 records of Baltimore County respectively in Libers EHK Jr.
 No. 6341, folios 114, 117, 120, and 124 from Marlene T.
 Harris.

C 120***100000000 024000

STATE DEPARTMENT OF
 ASSESSMENTS & TAXATION

DATE

CLERK

DATE

SIGNATURE

AGRICULTURAL TRANSFER TAX

NOT APPLICABLE

RC/F 16.00
 CT TX 5000.00
 C DOCS 5000.00 #
 DEED 10016.00
 SM CLERK #57189 C001 R02 T12:19
 12/24/86

MICROFILMED

The said parties of the second and third parts join in the execution of this Deed in order to grant, convey and assign all of their right, title and interest in and to the improvements situate on the property hereby conveyed and all of their right, title and interest in and to the use of said property under those certain two (2) unrecorded Leases, one dated October 12, 1979 by and between Paul McLaren Pardew and Rampart and one dated October 12, 1979 by and between Paul McLaren Pardew and James P. Pardew.

TOGETHER, with the buildings and improvements thereon erected, made or being; and all and every, the rights, alleys, ways, waters, privileges, appurtenances and advantages, to the same belonging, or in any wise appertaining and especially the easement rights as aforesaid.

TO HAVE AND TO HOLD the said described lot of ground and premises, above described and mentioned, and hereby intended to be conveyed together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining, unto the Grantee, its successors and assigns, in fee simple.

AND the said party of the first part hereby covenantst that he has not done or suffered to be done any act, matter or thing whatsoever to encumber the property hereby conveyed; that he will warrant specially the property hereby granted, and that he will execute such further assurances of same as may be requisite.

IN WITNESS WHEREOF the Grantor has executed this Deed on the day and date hereinabove first written.

WITNESS:

Amelia H. Gentry

Amelia H. Gentry

Paul M. Pardew Sr.
PAUL M. PARDEW

RAMPART, a Maryland
General Partnership

by: *Paul McLaren Pardew, Jr.*
Paul McLaren Pardew, Jr.,
General Partner

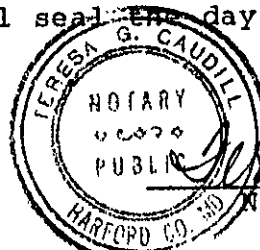
Camille A. Fegredo

JAMES P. PARDEW

STATE OF MARYLAND, CITY OF BALTIMORE, to wit:

I HEREBY CERTIFY, that on this 22nd day of December, 1986, before me, the subscriber, a Notary Public of the State of Maryland aforesaid, personally appeared PAUL M. PARDEW, Paul McLaren Pardew, Jr., general partner of RAMPART, and JAMES P. PARDEW and acknowledged the foregoing Deed to be their respective individual and partnership deeds and acts, and for the purposes as therein contained.

WITNESS my hand and notarial seal this day and year last above written.



My Commission Expires: July 1, 1990

STATE OF MARYLAND, BALTIMORE COUNTY, TO WITH

I HEREBY CERTIFY that the foregoing is a true copy of the original
DEED taken from the records of said Circuit Court as
recorded in Liber SM No. 7365
Folio 301 one of the LANDS
records of Baltimore County.

IN TESTIMONY WHEREOF I hereto set my hand
and affix the seal of the Circuit Court for
Baltimore County

this 14th day of JAN 1977

Raymond Smith

Clerk of the Circuit Court of Baltimore County

"04"



BALTIMORE COUNTY
DEPARTMENT OF PERMITS & LICENSES
TOWSON, MARYLAND 21204

DATE: March 8, 1988

TED ZALESKI, JR.
DIRECTOR

Pikesville Const. Corp
52 New Plant Ct.
Owings Mills, MD 21117

RE: PERMIT # 100667/C285-88
DISTRICT: 9 PCT: 10
LOCATION: 8801 Orchard Tree Lane.

Your construction plans have been reviewed by our office and released, subject to the items listed below. Although our office does not require a direct reply to these items, all comments should be incorporated into the plans prior to construction. Comments from other agencies must be handled separately.

Mr. Burnham "04"

PLANS REVIEW - PHONE: 494-3987

1. This permit is being reviewed as an A-3 assembly use due to its construction type, occupancy load and allowable area. Type 2C construction does not permit an A-2 use of this size and also limits certain 1A uses. See table 501 A3 will permit future restaurant uses, etc. but not a night club as section 302.
2. Doors to toilet stalls shall be 2'-8" clear width minimum.
3. All doors in the means of egress shall be a minimum of 2'-8" clear width section 812.3.
4. Interior finishes shall comply to table 1421.5 and 1421.7 for an unsprinklered structure.

Mr. Seim "04"

1. The construction and installation of all ductwork shall comply with sections M301 thru M306 and M308 of the 1984 BOCA Mechanical Code.
2. Heat or smoke detectors shall be installed as required by section M307 of the BOCA Mec. Code.
3. Ventilation air shall comply with Sect. M1601, M1602 and M1603 of the BOCA Code.
4. The building envelope and the mechanical eqpt shall comply with the applicable sections of the 1984 BOCA Energy Conservation Code.
5. This permit covers only the mechanical work shown on drawing M-1 of submitted with this application for this tenant space.

CC: Plans Review - Sup. Copy
Inspection - File - Fire
Owner: Paul Pardew 1424 Autumn Leaf Rd. Balto, MD 21204
Filer:

MICROFILMED

CONSTR PLANS	RECORD PLANS	PLANS PLAT	LETTER OF INTENT	DATA	APP	SUPERVISION WAIVER
3						

APPLICATION FOR PERMIT
BALTIMORE COUNTY MARYLAND
 OFFICE OF THE BUILDING ENGINEER
 TOWSON, MARYLAND 21204 CJB

TRACY	ALOCK	YES	NO	YES	NO
		X		X	

DATE ISSUED **MAR 08 1988**

BUILDING PERMIT NO.	DISTRICT	PRECINCT
100667	9	10

BUILDING ADDRESS	8801 ORCHARD TREE LA.		
OWNER'S NAME	PAUL M. PARDEW		
MAILING ADDRESS OF OWNER	1424 AUTUMN LEAF RD.	21204	
IDENTIFICATION	NAME	ADDRESS	CITY STATE ZIP PHONE NO. LICENSE
TENANT	FIRST STEP DANCE STUDIO INC.		
BUILDING CONTRACTOR	PIKESVILLE CONST. & MAINT. INC.		
ENGINEER OR ARCHITECT			
IF UNDER CONTRACT OF SALES GIVE SELLER'S NAME AND ADDRESS			
TRANSFER DESCRIPTION	E/S ORCHARD TREE LA.		

A. TYPE OF IMPROVEMENT

- 1 ☐ NEW BUILDING CONSTRUCTION
 2 ☐ ADDITION
 3 ☒ ALTERATION
 4 ☐ REPAIR
 5 ☐ WRECKING (ENTER NO. UNITS DEDUCTED)
 6 ☐ MOVING
 7 ☐ OTHER

RESIDENTIAL

- 01 ☐ ONE FAMILY
 02 ☐ TWO FAMILY
 03 ☐ THREE AND FOUR FAMILY
 04 ☐ FIVE OR MORE FAMILY (ENTER NO. UNITS)
 05 ☐ SWIMMING POOL
 06 ☐ GARAGE
 07 ☐ OTHER

C. TYPE OF USE

NON-RESIDENTIAL

- 08 ☒ AMUSEMENT, RECREATION, PLACE OF ASSEMBLY
 09 ☐ CHURCH, OTHER RELIGIOUS BUILDING
 10 ☐ FENCE (LENGTH _____ HEIGHT _____)
 11 ☐ INDUSTRIAL STORAGE BUILDING
 12 ☐ PARKING GARAGE
 13 ☐ SERVICE STATION REPAIR GARAGE
 14 ☐ HOSPITAL INSTITUTIONAL NURSING HOME
 15 ☒ OFFICE, BANK, PROFESSIONAL
 16 ☐ PUBLIC UTILITY
 17 ☐ SCHOOL, COLLEGE, OTHER EDUCATIONAL
 18 ☐ SIGN
 19 ☐ STORE ☐ MERCANTILE ☐ RESTAURANT
 SPECIFY TYPE _____
 20 ☐ SWIMMING POOL (MD HEALTH DEPT. APPR. REQ.)
 21 ☐ TANK, TOWER
 22 ☐ TRANSIENT HOTEL, MOTEL (NO. UNITS _____)
 23 ☐ OTHER

DESCRIBE PROPOSED WORK ☐ 1 AND 2 FAM. CODE

1984 BOCA CODE
 INTERIOR ALTERATION TO INSTALL FLOORING, CEILING, PARTITIONS, DUCT WORK & FINISHES. BUILDING CONSTRUCTED IN 1987-1988. REFER TO SHELL PERMIT #97602/C-1869-87. REFER TO #100671/CO-C-285-88 FOR CHANGE OF OCCUPANCY. DATA SHEETS WAIVED: E.A.B.

- TYPE FOUNDATION
☐ SLAB
☐ BLOCK
☐ CONCRETE
☐ BASEMENT
☐ FULL
☐ PARTIAL
☐ NONE

B. OWNERSHIP

- 1 ☒ PRIVATELY OWNED 2 ☐ PUBLICLY OWNED

ESTIMATED COST OF MATERIAL & LABOR **\$190,000.00**

CHECK APPROPRIATE CATEGORIES FOR RESIDENTIAL ONLY

1	2	3	4	5	6	7	8	9	10

24 PROPOSED USE(S) **ASSEMBLY-DANCE STUDIO & ALT-**
 EXISTING USE(S) **OFFICE-RETAIL-SEE 100671/CO-C-285-88**

D. TYPE OF CONSTRUCTION

- 1 ☒ MASONRY 3 ☐ STRUCTURE STEEL
 2 ☐ WOOD FRAME 4 ☐ REINF. CONCRETE
- TYPE OF HEATING FUEL**
 1 ☐ GAS 3 ☐ ELECTRICITY
 2 ☐ OIL 4 ☐ COAL
- TYPE OF SEWAGE DISPOSAL**
 1 ☒ PUBLIC SEWER ☐ EXISTS ☐ PROPOSED
 2 ☐ PRIVATE SYSTEM ☐ EXISTS ☐ PROPOSED
 SEPTIC ☐ EXISTS ☐ PROPOSED
 PRIVY ☐ EXISTS ☐ PROPOSED

TYPE OF WATER SUPPLY

- 1 ☒ PUBLIC SYSTEM ☒ EXISTS ☐ PROPOSED
 2 ☐ PRIVATE SYSTEM ☐ EXISTS ☐ PROPOSED
- IS THERE CENTRAL AIR CONDITIONING**
 1 ☐ YES 2 ☐ NO
- IS THERE AN INCINERATOR**
 1 ☐ NO 2 ☐ YES - WITH AIR POLLUTION CONTROL
 3 ☐ YES - WITHOUT AIR POLLUTION CONTROL
 NO. OF ELEVATORS TO BE INSTALLED _____
 NUMBER OF OFF STREET PARKING SPACES _____
 ENCLOSED _____ OUTDOORS _____

E. RESIDENTIAL ONLY

- SINGLE FAMILY UNITS**
 1. TOTAL NO. OF BEDROOMS _____
- MULTI FAMILY UNITS**
HOW MANY APARTMENTS HAVE
 2. EFFICIENCY (NO SEPARATE BEDROOMS) _____
 3. ONE BEDROOM _____
 4. TWO BEDROOMS _____
 5. THREE BEDROOMS OR MORE _____
 6. TOTAL NO. OF BEDROOMS _____
 7. TOTAL NO. OF APARTMENTS _____

F. DIMENSIONS

GARAGE DISPOSAL	YES	NO	POWDER ROOMS	BATHROOMS	KITCHENS

BUILDING SIZE - LARGEST OVERALL DIMENSIONS INCLUDING BASEMENT
 FLOOR AREA **8550 S.F.**
 LOT SIZE **2.518 AC.**

CENTER LINE SETBACKS FROM STREET CENTER
 FRONT STREET _____ SIDE STREET _____

PROPERTY LINE SETBACKS
 FRONT **NO CHANGE** SIDE **NO CHANGE** REAR **N.C.**

IN LINE WITH EXISTING BLDGS. YES ☐ NO ☐ CORNER LOT YES ☐ NO ☐ LOT NUMBERS **1**

ZONING INFORMATION **BR** ZONING MAP NO. _____ PETITION NO. _____ DATE _____

ASSESSMENT LAND SUBDIVISION NAME **PAUL, MCL PARDEW**

IMPROVEMENTS **IMPROVED** BLOCK _____ SECTION _____ LIBER **53** FOLIO **106**

TOTAL BUILDINGS TYPE **#6**

G. I HAVE CAREFULLY READ THIS APPLICATION AND KNOW THE SAME IS CORRECT AND TRUE, AND THAT IN DOING THIS WORK ALL PROVISIONS OF THE BALTIMORE COUNTY CODE AND APPROPRIATE STATE REGULATIONS WILL BE COMPLIED WITH WHETHER HEREIN SPECIFIED OR NOT AND WILL REQUEST ALL REQUIRED INSPECTIONS MAIL PERMIT TO:

PIKESVILLE CONT. CORP. **2-18-88**
 COMPANY OR OWNER **52 NEW PLANT CT.** DATE
OWINGS MILLS, MD 21117

ADDRESS _____ CITY _____ STATE _____ ZIP _____
JOAN T. MILLER ☒ AGENT **363-1780**
 SIGNATURE OF APPLICANT ☐ OWNER PHONE _____

PERMIT FEE **\$522.00** RECEIPT NO. **A-27054** DATE **2-18-88**

AGENCY	APPROVAL SIGNATURE	DATE
PRELIMINARY INSPECTION	<i>Edward E. Baker</i>	2-18-88
ZONING	<i>David Green</i>	2-18-88
PLANNING	<i>David Green</i>	3/1/88
BUREAU OF PUBLIC SERVICES	<i>David Green</i>	3/1/88
HEALTH DEPARTMENT	<i>David Green</i>	3/1/88
CONSTRUCTION PLANS REVIEW	<i>David Green</i>	3/1/88
FIRE PREVENTION	<i>David Green</i>	3/1/88
PROCESSING SUPERVISOR	<i>David Green</i>	3/1/88

OFFICE

APPLICATION FOR PERMIT
BALTIMORE COUNTY, MARYLAND
 OFFICE OF THE BUILDING ENGINEER
 TOWSON, MARYLAND 21204

TAX ACCOUNT NUMBER 20-06-007673

Building Address 8801 Orchard Tree Lane

Owners Name Paul M. Pankow

Mailing Address 1424 Autumn Leaf Rd 21004

DATE ISSUED MAR 08 1988

BUILDING PERMIT NO. 100671

CONTROL NO. 9 10

TENANT First Step Tennis Center

BUILDING CONTRACTOR Vibranco Construction Co.

ENGINEER OR ARCHITECT data deleted

IF UNDER CONTRACT OF SALES GIVE SELLER'S NAME AND ADDRESS

TRANSFER DESCRIPTION 85 Orchard Tree Lane

A. TYPE OF IMPROVEMENT

- 1 ☐ NEW BUILDING CONSTRUCTION
- 2 ☐ ADDITION
- 3 ☒ ALTERATION
- 4 ☐ REPAIR
- 5 ☐ WRECKING (ENTER NO. UNITS DEDUCTED)
- 6 ☐ MOVING
- 7 ☐ OTHER

DESCRIBE PROPOSED WORK

1 OR 2 FAM. CODE ☐ 100671 BOCA CODE ☒ 100671

Drill alt. to install flooring, ceiling, partitions, ductwork, finishes. Bldg constructed in 1987-88. Shell permit # 97602

B. OWNERSHIP

- 1 ☐ PRIVATELY OWNED 2 ☐ PUBLICLY OWNED

ESTIMATED COST OF MATERIAL & LABOR \$129,000.00

C. TYPE OF USE

NON-RESIDENTIAL

- 08 ☒ AMUSEMENT, RECREATION, PLACE OF ASSEMBLY
- 09 ☐ CHURCH, OTHER RELIGIOUS BUILDING
- 10 ☐ FENCE (LENGTH _____ HEIGHT _____)
- 11 ☐ INDUSTRIAL, STORAGE BUILDING
- 12 ☐ PARKING GARAGE
- 13 ☐ SERVICE STATION, REPAIR GARAGE
- 14 ☐ HOSPITAL, INSTITUTIONAL, NURSING HOME
- 15 ☐ OFFICE, BANK, PROFESSIONAL
- 16 ☐ PUBLIC UTILITY
- 17 ☐ SCHOOL, COLLEGE, OTHER EDUCATIONAL
- 18 ☐ SIGN
- 19 ☐ STORE ☐ MERCANTILE ☐ RESTAURANT
- SPECIFY TYPE _____
- 20 ☐ SWIMMING POOL (MD HEALTH DEPT. APPR. REQ.)
- 21 ☐ TANK, TOWER
- 22 ☐ TRANSIENT HOTEL, MOTEL (NO. UNITS _____)
- 23 ☐ OTHER

CHECK APPROPRIATE CATEGORIES FOR RESIDENTIAL ONLY

APARTMENTS	WALK-OUTS	CARPORT	TOWN HOUSES	AND MORE	IN ROW
1	2	3	4	5	6

EXISTING USE(S) _____

D. TYPE OF CONSTRUCTION

- 1 ☒ MASONRY 3 ☐ STRUCTURE STEEL
- 2 ☐ WOOD FRAME 4 ☐ REINFORCED CONCRETE
- TYPE OF HEATING FUEL
- 1 ☐ GAS 3 ☐ ELECTRICITY
- 2 ☐ OIL 4 ☐ COAL

TYPE OF SEWAGE DISPOSAL

- 1 ☒ PUBLIC SEWER
- 2 ☐ PRIVATE SYSTEM ☒ EXISTS ☐ PROPOSED
- SEPTIC ☐ EXISTS ☐ PROPOSED
- PRIVY ☐ EXISTS ☐ PROPOSED

TYPE OF WATER SUPPLY

- 1 ☒ PUBLIC SYSTEM ☐ EXISTS ☐ PROPOSED
- 2 ☐ PRIVATE SYSTEM ☐ EXISTS ☐ PROPOSED
- IS THERE CENTRAL AIR CONDITIONING
- 1 ☐ YES 2 ☐ NO
- IS THERE AN INCINERATOR
- 1 ☐ NO 2 ☐ YES WITH AIR POLLUTION CONTROL
- 3 ☐ YES WITHOUT AIR POLLUTION CONTROL
- NO. OF ELEVATORS TO BE INSTALLED _____
- NUMBER OF OFF STREET PARKING SPACES _____
- ENCLOSED _____ OUTDOORS _____

E. RESIDENTIAL ONLY

SINGLE FAMILY UNITS

- 1 TOTAL NO. OF BEDROOMS _____
- MULTI FAMILY UNITS
- HOW MANY APARTMENTS HAVE
- 2 EFFICIENCY (NO SEPARATE BEDROOMS) _____
- 3 ONE BEDROOM _____
- 4 TWO BEDROOMS _____
- 5 THREE BEDROOMS OR MORE _____
- 6 TOTAL NO. OF BEDROOMS _____
- 7 TOTAL NO. OF APARTMENTS _____

F. DIMENSIONS

GARBAGE DISPOSAL	YES	NO	POWDER ROOMS	BATHROOMS	KITCHENS
BUILDING SIZE - LARGEST OVERALL DIMENSIONS INCLUDING BASEMENT					
LOT SIZE	WIDTH	DEPTH	HEIGHT	STORIES	
2515 AC					
PROPERTY LINE SETBACKS	FRONT	SIDE	SIDE STREET	REAR	
IN LINE WITH EXISTING BLDGS	YES	NO	CORNER LOT	YES	NO
ZONING INFORMATION	BR	ZONING MAP NO.	PETITION NO.	DATE	
ASSESSMENT LAND	SUBDIVISION NAME				
	H Paul M. Pankow				
IMPROVEMENTS	BLOCK	SECTION	LIBER	FDLIO	
			53	106	
TOTAL	BUILDINGS				
	04				

G. I HAVE CAREFULLY READ THIS APPLICATION AND KNOW THE SAME IS CORRECT AND TRUE, AND THAT IN DOING THIS WORK ALL PROVISIONS OF THE BALTIMORE COUNTY CODE AND APPROPRIATE STATE REGULATIONS WILL BE COMPLIED WITH WHETHER HEREIN SPECIFIED OR NOT AND WILL REQUEST ALL REQUIRED INSPECTIONS.

Vibranco Construction Co. 2-19-88

COMPANY 52 New York St. Towson, MD 21204

ADDRESS 52 New York St. CITY Towson STATE MD ZIP 21204

SIGNATURE OF APPLICANT Paul M. Pankow ☐ AGENT ☐ OWNER 363-1784 PHONE

MAKE CHECKS PAYABLE TO BALTIMORE COUNTY MARYLAND

PERMIT FEE \$500.00 RECEIPT NO. 27054 DATE 2/19/88

AGENCY Planning APPROVAL SIGNATURE Paul M. Pankow DATE 2/19/88

PRELIMINARY INSPECTION 2/19/88

PLANNING 2/19/88

BUREAU OF PUBLIC SERVICES 2/19/88

HEALTH DEPARTMENT 2/19/88

CONSTRUCTION 2/19/88

LAND REVIEW 2/19/88

SARD CHIEF 2/19/88

INVESTIGATION FEE

NO PERMIT FEES REFUNDED

OCCUPANCY FEE

waive data, sheets & seals

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF PERMITS AND LICENSES
OFFICE OF THE BUILDINGS ENGINEER
COUNTY OFFICE BUILDING, TOWSON, MD. 21204

No. 100667

Permit is hereby granted to:

Name Atsulla Coal Corp.

Address 52 New Plant Ct.

Booths Mills, Md. 21117

to use and occupy the land and/or buildings described and located as follows on Permit No.

100667 8419 DeHann Lane

Address

City, Town, State, Election District

Lot No.

Block No.

Assessed No.

Subdivision name or acreage description

for the purposes set forth below:

Use for which permit is granted (describe fully)

Occupancy used Storage

Date 4/18/67

Issued by the Buildings Engineer

Fee Paid

NOTE: This permit must be conspicuously displayed and not removed from the premises for which it was issued. It is not transferable. It must be shown upon demand to any authorized representative of the Buildings Engineer, Division of Building Inspection. This permit is good only for the use and to the extent described above. Changes in use, any extension thereof, and changes in occupancy require a new permit.

INSPECTION RECORD

Permit No. 100667 Preliminary _____ Issued _____
Type Bldg. _____ Address _____
Extended to: _____ Work Completed _____ Inspector _____

MUST BE COMPLETED FOR ALL NEW CONSTRUCTION

COMMENTS

FOOTINGS

Date _____ Inspector _____

SLAB

Date _____ Inspector _____

FRAMING

Date _____ Inspector _____

INSULATION

Date _____ Inspector _____

MECHANICAL/SUPPLEMENTAL HEATING

Date _____ Inspector _____

HANDICAPPED CODE COMPLIANCE

Date _____ Inspector _____

FINAL OCCUPANCY

Date 4-7-88 Inspector [Signature]

4-6-88 - Ceiling ? [Signature]

1-12-78

BALTIMORE COUNTY OFFICE BUILDING
PLANS REVIEW SECTION
TOWSON, MARYLAND 21204

494-3987

PLAN REVIEW RECORD

PERMIT NO: 100667+71 WORK NO: C-285-88 DATE: 3-4-88

DISTRICT: 9 PCT: 10 LOCATION: 8801 ORCHARD LANE

PROPOSED USE GROUP A-3 EXISTING USE GROUP M + ~~B~~ CONSTRUCTION TYPE 2C
3hr. FIREWALL Sep. 1 story.

CHECK LIST

HEIGHT & AREA See note #1 MECHANICAL _____
TRAVEL DISTANCES _____ PLUMBING _____
MEANS OF EGRESS See note 3. HANDICAPPED PROVISIONS See note 2
STRUCTURAL _____ FIRE RATINGS See note 4
LIGHT & VENTILATION _____

COMMENTS

BURNHAM. 04.

1. THIS PERMIT is being reviewed as an A-3 Assembly Use due to its construction type, occupancy load and allowable area. Type 2C construction does not permit an A-2 use of this size and also limits certain ~~BA~~ Uses. See table 501. A-3 will permit future restaurant use, but not a night club use. ^{302.}
2. St Doors to toilet stalls shall be 2'-8" clear width minimum.
3. All doors in the means of egress shall be a minimum of 2'-8" clear width. Sect 812.3
4. Interior Finishes shall comply to tables 1421.5 and 1421.7 for an unsprinkled structure.

- OVER -

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Kevin R. Connor
Zoning Inspector

DATE: October 11, 1994

FROM: James H. Thompson
Zoning Supervisor

RE: Case Nos. V-94-537SPH
94-1187
8819 Orchard Tree Lane
9th Election District

The referenced case will again be scheduled for a Petition for Special Hearing before the zoning commissioner or his deputy.

Having made the error of assuming that the Baltimore County Police would attend the August 17, 1994 hearing to offer testimony and ultimately find out that they failed to show, to prevent another embarrassing occurrence, the enforcement division must inspect "Club 101" during its hours of operation.

The club operates from approximately 10:00 p.m. until 5:00 a.m., Thursday through Saturday. Also, there is a charge for entry into the establishment.

I am requesting that an inspection be made during the week of October 10, 1994. Please keep track of your time and observations.

JHT:eoh

READ AND PASSED this 20th day of June, 1994

BY ORDER

Thomas J. Peddicord, Jr.
Thomas J. Peddicord, Jr.
Secretary

PRESENTED to the County Executive for his approval this 21st day
of June, 1994.

Thomas J. Peddicord, Jr.
Thomas J. Peddicord, Jr.
Secretary

APPROVED AND ENACTED:

6/24/94
Roger B. Hayden
Roger B. Hayden
County Executive

I HEREBY CERTIFY THAT BILL NO. 85-94 IS TRUE AND CORRECT

AND TOOK EFFECT ON August 8, 1994.

William A. Howard, IV
William A. Howard, IV
Chairman, County Council

"K"
Get Definition From
Rick Wisnam
{"Neighborhood" and definition added by Bill No. 100, 1970;
deleted by Bill No. 3, 1992.]

Nightclub: A tavern or other commercial establishment which provides live or recorded entertainment, with or without a dance floor, and which is categorized as a nightclub by the building code of Baltimore County. {Bill No. 110, 1993.}

Nonconforming Use: A legal use that does not conform to a use regulation for the zone in which it is located or to a special regulation applicable to such a use. A specifically named use described by the adjective "nonconforming" is a nonconforming use. [B.C.Z.R., 1955; Bill No. 18, 1976.]

Nonindustrial Use: Any use other than an industrial, quasi industrial, or industry-related use. [Bill No. 178, 1979.]

Nudity: A state of dress in which a human buttock, anus, genitalia, or female breast is completely bared. [Bill No. 137, 1990.]

Nudity, Partial: A state of dress in which clothing covers no more than the genitals, pubic region, and areolae of the female breast, as well as portions of the body covered by supporting straps or devices. [Bill No. 137, 1990.]

Nursery, Horticultural: An agricultural operation primarily engaged in the production and marketing of trees, shrubs and plants. The plant materials may be produced on the premises and may be purchased elsewhere at any stage of maturity for further production. Horticultural nurseries may engage in accessory uses such as storage of plant materials, sale of products necessary for the health of the nursery stock, and provision of limited landscape services. A nursery which sells plant materials grown exclusively on-site and which does not offer any of the accessory services permitted at horticultural nurseries, shall be considered a farm. {Bill No. 41, 1992.}

Nursery School: A school or a level within a school providing educational instruction for children between two and four years old. [Bill No. 47, 1985.]

Nursing Home: (Formerly Convalescent Home): A facility which provides board, shelter, and nursing care to chronic or convalescent patients. This term also includes facilities which provide domiciliary care within a nursing home. [Bill No. 37, 1988.]

Office: The term "office" does not include a bank, a post office, a veterinarian's office, nor an establishment where merchandise is stored on or sold from the premises. The term does include a medical office. [Bills No. 13, 1980; No. 167, 1980; No. 37, 1988.]

CODE INTERPRETATIONS

Interpretation of the *BOCA Basic/National Codes* and *BOCA National Codes* is a regular service to the membership of BOCA and is intended to be of an advisory nature, with the final responsibility being with the appropriate code official.

The interpretations which appear herein have been approved by the BOCA Code Interpretations Committee. Each formal interpretation is individually numbered for future reference. The numbering system indicates the se-

quence, applicable code section and year the interpretation was issued.

For example, 18/M302/86 indicates the 18th interpretation given in the 1986 cycle and that the interpretation involves Section 302.0 of the *BOCA Basic/National Mechanical Code/1984*. A code interpretation cycle encompasses the one-year term of the Code Interpretations Committee, from October 1 through September 30.

09/302/87, BOCA National Building Code/1987

Question: What characteristics of an assembly use serve to make Use Group A-2 (nightclubs) an appropriate Use Group classification?

NIGHT CLUBS

Answer: The common factor in nightclub life losses has been high-occupant densities. A large occupant load alone, however, does not provide a basis to distinguish between the level of hazard associated with an A-2 use and any other assembly or educational use. The unique level of hazard results from the presence of the following attributes of a nightclub-type occupancy:

1. Lighting levels
2. Entertainment type
3. Hours of operation
4. Seating characteristics, including size of tables
5. Dance area
6. Service facilities

The low lighting level, the loud sound and associated activity, the late hour, dense seating with ill-defined aisles, and beverage service have all combined to delay fire recognition, confuse appropriate response, increase egress time and result in extensive life losses. For these reasons, the A-2 Use Group is termed the most hazardous Use Group in the 1987 Edition of the *BOCA National Building Code* (see Table 501).

13/M305/87, BOCA National Mechanical Code/1987

Question: Is UL 181 the applicable standard for flexible nonmetallic underground ducts?

Answer: Yes. Sections M-302.2 and M-303.1 require nonmetallic and/or flexible ducts, respectively, "to conform to the requirements of UL 181 listed in Appendix A...". Section M-305.4, "Underground ducts", addresses the installation of underground ducts, not the acceptability of the duct materials and construction. However, compliance with UL 181 does not provide assurance that the ducts are "rated for underground installation." Such suitability must be evaluated based upon the manufacturer's installation instructions for the intended underground application and the corresponding supporting evidence.

11/M1600/87, BOCA National Mechanical Code/1987

Question: Section M-1600.3 of the *BOCA National Mechanical Code/1987* requires that ventilation be provided during periods that a room or space is occupied. Certain rooms requiring ventilation, such as public and private bathrooms are, by their nature, only intermittently occupied. When mechanical ventilation provides the required ventilation, is it the intent of the code to require the system to be operating at all times the building is occupied in order to assure ventilation whenever the room in question is used?

Answer: No. Since Section M-1600.3 only requires ventilation when a room or space is occupied, it would be permissible to activate the mechanical ventilation system serving that room by interconnection with the light switch in the room, by a timer switch, by interconnection with the building ventilation system, by a separate manual switch in the room or by other approved means.

302.1.1.1 Separation: Where Table 302.1.1 requires a fire-resistance rated separation, the specific occupancy area shall be separated from the remainder of the building with *fire separation assemblies* (see Section 709.0). Where Table 302.1.1 requires smoke partitions, the smoke partitions shall be constructed of materials consistent with the type of construction and shall be capable of resisting the passage of smoke. The smoke partitions shall extend from the floor to the underside of the fire-resistance rated floor/ceiling or roof/ceiling assembly or to the underside of the floor or roof deck above. All doors shall be self-closing or automatic-closing upon detection of smoke.

302.1.2 Accessory areas: Except for accessory areas of Use Group H in accordance with Section 302.1.2.1 and specific occupancy areas indicated in Section 302.1.1, where the area devoted to an accessory occupancy does not occupy more than 10 percent of any *fire area* nor more than 10 percent of the allowable *area* permitted by Sections 503.0 based on the accessory use group, a *fire separation assembly* shall not be required between the main use group and accessory areas. The required type of construction and the *automatic fire suppression* requirements in Section 904.0 shall be based on the main use group of the *fire area*.

302.1.2.1 High-hazard uses: In buildings that are three stories or less in *height* and equipped throughout with an *automatic sprinkler system* in accordance with Section 906.2.1, an occupancy in Use Group F or S is permitted to have accessory areas of Use Group H-2, H-3 or H-4, provided that such areas do not occupy more than 10 percent of any *fire area* nor more than 10 percent of the allowable *area* permitted by Section 503.0 based on the use group of the accessory area. A *fire separation assembly* shall not be required between the F or S use group and the accessory H use group. The maximum quantity of *hazardous materials* within the accessory H use group shall not exceed twice the permitted exempt amount specified in Table 307.8(1) or Table 307.8(2). The required type of construction shall be based on the main use group of the *fire area*.

302.2 Mixed use: All buildings and structures that include more than one use group shall be further designated as a mixed use and shall comply with Section 313.0. Specific occupancy areas and accessory areas complying with Sections 302.1.1 and 302.1.2, respectively, shall be classified in accordance with the main use group.

SECTION 303.0 ASSEMBLY USE GROUPS

303.1 General: All structures which are designed or occupied for the gathering together of persons for purposes such as civic, social or religious functions, recreation, food or drink consumption or awaiting transportation, shall be classified as Use Group A-1, A-2, A-3, A-4 or A-5. A room or space used for assembly purposes by less than 50 persons and which is accessory to another use group shall be included as a part of that main use group. The term "Use Group A" shall include Use Groups A-1, A-2, A-3, A-4 and A-5.

303.2 Use Group A-1, theaters: This use group shall include all theaters and all other buildings and structures intended for the

production and viewing of performing arts or motion pictures; and which are usually provided with fixed seats — including theaters, motion picture theaters and television and radio studios admitting an audience. *Stages* and *platforms* shall comply with Section 412.0.

303.3 Use Group A-2 structures: This use group shall include all buildings and places of public assembly, without theatrical *stage* accessories, designed for occupancy as dance halls, nightclubs and for similar purposes, including all rooms, lobbies and other spaces connected thereto with a common *means of egress* and entrance.

303.4 Use Group A-3 structures: This use group shall include all buildings with or without an auditorium in which persons assemble for amusement, entertainment or recreation purposes as well as incidental motion picture, dramatic or theatrical presentations, lectures or other similar purposes without theatrical *stage* other than a raised *platform*; and which are principally occupied without permanent seating facilities, including art galleries, exhibition halls, museums, lecture halls, libraries, restaurants other than nightclubs, and recreation centers; and buildings designed for similar assembly purposes, including passenger terminals.

303.5 Use Group A-4 structures: This use group shall include all buildings and structures which are occupied exclusively for the purpose of worship or other religious services.

303.6 Use Group A-5, outdoor assembly: This use group shall include structures utilized for outdoor assembly intended for participation in or reviewing activities, including *grandstands* (Section 1013.0), *bleachers* (Section 1013.0), coliseums, stadiums, amusement park structures (Section 413.0) and fair or carnival structures. Such structures shall comply with all pertinent provisions of this code.

SECTION 304.0 BUSINESS USE GROUP

304.1 General: All buildings and structures which are occupied for the transaction of business, for the rendering of professional services, or for other services that involve stocks of goods, wares or merchandise in limited quantities which are incidental to office occupancies or sample purposes, shall be classified as Use Group B.

304.2 List of business occupancies: The occupancies listed in Table 304.2 are indicative of and shall be classified as Use Group B.

Table 304.2
BUSINESS OCCUPANCIES

Airport traffic control towers	Fire stations
Animal hospitals, kennels, pounds	Florists and nurseries
Automobile and other motor vehicle showrooms	Laboratories; testing and research
Banks	Laundries; pickup and delivery stations and self-service
Barber shops	Police stations
Beauty shops	Post offices
Car wash	Print shops
Civic administration	Professional services; attorney, dentist, physician, engineer, etc.
Clinic, outpatient	Radio and television stations
Dry cleaning; pickup and delivery stations and self-service	Telecommunication equipment building
Electronic data processing	

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APPLICATION FOR PERMIT
BALTIMORE COUNTY, MARYLAND
OFFICE OF THE BUILDING ENGINEER
TOWSON, MARYLAND 21204

TAX ACCOUNT NUMBER 20-00-007013

Building Address 8801 Orchard Tree Lane

Owners Name Paul M. Parlow

Mailing Address 1424 Autumn Leaf Rd 21084

DATE ISSUED MAR 08 1988

BUILDING PERMIT NO 100667

CONTROL NO C-285-88

TENANT Tiff's Steps Dance Studio in

BUILDING CONTRACTOR Fishersville Const & Appliances in

ENGINEER OR ARCHITECT [Signature]

IF UNDER CONTRACT OF SALES GIVE SELLER'S NAME AND ADDRESS

TRANSFER DESCRIPTION 25 Orchard Tree Lane

CONSTRUCTION PLANS SUBMITTED data sheets EAB

A. TYPE OF IMPROVEMENT

1. ☐ NEW BUILDING CONSTRUCTION
2. ☐ ADDITION
3. ☒ ALTERATION
4. ☐ REPAIR
5. ☐ WRECKING (ENTER NO. UNITS DEDUCTED)
6. ☐ MOVING
7. ☐ OTHER

DESCRIBE PROPOSED WORK

1 OR 2 FAM. CODE ☐ 1981 BOCA CODE ☒

Int. alt. to install flooring, ceiling, partitions, ductwork, + finishes. Bldg constructed in 1987-88. Shell permit # 97602

C-1569-87

B. OWNERSHIP

1. ☐ PRIVATELY OWNED
2. ☒ PUBLICLY OWNED

ESTIMATED COST OF MATERIAL & LABOR \$12,000.00

RESIDENTIAL

01. ☐ ONE FAMILY
02. ☐ TWO FAMILY
03. ☐ THREE AND FOUR FAMILY
04. ☐ FIVE OR MORE FAMILY (ENTER NO. UNITS)
05. ☐ SWIMMING POOL
06. ☐ GARAGE
07. ☐ OTHER

C. TYPE OF USE

NON-RESIDENTIAL

08. ☒ AMUSEMENT, RECREATION, PLACE OF ASSEMBLY
09. ☐ CHURCH, OTHER RELIGIOUS BUILDING
10. ☐ FENCE (LENGTH _____ HEIGHT _____)
11. ☐ INDUSTRIAL, STORAGE BUILDING
12. ☐ PARKING GARAGE
13. ☐ SERVICE STATION, REPAIR GARAGE
14. ☐ HOSPITAL, INSTITUTIONAL, NURSING HOME
15. ☐ OFFICE, BANK, PROFESSIONAL
16. ☐ PUBLIC UTILITY
17. ☐ SCHOOL, COLLEGE, OTHER EDUCATIONAL
18. ☐ SIGN
19. ☐ STORE ☐ MERCANTILE ☐ RESTAURANT
20. ☐ SWIMMING POOL (NO. HEALTH DEPT. APPR. REQ.)
21. ☐ TANK, TOWER
22. ☐ TRANSIENT HOTEL, MOTEL (NO. UNITS)
23. ☐ OTHER

CHECK APPROPRIATE CATEGORIES: FOR RESIDENTIAL ONLY

TYPE	FOUNDATION	SLAB	FLOOR	CONCRETE	BASEMENT	FULL	PARTIAL	NONE

D. TYPE OF CONSTRUCTION

1. ☒ MASONRY
2. ☐ STRUCTURE STEEL
3. ☐ WOOD FRAME
4. ☐ REINF. CONCRETE

TYPE OF HEATING FUEL

1. ☐ GAS
2. ☐ OIL
3. ☐ ELECTRICITY
4. ☐ COAL

TYPE OF SEWAGE DISPOSAL

1. ☒ PUBLIC SEWER
2. ☐ PRIVATE SYSTEM ☐ EXISTS ☐ PROPOSED
3. ☐ SEPTIC ☐ EXISTS ☐ PROPOSED
4. ☐ PRIVY ☐ EXISTS ☐ PROPOSED

TYPE OF WATER SUPPLY

1. ☒ PUBLIC SYSTEM ☐ EXISTS ☐ PROPOSED
2. ☐ PRIVATE SYSTEM ☐ EXISTS ☐ PROPOSED

IS THERE CENTRAL AIR CONDITIONING

1. ☐ YES
2. ☐ NO

IS THERE AN INCINERATOR

1. ☐ NO
2. ☐ YES - WITH AIR POLLUTION CONTROL
3. ☐ YES - WITHOUT AIR POLLUTION CONTROL

NO. OF ELEVATORS TO BE INSTALLED

NUMBER OF OFF STREET PARKING SPACES

ENCLOSED _____ OUTDOORS _____

E. RESIDENTIAL ONLY

SINGLE FAMILY UNITS

1. TOTAL NO. OF BEDROOMS _____

MULTI FAMILY UNITS

HOW MANY APARTMENTS HAVE

2. EFFICIENCY (NO SEPARATE BEDROOMS) _____
3. ONE BEDROOM _____
4. TWO BEDROOMS _____
5. THREE BEDROOMS OR MORE _____
6. TOTAL NO. OF BEDROOMS _____
7. TOTAL NO. OF APARTMENTS _____

F. DIMENSIONS

GARAGE DISPOSAL	YES	NO	PORCH ROOMS	BATHROOMS	KITCHENS

BUILDING SIZE - LARGEST OVERALL DIMENSIONS INCLUDING BASEMENT

WIDTH	DEPTH	HEIGHT	STORIES
8.7500	5.15		

LOT SIZE	FRONT STREET	SIDE STREET	REAR
0.515			

PROPERTY LINE SETBACKS	FRONT	SIDE	REAR

IN LINE WITH EXISTING BLDG	YES	NO	CORNER LOT	YES	NO	LOT NUMBERS

ZONING INFORMATION	ZONE DISTRICT	ZONING MAP NO.	PETITION NO.	DATE
	BR			

ASSESSMENT LAND	SUBDIVISION NAME	BLOCK	SECTION	LIVER	FOLIO
	H. Paul McParlow				

IMPROVEMENTS	BUILDINGS	06

TOTAL	06

G. - IF HAVE CAREFULLY READ THIS APPLICATION AND KNOW THE SAME IS CORRECT AND TRUE, AND THAT IN DOING THIS WORK ALL PROVISIONS OF THE BALTIMORE COUNTY CODE AND APPROPRIATE STATE REGULATIONS WILL BE COMPLIED WITH WHETHER HEREIN SPECIFIED OR NOT AND WILL REQUEST ALL REQUIRED INSPECTIONS

Signature of Applicant [Signature]

DATE 2-15-88

ADDRESS 52 New York St. Baltimore, MD 21201

PHONE 363-1780

MAKE CHECKS PAYABLE TO BALTIMORE COUNTY MARYLAND

PERMIT FEE \$500.00

APPROVAL SIGNATURE [Signature]

DATE 2/19/88

PLANNING [Signature]

BUREAU OF PUBLIC SERVICES [Signature]

CONSTRUCTION [Signature]

PLANS REVIEW [Signature]

BOARD CHIEF [Signature]

INVESTIGATION FEE NO PERMIT FEES REFUND OCCUPANCY FEE

Waived data sheets & seals.

MICROFILMED

OFFICE

N^o 100667

BALTIMORE COUNTY, MARYLAND
 DEPARTMENT OF PERMITS AND LICENSES
 OFFICE OF THE BUILDINGS ENGINEER
 COUNTY OFFICE BUILDING, TOWSON, MD 21204

Permission is hereby granted to:

Name Bikereville Court Corp.
 Address 52 New Point Ct.
Quilting Mills Rd. #2117

to use and occupy the land and/or buildings described and located as follows on Permit No.
100667 5219 Oakwood Lane
 Address

City, Town, State, Election District	Lot No.	Block No.	Acres

for the purpose set forth below:

1st Flr Use for which permit is granted (describe fully)
Dance Studio

Occupancy Load 100

Date 4/19/88

Fee Paid

Issued by the Buildings Engineer

John R. Burtis, Jr.
MD 21204-158

NOTE: This permit must be conspicuously displayed and not removed from the premises for which it was issued. It is not transferable. It must be shown upon demand to any authorized representative of the Buildings Engineer, Division of Building Inspection. This permit is good only for the use and to the extent described above. Changes in use, any extension thereof, and changes in occupancy require a new permit.

INSPECTION RECORD

Permit No. 100667 Preliminary _____ Issued _____
 Type Bldg. _____ Address _____
 Extended to: _____ Work Completed _____ Inspector _____

MUST BE COMPLETED FOR ALL NEW CONSTRUCTION

COMMENTS

FOOTINGS

Date _____ Inspector _____

SLAB

Date _____ Inspector _____

FRAMING

Date _____ Inspector _____

INSULATION

Date _____ Inspector _____

MECHANICAL/SUPPLEMENTAL HEATING

Date _____ Inspector _____

HANDICAPPED CODE COMPLIANCE

Date _____ Inspector _____

FINAL OCCUPANCY

Date 4-7-88 Inspector [Signature]

4-6-88 - Certifier ? [Signature]

1-12-78

BALTIMORE COUNTY OFFICE BUILDING
PLANS REVIEW SECTION
TOWSON, MARYLAND 21204

494-3987

PLAN REVIEW RECORD

PERMIT NO: 100067+78 WORK NO: C-285-88 DATE: 3-4-88

DISTRICT: 9 PCT: 10 LOCATION: 8801 ORCHARD LANE

PROPOSED USE GROUP A-3 EXISTING USE GROUP M + ~~B~~ CONSTRUCTION TYPE 2C
3hr. FIREWALL Sep. 1 story.

CHECK LIST

HEIGHT & AREA See note #1 MECHANICAL _____
TRAVEL DISTANCES _____ PLUMBING _____
MEANS OF EGRESS See note 3. HANDICAPPED PROVISIONS See note 2
STRUCTURAL _____ FIRE RATINGS See note 4
LIGHT & VENTILATION _____

COMMENTS

BURHAM. 04.

1. THIS PERMIT is being reviewed as an A-3 Assembly Use due to its construction type, occupancy load and allowable area. Type 2C construction does not permit an A-2 Use of this size and also limits certain A Uses. See table 501. A-3 will permit future restaurant use, etc. but not a night club use. Sect 802.
2. St Doors to toilet stalls shall be 2'-8" clear width minimum
3. All doors in the means of egress shall be a minimum of 2'-8" clear width. Sect 812.3
4. Interior Finishes shall comply to tables 1421.5 and 1421.7 for an unsprinkled structure.

OVER

"04"



BALTIMORE COUNTY
DEPARTMENT OF PERMITS & LICENSES
TOWSON, MARYLAND 21204

DATE: March 8, 1988

TED ZALESKI, JR.
DIRECTOR

Pikesville Const. Corp
52 New Plant Ct.
Owings Mills, MD 21117

RE: PERMIT # 100667/C285-88
DISTRICT: 9 PCT: 10
LOCATION: 8801 Orchard Tree Lane.

Your construction plans have been reviewed by our office and released, subject to the items listed below. Although our office does not require a direct reply to these items, all comments should be incorporated into the plans prior to construction. Comments from other agencies must be handled separately.

Mr. Burnham "04"

PLANS REVIEW - PHONE: 494-3987

1. This permit is being reviewed as an A-3 assembly use due to its construction type, occupancy load and allowable area. Type 2C construction does not permit an A-2 use of this size and also limits certain 1A uses. See table 501 A3 will permit future restaurant uses, etc. but not a night club as section 302.
2. Doors to toilet stalls shall be 2'-8" clear width minimum.
3. All doors in the means of egress shall be a minimum of 2'-8" clear width section 812.3.
4. Interior finishes shall comply to table 1421.5 and 1421.7 for an unsprinklered structure.

Mr. Seim "04"

1. The construction and installation of all ductwork shall comply with sections M301 thru M306 and M308 of the 1984 BOCA Mechanical Code.
2. Heat or smoke detectors shall be installed as required by section M307 of the BOCA Mec. Code.
3. Ventilation air shall comply with Sect. M1601, M1602 and M1603 of the BOCA Code.
4. The building envelope and the mechanical eqpt shall comply with the applicable sections of the 1984 BOCA Energy Conservation Code.
5. This permit covers only the mechanical work shown on drawing M-1 of subbitted with this application for this tenant space.

CC: Plans Review - Sup. Copy

Inspection - File - Fire

Owner: Paul Pardew 1424 Autumn Leaf Rd. Balto, MD 21204

Filer:

302.2 Use Group A-1, theaters: This use group shall include all theaters and all other buildings and structures, or parts thereof, intended for the production and viewing of the performing arts or motion pictures and usually provided with fixed seats, including theaters, motion picture theaters and television and radio studios admitting an audience. Stages and platforms shall comply with Section 615.0.

302.2 Use Group A-1, theaters: Buildings representative of Use Group A-1 and the associated characteristics of this use are identified. Some of these characteristics are large occupant loads, low lighting levels, above-normal sound levels and the use of combustible materials.

Commentary

Buildings or portions of buildings in Use Group A-1 can be characterized by two basic types of activity. The first type is when the use of the facility is intended for the production and viewing of theatrical or operatic performances having a raised stage, proscenium curtain, fixed or portable scenery loft, lighting devices, motion picture booth, drops, leg drops, dressing rooms, mechanical appliances or other theatrical accessories and equipment and provided with fixed seats (see Figure 2).

The second type of activity is when the building is used primarily for the viewing of motion pictures, noted by the absence of a stage, but having fixed seating, viewing screen, motion picture projection booth(s) and equipment (see Figure 3).

Where a stage or enclosed platform is utilized, Section 615.0 provides the construction and other requirements for

the hazards associated with that type of space.

Theaters are placed into a separate use group classification because of the large occupant loads and the concentration of people within confined spaces. This condition poses a high level of risk to life safety. The means of egress are very important factors in the design of such facilities. Theaters for the performing arts that require stages are considered particularly hazardous because of the amount of combustibles such as curtains, drops, leg drops, scenery, lighting equipment, burnable construction materials and other accessories normally associated with stage operation. For the design and construction of facilities in this use group, the code provisions are generally demanding enough as to provide an acceptable level of protection from fire (see also the requirements of Section 615.0 for stages and platforms).

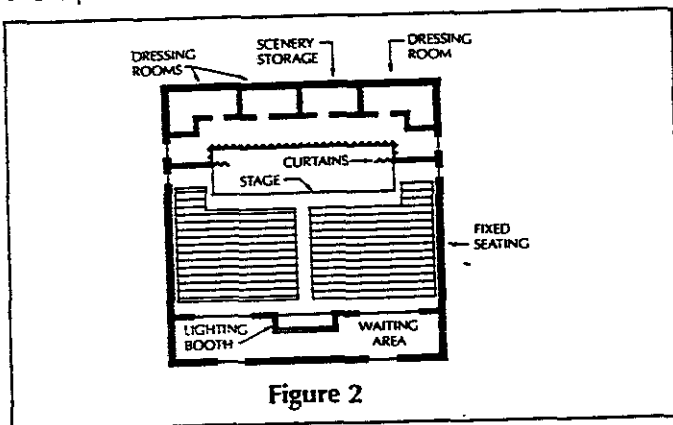


Figure 2

Code Text

302.3 Use Group A-2 structures: This use group shall include all buildings and places of public assembly, without theatrical stage accessories, designed for use as dance halls, night clubs and for similar purposes, including all rooms, lobbies and other

(continued on following page)

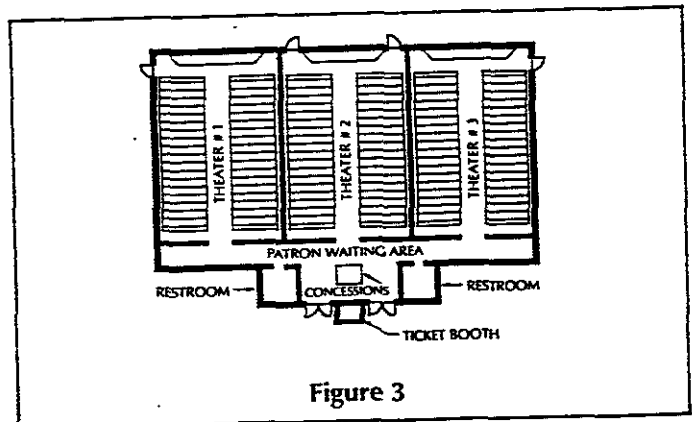


Figure 3

Commentary

302.3 Use Group A-2 structures: Buildings representative of Use Group A-2 and the associated characteristics of this use are identified.

Buildings or portions thereof which are classified as Use Group A-2, are often characterized by the following:

(continued on following page)

- Lighting levels — low lighting levels are generally present;
- Entertainment type — a live band or music is often present, generating above-normal sound levels;
- Hours of operation — later than average operating hours;
- Seating characteristics — the tables and chairs tend to be positioned so as to create ill-defined aisles;
- Dance area — a specific area designated for dancing;
- Service facilities — only beverages and limited food services are typically offered; and
- Occupant load — areas are typically crowded.

Generally the primary attraction of nightclubs, cabarets, dance halls and similar buildings consists of a combination of entertainment and beverages.

The fire records are very clear in identifying that the factors listed above often cause a delayed awareness of a fire situation and confuse the appropriate response, resulting in an increased egress time and sometimes panic. Together, these factors may result in extensive life and property losses. These characteristics are only advisory in determining if a building should be classified in the A-2 Use Group. There will always be additional characteristics which are unique to a project, and these must be also taken into consideration when classification is made.

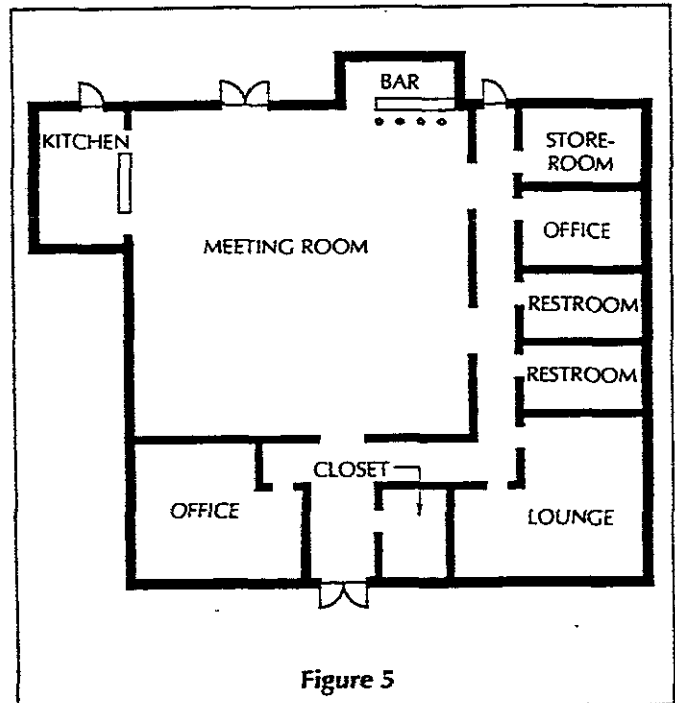
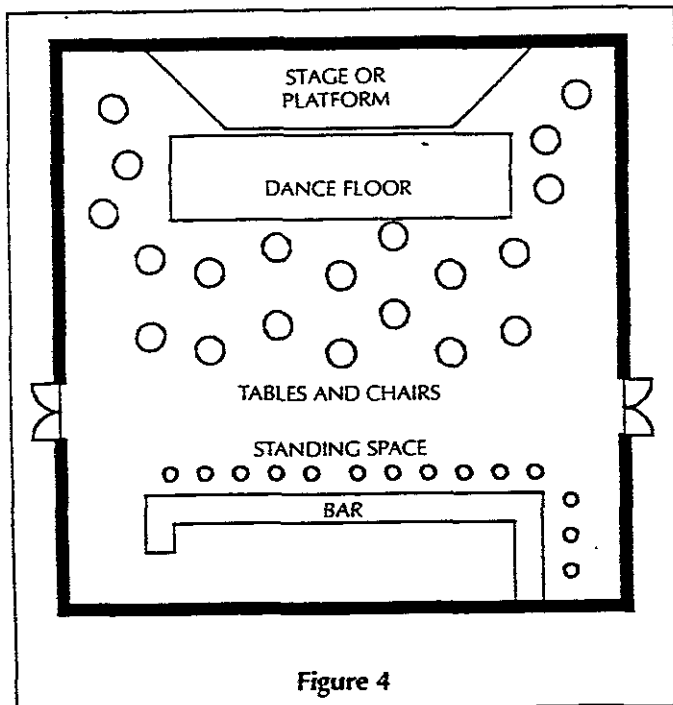
Example: The Downtown Club, a popular local nightclub/dance hall, features a different band every weekend. It is equipped with a bar and basic kitchen facilities so that beverages and appetizers can be served. There is a stage for the bands to perform on, a dance floor in front of the stage and numerous cocktail tables and chairs. The tables and chairs are not fixed, resulting in a haphazard

arrangement. There are usually no distinct aisles. When the band performs the house lights are dimmed and spot lights are keyed in on the performers. The club is equipped with a sound system which is used at loud levels. The club is open until 3 a.m. — the latest time the local jurisdiction will allow.

From this description of the Downtown Club, one can see that the classification of the building would be Use Group A-2. Sometimes, however, it is not this easy to determine the appropriate classification. In such cases, the code official must seek additional information regarding the function(s) of the building and each area within the building (see Figure 4).

Example: The local Wallabys Club has a meeting hall which is used for club gatherings and social functions. Based on this description, the Wallabys Club would be classified as Use Group A-3. But, one night a year the Wallabys sponsored a "Cabaret Night." A band and a show are featured, tables and chairs are placed close together, lights are dimmed for atmosphere, and beverages and snacks are served by waitresses. The building now has all the characteristics associated with a nightclub, Use Group A-2. Use Group A-2 represents an overall greater hazard to public safety and welfare than does the initial use classification of A-3. In order to apply the most restrictive provisions, the Wallabys meeting hall should be classified as Use Group A-2 instead of what might have been a Use Group A-3 classification.

Nightclubs, cabarets, dance halls, beer gardens, disco theques and other similar facilities are classified as Use Group A-2 because of the nature of their occupancies. Establishments of this type are frequently overcrowded, thus hindering access to exits. The level of risk to life safety



(continued on following page)

spaces connected thereto with a common means of egress and entrance.

302.4 Use Group A-3 structures: This use group shall include all buildings with or without an auditorium in which persons assemble for amusement, entertainment or recreation, and incidental motion picture, dramatic or theatrical presentations, lectures or other similar purposes without theatrical stage other than a raised platform; and principally used without permanent seating facilities, including art galleries, exhibition halls, museums, lecture halls, libraries, restaurants other than night clubs, and recreation centers; and buildings designed for other similar assembly purposes including passenger terminals.

302.5 Use Group A-4 structures: This use group shall include all buildings used as churches and for similar religious purposes.

in this use group is the highest as compared to all other assembly use groups and is reflected in the strictness of the code provisions (see Figure 5).

302.4 Use Group A-3 structures: Buildings representative of Use Group A-3 uses and the associated characteristics for this use are identified.

Exhibition halls, museums, libraries, indoor stadiums, gymnasiums and restaurants which are not classified as A-2 uses are among some of the facilities covered in A-3 uses. Lecture halls that are located in colleges, universities and academies for students above the 12th grade, and that have an occupant load of 50 or more are also contained in this use group classification.

Recreation centers, including health clubs, indoor arenas, indoor shooting galleries, bowling alleys, billiard halls and the like are classified as Use Group A-3.

The facilities covered under this use group vary widely as to the purpose of the occupancy and, indeed, the measure of the fire hazard in terms of combustible contents (fuel load). For example, the fuel load in a library or an exhibition hall would be considerably greater than that normally found in a bowling center or a lecture hall.

The common denominator in this group of uses is that the density of the occupant load is generally lower than it is for Use Groups A-1 and A-2. The risks to life safety are also lower — falling within an acceptable range regardless of the different conditions of occupancy.

302.5 Use Group A-4 structures: Buildings representative of Use Group A-4 and the associated characteristics of this use group are identified. This section includes all buildings in which people gather for religious purposes. It should be noted that any and all religions are included in the A-4 classification. Use Group A-4 resembles the A-1 and A-2 occupancies in that there is generally a large occupant load. But, unlike other assembly uses, A-4 occupancies are only in use for relatively short periods of time, i.e., the time it takes to hold a religious service. Buildings of Use Group A-4 typically contain a narthex or lobby, a nave, a sanctuary and an altar area. With the exception of the narthex, all other designated areas are open (see Figure 6).

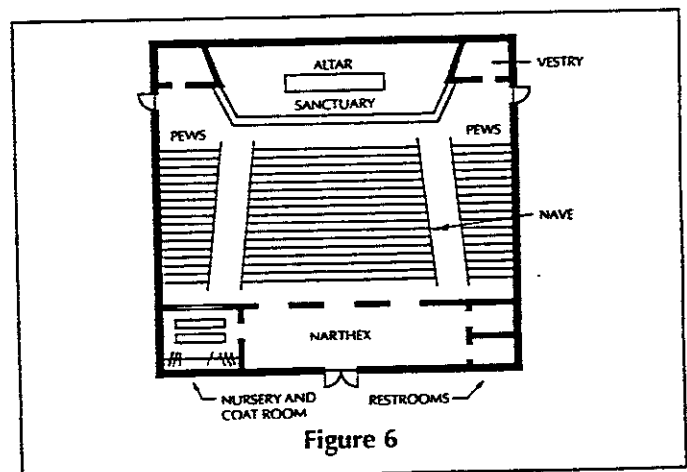


Figure 6

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

MICROFILMED

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Date

By

3/29/94
 M. J. Gora

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. Mer-

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 Ms. 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 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. As 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

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 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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Date

By

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-

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Date

By

3/29/94
Mr. David

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. Lamar, 25 Md. App. 493, 334 A2d. 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.

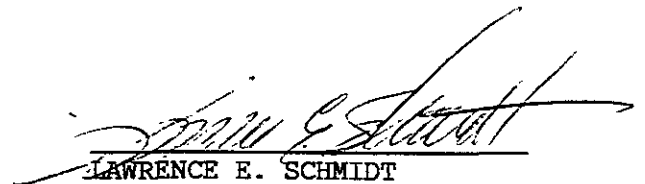
In summation, it appears that the Petitioners have attempted to create a new use, which they label as an "after-hours club", and seek authority to permit that use in certain zones in Baltimore County. Despite their creativity, a new use need not be created. A nightclub by any other name is still a nightclub, 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.

ORDER RECEIVED FOR FILING
Date 3/29/94
By M. J. Clark

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 29th 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


LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

ORDER RECEIVED FOR FILING

Date

By

3/29/44
M. J. Watkins

290SPHA



Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at NO LOCATION SPECIFIED
which is presently zoned -

This Petition shall be filed with the Office of Zoning Administration & Development Management.
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 Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve
Provide an interpretation that after-hours clubs (as to be described further at the public hearing) are permitted uses in certain zones and to determine what zones are appropriate to permit the use. (Per Section 500.6 of the Baltimore County Zoning Regulations.)

Property is to be posted and advertised as prescribed by Zoning Regulations.
I, or we, agree to pay expenses of 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.

Contract Purchaser/Lessee.

(Type or Print Name)

Signature

Address

City State Zipcode

Attorney for Petitioner.

Melvin J. Kodenski
(Type or Print Name)
Melvin J. Kodenski
Signature
19 E. Fayette St. Suite 301
Address
Balt. MD 21202
City State Zipcode
410-685-3100
Phone No.

Legal Owner(s) Petitioner(s)

Scott M. Culiner
(Type or Print Name)
Scott M. Culiner
Signature
William B. England, Jr.
(Type or Print Name)
William B. England, Jr.
Signature

2 Championship Ct. 356-3551/356-3601
Address Phone No.
Owings Mills MD 21117
City State Zipcode
Name, Address and phone number of representative to be contacted.
Scott M. Culiner / William B. England Jr.
Name
2 Championship Ct Owings Mills, MD 21117 356-3551/356-3601
Address Phone No.

OFFICE USE ONLY
ESTIMATED LENGTH OF HEARING 2 HRS.
unavailable for Hearing
the following dates _____ Next Two Months
ALL ☒ OTHER ☐
REVIEWED BY: [Signature] DATE 1/25/94

MICROFILMED



IN RE: PETITION FOR SPECIAL HEARING *	BEFORE THE
(8819 Orchard Tree Lane)	
9th Election District *	ZONING COMMISSIONER
4th Councilmanic District	
Paul M. Pardew, Property Owner*	OF BALTIMORE COUNTY
John M. Giorgelli, Proprietor	
Baltimore Co. Zoning Admin *	CASE No. V 95-211-SPH
& Dev. Mgt., Enforcement Div.	
Petitioner *	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as a Petition for Special Hearing for the property located at 8819 Orchard Tree Lane in Towson. The case is presented to this Zoning Commissioner in somewhat of an unusual posture in that the Petition for Special Hearing relief is not filed by the property owner. Rather, the Petition is filed by the Baltimore County Zoning Administration and Development Management Office (ZADM), Enforcement Division. The Petition presents two issues; namely, whether the business operation at the aforementioned property is an "After Hours Club" as defined in the Baltimore County Zoning Regulations (BCZR) and, if so, whether said use may continue without the benefit of a special exception and a variance to allow same within 1,000 ft. of a residentially used dwelling.

Appearing at the requisite public hearing held for this case was Kevin R. Connor, an inspector in the Enforcement Division of ZADM. Mr. Connor was present to explain the reasons behind the filing of the Petition for Special Hearing and to present the County's position. Appearing as interested persons was John A. Giorgelli, proprietor of Club 101, Inc., the business on the site and that corporation's counsel, Edward J. Covahey, Jr. Also present was Wayne Skinner on behalf of the Towson-LochRaven Community Council.

The facts presented regarding the subject property and uses thereon were largely not in dispute. The subject property is known as 8819 Orchard

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Tree Lane and is located near the intersection of Joppa Road and Loch Raven Boulevard in Towson. The property is zoned B.R. and is improved with a commercial building which has been on the site for many years. Mr. Giorgelli indicated that he is President and major stockholder of Club 101, Inc., a tenant of this building and proprietor of the business which has been brought into question. Mr. Giorgelli testified that, approximately two years ago, he recognized the lack of facilities available in Baltimore County to cater to the late night crowd for socializing and dancing. He, therefore, incorporated the business known as Club 101 and went into operation in March of 1993. The nature of the club is to operate a late night facility. The Club is open some Thursdays and most Fridays and Saturdays from 11:00 P.M. to 5:00 A.M. There is a dance floor and a disc jockey set up to provide entertainment. There are also some pool tables and similar amusement devices.

Owing to the liquor laws of Baltimore County and the State which prohibit late night sales of alcohol, the facility does not have a liquor license or sell liquor. Moreover, food is not sold, although a small independent food vendor operates in the front of the building. An admission fee is paid by the patrons who use the facility to socialize and listen and dance to the music provided. Patrons are allowed to bring in alcoholic beverages.

Mr. Giorgelli testified that prior to his going into business, he extensively investigated the propriety of this use both individually and through his counsel. He checked with the Liquor Board and was advised that since liquor was not sold there was no violation of any of that Board's requirements or regulations. He also spoke with the Fire Department, the Health Department and ZADM in Baltimore County. He was assured by all of these agencies that such a use was not violative of any County codes, laws or regulations. He attempted, in fact, to purchase a trader's license or other

license to legitimize the business but was advised by County agencies that no such license was required. Thus, the business went into operation and has continued for approximately two years.

As could be anticipated, many of the neighbors in the subject locale object to the operation of the business. In that the Club is open during late evening/early morning hours, the noise and traffic associated with the operation are objected to by some. Complaints were received by ZADM's Enforcement Division and Mr. Connor indicated that he has visited the site on a couple of occasions. He corroborated Mr. Giorgelli's description of the activities which occur thereon. He also described the large dancing floor and DJ setup. He admitted that he saw nothing unlawful or illegal and has brought the subject Petition to clarify the use of the subject property and whether same is violative of the BCZR.

Club 101 is not the only after hours club in Baltimore County. Other copy cat businesses have sprung up since Mr. Giorgelli went into business. The mushrooming of these businesses and their validity pursuant to the BCZR has resulted in other cases before the Zoning Commissioner's office and enactment of legislation by the Baltimore County Council.

The first case which came before this office was also before this Zoning Commissioner. That case was filed by Scott M. Curliner and William B. England, Jr. (case No. 94-290-SPH). The matter was filed in early 1994 and a decision was rendered by this Zoning Commissioner on March 29, 1994.

The Petition brought in that case sought an interpretation that after hours clubs as described in the testimony presented are permitted uses in certain zones and a determination of what zones are appropriate to permit such uses. Although a specific property was not the subject of that Petition, testimony was received about the activities that go on at these clubs. The activity described in the body of that opinion is similar to the

facts as were presented by Mr. Giorgelli and Mr. Connor in the instant case. At the time the case was held and considered, there was no definition of "After Hours Clubs" in the BCZR. Moreover, as is well settled, the Zoning Commissioner must consider all cases in context of the law then in effect at the time the decision is rendered. See Yorkdale Corporation v. Powell, 237 Md. 121 (1964).

Upon consideration of the evidence and testimony presented in the Culiner case, I held that the use described constituted a night club under the BCZR as it existed at that time. I noted that an after hours club was not an identified use in the BCZR and that the Court of Special Appeals, in Kowalski v. Lamar, 25 Md. App. 493 (1975), held that any use other than that permitted by the zoning ordinance and being carried on as of right or by special exception is prohibited. In the Culiner case, I determined that the proposed operation most closely fit the definition of a night club in the BCZR. As noted in that opinion, night clubs are not permitted in an M.L. zone.

The second case which came before this office related to the same property which is the subject of the instant Petition. That Petition was also filed by the Enforcement Division of ZADM. That Petition named Paul M. Pardew, property owner and John A. Giorgelli, tenant, as interested persons. The Petitioner sought a determination of whether or not the Club 101 use was an after hours club and whether same was permitted in a B.R. zone. In fact, the relief requested there was similar to the interpretation requested at this time.

That case came in for hearing before Deputy Commissioner, Timothy M. Kotroco. Deputy Kotroco's opinion and Order dated September 7, 1994 did not directly answer the question presented. Rather, he granted a preliminary Motion to Dismiss submitted by Mr. Giorgelli's counsel, Edward Covahey.

Specifically, Deputy Commissioner Kotroco held that since the Petition was filed in July of 1994, prior to the enactment of relevant legislation by the County Council in August, that consideration of the alleged violation of the BCZR was premature. Moreover, Deputy Commissioner Kotroco dismissed the action without prejudice, reserving to ZADM the right to file a new Petition for Special Hearing should they deem it appropriate in the future.

Also relevant to the issue presented, is the enactment of Bill 85-94 by the Baltimore County Council. This Bill, which took effect on August 8, 1994, amended the BCZR to provide a definition of after hours clubs and, in fact, regulated same. The definition added to the zoning regulations defined an after hours club as a "Commercial establishment whose principal business is the provision of live or recorded entertainment with or without a dance floor, which is open primarily between 11:00 P.M. and 4:00 A.M., and which does not have a Baltimore County liquor license. An after hours club is not a night club as defined in the zoning regulations or the building code of Baltimore County, Maryland". The legislation went on to provide that an after hours club was permitted in a B.R. zone only by special exception. Moreover, the Bill required that any after hours club located in a B.R. zone be situated at least 1,000 ft. from any residentially used structure.

Having recited this factual and legislative/hearing history, it is now appropriate to answer the questions presented by the subject Petition. In answer to the first question; namely, Is the subject property being used as an after hours club?, it is manifestly apparent that the answer must be in the affirmative. Clearly, the operation of the Club 101 is exactly what the Council envisioned when they enacted Bill 85-94. The facility, as described by Mr. Giorgelli and Mr. Connor, fits precisely the new definition of an after hours club. The business is open during the late evening hours, does

not have a liquor license, provides live entertainment and has a dance floor. Just as a rose by any other name is still a rose, Mr. Giorgelli's operation by any other name is an after hours club.

This is not inconsistent with the prior rulings of this office. As noted above, Mr. Kotroco declined to answer the precise question presented in the prior case regarding this property. Rather, he granted Mr. Covahey's Motion to Dismiss and held that the matter was premature for consideration at that time.

My prior decision in the Curliner/England case is also not a bar to this conclusion. As noted above, the Commissioner must consider each case in accordance with the regulations in effect at that time. When the Curliner/England case was heard, there was no definition of an after hours club in Baltimore County. Now that a definition has been so created and enacted by the legislature, it must be considered and applied in this case. Thus, it is clear that the business operated by Mr. Giorgelli is an after hours club.

In answer to the second question, whether same requires a special exception and need be located more than 1,000 ft. from a residential structure, the answer is "not yet". The legislation enacted by the Council defining after hours clubs (Bill 85-94) provided that any after hours club lawfully operating prior to the effective date of the Bill (August 6, 1994) which is violation of the requirements of said legislation shall be permitted to continue for a period not to exceed one year. That is, the Council clearly enacted a one year sunset provision, allowing after hours clubs a period of one year to comply with the new legislation.

As noted above, Bill 85-94 became effective on August 8, 1994. Thus, after hour clubs which are in violation of the provisions of that legisla-

tion have until August 9, 1995 to either come into compliance or to cease operations.

Moreover, it is clear that this sunset provision is applicable here. As noted above, the proposed use is indeed an after hours club which brings same within the purview of Bill 85-94. Moreover, it was stipulated that indeed the Club is in violation of the requirements contained therein, namely, that no special exception has been obtained and that the use is within a 1,000 ft. of a residential structure. The sole question open for a debate is whether Mr. Giorgelli's after hours club was "lawfully operating" prior to the effective date of the Act. I believe it was for a number of reasons. First, as Mr. Giorgelli testified and Mr. Connor corroborated, the business owner in this case expended great efforts and no doubt expense to legitimize this use before opening. His testimony was uncontradicted that he left no stone unturned in an effort to ensure that the business could legally operate. He checked with County and State agencies and received assurances from them that the business could properly operate. As Mr. Connor commented, he does not believe that the use is violative of any State or County ordinance, save the provisions of Bill 85-94 when they become effective as to this use on August 9, 1994.

Moreover, the use of the word "lawful" by the Council and the interpretation of that term is of note. In Germenko v. Public Services Commission, 226 Md. 295, (1961), the Court determined that lawful implied "that an Act is authorized, sanctioned or, at any rate, not forbidden by law", i.d. @ pg. 367. Although no licenses were obtained, even though same were requested, I believe that Mr. Giorgelli's use is, at the least, not forbidden by law. That is, irrespective of the fact that Mr. Giorgelli had no governmental permission to conduct the business, per se, it is apparent that the

business was not forbidden by any law, rule, regulation or standard when it opened.

It is also significant that the case file contains a copy of a permit for interior renovation of the building in 1987-88. Although this permit did not, in any way, address the proposed use as an after hours club, it is significant that the structure on the site was properly permitted by the Baltimore County Department of Permits and Licenses. Thus, it can be argued that the permit which allowed original construction and subsequent renovation to the building constitutes a tacit authorization or sanction of the use of that building for any purposes other than those illegal.

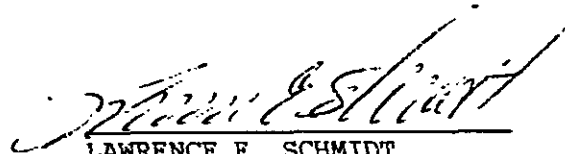
Based on the foregoing analysis, it is clear, therefore, that the subject business is indeed an after hours club. However, by its terms, the provisions of Bill 85-94 are not applicable thereto until August 9, 1995. Thus the Petition for Special Hearing should be granted in part and denied in part and there can be no finding of violation at the present.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the Petition for Special Hearing should be granted in part and denied in part.

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County this 2nd day of March, 1995 that, pursuant to the Petition for Special Hearing, approval as to whether the business operation at the aforementioned property is an "After Hours Club" as defined in the Baltimore County Zoning Regulations (BCZR), be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that the Petition for Special Hearing as it relates to the requirement that the property owner obtain approval for said use by a Petition for Special Exception, and be a 1,000 ft. from a residential property, be and is hereby DENIED, as premature.

Any appeal from this decision must be filed, in writing, within thirty days from the date of this Order to the County Board of Appeals.



LAWRENCE E. SCHMIDT
Zoning Commissioner for
Baltimore County

LES:mmn

IN RE: PETITION FOR SPECIAL HEARING * BEFORE THE
 (8819 Orchard Tree Lane)
 9th Election District * DEPUTY ZONING COMMISSIONER

Paul M. Pardew, Property Owner * OF BALTIMORE COUNTY
 and John A. Giorgelli, Resident Agent
 * Case No. V94-537-SPH

Baltimore County Zoning Admin.
 and Dev. Mgt., Enforcement Div. *
 Petitioner

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner as a Petition for Special Hearing for that property known as 8819 Orchard Tree Lane, located in the vicinity of Towson in northern Baltimore County. The Petition was filed by the Enforcement Division of the Zoning Administration and Development Management (ZADM) office, through James H. Thompson, Supervisor. The Petition was filed pursuant to Sections 26.3 and 26.121, Subsection (e) of the Baltimore County Code (B.C.C.), and Section 500.6 of the Baltimore County Zoning Regulations (B.C.Z.R.) Specifically, the Petitioner seeks a determination as to whether or not the use on the subject property as an "after hours club", known as "Club 101", should be interpreted as a nightclub, social club or any use which otherwise is permitted in a Business, Roadside (B.R.) zone, pursuant Section 101 - "Nightclub", and Sections 102.1 and 236 of the B.C.Z.R. The request for special hearing was filed by Mr. Thompson on July 12, 1994 and summons were issued to Mr. Paul M. Pardew, property owner, and John A. Giorgelli, Resident Agent, to appear before this Deputy Zoning Commissioner for a public hearing on the matter on August 17, 1994.

Appearing at the hearing in response to the summons were Messrs. Pardew and Giorgelli. The respondents were represented by Edward C. Covahey, Jr., Esquire, attorney at law. Appearing as an interested party

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was Wayne Skinner, a community activist and member of the Towson-Loch Raven Community Council.

As noted above, the Petitioner in this case was the Enforcement Division of ZADM, a Baltimore County agency. It should also be noted that no representative from that agency or any other Baltimore County agency appeared at the hearing to offer any testimony as to the special hearing request. On behalf of the respondents, Mr. Covahey requested a preliminary Motion to Dismiss this Petition, given the fact that there was no representative for the Petitioner. Mr. Covahey argued that his clients were not compelled to testify and were merely in attendance to respond to any testimony and evidence offered by the Petitioner.

In addition, Mr. Covahey argued by way of the Motion to Dismiss, that the date of the summons issued to his clients was July 12, 1994, which pre-dates the effective date of the new zoning regulations dealing with such "after hours clubs". It was pointed out that the effective date for this legislation was August 8, 1994. Mr. Covahey asserts that his clients were charged with the alleged violation almost one month prior to the new law taking effect. He requested that the matter be dismissed inasmuch as the Petition for Special Hearing and summons issued to his clients was done so prematurely. Finally, Mr. Covahey argues that this matter should be dismissed because a specific violation of the zoning regulations is not asserted within the Petition for Special Hearing.

I informed Mr. Covahey that the Motion to Dismiss the Petition for Special Hearing would be held sub curia and that we would proceed with the taking of any testimony in this case, after which I would rule upon his motion by way of this Order.

As noted above, no one appeared on behalf of Baltimore County to offer any testimony or evidence regarding the special hearing request. Mr. Wayne Skinner, a representative of the Towson-Loch Raven Community Council, was in attendance on the day of the hearing. Mr. Skinner, who has a keen interest in events that occur within his neighborhood, attended the hearing, more out of curiosity than with the intent to testify. Mr. Skinner did have some literature and limited testimony concerning the use of the subject property which he offered to this Deputy Zoning Commissioner. The testimony offered by Mr. Skinner was then rebutted and additional testimony offered by Mr. Covahey's clients.

After reviewing Mr. Covahey's request for dismissal of this case, it does not become necessary at this time to rule upon the testimony and evidence offered at the hearing. Rather, I am persuaded by his argument that the special hearing request filed herein should be dismissed. It is clear that the Petitioner in this case is Baltimore County. It is also clear that no representative from Baltimore County appeared at the hearing to offer any testimony or evidence concerning this matter. Therefore, I believe that the Petition for Special Hearing should be dismissed and I shall so Order; however, the Zoning Administration and Development Management (ZADM) office shall be permitted to file a new Petition for Special Hearing should they deem it appropriate to do so in the future.

Now that the new Council Bill No. 85-94 was enacted by the County Council as of August 8, 1994, ZADM may file a Petition at this time as to whether the existing business at 8819 Orchard Tree Lane is, in fact, an "after hours club" or some other type of business defined within Section 101 of the B.C.Z.R. In the event a new Petition for Special Hearing is filed by ZADM, it will be incumbent upon them to have a representative

present to offer testimony and evidence in support of the special hearing request. Furthermore, any new Petition for Special Hearing should specifically allege what regulation, if any, of the B.C.Z.R. has been violated.

Based on the arguments presented by Counsel for the respondents and a plain reading of Sections 26.3 and 26.121 of the Baltimore County Code, and Section 500.6 of the B.C.Z.R., the Respondent's Motion to Dismiss shall be granted and I shall so Order.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 7th day of September, 1994 that the Petition for Special Hearing in the above-captioned matter be and the same is hereby DISMISSED; and,

IT IS FURTHER ORDERED that the Petitioner shall be permitted to file a new Petition for Special Hearing, if deemed appropriate.


TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs

Petition for Special Hearing

Case #: V-94-537-SPH
to the Zoning Commissioner of Baltimore County
for the property located at 8819 Orchard Tree Lane
which is presently zoned B.R.

This Petition shall be filed with the Office of Zoning Administration & Development Management, Baltimore County, hereby petitions for a Special Hearing under Sections 26-3 and 26-121(a) of the County Code and Section 500.6 of the Zoning Regulations of Baltimore County, for the Zoning Commissioner to conduct a hearing involving a violation or alleged violation or non-compliance with any zoning regulations or order issued by the Zoning Commissioner, Board of Appeals or Court, or for the proper interpretation thereof, more specifically:

Section number(s): 101 "Nightclub"; 102.1; 236

Nature of violation(s):

Whether the "after hours club" existing at 8819 Orchard Tree Lane, known as Club 101, should be interpreted as a nightclub, social club or any use which otherwise is permitted in a Business, Roadside (B.R.) zone.

I do solemnly affirm that the contents stated above are correct to the best of my knowledge, information and belief.

Date

July 12, 1994

Office of Zoning Administration Representative

SUMMONS

ISSUED TO Paul M. Pardew
ADDRESS: 1424 Autumn Leaf Road
Baltimore, MD 21286-1501

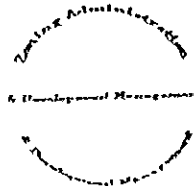
To appear and testify in the matter of an alleged zoning violation or for the purpose of a proper interpretation of the zoning regulations or order of the Zoning Commissioner, Board of Appeals or Court

Hearing Date: August 17, 1994 Time: 9:00 am ~~pm~~ Location: 400 Washington Avenue Room 118, Old Courthouse

Lawrence E. Schmidt

Please be advised that your failure to appear at the date, time and location stated above could result in your attachment.

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OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

ORDER RECEIVED FOR FILING

Date

By

NOTICE

to the Director of Zoning Administration & Development Management

Special Hearing # V-94-537-SPH

Date _____

I hereby acknowledge receipt of the attached Petition for Special Hearing

Date _____ Signature _____

Name (please print) _____

Address _____

Phone # _____

RETURN TO:

Director of Zoning Administration and Development Management
111 West Chesapeake Avenue, Suite 109
Towson, Maryland 21204

5396-94

11/1/94
JO KC
S

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Battalion Chief One DATE: October 31, 1994
FROM: L.P. Lester E. Paull, Jr., Acting Battalion Chief
 Fire Marshals Office
SUBJECT: PLACE OF ASSEMBLY
 CLUB 101
 8818 Orchard Tree Lane, (off Joppa Road)

The above after hours club operates Thursday, Friday and Saturday from 11:00PM to 6:00AM. We have received information from Zoning of a possible overcrowding condition during these times. The total occupant load is posted for 600 people. Zoning has requested a Fire Official to meet with Kevin Connor from Zoning at the Club 101 on Friday, November 4, 1994 at midnight, to check for overcrowding.

We are requesting the on duty Battalion Chief to meet with Mr. Connor on the above date and time to investigate the possible overcrowding condition and take the appropriate action.

If you have any questions please contact me at 887-4882.

LEP/dal

cc: Acting Deputy Chief Weir
 Acting Captain DeFlavis
 Kevin Connor, Zoning
 Reader File
 Master File
 File

RECEIVED
NOV 1 1994
ZADM

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IT
and with 7 the
to Kelly +
Riley, for
their info

Inspection on 11-4-94 @ 12:45 Am
@ Club 101. <sup>with Tom Pandee Dept. of
Crime</sup>

Upon entering club I notice
a food cart outside the establishment.

We met with owner who was not expecting
us & went about showing ~~us~~ his place.

I saw a very large dance floor
(50' x 60') Ten tables with about 4 chairs
around each table. Also 2 pool tables

The exits were clearly visible &
the owner demonstrated how things are
handled when customer bring ~~ing~~ ^{there}
beer.

There are two bars & a coast girl
the employees 6-7 employees in the.

Music was loud with smoke & laser show
Crowd normally starts to ~~in~~ ⁱⁿ around
1:30 am - 2:30 am. (We waited a while).

I saw the people coming in and
bringing beverages. Friday nites about 200-300 people
standing 500-500

Inspection Report

9:20pm - Left home to inspect "Club 101"
on Orchard Tree Lane.

9:45pm - Arrived at club doors were closed
I was told by a young lady who was
inside the Dance studio that the
Club would not open up until 10:00 pm

11:05pm - Revisited the Club it was just
opening; walk in and saw a very
large Dance floor with tables around
the outside (20-25 small tables).
By the place just opening it was ~~not~~
~~not~~ not crowded at all. I waited
about 1/2 hour then I left.

* The music was loud with 4
speakers (3'x4') at each corner of
the dance floor.

* There is also a bar area where you store
your booze & the have free set-up (ice, cups, etc)

Ken Conrad

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Conahey - stated we
contacted every department
before "John" opened
shop → could not
find any correspondence
nor reply to this proposed
use of this file

Charged with the
alleged violation almost one
month prior to the new
law → B.S.

Letter dated 4-15-94
by our office stated we
would take such action

His office in letter
dated 1-26-94 stated they
had an appointment review
date to file March 3, 94.

410 700 000 1/2 1/2

27. Meekins

② DID YOU 1993



Baltimore County
Office of Law

400 Washington Avenue
Towson, Maryland 21204
(410) 887-4420
Fax: (410) 296-0931

September 2, 1997

HAND DELIVERED

Mrs. Kathleen C. Bianco
Baltimore County Board of Appeals
Room 49, Old Courthouse
Towson, Maryland 21204

Re: Club 101, Inc.
Case No.: CBA-96-XA

Dear Mrs. Bianco:

Please enter my appearance on behalf of Baltimore County, Maryland in the above-captioned matter and forward any notices of future hearings to my attention. Thank you.

Very truly yours,

A handwritten signature in cursive script that reads "Nancy C. West".

Nancy C. West
Assistant County Attorney

NCW:raj

c: . Edward C. Covahey, Jr., Esq.
. Mr. Wayne Skinner
. Captain George Harvey
. Peter Max Zimmerman, Esq.

MICROFILMED

RECEIVED
COUNTY BOARD OF APPEALS
97 SEP -3 AM 10:27



IN THE MATTER OF
RAMPART PARTNERSHIP

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF BALTIMORE COUNTY
* CASE NO. 96-60-XA

* * * * *

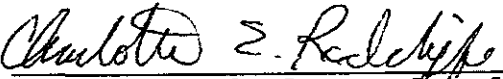
SUBPOENA

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on Thursday, November 20, 1997 at 10:00 a.m. in Room 48, Basement, Old Courthouse, located at 400 Washington Avenue, Towson, MD 21204, and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board:

Witness: Kevin Connor
c/o Baltimore County Office of
Fair Practices, Community Affairs
Address: 400 Washington Ave., Room 124
Towson, MD 21204

Requested by: Roger J. Sullivan, Esq.
Covahey & Boozer, P.A.
614 Bosley Avenue
Towson, MD 21204
410-828-9441

The witness named above is hereby ordered to so appear before the County Board of Appeals. (The Board requests the Sheriff to issue the summons set forth herein.)


County Board of Appeals of
Baltimore County

97-11-24.ldr

84:34 81 AON 16
RECEIVED
COUNTY BOARD OF APPEALS

MICROFILMED

IN THE MATTER OF

RAMPART PARTNERSHIP

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF BALTIMORE COUNTY
* CASE NO. 96-60-XA

* * * * *

SUBPOENA

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on Friday, December 12, 1997 at 9:00 a.m. in Room 48, Basement, Old Courthouse, located at 400 Washington Avenue, Towson, MD 21204, and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board:

Witness: Kevin Connor
c/o Baltimore County Office of
Fair Practices, Community Affairs
Address: 400 Washington Ave., Room 124
Towson, MD 21204

Requested by: Roger J. Sullivan, Esq.
Covahey & Boozer, P.A.
614 Bosley Avenue
Towson, MD 21204
410-828-9441

The witness named above is hereby ordered to so appear before the County Board of Appeals. (The Board requests the Sheriff to issue the summons set forth herein.)



County Board of Appeals of
Baltimore County

97-11-24.1dr

97 DEC -4 AM 11:41
RECEIVED
COUNTY BOARD OF APPEALS
MICROFILMED



Baltimore County
Office of Law

400 Washington Avenue
Towson, Maryland 21204
(410) 887-4420
Fax: (410) 296-0931

February 26, 1998

Mrs. Kathleen C. Bianco, Administrator
County Board of Appeals
for Baltimore County
Old Courthouse, Rm. 49
400 Washington Avenue
Towson, Maryland 21204

Re: In the Matter of Rampart Partnership-Club 101, Inc.
a.k.a. Liquids

Dear Mrs. Bianco:

I am hereby returning to the Board of Appeals the original Exhibit 15, a computer print-out, which was submitted by the County in its case-in-chief in the above referenced matter. I am copying this letter to Ed Covahey, Petitioner's Counsel, and Carole DeMilio, Deputy People's Counsel, and forwarding to them copies of the same.

Thank you.

Sincerely yours,

A handwritten signature in cursive script, reading "Nancy C. West".

Nancy C. West
Assistant County Attorney

NCW:jdo
Enclosures

c: Edward C. Covahey, Jr., Esquire
Carole S. DeMilio, Esquire

*Returned exhibit
#15 to file
2/27/98
Jab*

98 FEB 27 AM 10:16
RECEIVED
COUNTY BOARD OF APPEALS

MICROFILMED



COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: Rampart Partnership (Club 101) -Petitioner
Case No. 96-60-XA

DATE : April 23, 1998 @ 2:00 p.m.

BOARD /PANEL : Lawrence M. Stahl (LMS)
Charles L. Marks (CLM)
Donna M. Felling (DMF)

SECRETARY : Kathleen C. Bianco
Administrator

PURPOSE: To deliberate Case No. 96-60-XA /Rampart Partnership
(Club 101) -Petitioners.

IN ATTENDANCE: Edward C. Covahey, Jr., Esquire, and Roger
Sullivan, Esquire, Counsel for Petitioner; and
People's Counsel for Baltimore County represented
by Carole S. Demilio; and Nancy C. West, Assistant
County Attorney, on behalf of Baltimore County.

LMS: Good afternoon, everyone. We are here today in Case No. 96-
60-XA for deliberation in that matter, which is Rampart
Partnership /Club 101 matter. We are here for the public
deliberation.

I welcome all of our guests here today. I would say just a
momentary word -- this is a matter that took three days
testimony; it's an emotional issue for many people. We did
not discuss the matter among ourselves prior to coming here so
for the civilians, this is an open deliberation which means we
will come to our conclusion through a process of discussion.
We may talk among ourselves, question among ourselves much as
though you folks were not here. There will be no comments or
responses, and so forth. Okay, Mr. Marks?

CLM: This case has consumed a considerable amount of time for all
parties involved, and the Board who reviewed in depth the
testimony received, the evidence admitted, and applicable law
and court decisions. In the first instance the subject
property has been the subject of administrative body hearing.
And I believe that while the instant case is here de novo, we
do have to consider what happened in those prior cases, as
came up during the hearing and covered in previous submittals
by Petitioner, People's Counsel and Baltimore County.

Counsel for Petitioner argues that while the club in existence
at the Zoning Commissioner's decision, after hours club would
not be binding until August 1995, and since enforcement action
could not be taken at that point in time, there was no
determination from which to appeal. As to that argument, I

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Rampart Partnership /Club 101 -Petitioners
Case No. 96-60-XA /Minutes of Deliberation

clearly disagree. In the March 3, 1995 case, Commissioner Schmidt stated that at the time of the decision business conducted on the subject premises was indeed an "after hours club" as defined in the zoning regulations. That Order specifically references the period afforded to appeal the decision to the County Board of Appeals, which Petitioner elected not to do.

If it were a question of time element relative to enforcement issue, the question should have been the subject of an appeal accompanied by argument on the part of Counsel as to the effect of delay between the Opinion and August 9, 1995.

Baltimore County in places indicates that the present use is not an issue; tend to migrate to second issue in Petitioner's memo.

The same parties are parties to the case at bar; the appeal to this body stems from an order of November 6, 1996 in which the Zoning Commissioner denied Petitioner's request for a special exception, variance and special hearing. On December 5, 1996, just about meeting 30-day requirement, Petitioner elected to appeal and since that time, there have been five postponements due partially to attempts to resolve issues and new legislation enacted June 1997 prohibiting possession of alcohol after 2:00 a.m., known as the "bottle law."

The points raised by Petitioner are germane and pertinent. Order dated March 2, 1995; not timely appealed; and Petitioner is stuck with it. Question of current use is proper. If in fact, based on testimony and evidence produced at hearing bears substantive weight that substantial change has occurred in the business, based on Zoning Commissioner's decision denying special hearing, special exception and variance, then the use is valid; Petitioner stated property uses and designations change with great regularity and speed, but only to the extent provided; referenced Racine case decided in 1975 by the Court of Special Appeals -- "only where there has been substantial change in condition" - to that extent, Petitioner bears heavy burden and must prove by the weight of the evidence that substantial change has taken place in the conduct and operation of the business.

On the first day of hearing, Petitioner withdrew the special exception and variance requests with prejudice. In retrospect, that was probably a wise move on their part, but the Board does not have to rule on those issues; the Petitioners would be very hard-pressed to meet the statutory requirements relative to special exception and variance

Rampart Partnership /Club 101 -Petitioners
Case No. 96-60-XA /Minutes of Deliberation

granting in Schultz v. Pritts as to special exception, Chesterhaven and Cromwell v. Ward as to variance.

That leaves only the issue of special hearing. No doubt the County Council enacted Bill 85-94 because of severe complaints from citizen groups and law enforcement officers that after hours clubs needed to be restricted and curtailed. Also the State legislature passed the "bottle bill" -- designed to limit drinking of liquor in Baltimore County -- after-hours clubs to conform with other establishments.

Is the subject property and use currently one of a night club or one of continuing after-hours club? Definitions of both are stated in the zoning regulations. Both are commercial establishments that may or may not have a dance floor. After hours club primarily 11 p.m. to 4 a.m. Does not have Baltimore County liquor license. A night club provides live or recorded entertainment, principal business not stated in the night club definition.

The after-hours club principal use, however, must be the provision of live or recorded entertainment. A night club is categorized and defined in the BOCA code. That Code recognizes night clubs as coming under group use 2 -- where people congregate for drinking, dancing; there will always be unique characteristics to a project and considered when classification made. As to whether or not the subject property was an after-hours club on March 2, 1995 -- clearly indicated that Mr. Schmidt's determination based on testimony was that facility as described by those individuals fit definition of after-hours club; "...a rose by any other name is still a rose...." (L. Schmidt)

Mr. Giorgilli testified at length as to changes since Mr. Schmidt's ruling and the "bottle bill" -- the Board still must determine if... in the form of after hours club has been transformed to.... No evidence produced to indicate permits issued by Baltimore County nor any receipts or negotiable instruments or documentation to support claim. He indicated he opens and closes from 9 p.m. to 3 a.m. Yet in some of the flyers, he admitted, he advertises, 5 a.m. closing. The mere establishment of a trade name is not sufficient to establish change.

There was sufficient testimony from Captain Harvey and others that the club was continuing as in the past, remaining open until 4 a.m. while incidents occurring continued to be on-going problem. I believe important is that portion that relates to the principal business of after-hour clubs --

Rampart Partnership /Club 101 -Petitioners
Case No. 96-60-XA /Minutes of Deliberation

provision of live or recorded entertainment. That is not stated in night club definition.

There's no doubt that draw lies principally with younger group who, because of age and inability of facility to serve liquor, they rely on services provided by a D.J. and game amusements. No food sold in building; must come from admission charge at the front door. While Mr. Giorgilli states that only those over 21 may bring alcoholic beverages, once inside, there's not much one can do to prevent sharing of alcohol. Without dancing and music, one must question why anyone under 21 would pay admission fee to watch TV and play pool or machines in the facility.

There was also adequate testimony to refute Mr. Giorgilli's charge that by 2 a.m. all liquor is removed. There was substantial evidence that liquor is available for sale in the establishment despite lack of a liquor license. Problem area to extent that additional resources are needed to police -- detract from police authority to assure safety of surrounding community.

In considering this, one must consider Jeff Long's testimony - testified on many occasions before the Board and is recognized as an expert in land use planning -- stated all night clubs in Baltimore County at present time have liquor licenses and close at 2 a.m. as required by law.

Mr. O'Conner also concurred with Jeff Long. Mr. Mooney, Manager of Champion Billiards, acknowledged that dancing was available; primarily business was billiards and brewery; liquor license and in a commercial area.

Based on the testimony and evidence, I cannot conclude that Petitioner has met his burden of proving that use of the facility has changed significantly enough to disagree with Mr. Schmidt's decision. The Petitioner also raises constitutional issues that probably belong outside the jurisdictional limits of this body, since jurisdiction is a given as to land issues but constitutional issues are determined by higher body.

He must also show that he has in good faith made substantial expenditures or obligations. Again, while he alleges considerable expense, there is clearly no documentation in the file to substantiate this testimony other than advertisements presented by Baltimore County and People's Counsel; cases that to validate use of local government to enact zoning laws is clear. Sunshine laws have clearly been upheld. Question remaining -- reasonable as to the constraints imposed in

legislation.

Petitioner has not taken position that County Council lacks authority to enact bill, but only that it is unreasonable. But did not appeal March 2, 1995 and has withdrawn special exception and variance which is in reality practical form to plead constitutional questions. Entered into one-year lease subsequent to ruling that his operation was required to comply with County ordinance. Any hardship caused was the result of Petitioner's own action and case law does not go out in sympathetic vein to such individuals.

It is my opinion that Petitioner has failed to meet his burden of showing that the site has changed as reflected in Zoning Commissioner's opinion and order, and as such is bound by 85-94. Further that Petitioner has failed to establish that substantial change or expenditures have been incurred that prohibit enforcement.

LMS: I want to say to the two of you I agree with you, Chuck; I was very impressed with the memos. In a way, however, I probably face the same dilemma you did. There were a number of issues raised -- constitutional issues, vesting, amortization -- interesting reading but we really have to make a decision based on the parameters of what is important to the decision of the Board. Does the law apply; is there any way he can avoid it -- those are the questions involved.

Regarding constitutional issues (referenced People's Counsel's Memo) -- I've never been impressed with the authority of the Board of Appeals to discuss in the sense is a law constitutional; is law by nature or act constitutional; can we strike down the law by saying it's unconstitutional? I don't believe we have that authority. Do we have a procedure? Certainly I'm not comfortable with that. Don't see any real procedure.

Everyone has had more than sufficient say; have let everyone do what they needed to do to present the case. Everyone has leaned over backwards all along the line. I think that the issue is not whether or not this law, in some sense, is constitutional; someone else will have to make that decision.

Is it a night club or after-hours club? Specific definition - what we see on paper is what the writer meant for us to see. In the zoning regulations, an after-hours club is defined (at this point definition of "after hours club" was read). The definition goes on to say it's not a night club as defined in the zoning regulations or building code; said not only what it

Rampart Partnership /Club 101 -Petitioners
Case No. 96-60-XA /Minutes of Deliberation

is but also said what it is not. Means that there was a purpose to the legislation, to the language in the legislation. The purpose was that people who write the definition realized there was kinship between the two establishments, probably some overlap between establishments but two different things.

I think that under the definitions at the time of hearing, it was an after-hours club. At the time of Commissioner Schmidt's decision, it was an after-hours club. Now the Petitioner says, why is something less now; I take issue when you say there was no information; there was testimony and proffered things; but still the question is was it sufficient and such.

There's a difference between no evidence or insufficient evidence -- we simply did not believe it was sufficient; to say I was moved by the sum total of Petitioner's evidence to believe that substantive change had been made sufficient that looking at it I would say it is not now an after-hours club, but is not a night club -- did not result in that.

Other issues - after-hours club - I think that is clear. Constitutional issues are not such that he is going to change anything or it is within our purview to change. Regarding res judicata and estoppel, we have two sets of people -- the same people, lot of the same information. Whether or not Petitioner is estopped from bringing arguments now is not the issue -- since I have come to the conclusion that he is an after-hours club; those arguments do not change anything.

Regarding vesting -- If you do some substantive thing it will change or insulate you -- I don't believe that the expenses (whether or not you believe they existed; let's assume the expenses were spent in good faith for the property), I don't believe they were the kind of expenses; were maintenance and continuation expenses. The kind of vesting the statute calls for is based on legal use there before change -- someone goes out, gets permit, begins construction, start doing substantial things in order to get into the concept of vesting.

I don't think vesting really changed anything. The concept was not borne out by what we heard and saw.

Significant that the "bottle statute" gave everybody a chance to get out of it; to phase out of it. Shows the intent of the County Council to do this in an orderly, proper and fair manner; certainly this type of phasing out is not unusual thing -- on the premise that people should not be put upon by

Rampart Partnership /Club 101 -Petitioners
Case No. 96-60-XA /Minutes of Deliberation

the law any more than common good requires.

Petitioner can be in that same business somewhere where these issues concerning land use and zoning are not raised. Also goes to amortization argument -- someone is always limited or affected by zoning regulations as they are passed. But it should be done in a logical and rational order.

The effect of dismissing any actions beforehand -- in essence these were actions that clarified the issues -- dismissal would narrow us to the essential issue. I agree with Counsel for Petitioner that was appropriate way to focus us. Found it was really a question of special hearing and they settled the issue.

In sum, it is an after-hours club. It was properly found so; it still is so; and it still is subject to the rules and regulations that presently exist by Baltimore County Council is the theory whatever it is called or made up of, they have an after-hours club. With all those comments, I concur with you.

DMF: I have also spent many hours laboring over the opinions, reviewing additional materials; I reduced it to a basic question as outlined in previous discussions -- night club or after-hours club?

I will concur with you. Based on the fact that activities of night club are based around the consumption of alcohol which must terminate between 2:00 a.m. and 6:00 a.m. Petitioner's operation is to cater to late-night crowd. The "bottle bill" and after-hours club legislation were passed to address the issue. It is noted sufficiently, since this is a de novo hearing, without review of previous opinion -- it is noted that Petitioner - there were numerous attempts to open earlier. However, one thing is that he still remains open and efforts for activities as to late night activities -- "5 a.m. or until the party ends" -- this automatically in my review of the two definitions moves this establishment to after-hours club. I would also say I spent time with the BOCA code that was presented by Petitioner as the reason for why they were a night club. According to BOCA -- service facilities primarily for alcohol provisions with limited food service. I find that very difficult because truly this club does not have a liquor license and there is a lot of alcohol being consumed on an open basis, and it is primarily revolved around use of alcohol. Petitioner made clear during discussion this was part of what was going on in the club -- produced exhibits by pictures of how alcohol is used, set up and consumed; large

Rampart Partnership /Club 101 -Petitioners
Case No. 96-60-XA /Minutes of Deliberation

component of this business. Petitioner had discussion with Captain Harvey regarding the law and use of alcohol; meeting with Police Department.

In the summer of 1996, Petitioner clearly said that without alcohol he had no business. That was his own quote. Petitioner is running a business of alcohol without a liquor license. Definition of after-hours club does apply in this case.

As to the issues related to special hearing - constitutional issues - I would also agree to what was said by my colleagues regarding vesting rights. There was testimony of expenditures but no documentation; no reason for us to believe there has been proof of substantial change.

Bill 85-94, after-hours club legislation -- is very clear about the time limits on allowing people to come in -- all did come up previously. He has withdrawn the special exception and variance requests, so I don't think there is anything else we can do with that issue.

I think he has failed to meet the burden and is bound by the bill.

LMS: It appears that we are unanimously in agreement as to the issue. An opinion will be prepared by this Board from which the rights to appeal go for 30 days from the date of the Opinion, and not from today's date. And with that, I think we are adjourned. Thank you all.

* * * * *

Respectfully submitted,


Kathleen C. Bianco
Administrator

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

TO: L. Stahl
C. Marks
D. Felling

DATE: March 17, 1998

FROM: Kathi

SUBJECT: Case No. 96-60-XA /Rampart Partnership /Club 101

The subject matter is scheduled for deliberation on Thursday, April 23, 1998 at 2:00 p.m. As requested by the Board at the conclusion of the hearing day #3, on February 13th, the following documents were filed by Counsel, copies of which are provided herewith for each panel member's review:

1. Memorandum of Law filed by Edward C. Covahey, Jr., Esquire, and Roger J. Sullivan, Esquire, on behalf of Club 101, Inc., Petitioner;
2. People's Counsel's Memorandum filed by Peter Max Zimmerman, People's Counsel for Baltimore County, and Carole S. Demilio, Deputy People's Counsel; and
3. Memorandum of Baltimore County, Maryland, filed by Virginia W. Barnhart, County Attorney, and Nancy C. West, Assistant County Attorney.

A copy of the Notice of Deliberation was forwarded to you on March 4th. Should you have any questions regarding the above, or need any additional information, please call me.

kathi

Attachments

MICROFILMED

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director DATE: December 20, 1999
Permits & Development Management

FROM: Charlotte E. Radcliffe *CR*
County Board of Appeals

SUBJECT: Closed Files:
Case Nos.: 95-355-A /John Blasy
 96-60-XA /Club 101
 96-507-XA /303 N. Rolling Rd Partnership

Since no further appeals have been taken from the upper court opinions, we are hereby closing and returning the Board's case files to you herewith. The original files and exhibits were returned to your office by John Almond, Records Manager /CCT on November 2, 1999.

Attachments: Case Nos. 95-355-A; 96-60-XA; & 96-507-XA

MICROFILMED

COVAHEY & BOOZER, P. A.

ATTORNEYS AT LAW
614 BOSLEY AVENUE
TOWSON, MARYLAND 21204
AREA CODE 410
828-9441

EDWARD C. COVAHEY, JR.
F. VERNON BOOZER *
MARK S. DEVAN
ANTHONY J. DiPAULA *
THOMAS P. DORE
ROGER J. SULLIVAN

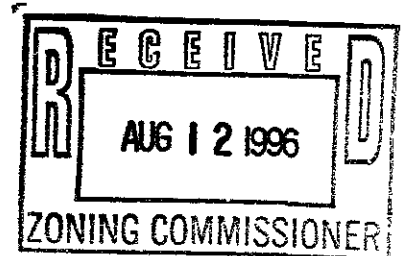
FAX 410-823-7530

ANNEX OFFICE
SUITE 302
606 BALTIMORE AVE.
TOWSON, MD. 21204

* ALSO ADMITTED TO D C BAR

August 9, 1996

Lawrence E. Schmidt, Zoning Commissioner
for Baltimore County
Courthouse, Suite 112
400 Washington Avenue
Towson, Maryland 21204



Re: Petitions for Special Exception and Variance
8819 Orchard Tree Lane
Case No. 96-60-XA

Dear Mr. Schmidt:

The Petitioner in the above-captioned case is in complete agreement with the Order and the provisions except for Item 6, the hours of operation. As I recall when we were before the Commissioner, it was agreed that the Club could also operate on the night preceding major holidays.

The Commissioner's indulgence in this matter would be appreciated, and it would also be appreciated if you could contact me with respect to same.

By separate copy of this letter, I am apprising Wayne Skinner of this matter.

Very truly yours,

Edward C. Covahey, Jr.

ECC,Jr./ldr
09ldr.13

cc: Mr. Wayne Skinner
Mr. John Giorgilli

WAYNE SKINNER
fax-767-4870

MICROFILMED

COVAHEY & BOOZER, P. A.

ATTORNEYS AT LAW
614 BOSLEY AVENUE
TOWSON, MARYLAND 21204
AREA CODE 410

828-9441

FAX 410-823-7530

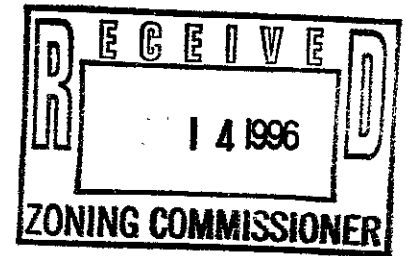
EDWARD C. COVAHEY, JR.
F. VERNON BOOZER *
MARK S. DEVAN
ANTHONY J. DiPAULA *
THOMAS P. DORE
ROGER J. SULLIVAN

ANNEX OFFICE
SUITE 302
606 BALTIMORE AVE.
TOWSON, MD. 21204

November 12, 1996

* ALSO ADMITTED TO D. C. BAR

Lawrence E. Schmidt, Zoning Commissioner
for Baltimore County
111 W. Chesapeake Avenue
Towson, Maryland 21204



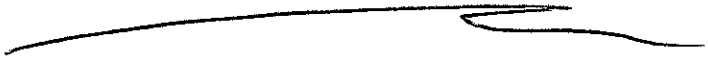
Re: Property: 8819 Orchard Tree Lane
Case No.: 96-60-SPHXA

Dear Mr. Schmidt:

Enclosed please find Findings of Fact and Conclusions of Law re: the above as executed by John Giorgilli without changing the date of same from September 1, 1997 to November 1, 1997. Accordingly, it would appear appropriate that a new Order be issued.

It would be appreciated if you would provide me with any additional procedures that you would desire to be undertaken in this matter.

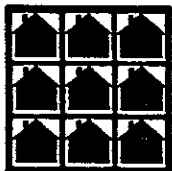
Very truly yours,


Edward C. Covahey, Jr.

ECC,Jr./ldr
Enclosure
12ldr.19

cc: Mr. John A. Giorgilli

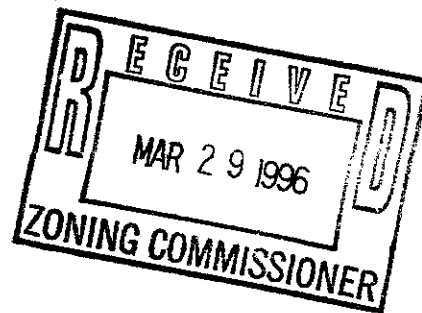
MICROFILMED



THE GREATER TOWSON COUNCIL OF COMMUNITY ASSOCIATIONS, INC.
620 MURDOCK ROAD • BALTIMORE, MD • 21212

March 28, 1996

The Honorable Lawrence Schmidt
Zoning Commissioner for Baltimore County
Old Courthouse
Washington Avenue
Towson, Maryland 21204



Re: 8819 Orchard Tree Lane
Club 101
Case No.: 96-60SPHXA
Hearing: April 2, 1996

Dear Commissioner Schmidt:

Please accept this letter in opposition to the request of Club 101 to operate an After-Hours Club at the above location.

There is no question that the proposed usage of this property violates appropriate zoning regulations in that their proximity to a residential neighborhood is greatly in excess of that permitted under the code. In order to preserve the neighborhood and to maintain peace and order in the area we are requesting that you deny the requested relief.

Very truly yours,


Justin J. King,
President

JJK/mlw

MICROFILMED

Club 101

The County Council passed the After-Hours bill in June 1994, enacted August 1994, effective August 1995.

During the drafting of the bill, John had requested at least two years to recover his expenses. That would make it August 1996.

The residents would like to have the club closed yesterday. However, realistically, that will not happen. The three residents (separate parcels) are willing to negotiate a settlement.

Our counteroffer to 2 years - 18 months is: June 1, 1997.

The reason: Although complaints are received throughout the year, most of the complaints from the residents are during the summer months (residents' windows are open and club patrons hang out outside). The summer of 1996 is a given (no matter what happens, the club will be open). So that the residents don't live through another summer, close by June 1, 1997.

Other concerns:

- * no subleasing, prior to or after ~~June 1~~
- * absolutely no free beer on premises (give aways)
- * clean up parking lot of trash (business concern)
- * keep the back door closed
- * don't allow patrons to hang around out back (prevent them from urinating on the wall, from throwing beer bottles onto the residents' yards)
- * keep the internal noise down to acceptable State levels (there is a State noise control law)
- * prevent loitering in the parking lot

04/11/96

* Not to expand current
beyond Thurs, Fri SAT
+
Holidays

MICROFILMED

* Turn down the wooter



Towson - Loch Raven Community Council, Inc.
P.O. Box 27682
Towson, Maryland 21285-7682

January 15, 1996

Mr. Lawrence E. Schmidt
Zoning Commissioner for Baltimore County
Old Courthouse
400 Washington Avenue
Towson, MD 21204

RE: Club 101
Case #96-60-XA

Dear Mr. Schmidt:

The hearing for Club 101 was originally scheduled for September 19, 1995, then postponed to October 19, 1995. At that time, it was decided to continue the hearing on another date.

Since it has been just about 3 months, will another date be set-up soon. Please advise.

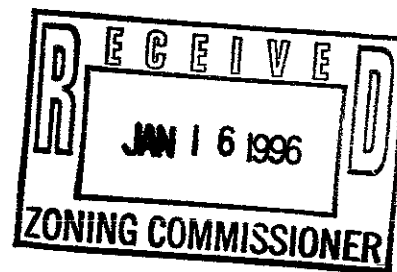
I can be contacted at (H) 661-8249, (W) 225-5759 or the above address.

Thank you for your attention.

Sincerely,

A handwritten signature in cursive script that reads "Wayne Skinner".

Wayne Skinner



MICROFILMED



Towson - Loch Raven Community Council, Inc.
P.O. Box 27682
Towson, Maryland 21285-7682

June 13, 1996

Mr. Lawrence E. Schmidt
Zoning Commissioner for Baltimore County
Towson Courthouse
400 Washington Avenue
Towson, MD 21204

RE: Club 101
96-60-SPHXA

Dear Mr. Schmidt,

On April 12, 1996, a hearing was conducted by your office concerning Club 101, an after-hours club located on Orchard Tree Lane.

At the conclusion of the hearing, it was my understanding that Covahey & Boozer, PA, who represented John Giorgilli, the owner and operator of Club 101, would draft an agreement for review by your office and the Towson-Loch Raven Community Council, Inc. (TLRCC).

As of the above date, we have not received a draft for our review. Please advise us of the status of the draft agreement. I can be contacted at the above address or by calling (W) 767-5759.

Thank you for your attention.

Sincerely,

A handwritten signature in cursive script, reading "Wayne Skinner".

Wayne Skinner

cc: Edward C. Covahey, Jr.
Donna Spicer, President, TLRCC

MICROFILMED

I called and advised that draft order had been prepared & forwarded to Covahey for review, distribution & signature on May 22, 1996.

Laurence Schmidt
Zentral Commissionierter
Tombon Courthaus
400 Washington Ave
Tombon, MD 21088

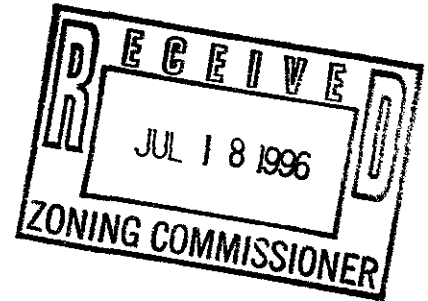
6666/00212

TLRCC

Towson - Loch Raven Community Council, Inc.
P.O. Box 27682
Towson, Maryland 21285-7682

July 15, 1996

Mr. Lawrence E. Schmidt
Zoning Commissioner for Baltimore County
Towson Courthouse
400 Washington Avenue
Towson, MD 21204



RE: Club 101
96-60-SPHXA

Dear Mr. Schmidt:

On April 12, 1996, a hearing was conducted by your office concerning Club 101, an after-hours club located on Orchard Tree Lane.

On June 13, 1996, I sent your office a letter inquiring about the status of the written decision. A representative from your office promptly called and informed me that your office has forwarded a decision to Mr. Edward Covahey for his follow-up.

To date, TLRCC has not received any correspondence from anyone. As you might expect, we are most anxious to complete the agreement so enforcement can start.

Please advise us of the current status. My home telephone number is 661-8249 or I can be reached at work at 767-5759.

Thank you for your attention.

Sincerely,

Wayne Skinner
TLRCC Representative

cc: Edward C. Covahey, Jr.
Donna Spicer, President, TLRCC

*I called
Wayne Skinner
advised of status
He'll call
Ed Covahey
JES 7/16/96
(File)*

MICROFILMED

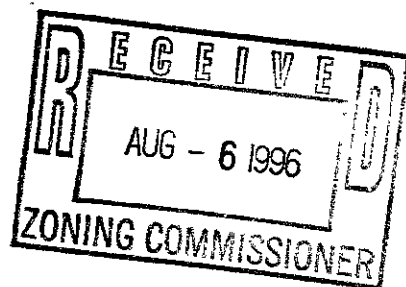


Towson - Loch Raven Community Council, Inc.
P.O. Box 27682
Towson, Maryland 21285-7682

August 2, 1996

Mr. Lawrence E. Schmidt
Zoning Commissioner for Baltimore County
Towson Courthouse
400 Washington Avenue
Towson, MD 21204

RE: Club 101
96-60-SPHXA



Dear Mr. Schmidt:

This is a follow-up letter to our recent telephone conversation regarding Club 101.

I contacted Mr. Cohavey's office on Friday, July 19th regarding the agreement. I was advised that the agreement was waiting for Mr. John Giorgilli to pick up. I made arrangements to pick it up around 4:00 pm. Around 3:30 pm, Mr. Cohavey's office called and told me that Mr. Giorgilli has just picked up the agreement.

I believe it was Monday, July 22 that I called Mr. Giorgilli and left a message for him to call me. He called back on Tuesday around 4 pm. When I returned his call later that day, Mr. Giorgilli answered and said he would call me right back. He never did. On Wednesday, I called him again and left another message. To date, he has not returned my call.

This past weekend I called one of the residents of Green Pastures Drive. He has not heard from Mr. Giorgilli nor has anyone stopped by to show him the agreement.

Since I am not getting anywhere with Mr. Giorgilli, my thought is to get a copy of the agreement from your office so I can review it, then take it to the three residences along Green Pastures Drive. If this is possible, please send a copy of it to my home: 1813 Edgewood Road, 21234.

Thank you for your attention.

Sincerely,

Wayne Skinner
TLRCC Representative

cc: Donna Spicer, President, TLRCC

MICROFILMED

COVAHEY & BOOZER, P. /

ATTORNEYS AT LAW
614 BOSLEY AVENUE
TOWSON, MARYLAND 21204
AREA CODE 410
828-9441

EDWARD C. COVAHEY, JR.
F. VERNON BOOZER *
MARK S. DEVAN
ANTHONY J. DIPAUZA *
THOMAS P. DORE
ROGER J. SULLIVAN

FAX 410-823-7530

ANNEX OFFICE
SUITE 302
606 BALTIMORE AVE
TOWSON, MD 21204

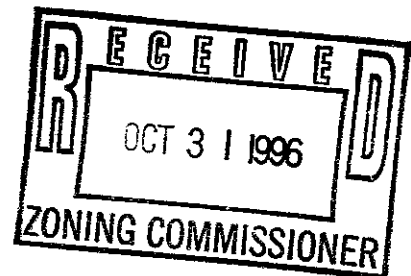
October 31, 1996

* ALSO ADMITTED TO D. C. BAR

VIA FAX - 887-3468

Lawrence E. Schmidt, Zoning Commissioner
for Baltimore County
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Property: 8819 Orchard Tree Lane
Case No.: 96-60-SPHXA



Dear Mr. Schmidt:

I have repeatedly discussed with my client the affixing of his signature to the Findings of Fact and Conclusions of Law in the above-captioned. Unfortunately, he will not execute same in that he is being repeatedly charged by the Baltimore County Police Department with various alleged liquor law offenses pursuant to Article 23 of the Annotated Code. John feels that as the Police Department is a Baltimore County agency, this action is contrary to the spirit and intent of the agreement that was reached at the zoning hearing. I have explained to John that you are involved in zoning, and that the police action is a separate and distinct matter. However, John views each agency of the County as a single entity; i.e., Baltimore County, Maryland, a body politic. John also feels that the community associations that agreed to the Order are now behind the Police Department's actions, and that they have violated the spirit and intent of the proposed Order.

Recognizing that you dispense justice with the wisdom of Solomon, the ball is in your court.

KINDEST REGARDS.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Edward C. Covahey, Jr.", with a long, sweeping horizontal line extending to the right.

Edward C. Covahey, Jr.

ECC,Jr./ldr
31ldr.20

cc: Mr. John A. Giorgilli

MICROFILMED

1813 Edgewood Road
Baltimore, MD 21234

October 11, 1996

TO: Larry Schmidt (via FAX)
FROM: Wayne Skinner
RE: Club 101

FYI

On October 9th, I received a telephone message (on my voice mail) to contact Mr. Edward Covahey's office regarding Club 101.

I called on October 10th and spoke with his secretary. They wanted me to pick up the amended agreement, get it signed by all parties, then return it for John Giorgilli's signature.

I suggested that John sign it first, then I would pick it up and have it signed by the others. I did this because I didn't want to do all the work of getting it signed only to have John refuse to sign it. His secretary will relay my message to Mr. Covahey.

MICROFILMED



Towson - Loch Raven Community Council, Inc.
P.O. Box 27682
Towson, Maryland 21285-7682

October 28, 1996

Mr. Lawrence E. Schmidt (via FAX)
Zoning Commissioner

RE: Club 101
Case # 96-60-XA

Dear Mr. Schmidt,

On September 23, 1996, you wrote to Mr. Covahey regarding the agreement discussed during the April 12, 1996 hearing.

On October 9, 1996, someone from Mr. Covahey's office called me regarding the agreement. When I returned the call on October 10th, I was asked to pick up the agreement, get all the signatures, then return it to them for John Giorgilli's signature. I suggested that John Giorgilli sign it first, then I'll pick it up and get all the other signatures. My reason for declining to sign first, then have Mr. Giorgilli sign is because I had no guarantee that Mr. Giorgilli would sign the agreement.

Since October 10th, I have not heard from anyone regarding this agreement. It has now been over one month since your correspondence to Mr. Covahey. Furthermore, Mr. Giorgilli's actions during the past few months demonstrate that he has no intentions of finalizing the agreement. I am thereby requesting that you deny Mr. Giorgilli's request for special exception and variance.

Thank you for your attention.

Sincerely,

A handwritten signature in black ink, reading 'Wayne Skinner'. The signature is written in a cursive, flowing style with a large 'W' and 'S'.

Wayne Skinner
TLRCC Representative

MICROFILMED

TLRCC

Towson - Loch Raven Community Council, Inc.
P.O. Box 27682
Towson, Maryland 21285-7682

File

November 13, 1996

TO: Edward Covahey (via FAX)
FROM: Wayne Skinner *W*
RE: Club 101

Yesterday, you called on behalf of your client and inquired whether TLRCC would be interested in revisiting the proposed zoning agreement with a revised offered club closing date of November 1, 1997 (and no private parties).

On October 28, 1996, I faxed a letter to Lawrence Schmidt asking him to deny your client's petitions (the subject of the April 1996 zoning hearing). The reason - for the past few months we have been trying to get the verbally agreed upon restrictions in writing and signed by your client. Your client never signed them. We also heard a few weeks ago that your client personally informed the police that there was no zoning agreement.

Quite frankly, TLRCC tried to work with your client, but he didn't work with us.

In regards to your client's most recent offer, the answer is no. The matter is out of TLRCC's hands. The issue is now between Club 101 and Baltimore County.

Thank you for your attention.

cc: Lawrence Schmidt (via FAX)

MICROFILMED



HALLOWEEN NIGHT COSTUME PARTY

Tuesday, October 31, 1995
Halloween Bash at Club 101
from 10 p.m. - 5 a.m.

CASH PRIZES for Best Costume

1st Place - \$250.00

2nd Place - \$150.00

3rd Place - \$75.00



ALL YOU CAN DRINK
20 Kegs of Beer
plus BYOB

8819 Orchard Tree Lane
Towson, MD 21204

Info: (410) 442-9643
Club: (410) 828-0001

MICROFILMED

Barbara S. Gavin
Attorney at Law
303 Allegheny Avenue
Suite 2001
Baltimore, Maryland 21204
(410) 337-0051

January 12, 1998

Baltimore County Board of Zoning Appeals
Room 49, Old Courthouse
Towson, Maryland 21204

Re: Case No.: 96-60-XA
Club 101

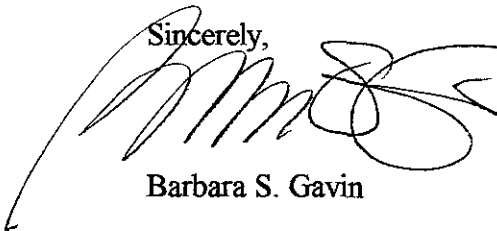
*File
Noted*

Dear Sir/Madam:

Please send me a copy of the Board of Appeals decision when it is rendered for the above-captioned case.

Thank you in advance for your assistance in this matter.

Sincerely,



Barbara S. Gavin

*COPY SENT
10-30-98*

bcc

MICROFILMED

109 West Meirose Avenue
Baltimore, Maryland 21210
(410) 323-8800
Fax (410) 323-0301

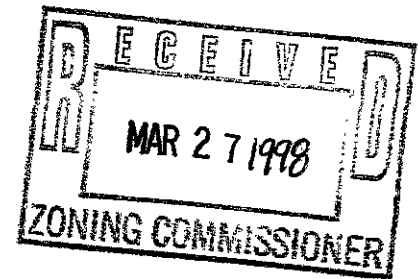
RECEIVED
COUNTY BOARD OF APPEALS
98 APR -2 AM 11:53

Case at
now at
CBA
4/1/98

The Bryn Mawr School

March 26, 1998

Mr. Laurence Schmidt
Baltimore County Zoning Commission
410 Bosley Avenue
Towson, MD 21204



Dear Mr. Schmidt:

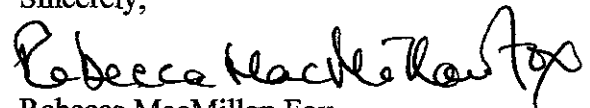
Recently, I read an article in the *Baltimore Sun* which mentioned that last November Liquids, the Towson dance club, was denied a zoning permit. The club's owner is currently appealing the decision and, as of this writing, the club remains open for business.

It has come to my attention that a number of area young people -- students who attend Bryn Mawr as well as other independent and public schools -- are regularly frequenting Liquids on the weekends. Apparently, business is rather slow until about midnight. At that time, however, scores of young people arrive. They are allowed in the club, which is supposed to be open only to people who are over age 18, by presenting fake IDs. The club remains open until approximately 4 a.m.

As you know, the Baltimore County police are well acquainted with Liquids. According to the *Sun* article, last year police officers responded to 197 calls about activities going on there. Our students, some of whom are as young as 16, have told of very troubling incidents taking place inside the club and in its parking lot, ranging from fighting to drug use. One young person repeated a rumor, unsubstantiated, which describes the club's owner as "one of the biggest coke dealers around."

Clearly, Liquids is not a safe place for our children. I urge you to deny the appeal. Thank you for your consideration.

Sincerely,


Rebecca MacMillan Fox
Head of School

cc: Mike Gimbel, Baltimore County Drug Prevention

MICROFILMED

RECEIVED POST-HEARING
DAY ONE

COPY

COVAHEY & BOOZER, P. A.

ATTORNEYS AT LAW
614 BOSLEY AVENUE
TOWSON, MARYLAND 21204
AREA CODE 410
828-9441

EDWARD C. COVAHEY, JR.
F. VERNON BOOZER *
MARK S. DEVAN
ANTHONY J. DiPAULA *
THOMAS P. DORE
ROGER J. SULLIVAN
MICHAEL T. PATE

FAX 410-823-7530

ANNEX OFFICE
SUITE 302
606 BALTIMORE AVE.
TOWSON, MD. 21204

October 1, 1998

* ALSO ADMITTED TO D. C. BAR

Ms. Carolyn Peatt
Towson Reporting Co., Inc.
600 Baltimore Avenue
Towson, Maryland 21204

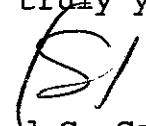
Re: Club 101, Inc./John A. Giorgilli
8819 Orchard Tree Lane
Court of Appeals Case No. 96-60-XA

Dear Carolyn:

Please cause the transcript in the above-captioned matter to be prepared, including all dates on which this matter was before the Board, including October 7, 1997, November 20, 1997, December 12, 1997, and all 1998 dates. Enclosed please find my check in the amount of \$1,560.00 to cover the cost of same.

If you require anything further, please do not hesitate to contact my office.

Very truly yours,


Edward C. Covahey, Jr.

ECC, Jr./ldr
Enclosure
24ldr.09

cc: County Board of Appeals
for Baltimore County
Mr. John A. Giorgilli

RECEIVED
COUNTY BOARD OF APPEALS
98 OCT -2 PM 3:21

MICROFILMED

PLEASE PRINT CLEARLY

PROTESTANT(S) SIGN-IN SHEET

NAME

ADDRESS

WAYNE SKINNER

1813 EDGEWOOD RD 21234



MICROFILMED

4/12/96

PLEASE PRINT CLEARLY

CITIZEN SIGN-IN SHEET

NAME

ADDRESS

Wayne SKINNER

JOHN HARTER

Shirley Chandler 8713 Green Pastures Dr
21286

Ed COVAHEY

LORNE HASTINGS

John Giorgilli;

see Club 101

Scott Cullner
3 Championship Ct
OH 21117

MICROFILMED

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME

ADDRESS

SUSAN PARDEW

828 Warren Rd Cocheysville

John Giarrilli

9203 Green House Circle 21030

LORNE HASTINGS

41 Eastship Rd 21222 21236

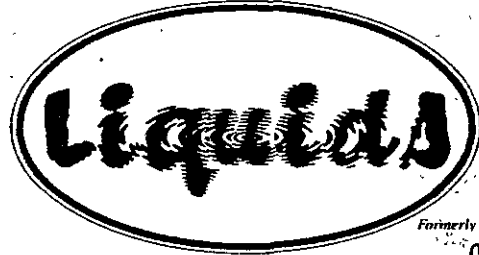
Ed Cowhey



Printed with Soybean Ink
on Recycled Paper

MICROFILMED

THURSDAY NIGHT - college night -



Nightclub
Presents

"GROOVE JET"

**EVERY THURSDAY NIGHT
OPEN 9:00 - 5:00 AM**

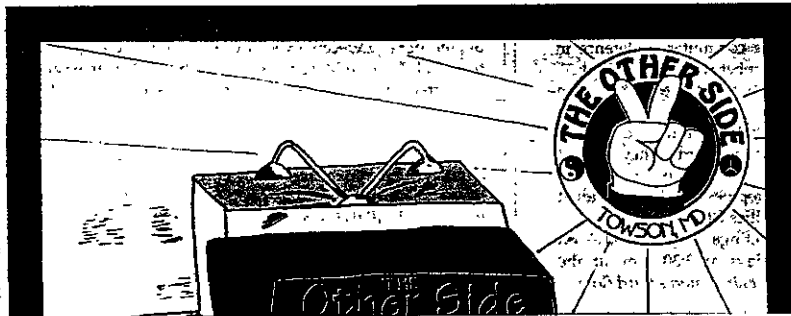
18+ ARE WELCOME

**21+ BYOB TIL 2 AM
PARTY TIL 5 AM**

(410) 828 0001

8819 ORCHARD TREE LANE TOWSON, MARYLAND 21204

\$2.00 off with this add!



NEWS

Student group offers Coca-Cola for spiritual surveys

The Reformed University Fellowship held a booth outside of the University Union giving free Coca-Cola to people who filled out spiritual surveys. Dan Passerelli, an International Studies major, and member of the group said that there were two goals with the event.

"One was taking a spiritual survey in the hope to find Christians interested in learning about Christianity," says Passerelli, "and the other was to talk about Christ."

Passerelli also said that he was able to talk with an atheist about Christianity.

The group meets every Wednesday night at 7:30 p.m. at the Severn Lounge in the Union. For more information call ext. 7246.

The Student activities board presents

The Student Activities Board will sponsor many activities through out the semester. There will be Friday Night movies such as Con Air, Batman and Robin and Men in Black. Other Friday night programs include Big Band Nights and Comedy/Variety nights. The SAB will also sponsor Off Campus Adventures to New York City, Hershey Park, The Renaissance Festival and Washington D.C.

Dr. Smith doing well

Last weeks Recommended Reading reports that President Hoke Smith, who underwent

Come to session or well being. All se Wednesdays at 1 University U

314. For mation 3649



strengthening families offers a wide n grams such as Adult Parenting support Child Development Center is looking f people who would in volunteering a mentor or just to p life skills to other information call Je (410) 235-0555.

Go Hike a

Join forces with Falls State Park sta teens in cleaning ar ing park trails. On 27, for 9 a.m.- 2p m 10 a.m.-2p.m. and o 1, 9 a.m.- 2p.m. For more informati 592-2897.

Ronald McI House need

The Ronald McD is looking for volun the piano, paint org party, bake a cake, f any other talent t lives of sick children pier. They are also organizations to p the meal program information call (41

Study Ab

To find out ho

Balto. Co. Philist #1

MICROFILMED

WHERE:

CLUB
101

The Infamous Party House

WHEN:

MONDAY, AUGUST 5, 1996

9:00 PM

'til everyone runs away!!!

(Monday, so that all of our

bar family members can attend.)

It's a Birthday Party (or just a good excuse to have
a great party). Don't worry about gifts, because the
only true gift is your company at our party.

(BULLSHIT!!!)

MICROFILMED

CATERED BY:

BIG AL'S CATERING

MENU:

Pit Beef, Pit Ham, Oysters, Sausage,
Chicken, Hamburgers, Hot Dogs,
Potato Salad, Macaroni Salad, Cole Slaw

40 Keg Keg Truck (Coors Light,
Miller Lite & Killians Red)

PLENTY of Top Shelf Alcohol

COST:

FREE

(DID THIS CATCH YOUR ATTENTION!)

ONE GUEST PER INVITATION ONLY

Robert
Bullshit Co. #2

**CLUB
101**

"We Do It ALL Night Long"

Don't Believe the Hype

Club 101 has never closed its doors in four years of business. In fact, we are open tonight! As long as I am the owner, Club 101 will always have its doors open to you, the customer, to utilize for late night entertainment.

BUSINESS AS USUAL - BYOB!

Johnny G

8819 Orchard Tree Lane Info: (410) 442-9643
Towson, MD 21204 Club: (410) 828-0001

Open Thursday, Friday & Saturday 11p.m. to 5 a.m.

Paulo C. Spillid #3

Directions to Club 101:

Take 695 to Exit 29 (Loch Raven exit). Once on Exit 29, proceed to the light at the top of the hill which is Joppa Road. Make a right hand turn at the light. Go down Joppa Road and proceed through one more traffic light. Thirty yards past light on the right is Orchard Tree Lane. Make a right and go straight back this road to the last building on the right. 8819 Orchard Tree Lane.

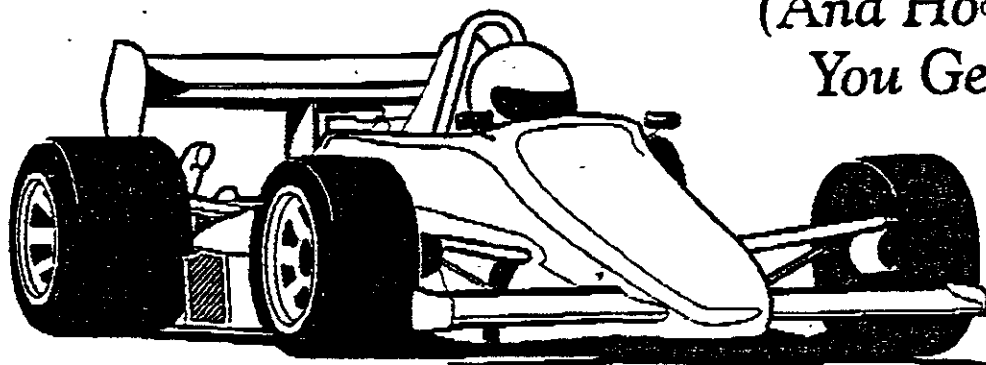
MICROFILMED

1st Annual Cannonball Run

From Baltimore, MD to Ocean City, MD
on Memorial Day Weekend



(And How Fast Can
You Get There?)



- Entry Fee:** \$100.00 per car which includes two Cannonball T-shirts. (Additional T-shirts \$15.00)
- Starting Place & Time:** You have a 3-hour window to leave from Club 101 in Towson on Friday Night, May 24th between midnight and 3:00 a.m. Saturday morning.
- Finish Line:** Secrets in Ocean City, MD on 49th Street & Bayside between the hours of 1:00 a.m. - 6:00 a.m.
- Rules:** **THERE ARE NONE!** (Just get there as fast as you can.)
You will be disqualified if you travel by airplane or motorcycle.
- First Place:** Guaranteed \$2500.00
- Second Place:** Guaranteed \$1000.00
- Third Place:** Guaranteed \$500.00
- Consolation Prize:**
- One:** Best Costume - Guaranteed \$500.00 (See the movie if you are lost.)
- Two:** Most Traffic Fines - Guaranteed \$500.00

Prize Info: ALL PRIZES ARE BASED ON ONLY 50 ENTRIES. PRIZES WILL INCREASE ACCORDINGLY. (Example: If 100 cars enter, then all prizes will then be doubled.) PRIZES WILL BE ANNOUNCED AND AWARDED AT SECRET'S IN OCEAN CITY, MD ON MEMORIAL DAY, MONDAY, MAY 27, 1996 AT 2:00 P.M.

For more information, call 750-5332. Good Luck to all contestants.

Time Card

MICROFILMED

Out: _____

In: _____

1st Annual Cannonball Run

From Baltimore, MD to Ocean City, MD

(And How Fast Can You Get There?)

Name _____

Address _____

City, State, Zip _____

March 4, 1997

Mr. Harry R. Thorn
8719 Green Pastures Dr.
Towson, Maryland 21286

Mr. Wayne Skinner
President, Towson-Loch Raven Comm. Council, Inc.
1813 Edgewood Road
Baltimore, Maryland 21234

dear Mr. Skinner:

I am writing to you regarding the problems our neighborhood is having due to the skating rink, the after hours clubs and taverns located on Orchard Tree Lane.

We are continually finding broken glass, beer bottles and beer cans thrown on our property and on our road. We are also constantly being awakened at three or four o'clock in the morning due to loud music, customers who come outside using loud, foul language, urinating in plain sight - having total disregard for the neighborhood. When they leave, some are apparently climbing the fence and trespassing on Green Pastures Drive (a private road) causing quite a bit of apprehension regarding our safety.

Another problem - cars driven on Orchard Tree Lane from two AM on with tires screaming and radios blasting.

Then, there are the drums. One (or more) of the businesses is playing music with the drum portion so loud, so penetrating, that even with our windows and storm windows closed we cannot watch television or listen to the radio. This has occurred during the day, late night and into the wee hours of the morning. Where are the police???

It's obvious the Orchard Tree Lane is becoming a spin-off of the "Block". In the twenty plus years that we have been here we have never had problems of this magnitude. Anything that you can do to get them out of there will be greatly appreciated. Count on our cooperation.

Sincerely,

Harry R. Thorn

Harry R. Thorn

Balto. Co. Exhibit #5

MICROFILMED

Greater Hillendale Investment Summary

Description	Source of Funds	Amount	Comment
Hot Spot Community Mobilization - Neighborhood Block Party Community Policing - Renovate 1,600 sf leased space - Police sub station. Community Probation - Team case management Youth Prevention - PAL activities and equipment (see also CCRC) Crime Prevention Through Environmental Design (CPTED design) Community Support for Addiction Recovery Housing and Business Revitalization	Governor's Office of Crime Control and Prevention (OCCP) OCCP/ DJJ JJAC OCCP OCCP	\$2,000 \$39,188 \$18,000 \$4,000 \$4,500 \$10,000 \$0	Award letter expected Oct. '97 County Council action expected Nov. -Dec. '97 Anticipated support from Year 2 HotSpot funds
Neighborhood Housing Services (NHS) of Greater Hillendale Operating Expenses - staff, office 1055 Taylor Avenue Operating / overhead SELP Actual SELP set aside Property Tax credit State Income Tax Credit	CDBG (FY '95, '96, '97) State DHCD FY' 97 FY '98 FY'97-99 (est. lost revenue) FY'97-99 (est. lost revenue)	\$233,000 \$50,000 \$92,880 \$150,000 \$88,000 \$88,000	55 settlements FY '97 22 SELP Loans 32 Tax Credit
Community Conservation Action Grants Northbrook Improvement Association - community cleanups Hillendale Improvement Association - community cleanups Ashlar Hill Condo Association - defensible space fence Banneker Community Dev - defensible space fence Deepin Woods Apt	Weinberg Foundation	Total awards FY '95-97 \$1,400 \$2,400 \$10,000 \$5,768	25% match required from each community for each project FY '98 applications under review - 4 proposals totaling over \$17,000 received
Commercial Revitalization Action Grants Joppla-Loch Raven Business Association (now LRBA)	3/95 Commerical Revit. 7/97 Commerical Revit	\$4,800 \$4,673	Marketing Material / Directory I.D. Banners for Utility poles
Community Conservation Leadership Grants *Towson Loch Raven Community Council/Joppla Loch Raven Business Assn	7/96 Operating Grant 8/97 Operating Grant*	\$15,000 \$21,669*	Administrative support services, publish newsletter, member dev. *Proposal under Review
Summary Sub-total Revenue Reduction Sub-total Capital Investment Sub-total - Program/service Investment TOTAL		176,000 1,767,528 1,780,255 \$3,723,783	Excludes proposals currently under review

Balt. Co. Exhibit #4

MICROFILMED

Penelope McMullan Johnson
14 Ballyhean Court
Lutherville, Maryland 21093

Experience and Skills

Marketing Management

Headed new business development and ventures department for McCormick / Schilling Consumer Products Division, McCormick & Co., Inc. Spices, seasonings and processed foods.

Research

Managed full range of qualitative and quantitative in-market consumer research programs to determine feasibility and commercial potential of product lines.

Communications

Directed research-based advertising and promotion programs in conjunction with major agencies, including budget development and implementation in medical device and food products industries.

Finance and budgeting

P&L responsibility for multi-million dollar product portfolios.

Honors, Awards, Citations, Publications

Governor's Award for Crime Prevention . 1996
Maryland

Big Cities Health Conference, Chicago, IL. 1994
Presenter. "Conducting a Consumer Research Program on Health Seeking Behavior".

Relevant Work History

Baltimore County, Maryland.
Office of Community Conservation , Central Sector Coordinator , 1995-present.

Johns Hopkins University, School of Hygiene and Public Health. Baltimore, Maryland.
Researcher Writer, Center for Communication Programs, Internship 1993-4.
Assistant to Pediatrics Department Head, Prince George's Hospital Center, Internship 1992

McCormick & Co., Inc. , Consumer Products Division. Hunt Valley, Maryland.
Group Manager, New Products, 1989-1991.
Manager, New Products 1988-1989
Associate Manager, New Products 1986-1988
Assistant Manager, New Products 1984-1986

Education and Training

Johns Hopkins University
M.E.D. , Doctor of Science candidate , School of Hygiene and Public Health 1992-1995

Gettysburg College
B.A., Political Science. Minor: French Language

The Wharton School, University of Pennsylvania,
Aresty School of Executive Education. Completed Consumer Marketing course series

Baltimore County, Maryland Planning Board
Vice Chairman 1979-1986

Balto. Co. Exhibit #7

MICROFILMED

RESUME

GEORGE MICHAEL HARVEY

68 NY #8

EDUCATION

Bachelor of Science, University of Maryland University College, in
Behavioral Sciences and Human Management, 1992

PROFESSIONAL HISTORY

Baltimore County Police Department, 1976 - present

Officer, 1976-78

Detective, Intelligence 1978-79

Detective, Narcotics 1979-81

Detective, Community Relations 1981-83

Corporal, Field Operations 1983-85

Sergeant, Field Operations 1985-87

Lieutenant, Field Operations 1987-89

Honor Guard Commander, 1985-89

Captain, Duty Commander 1989-91

Inspectional Services Division 1991-92

Field Operations Planning & Budget Division 1992-93

Technical Support Services Division 1993-1995

Training Division, 1995-96

Patrol, Towson Precinct, effective July 1, 1996

The Baltimore County Police Department, established in 1874, currently employs over 2,000 people, including 1500 sworn personnel. The Department operates from 24 police facilities to serve a population of 700,000 over a 610 square mile area, including 173 miles of waterfront.

MICROFILMED

PERFORMANCE STRENGTHS

Administration - Experience in successfully presenting the needs of the department to appropriating authorities in order to obtain the necessary level of funding to fulfill departmental goals. Able to weigh competing interests of various divisions and units within the organization to maintain a constant state of operational readiness even during severe fiscal constraints and reductions in force. Provide testimony at County Council hearings on various fiscal and operational issues. Act as liaison with the Department of Emergency Preparedness (Civil Defense) on evacuation plans relative to hazardous materials stored at Aberdeen Proving Grounds/Edgewood Arsenal.

As Commanding Officer of the Technical Support Services Division, supervised and directed the operation of five support service sections. This division consisted of 53 sworn and civilian personnel with a \$2.4 million annual operating budget.

Evidence Management:

- processing, custody and storage of all prosecutorial evidence in over 100,000 cases annually, disposition of unclaimed property, related records maintenance;
- provide security for an 11-story Public Safety headquarters;

Quartermaster:

- product evaluation, procurement, inventory control, and distribution of supplies and equipment for the entire department;
- coordinate maintenance and repairs to 24 separate facilities;
- research and evaluate asset forfeiture and operating budget requests;
- Print Shop - graphic design and offset printing of all departmental forms, stationery, messages, orders, and S.O.P.s, awards and certificates.

Communications:

- technical support of police communications system (800 MHZ);
- cooperative interdepartmental response to 911 Center emergency communications technicians;
- screening of calls for service and telephone report response;

Fleet Management:

- fleet administration of over 600 vehicles; coordinate repairs, monitor costs, maintain radio inventory, develop vehicle and equipment specifications, provide amortization estimates for replacement funding.

Facilities Management:

- facilities planning and management of department buildings;
- prepare and execute \$9.5 million 5-year capital improvements budget;
- participate in site acquisition for new facilities.

PERFORMANCE STRENGTHS

Administration. (contd.)

As Executive Officer of the Training Division, directed training activities and resources of a staff of 28:

Approved curriculums, directed the revision and development of new training programs for recruits, specialized units and executive development, directed firearms training, personally developed new lesson plan and taught ethics course. Approved videos produced for academy and officer roll call training, coordinated Citizens' Academy, Citizens on Patrol Program, and requests from other jurisdictions for officer training.

Negotiated contracts for offsite driver training and onsite facilities upgrades, monitored formulation of annual budget requests and execution of annual operating budget appropriations.

Inspected state of command and monitored compliance with state regulations and accreditation standards.

Handled all complaints, requests and inquiries internally, from the community, other agencies and other jurisdictions. Assigned and reviewed internal investigations and all other personnel issues, recommend discipline and commendations.

Crowd Control - Recognized as an expert in the State of Maryland with the ability to effectively balance the individual citizen's constitutional right to free assembly and to petition the government with society's right to peacefully conduct normal daily activities and business.

Field Commander during multiple demonstrations at Congressional Representative's office, motorcycle gang assembly involving over 300 persons, multiple abortion protests (Hill Crest and Bel Air Road Plaza Clinics), and a demonstration by disabled persons outside the Social Security Administration.

In 1987, formulated the Crowd Control Response Plan for Baltimore County Police Department, including the development of training programs, lesson plans and field exercises on formations, tactics and security, crowd psychology, use of chemical weapons, mass arrest/processing/detention methods and court liaison. Presented this plan to various other law enforcement agencies association with the Maryland Mutual Aid Network, including Anne Arundel County, Prince George's County, Harford County, Howard County, and Montgomery County, as well as the Buffalo, New York Police Department. All Maryland agencies listed have since adopted this plan or a variation of it. As a result of these and other intra-departmental efforts, in 1993 the Baltimore County Police Department established a 36 member Crowd Control Platoon.

PERFORMANCE STRENGTHS

Appointed as the Baltimore County Police Department representative to serve as a member of the National Institute Of Justice Technical Assessment Program Advisory Council (TAPAC) Systems Committee.

Accreditation - As **Inspectional Services Division Commanding Officer**, was ultimately responsible for ensuring compliance with over 900 Commission on Accreditation of Law Enforcement Agencies (CALEA) standards that applied to the entire department. The Baltimore County Police Department is the largest (1507 personnel) law enforcement agency in the country to be accredited under the CALEA standards.

Leadership - Proven ability to motivate divergent interest groups to cooperate and achieve common goals by consolidating resources and emphasizing human relations. Of primary concern is the training and support of first line supervisors and accountability of all sworn members to comply with professional law enforcement ethics.

Served in Acting Sergeant and Lieutenant positions for extended periods exceeding 10 months. As a newly promoted Sergeant, served as Acting Lieutenant in two precincts concurrently for over 30 days.

As **Duty Commander**, acted as Field Commander for all Critical Incident Responses, commanding all resources of the department during the incidents, including tactical, aviation, marine, hazardous devices units, crime lab, traffic and operations personnel. Authority included the ability to commit non-budgeted resources in emergency situations. Conducted inspections of officers and facilities, monitored appearance and testimony of officers in District and Circuit Court cases.

Crime Prevention and Community Policing - Ability to involve citizens of various ages, ethnic and cultural origins, socio-economic backgrounds and special interests, in neighborhood problem solving. Emphasis is placed on crime prevention and education, particularly in the schools, to develop values and behavior which promote law-abiding communities.

Currently developing a pilot program (Student and Police Association) for Precinct 6 in Towson. This program will create a positive and credible role for police officers in the high schools by establishing a police presence in this setting. Officers will work with students in crime prevention efforts and other matters of mutual concern.

PERFORMANCE STRENGTHS

Crime Prevention and Community Policing. (contd.)

Participated in or led in-depth investigations and effective reconciliation of community problems including drug distribution, juvenile loitering and drinking, prostitution, and ethnic relations while serving in three precincts.

Developed and presented a wide variety of programs to numerous and diverse groups including elementary school students, senior citizen groups, parent-teacher associations, precinct adult council groups, and women's groups. Served as Detail Commander at various festivals and other community events.

Participated in Student-Police Relations program, in which patrol officers interacted with junior high school students as part of their civics classes. Calls for service in connection with two high-incident juvenile offense problems were reduced significantly within one school year.

Investigation and Critical Incident Control - Demonstrated technical expertise, street experience, and judgment to successfully complete both long-term and immediate response investigations of the various civil incidents and criminal events occurring in a large metropolitan area.

Investigative work as a member of the Narcotics Squad resulted in the breakup of an international drug ring and the seizure of drugs, cash and property valued at \$54,519,847.

Directed an incident which began as a suspicious subject call and quickly evolved into multiple burglaries and B&Es requiring the response of three precincts, and ultimately resulted in the clearance of 56 cases.

Simultaneously directed and controlled crime scenes in two different areas which were both implicated in a homicide, preserving the integrity of both the residential crime scene and area where body was located, prior to obtaining a search warrant.

Field Commander during a drug-related firefight near a major shopping mall, involving four suspects with automatic weapon; ordered response from three precincts and obtained response from the Maryland State Police. Ordered a systematic search of the mall using plainclothes officers. Suspects were located, maneuvered outside, and apprehended without disruption to the business center, which was crowded with Christmas shoppers.

PERFORMANCE STRENGTHS

Investigation and Critical Incident Control (contd.)

Involved in extensive investigations in plainclothes and undercover assignments including narcotics, outlaw motorcycle gangs, homicide, arson, kidnaping, sex offenses, prostitution, and involuntary servitude.

Directed and controlled the scene of a bomb threat, locating an explosive device, ordering the partial evacuation of a shopping center until the device was removed and disarmed.

SPECIALIZED TRAINING

1972, 1977, 1979 DEA Narcotics Investigation (3 day, 2 week, 30 day seminars)

1976 Crash Management (Injury)

1980 Field Training Officer School

1982 Police Officer Survival Training

Bombs & Ordinance, Aberdeen Proving Ground

COPE Training

1982, 1984, 1985, 1986 Supervisors Training

1992 Situational Leadership Seminar

New Civil Violence - Are You Prepared? IACP Conference

1995 Administering a Small Law Enforcement Agency IACP Conference

LABOR RELATIONS

Served on Baltimore County Police Department Meet and Confer Committee to negotiate Executive Corps benefits with County officials, 1992-94.

COMMENDATIONS

Commendation Ribbon

Apprehension of Robbery Suspects Outside Jurisdiction 1977

AMTRAK Derailment 1986

Chief's Service Award, 1992

Unit Citation

Honor Guard Services, 1987

Honor Guard Services, 1985

Narcotics Investigation, 1978

Billy Artes Kidnaping, 1976

COMMENDATIONS (contd.)

Certificate of Merit

Special Olympics Campaign 1992

Blue Cross/Blue Shield Blood Pressure Screening Program 1983

Certificate of Appreciation

Special Olympics, 1991

Suicide Prevention, 1990

Burglary Case Clearance, 1979

Nomination, Police Officer of the Year 1979, 1980, 1985

Complimentary Letters on File - 45

ORGANIZATIONS

I.A.C.P.

Maryland Chiefs of Police

F.O.P. Maryland, Lodge #4

V.F.W. Post 9083

MILITARY SERVICE

United States Marine Corps, Honorable Discharge 1975

COMMUNITY SERVICE

United Way - Department Coordinator (3 years), Assistant Coordinator (2 years)

Special Olympics - Dept. Coordinator, Special Projects Coordinator, 1988-92

Police Athletic League - fitness program coordinator, girls' weight lifting (3 years);

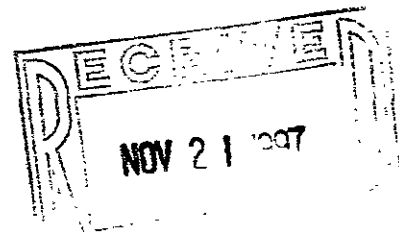
1994 fundraising.

Current Salary \$64,291

rw
County Exhibit
#10

Call for Service	Number of cases
F18 ADDED INFORMATION	1
A54 ALARM, ACCIDENTAL - NON RESIDENTIAL	8
A2 ALARM, ACCIDENTAL - RESIDENTIAL	10
A56 ALARM, FAULTY - NON RESIDENTIAL	6
A4 ALARM, FAULTY - RESIDENTIAL	7
E1 ASSIST MOTORIST	3
E3 ASSISTANCE REQUEST	12
C2 AUTO ACCIDENT-PERSONAL INJURY	1
C1 AUTO ACCIDENT-PROPERTY DAMAGE	7
J4 BATTERY	56
A8 BOMB THREAT	1
E5 CHECK ON LOCATION	8
E4 CHECK ON SUBJECT	7
E7 CIVIL MATTER	2
F17 COUNTY CODE VIOLATION-OTHER	34
F4 CUSTOMER DISPUTE	4
A11 DESTRUCTION OF PROPERTY	22
A21 DISCHARGING FIREARMS	1
A12 DISTURBANCE	40
F16 DUPLICATE CALL	6
F7 FOUND PROPERTY	4
F19 FOUND SYRINGE/MEDICAL WASTE	1
A17 GAMBLING NUMBERS & LOTTO	2
C7 HIT & RUN ACCIDENT-PROPERTY DAMAGE	11
J6 HOMICIDE	1
A23 LIQUOR LAW VIOLATION	14
A24 LIQUOR, OPEN CONTAINER	28
A25 LOITERING COMPLAINT	1
F8 LOST OR STOLEN PROPERTY	1
A29 NARCOTICS, CITIZEN INITIATED	13
A53 NARCOTICS, OFFICER INITIATED	3
F9 NOISE COMPLAINT	4
F12 NON ENUMERATED COMPLAINT	6
A31 OPEN DOOR OR WINDOW	4
D2 PARKING COMPLAINT	2
A32 POSSESSION OF A DEADLY WEAPON	1
A33 ROAD DEFECTS/HAZARDOUS ROAD CONDITIONS	2
J3 ROBBERY, ATTEMPTED	1
J7 SIMPLE ASSAULT	10
E6 SLIM JIM DETAIL	11
A46 SUSPICIOUS CONDITION	2
A37 SUSPICIOUS SUBJECT, ROGUE OR VAGABOND	8
D3 SUSPICIOUS VEHICLE	2
H12 THEFT - FROM MOTOR VEHICLE	11
H9 THEFT - MOTOR VEHICLE	6
H11 THEFT - OTHER	22
D6 TRAFFIC ARREST - D.W.I.	6
D13 TRAFFIC COMPLAINT - D.W.I.	1
D8 TRAFFIC COMPLAINT - OTHER	1
F13 TRAFFIC STOPS	31
A39 TRESPASSING	3
F11 WARRANT/SUMMONS SERVICE	5

Total: 454



MICROFILMED

POLICE DEPARTMENT FORM 100 (Rev. 1-1-88) F-12 6 6 96 306 0200

4. OFFENSE/INCIDENT 20. NING VIOLATION				5. LOCATION 8819 ORCHARD TREE		CITY-STATE-ZIP LA. 21286		6. TYPE OF PREMISE AFTER HOURS	
7. TIME OCCURRED M 11 P 1 Y 96 T 0310		8. TIME REPORTED D 1 FRI		9. VICTIM/FIRM NAME (LAST, FIRST, MIDDLE) BALTIMORE COUNTY		10. VICTIM/FIRM ADDRESS 111 W. CHEASPEAKE AVE		CITY-STATE-ZIP 21204	
11. VICTIM/EMPLOYMENT OR SCHOOL				12. OCCUPATION/HOURS		13. SBR		14. RESIDENCE PHONE	
15. BUSINESS PHONE				16. NO. OF VICTIMS		17. NATURE OF INJURY(S)			
18. FORCE/WEAPON USED				19. VICTIM HOSPITALIZED - WHERE?				PHYSICIAN	
20. OWNER OF ANIMAL				21. ADDRESS		PHONE		22. INSTRUCTIONS	
23. LICENSED				24. CONFINED		25. LEASED			

26. INVESTIGATIVE INTERVIEWS: INTERVIEWS CONDUCTED? YES ☐ NO ☐ IF NO, EXPLAIN IN BLOCK #80.
W - WITNESS, V - VICTIM, C - COMPLAINANT, P - PARENT, G - GUARDIAN, I - INTERVIEWED

NAME SGT. MILLER, J.G. M/W 45		SEX-RACE-AGE M W 8-6-66		ADDRESS 308 WASHINGTON		RESIDENCE PHONE 887-5508		BUSINESS PHONE 887-5508		FACTOR(S)		RELATION C	

SUSPECT(S) A. 12

27. SUSPECT ONE: ARRESTED YES ☐ NO ☒ WEAPON-DESCRIPTION

NAME (LAST, FIRST, MIDDLE) GIORGILLI, JOHN AMERICO		ALIAS JOHNNY G		SEX M		RACE W		DOB OR AGE 8-6-66		HT. 5-11		WT. 190		BLD. MED		EYES GRN		COMP. MED		HAIR & STYLE BRN	
ADDRESS 9203 GREENHOUSE CIR. 21236				PHONE		MISCELLANEOUS: BCI 191492															

SUSPECT VEHICLE B.

28. VEHICLE(S)

29. YEAR		30. MAKE		31. MODEL		32. STYLE		33. COLOR (TOP/BOTTOM)		34. EQUIPMENT/CHARACTERISTICS													
35. VIN:		36. REGISTRATION INFORMATION										STATE		YEAR		TAG		37. VEH. PROCESSED					
38. TOW CO./STORAGE LOCATION										DATE-TIME-DRIVER				39. OWNER OF VEHICLE				40. OWNER NOTIFIED					
41. REASON FOR TOWING/STORAGE										42. VEHICLE HELD													

SUSPECT ☐ STORED ☐ ABANDONED ☐ OTHER ☐

WORTHLESS DOCUMENTS

43. TYPE OF DOCUMENT		44. NUMBER		45. DATE OF DOCT		46. AMT. OF DOCUMENT		47. ACCOUNT NUMBER											
48. MADE PAYABLE TO:				49. PROPERTY/SERVICE OBTAINED				50. FIRM NAME											
51. NAME OF BANK - INSTITUTION				52. REASON NOT HONORED				53. SIGNATURE ON DOCUMENT				54. ENDORSEMENT SIGNATURE							
55. SOUNDINDEX NO./I.D. PRESENTED				56. PHOTO AVAILABLE				57. PROSECUTION				58. ACTUAL LOSS VALUE				59. VALUE OF ALL CHECKS			

60. CRIME SCENE TECHNICAL WORK: NONE ☐ CRIME LAB ☐ FIELD ☐ TYPE:

PHYSICAL EVIDENCE C.

61. MISS. PER. ☐ OR RUNAWAY ☐		62. SEX		63. RACE		64. DOB		65. HT.		66. WT.		67. BLD.		68. EYES		69. COMP.		70. HAIR & STYLE		71. MARKS-SCARS, ETC.	
72. CLOTHING-JEWELRY-ETC.				73. MEDICAL/PHYSICAL PROBLEMS								74. PHOTO YES ☐ NO ☐		75. MEDICATION(S)							
76. AMOUNT OF MONEY				77. PROBABLE DESTINATION				78. CAUSE OF ABSENCE				79. N.C.I.C. AUTHORIZATION									
79.1 DENTAL RECORDS YES ☐ NO ☐				79.2 FINGERPRINTS YES ☐ NO ☐				79.3 BLOOD TYPE				79.4 NO. TIMES PERSON HAS BEEN MISSING/RUNAWAY NONE ☐ LESS THAN FIVE ☐ MORE THAN FIVE ☐									

STOLEN PROPERTY D.

IS ANY FORM OR TYPE OF M.O. PRESENT? E.

INVESTIGATING OFFICER: CAN CRIME BE SOLVED WITH INVESTIGATION AT FIELD LEVEL? F.

PROPERTY: FOUND/RECOVERED POSSE SYSTEM SEARCH ☐ YES ☐ NO FOLLOW UP SEARCH REQ'D ☐ YES ☐ NO

SC MISCELLANEOUS: 27. PH# Home 256-0059 - CLUB 828-0001

80. THIS WRITER OBSERVED ON THE ABOVE DATE AND TIME THAT THE CLUB 101 LOCATED AT 8819 ORCHARD TREE LA. 21286 WAS IN FULL OPERATION. (CONT.)

81. CASE ASSIGNMENT

82. CASE STATUS

83. TOTAL SCREENING FACTORS: 12

84. DISTRIBUTION: Cent. Rec. 2 Juv. Detective Intel. Other

85. INVESTIGATING OFFICER 20740 NO. SGT. J.G. MILLER

86. APPROVAL - INVESTIGATION COMPLETE YES ☐ NO ☐ 87. DATE 11/1/96

88. REPORT REVIEW

89. REPORTING AREA 060160

90. RECT. CENT. REC.

91. TELETYPE NUMBER

92. MICROFILMED

93. CC NUMBER 96 306 0200

1. OFFENSE/INCIDENT 2011G VIOLATION		4. DE	5. LOCATION 8819 ORCHARD TREE	CITY-STATE-ZIP A 21286		6. TYPE OF PREMISE NITE CLUB		
7. TIME OCCURRED M 11 P 23 Y 96 T 0355 SAT		8. TIME REPORTED M 11 P 23 Y 96 T 0355 SAT						
9. VICTIM/FIRM NAME (LAST, FIRST, MIDDLE) BALTIMORE COUNTY		SEX-RACE-DOB		10. VICTIM/FIRM ADDRESS 111 W. CHEASPEAKE AVE 21204		CITY-STATE-ZIP		
1. VICTIM/EMPLOYMENT OR SCHOOL		12. OCCUPATION/HOURS		13. SBR.	14. RESIDENCE PHONE	15. BUSINESS PHONE	16. NO. OF VICTIMS	
7. NATURE OF INJURY(S)		CONDITION		18. FORCE/WEAPON USED		19. VICTIM HOSPITALIZED - WHERE? PHYSICIAN		
20. OWNER OF ANIMAL		21. ADDRESS		PHONE	22. INSTRUCTIONS	23. LICENSED	24. CONFINED	25. LEASHED

26. INVESTIGATIVE INTERVIEWS:				INTERVIEWS CONDUCTED? YES ☐ NO ☐ IF NO, EXPLAIN IN BLOCK #80.				
W - WITNESS, V - VICTIM, C - COMPLAINANT, P - PARENT, G - GUARDIAN, I - INTERVIEWED								
NAME SGT. MILLER, J.G.		SEX-RACE-AGE 2074		ADDRESS 308 WASHINGTON AVE		RESIDENCE PHONE 887 5508		RELATION C

SUSPECT(S)										A. 12
27. SUSPECT ONE: ARRESTED YES ☐ NO ☒ WEAPON-DESCRIPTION										
NAME (LAST, FIRST, MIDDLE) GIORGILLI, JOHN AMERICO										
ADDRESS 9203 GREENHOUSE CIR 21236										
PHONE BCI 191492										

SUSPECT VEHICLE										B. 0		
28. VEHICLE(S)		29. YEAR	30. MAKE	31. MODEL	32. STYLE	33. COLOR (TOP/BOTTOM)			34. EQUIPMENT/CHARACTERISTICS			
SUSPECT ☐		35. VIN:				36. REGISTRATION INFORMATION			STATE	YEAR	TAG	37. VEH. PROCESSED
STORED ☐		38. TOW CO./STORAGE LOCATION				DATE-TIME-DRIVER			39. OWNER OF VEHICLE			40. OWNER NOTIFIED
ABANDONED ☐		41. REASON FOR TOWING/STORAGE										42. VEHICLE HELD
OTHER ☐												
WORTHLESS DOCUMENTS	43. TYPE OF DOCUMENT			44. NUMBER	45. DATE OF DOCT	46. AMT. OF DOCUMENT			47. ACCOUNT NUMBER			
	48. MADE PAYABLE TO:			49. PROPERTY/SERVICE OBTAINED					50. FIRM NAME			
	51. NAME OF BANK - INSTITUTION			52. REASON NOT HONORED		53. SIGNATURE ON DOCUMENT			54. ENDORSEMENT SIGNATURE			
	55. SOUNDINDEX NO./LD. PRESENTED			56. PHOTO AVAILABLE		57. PROSECUTION		58. ACTUAL LOSS VALUE		59. VALUE OF ALL CHECKS		

60. CRIME SCENE TECHNICAL WORK: NONE ☐ CRIME LAB ☐ FIELD ☐ TYPE:										
PHYSICAL EVIDENCE										C. 0
61. MISS. PER. OR RUNAWAY ☐	62. SEX	63. RACE	64. DOB	65. HT.	66. WT.	67. BLD.	68. EYES	69. COMP.	70. HAIR & STYLE	71. MARKS-SCARS, ETC.
	72. CLOTHING-JEWELRY-ETC.				73. MEDICAL/PHYSICAL PROBLEMS				74. PHOTO YES ☐ NO ☐	75. MEDICATION(S)
	76. AMOUNT OF MONEY		77. PROBABLE DESTINATION		78. CAUSE OF ABSENCE		79. N.C.I.C. AUTHORIZATION			
	79.1 DENTAL RECORDS YES ☐ NO ☐		79.2 FINGERPRINTS YES ☐ NO ☐		79.3 BLOOD TYPE		79.4 NO. TIMES PERSON HAS BEEN MISSING/RUNAWAY NONE ☐ LESS THAN FIVE ☐ MORE THAN FIVE ☐			

STOLEN PROPERTY										D. 0
IS ANY FORM OR TYPE OF M.O. PRESENT?										E. 0
INVESTIGATING OFFICER: CAN CRIME BE SOLVED WITH INVESTIGATION AT FIELD LEVEL?										F. 0

PROPERTY: FOUND/RECOVERED POSSE SYSTEM SEARCH ☐ YES ☒ NO FOLLOW UP SEARCH REQ'D ☐ YES ☒ NO										
80. MISCELLANEOUS: 27) Phone # Home 256-0059 - CLUB 101-828-0001										
80) ON THE ABOVE DATE AND TIME THIS WRITER OBSERVED THAT THE CLUB 101, LOCATED AT 8819 ORCHARD TREE LA. 21286, WAS IN FULL OPERATION.										
THE CLUB 101 IS AN 83. TOTAL SCREENING FACTORS: 12										
84. Distribution: Cont. Rec. _____ Juv. _____ Detective _____ Intel. _____ Other _____		85. INVESTIGATING OFFICER ID NO. SGT. J.G. MILLER 2074		86. APPROVAL-INVESTIGATION COMPLETE YES ☐ NO ☒ 87. DATE 11-23-96		88. CASE STATUS 96 328 6246		89. CASE NUMBER		
		88. REPORT REVIEW 060220		89. REPORTING AREA		90. REC'D CENT. REC.		91. MICROFILMED		92. TELETYPE NUMBER

ZONING VIOLAT. 1

75. SUPPLEMENT STATUS: CON7. ☒FOLLOW-UP ☐

85. IF MULTIPLE CLEARANCE, LIST C.C. NUMBERS

11/23/96

NARRATIVE:

DO NOT REPEAT RESULTS OF PRELIMINARY INVESTIGATION. CLARIFY DATA, SCREENING FACTORS, PROBABLE CAUSE, ETC. ENTER ANY ADDITIONAL INFORMATION.
DO NOT SUMMARIZE UNLESS NECESSARY.

95 PAGE NO. 105 ARREST DATA

NAME (LAST, FIRST, MIDDLE) D.O.B.

BCI NUMBER, ARREST NUMBER, MISC. INFO.

115 BLOCK NO.

125

AFTER HOURS CLUB THAT DOES NOT HAVE A LIQUOR LICENSE. PATRONS BRING THEIR OWN ALCOHOLIC BEVERAGES TO THE CLUB.

THE CLUB 101 IS A COMMERCIAL ESTABLISHMENT WHOSE PRINCIPAL BUSINESS IS THE PROVISION OF RECORDED ENTERTAINMENT, WITH A DANCE FLOOR AND IS OPEN BETWEEN THE HOURS OF 2300 HRS AND 0400 HOURS. ADDITIONALLY THE CLUB 101 IS LOCATED JUST 84 FEET FROM THE CLOSEST RESIDENTIAL DWELLING.

THIS WRITER IS ALSO AWARE THAT THE CLUB 101 NOR ITS OWNER, MR. JOHN GIORGILLI, HAS BEEN GRANTED ANY EXCEPTION BY THE ZONING OFFICES.

SCREENING FACTORS
REVISED
TOTAL13s
INITIAL
REVISED

A	B	C	D	E	F

14s CASE CONTINUANCE

16s TOTAL FACTORS

12

15s. CASE STATUS

OPEN ☐

EX CLEAR ☒

SUSP. ☐

CLOSED ☐

*7s. Distribution:

Cert. Rec. _____ Juv. _____

Detective _____ Intel. _____

Other _____

18s. INVESTIGATING OFFICER

I.D.

19s. APPROVAL

SGT. J.G. MILLER 2074

20s. DATE

11/23/96

21s. REPORT REVIEW

22s. REPORTING AREA

066220

23s. REC'D - CENT. REC.

24s. TELETYPE NUMBER

25s. C.C. NUMBER

763280246

		060160		AVIATION			

DDI 12-05

4s. OFFENSE/INCIDENT ZONING VIOLATION (F17)	5s. VICTIM/FIRM NAME BALTIMORE COUNTY	6s. DATE-ORIGINAL REPORT 11-24-96
7s. SUPPLEMENT STATUS: CONT. ☒ FOLLOW-UP ☐		8s. IF MULTIPLE CLEARANCE, LIST C.C. NUMBERS
NARRATIVE: DO NOT REPEAT RESULTS OF PRELIMINARY INVESTIGATION. CLARIFY DATA, SCREENING FACTORS, PROBABLE CAUSE, ETC. ENTER ANY ADDITIONAL INFORMATION. DO NOT SUMMARIZE UNLESS NECESSARY.		
9s. PAGE NO. 2	10s. ARREST DATA NAME (LAST, FIRST, MIDDLE) D.O.B. BCI NUMBER, ARREST NUMBER, MISC. INFO.	

11s. BLOCK NO.	12s.
80	AFTER HOURS CLUB THAT DOES NOT HAVE A LIQUOR LICENSE. PATRONS BRING THEIR OWN ALCOHOLIC BEVERAGES TO THE CLUB. THE CLUB 101 IS A COMMERCIAL ESTABLISHMENT WHOSE PRINCIPAL BUSINESS IS THE PROVISION OF RECORDED ENTERTAINMENT, WITH A DANCE FLOOR AND IS OPEN BETWEEN THE HOURS OF 2300 HRS AND 400 HRS. ADDITIONALLY THE CLUB 101 IS LOCATED JUST 84 FEET FROM THE CLOSEST RESIDENTIAL DWELLING. THIS WRITER IS ALSO AWARE THAT THE CLUB NOR ITS OWNER, MR. JOHN GIORGILLI, HAS BEEN GRANTED ANY EXCEPTION BY THE ZONING OFFICES. MR. GLIATIS, JOHN ARIS, MANAGER OF 101 CLUB STATED THAT MR. GIORGILLI, JOHN, OWNER OF 101 CLUB WAS NOT PRESENT THAT NIGHT.

SCREENING FACTORS INITIAL REVISED TOTAL	13s.	A	B	C	D	E	F	14s. CASE CONTINUANCE	15s. CASE STATUS OPEN ☐ EX. CLEAR ☐ SUSP. ☐ CLOSED ☐	25s. C.C. NUMBER 463290249
	16s. TOTAL FACTORS									
17s. Distribution: Cent. Rec. _____ Juv. _____ Detective _____ Intel. _____ Other _____		18s. INVESTIGATING OFFICER OFF. BOCCIA 4015		I.D.		19s. APPROVAL		20s. DATE 11-24-96		
21s. REPORT REVIEW		22s. REPORTING AREA 060160		23s. REC'D - CENT. REC.		24s. TELETYPE NUMBER				

**LIQUIDS DETAIL 1/18/98
ENFORCEMENT TOTALS**

ADULT:

**ALCOHOL VIOLATIONS: 12
PUBLIC URINATION: 3
DISORDERLY: 1
ASSAULT ON POLICE: 4
RESISTING ARREST: 4
ASSAULT: 1
CDS VIOLATION: 3**

JUVENILE:

**ALCOHOL VIOLATIONS: 5
ASSAULT ON POLICE: 2
ASSAULT: 3
RESISTING ARREST: 1**

ATTACHED IS AN ITEMIZED LIST OF ENFORCEMENT BY UNIT.

MICROFILMED

*Balto Co
Exhibit #12*

ITEMIZED ENFORCEMENT:

ISU:

ADULT:

ALCOHOL VIOLATIONS: 5

PUBLIC URINATION: 2

DISORDERLY: 1

RESISTING ARREST: 2

ASSAULT: 1

ASSAULT ON POLICE: 2

JUVENILE:

ASSAULT: 3

ALCOHOL VIOLATIONS: 2

ASSAULT ON POLICE: 1

RESISTING ARREST: 1

CDVIT:

ADULT:

CDS: 3

RESISTING ARREST: 2

ASSAULT ON POLICE: 2

OUTREACH:

ADULT:

ALCOHOL VIOLATIONS: 3

PUBLIC URINATION: 1

CAPTAIN SQUAD:

ADULT:

ALCOHOL VIOLATIONS: 4

JUVENILE:

ALCOHOL VIOLATIONS: 3

SHIFT PERSONNEL:

JUVENILE:

ASSAULT ON POLICE: 1

TERRENCE B. SHERIDAN
Chief of Police



Integrity . . . Fairness . . . Service

Baltimore County Police
Headquarters
700 East Joppa Road
Towson, Maryland 21286-5501

(410) 887-2214
Fax (410) 821-8887

August 26, 1996

Mr. John A. Giorgilli
Club 101
8819 Orchard Tree Lane
Baltimore, Maryland 21234

FBI

*Balto. Co
Exhibit
#B*

Dear Mr. Giorgilli:

This correspondence is intended to make you aware of two sections of the Annotated Code of Maryland regarding the consumption and unlicensed dispensing of *Alcoholic Beverages*.

Article 2B, § 11-304(a) entitled "Consumption - In general," states that:

"between the hours of 2 o'clock a.m. and 6 o'clock a.m. on any day, no person shall consume any alcoholic beverages on any premises open to the general public, any place of public entertainment, or any place at which setups or other component parts of mixed alcoholic drinks are sold under any license issued under the provisions of the Business Regulation Article, and no owner, operator or manager of said premises or places shall knowingly permit such consumption."

Section 11-304(a) forbids a business owner to allow members of the general public to consume alcoholic beverages in his establishment between 2 a.m. and 6 a.m. regardless of whether the owner originally sold the beverages to the patron or not. Additionally, this law applies equally to businesses with or without a liquor license.

Article 2B, § 1-201(a) entitled "Prohibition without license," states that alcoholic beverages may not be "possessed" or "stored" on "...any premises or under the charge or control of any person except: (i) by a consumer, or (ii) by a licensee as provided in this article..."

This section prohibits a club or business from storing or holding alcoholic beverages (such as keeping them cold for a patron), without first obtaining a license to sell and dispense alcoholic beverages under this article.

This letter is intended to provide you with personal notice of the above sections in order that you may review your club's practices, and comply with Maryland's *alcoholic beverages laws*, prior to possible enforcement action by this agency.

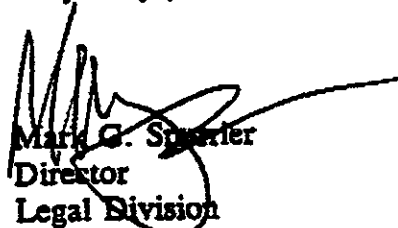
MICROFILMED



Mr. John A. Giorgilli
August 28, 1996
Page 2

If I may provide further assistance in this matter, to either you or your legal counsel, please feel free to contact me at my office, (410) 887-2211.

Very truly yours,


Mark G. Spangler
Director
Legal Division

c: Mr. Howard Merker - Balto. Co. State's Atty's. Ofc.
Colonel Johnny C. Whitehead - Field Operations Bureau
Major Michael Stelmack - Towson Precinct
Captain George Harvey - Towson Precinct

MGS/ECP:ecp

TERRENCE B. SHERIDAN
Chief of Police



Integrity . . . Fairness . . . Service

FILE
Baltimore County Police
Headquarters
700 East Joppa Road
Towson, Maryland 21286-5501

(410) 887-2214
Fax (410) 821-8887

October 1, 1996

*Balto. County
Exhibit #14*

Edward C. Covahey, Jr., Esquire
614 Bosley Avenue
Towson, Maryland 21204-4029

Re: Mr. John A. Giorgilli
Club 101

Dear Mr. Covahey:

Supplementing our previous discussions concerning Club 101, I am again requesting that your client, Mr. Giorgilli, immediately bring his business into compliance with Maryland law concerning the consumption and dispensing of alcoholic beverages. Detectives continue to observe flagrant violations even after repeated warnings.

Based upon past warnings and your client's refusal to comply with Maryland law, all future violations will result in on-site arrest and the seizure of any evidence which exist at the time of arrest. Furthermore, after discussions with the Baltimore County State's Attorney's Office, additional violations will also result in enforcement actions pursuant to Article 27, §125 - Keeping [a] disorderly house, Annotated Code of Maryland (1996).

We have made every effort to bring your client into voluntary compliance, unfortunately, the violations continue to occur.

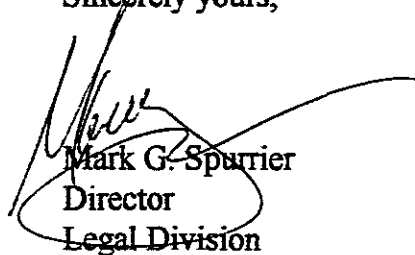
MICROFILMED



Edward C. Covahey, Jr., Esquire
October 1, 1996
Page Two

Should you have any questions concerning this notification, please do not hesitate to contact me.

Sincerely yours,



Mark G. Spurrier
Director
Legal Division

MGS/acr

c: Howard Merker, Esquire
Colonel Johnny C. Whitehead
Major Michael Stelmack
Captain George Harvey

Do not unfold
Printout

3alts. Co.
Dybelius #K

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ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

Date Received (mm/dd/yyyy)
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Date Received (mm/dd/yyyy)
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Type	Date Received	Address	Street Address	Report District
AC9	12/17/94	0019	ORCHARD TREE LA	06
174	12/17/94	0019	ORCHARD TREE LA	06
175	12/17/94	0019	ORCHARD TREE LA	06
176	12/17/94	0019	ORCHARD TREE LA	06
177	12/17/94	0019	ORCHARD TREE LA	06
178	12/17/94	0019	ORCHARD TREE LA	06
179	12/17/94	0019	ORCHARD TREE LA	06
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181	12/17/94	0019	ORCHARD TREE LA	06
182	12/17/94	0019	ORCHARD TREE LA	06

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED
DATE 01-17-2001 BY 60322 UCBAW/STP

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED
DATE 01-17-2001 BY 60322 UCBAW/STP

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED
DATE 01-17-2001 BY 60322 UCBAW/STP

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A2	ALARM, ACCIDENTAL - RESIDENTIAL	C16
A3	ALARM, WEATHER MALFUNCTION - RESIDENTIAL	C17
A4	ALARM, FAULTY - RESIDENTIAL	C18
A5	ALARM, MISUSE - RESIDENTIAL	C19
A6	ALARM, ACCIDENTAL - NON RESIDENTIAL	C20
A7	ALARM, WEATHER MALFUNCTION - NON RESIDENTIAL	C21
A8	ALARM, FAULTY - NON RESIDENTIAL	C22
A9	ALARM, MISUSE - NON RESIDENTIAL	C23
A10	ALARM, CANCEL EN ROUTE	C24
A11	ALARM, MOTOR VEHICLE	C25
A12	ALARM, CIVIL CITATION	C26
A13	ALARM, CRIMINAL CITATION	C27
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A109		

FORM 7 (Rev. 7/96)

INCLUDING *Do-It-Yourself* #11

E1 ASSIST
 E2 ASSIST MOTORIST
 E3 ASSISTANCE REQUEST
 E4 ATTEMPT TO LOCATE
 E5 CHECK ON SUBJECT
 E6 CHECK ON LOCATION
 E7 CIVIL MATTER
 E8 SLIM JIM DETAIL

F18 MISCELLANEOUS
 F19 ADDED INFORMATION
 F20 ALL ANIMAL BITE CASES
 F21 ANIMAL COMPLAINTS
 F22 BURNING COMPLAINTS
 F23 COUNTY CODE VIOLATION-OTHER
 F24 CUSTOMER DISPUTE
 F25 DETENTION FOR O.J.
 F26 DUPLICATE CALL
 F27 FALSE REPORT
 F28 FOUND PROPERTY
 F29 FOUND SYRINGE/MEDICAL WASTE
 F30 HEALTH OR TRASH COMPLAINT
 F31 LOST OR STOLEN PROPERTY
 F32 NOISE COMPLAINT
 F33 NON ENUMERATED COMPLAINT
 F34 NOTIFY
 F35 SCHOOL CROSSING
 F36 TRAFFIC STOPS
 F37 WARRANT/SUMMONS SERVICE

G1 SEXUAL RELATED
 G2 INDECENT EXPOSURE
 G3 RAPE
 G4 RAPE, ATTEMPT
 G5 ALL OTHER SEX OFFENSES
 H1 THEFT
 H2 ALTERED MONEY/COUNTERFEITING
 H3 BAD CHECKS
 H4 BURGLARY/BREAKING & ENTERING
 H5 BURGLARY/B & E, ATTEMPT
 H6 CREDIT CARD MISUSE

H6 THEFT (CONT'D)
 H7 FAILURE TO RETURN RENTAL PROPERTY
 H8 FAILURE TO PAY
 H9 FORGERY
 H10 THEFT - MOTOR VEHICLE
 H11 THEFT - BIKE
 H12 THEFT - OTHER
 H13 THEFT - FROM MOTOR VEHICLE
 H14 THEFT - PURSE SNATCHING
 H15 THEFT - SHOPLIFTING
 H16 THEFT - BOAT
 H17 THEFT - FROM BOAT
 H18 UNAUTHORIZED USE
 H19 RECOVERED MOTOR VEHICLES
 H20 RECOVERED BIKES
 H21 RECOVERED PROPERTY
 J6 VIOLENCE
 J7 AGGRAVATED ASSAULT/ASSAULT W/

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 K9 OTHER MISC. CRIMINAL ARE
 K10 INCIDENTS
 L1 GANG RELATED
 L2 HOMICIDE
 L3 SHOOTING
 L4 ROBBERY
 L5 ROBBERY, ATTEMPTED
 L6 AGGRAVATED ASSAULT
 L7 SIMPLE ASSAULT
 L8 AGGRAVATED ASSAULT, GU
 L9 WEAPON POSSESSION, OT
 L10 HARASSMENT
 L11 DESTRUCTION OF PROPERT
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 L13 TELEPHONE MISUSE
 L14 OTHER MISC. CRIMINAL IN
 L15 NON-CRIMINAL INCIDENTS

DISPOSITION CODES

1. REPORT
2. REPORT; UNFOUNDED (INCIDENT DID NOT OCCUR)
3. REPORT; INCIDENT HANDLED BY OTHER AGENCIES
4. REPORT; INCIDENT UNVERIFIED (CANNOT SUBSTANTIATE OCCURRENCE)
5. NO REPORT; UNFOUNDED (INCIDENT DID NOT OCCUR)
6. NO REPORT; INCIDENT HANDLED BY OTHER AGENCIES
7. NO REPORT; INCIDENT UNVERIFIED (CANNOT SUBSTANTIATE OCCURRENCE)
8. NO REPORT; INCIDENT ADJUSTED
9. NO ACCIDENT REPORT; M.V.A. FORMS ISSUED, OCCURRED ON PUBLIC PROPERT
0. NO ACCIDENT REPORT; M.V.A. FORMS ISSUED, OCCURRED ON ALL OTHER PROI



Baltimore County
Office of Law

400 Washington Avenue
Towson, Maryland 21204
(410) 887-4420
Fax: (410) 296-0931

February 26, 1998.

Mrs. Kathleen C. Bianco, Administrator
County Board of Appeals
for Baltimore County
Old Courthouse, Rm. 49
400 Washington Avenue
Towson, Maryland 21204

Re: In the Matter of Rampart Partnership-Club 101, Inc.
a.k.a. Liquids

Dear Mrs. Bianco:

I am hereby returning to the Board of Appeals the original Exhibit 15, a computer print-out, which was submitted by the County in its case-in-chief in the above referenced matter. I am copying this letter to Ed Covahey, Petitioner's Counsel, and Carole DeMilio, Deputy People's Counsel, and forwarding to them copies of the same.

Thank you.

Sincerely yours,

Nancy C. West
Assistant County Attorney

NCW:jdo
Enclosures

c: Edward C. Covahey, Jr., Esquire
Carole S. DeMilio, Esquire

*Returned exhibit
#15 to file
2/27/98
KCB*

98 FEB 27 AM 10:16
RECEIVED
COUNTY BOARD OF APPEALS

MICROFILMED



RAMPART PARTNERSHIP - * COUNTY BOARD OF APPEALS

Legal Owner; Club 101, Inc. * OF BALTIMORE COUNTY

Contract Lessee * Case No. 96-60-XA

(8819 Orchard Tree Lane) * February 13, 1998

(Special Hearing, Special *

Exception and Variance *

relief Denied.) *

* * * * *

The above-entitled matter came on for hearing

before the County Board of Appeals of Baltimore County at

the Old Courthouse, Room 49, 401 Washington Avenue,

Towson, Maryland 21204 at 10 a.m., February 13, 1998.

* * * * *

Reported by:

C.E. Peatt

ORIGINAL

MICROFILMED

more County Board of Appeals

LOWSON REPORTING COMPANY

600 Baltimore Avenue, Suite 201, Towson, Maryland 21204

410-284-9181 • 800-734-2411

Minimum with contract has Reporting & Video Comp

IN THE MATTER OF * BEFORE THE

RAMPART PARTNERSHIP - * COUNTY BOARD OF APPEALS

Legal Owner; Club 101, Inc. * OF BALTIMORE COUNTY

Contract Lessee * Case No. 96-60-XA

(8819 Orchard Tree Lane) * January 9, 1998

(Special Hearing, Special *

Exception and Variance *

relief Denied.) *

ORIGINAL

* * * * *

The above-entitled matter came on for hearing

before the County Board of Appeals of Baltimore County at

the Old Courthouse, Room 49, 401 Washington Avenue,

Towson, Maryland 21204 at 10 o'clock a.m., January 9,

1998.

* * * * *

Reported by:

C.E. Peatt

MICROFILMED

600 Baltimore Avenue Suite 201, Towson, Maryland 21204
410-828-2048 • 800-734-5292
Wittig & Wittig Co., Brothers Reporting & Video Company, Inc.

IN THE MATTER OF * BEFORE THE

RAMPART-PARTNERSHIP - * COUNTY BOARD OF APPEALS

Legal Owner; Club 101, Inc. * OF BALTIMORE COUNTY

Contract Lessee * Case No. 96-60-XA

(8819 Orchard Tree Lane) * December 12, 1997

(Special Hearing, Special *

Exception and Variance *

relief Denied.) *

ORIGINAL

* * * * *

The above-entitled matter came on for

hearing before the County Board of Appeals of Baltimore

County at the Old Courthouse, Room 49, 401 Washington

Avenue, Towson, Maryland 21204 at 9 o'clock a.m., December

12, 1997.

* * * * *

Reported by:

MICROFILMED

TOWSON REPORTING COMPANY
100 Baltimore Avenue, Suite 201, Towson, Maryland 21204
410-828-7118 • 800-734-3293
Affiliated With: Court Reporting Resources, Inc.

101 is
after hours
club

IN RE: PETITION FOR SPECIAL HEARING * BEFORE THE
(8819 Orchard Tree Lane)
9th Election District * ZONING COMMISSIONER
4th Councilmanic District
Paul M. Pardew, Property Owner* OF BALTIMORE COUNTY
John M. Giorgelli, Proprietor
Baltimore Co. Zoning Admin * CASE No. V 95-211-SPH
& Dev. Mgt., Enforcement Div.
Petitioner *

People's
Counsel #1

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as a Petition for Special Hearing for the property located at 8819 Orchard Tree Lane in Towson. The case is presented to this Zoning Commissioner in somewhat of an unusual posture in that the Petition for Special Hearing relief is not filed by the property owner. Rather, the Petition is filed by the Baltimore County Zoning Administration and Development Management Office (ZADM), Enforcement Division. The Petition presents two issues; namely, whether the business operation at the aforementioned property is an "After Hours Club" as defined in the Baltimore County Zoning Regulations (BCZR) and, if so, whether said use may continue without the benefit of a special exception and a variance to allow same within 1,000 ft. of a residentially used dwelling.

Appearing at the requisite public hearing held for this case was Kevin R. Connor, an inspector in the Enforcement Division of ZADM. Mr. Connor was present to explain the reasons behind the filing of the Petition for Special Hearing and to present the County's position. Appearing as interested persons was John A. Giorgelli, proprietor of Club 101, Inc., the business on the site and that corporation's counsel, Edward J. Covahey, Jr. Also present was Wayne Skinner on behalf of the Towson-LochRaven Community Council.

The facts presented regarding the subject property and uses thereon were largely not in dispute. The subject property is known as 8819 Orchard

MICROFILMED

Tree Lane and is located near the intersection of Joppa Road and Loch Raven Boulevard in Towson. The property is zoned B.R. and is improved with a commercial building which has been on the site for many years. Mr. Giorgelli indicated that he is President and major stockholder of Club 101, Inc., a tenant of this building and proprietor of the business which has been brought into question. Mr. Giorgelli testified that, approximately two years ago, he recognized the lack of facilities available in Baltimore County to cater to the late night crowd for socializing and dancing. He, therefore, incorporated the business known as Club 101 and went into operation in March of 1993. The nature of the club is to operate a late night facility. The Club is open some Thursdays and most Fridays and Saturdays from 11:00 P.M. to 5:00 A.M. There is a dance floor and a disc jockey set up to provide entertainment. There are also some pool tables and similar amusement devices.

Owing to the liquor laws of Baltimore County and the State which prohibit late night sales of alcohol, the facility does not have a liquor license or sell liquor. Moreover, food is not sold, although a small independent food vendor operates in the front of the building. An admission fee is paid by the patrons who use the facility to socialize and listen and dance to the music provided. Patrons are allowed to bring in alcoholic beverages.

Mr. Giorgelli testified that prior to his going into business, he extensively investigated the propriety of this use both individually and through his counsel. He checked with the Liquor Board and was advised that since liquor was not sold there was no violation of any of that Board's requirements or regulations. He also spoke with the Fire Department, the Health Department and ZADM in Baltimore County. He was assured by all of these agencies that such a use was not violative of any County codes, laws or regulations. He attempted, in fact, to purchase a trader's license or other

license to legitimize the business but was advised by County agencies that no such license was required. Thus, the business went into operation and has continued for approximately two years.

As could be anticipated, many of the neighbors in the subject locale object to the operation of the business. In that the Club is open during late evening/early morning hours, the noise and traffic associated with the operation are objected to by some. Complaints were received by ZADM's Enforcement Division and Mr. Connor indicated that he has visited the site on a couple of occasions. He corroborated Mr. Giorgelli's description of the activities which occur thereon. He also described the large dancing floor and DJ setup. He admitted that he saw nothing unlawful or illegal and has brought the subject Petition to clarify the use of the subject property and whether same is violative of the BCZR.

Club 101 is not the only after hours club in Baltimore County. Other copy cat businesses have sprung up since Mr. Giorgelli went into business. The mushrooming of these businesses and their validity pursuant to the BCZR has resulted in other cases before the Zoning Commissioner's office and enactment of legislation by the Baltimore County Council.

The first case which came before this office was also before this Zoning Commissioner. That case was filed by Scott M. Curliner and William B. England, Jr. (case No. 94-290-SPH). The matter was filed in early 1994 and a decision was rendered by this Zoning Commissioner on March 29, 1994.

The Petition brought in that case sought an interpretation that after hours clubs as described in the testimony presented are permitted uses in certain zones and a determination of what zones are appropriate to permit such uses. Although a specific property was not the subject of that Petition, testimony was received about the activities that go on at these clubs. The activity described in the body of that opinion is similar to the

✓ facts as were presented by Mr. Giorgelli and Mr. Connor in the instant case. At the time the case was held and considered, there was no definition of "After Hours Clubs" in the BCZR. Moreover, as is well settled, the Zoning Commissioner must consider all cases in context of the law then in effect at the time the decision is rendered. See Yorkdale Corporation v. Powell, 237 Md. 121 (1964).

Upon consideration of the evidence and testimony presented in the Culiner case, I held that the use described constituted a night club under the BCZR as it existed at that time. I noted that an after hours club was not an identified use in the BCZR and that the Court of Special Appeals, in Kowalski v. Lamar, 25 Md. App. 493 (1975), held that any use other than that permitted by the zoning ordinance and being carried on as of right or by special exception is prohibited. In the Culiner case, I determined that the proposed operation most closely fit the definition of a night club in the BCZR. As noted in that opinion, night clubs are not permitted in an M.L. zone.

The second case which came before this office related to the same property which is the subject of the instant Petition. That Petition was also filed by the Enforcement Division of ZADM. That Petition named Paul M. Pardew, property owner and John A. Giorgelli, tenant, as interested persons. The Petitioner sought a determination of whether or not the Club 101 use was an after hours club and whether same was permitted in a B.R. zone. In fact, the relief requested there was similar to the interpretation requested at this time.

That case came in for hearing before Deputy Commissioner, Timothy M. Kotroco. Deputy Kotroco's opinion and Order dated September 7, 1994 did not directly answer the question presented. Rather, he granted a preliminary Motion to Dismiss submitted by Mr. Giorgelli's counsel, Edward Covahey.

Specifically, Deputy Commissioner Kotroco held that since the Petition was filed in July of 1994, prior to the enactment of relevant legislation by the County Council in August, that consideration of the alleged violation of the BCZR was premature. Moreover, Deputy Commissioner Kotroco dismissed the action without prejudice, reserving to ZADM the right to file a new Petition for Special Hearing should they deem it appropriate in the future.

Also relevant to the issue presented, is the enactment of Bill 85-94 by the Baltimore County Council. This Bill, which took effect on August 8, 1994, amended the BCZR to provide a definition of after hours clubs and, in fact, regulated same. The definition added to the zoning regulations defined an after hours club as a "Commercial establishment whose principal business is the provision of live or recorded entertainment with or without a dance floor, which is open primarily between 11:00 P.M. and 4:00 A.M., and which does not have a Baltimore County liquor license. An after hours club is not a night club as defined in the zoning regulations or the building code of Baltimore County, Maryland". The legislation went on to provide that an after hours club was permitted in a B.R. zone only by special exception. Moreover, the Bill required that any after hours club located in a B.R. zone be situated at least 1,000 ft. from any residentially used structure.

Having recited this factual and legislative/hearing history, it is now appropriate to answer the questions presented by the subject Petition. In answer to the first question; namely, Is the subject property being used as an after hours club?, it is manifestly apparent that the answer must be in the affirmative. Clearly, the operation of the Club 101 is exactly what the Council envisioned when they enacted Bill 85-94. The facility, as described by Mr. Giorgelli and Mr. Connor, fits precisely the new definition of an after hours club. The business is open during the late evening hours, does

not have a liquor license, provides live entertainment and has a dance floor. Just as a rose by any other name is still a rose, Mr. Giorgelli's operation by any other name is an after hours club.

This is not inconsistent with the prior rulings of this office. As noted above, Mr. Kotroco declined to answer the precise question presented in the prior case regarding this property. Rather, he granted Mr. Covahey's Motion to Dismiss and held that the matter was premature for consideration at that time.

My prior decision in the Curliner/England case is also not a bar to this conclusion. As noted above, the Commissioner must consider each case in accordance with the regulations in effect at that time. When the Curliner/England case was heard, there was no definition of an after hours club in Baltimore County. Now that a definition has been so created and enacted by the legislature, it must be considered and applied in this case. Thus, it is clear that the business operated by Mr. Giorgelli is an after hours club.

In answer to the second question, whether same requires a special exception and need be located more than 1,000 ft. from a residential structure, the answer is "not yet". The legislation enacted by the Council defining after hours clubs (Bill 85-94) provided that any after hours club lawfully operating prior to the effective date of the Bill (August 6, 1994) which is violation of the requirements of said legislation shall be permitted to continue for a period not to exceed one year. That is, the Council clearly enacted a one year sunset provision, allowing after hours clubs a period of one year to comply with the new legislation.

As noted above, Bill 85-94 became effective on August 8, 1994. Thus, after hour clubs which are in violation of the provisions of that legisla-

tion have until August 9, 1995 to either come into compliance or to cease operations.

Moreover, it is clear that this sunset provision is applicable here. As noted above, the proposed use is indeed an after hours club which brings same within the purview of Bill 85-94. Moreover, it was stipulated that indeed the Club is in violation of the requirements contained therein, namely, that no special exception has been obtained and that the use is within a 1,000 ft. of a residential structure. The sole question open for a debate is whether Mr. Giorgelli's after hours club was "lawfully operating" prior to the effective date of the Act. I believe it was for a number of reasons. First, as Mr. Giorgelli testified and Mr. Connor corroborated, the business owner in this case expended great efforts and no doubt expense to legitimize this use before opening. His testimony was uncontradicted that he left no stone unturned in an effort to ensure that the business could legally operate. He checked with County and State agencies and received assurances from them that the business could properly operate. As Mr. Connor commented, he does not believe that the use is violative of any State or County ordinance, save the provisions of Bill 85-94 when they become effective as to this use on August 9, 1994.

Moreover, the use of the word "lawful" by the Council and the interpretation of that term is of note. In Germenko v. Public Services Commission, 226 Md. 295, (1961), the Court determined that lawful implied "that an Act is authorized, sanctioned or, at any rate, not forbidden by law", i.d. @ pg. 367. Although no licenses were obtained, even though same were requested, I believe that Mr. Giorgelli's use is, at the least, not forbidden by law. That is, irrespective of the fact that Mr. Giorgelli had no governmental permission to conduct the business, per se, it is apparent that the

business was not forbidden by any law, rule, regulation or standard when it opened.

It is also significant that the case file contains a copy of a permit for interior renovation of the building in 1987-88. Although this permit did not, in any way, address the proposed use as an after hours club, it is significant that the structure on the site was properly permitted by the Baltimore County Department of Permits and Licenses. Thus, it can be argued that the permit which allowed original construction and subsequent renovation to the building constitutes a tacit authorization or sanction of the use of that building for any purposes other than those illegal.

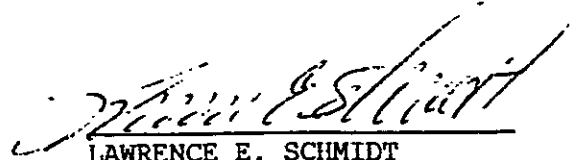
Based on the foregoing analysis, it is clear, therefore, that the subject business is indeed an after hours club. However, by its terms, the provisions of Bill 85-94 are not applicable thereto until August 9, 1995. Thus the Petition for Special Hearing should be granted in part and denied in part and there can be no finding of violation at the present.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the Petition for Special Hearing should be granted in part and denied in part.

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County this 2nd day of March, 1995 that, pursuant to the Petition for Special Hearing, approval as to whether the business operation at the aforementioned property is an "After Hours Club" as defined in the Baltimore County Zoning Regulations (BCZR), be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that the Petition for Special Hearing as it relates to the requirement that the property owner obtain approval for said use by a Petition for Special Exception, and be a 1,000 ft. from a residential property, be and is hereby DENIED, as premature.

Any appeal from this decision must be filed, in writing, within thirty days from the date of this Order to the County Board of Appeals.

A handwritten signature in cursive script, appearing to read "Lawrence E. Schmidt", is written over a horizontal line.

LAWRENCE E. SCHMIDT
Zoning Commissioner for
Baltimore County

LES:mmm

Exhibit #1

DATE: 11/20/97

PEOPLE'S COUNSEL'S SIGN IN SHEET

CASE: RAMPART

The Office of People's Counsel was created by County Charter to participate in zoning matters on behalf of the public interest. While it does not actually represent community groups or protestants, it will assist in the presentation of their concerns if they do not have their own attorney. If you wish to be assisted by People's Counsel, please sign below.

Check if you wish to testify.	Name/Address Phone No.	(Community Group You Represent?) Basis of Your Concerns
✓	CAPTAIN GEORGE M. NARLEY POLICE DEPT.	
✓	Shirley Chandler 410-823-1355	
✓	Penelope Johnson	Office of Community Conservation
	H. R. P. Bolger D 6010 PC6	
	WAYNE SKINNER	TOWSON - LOCH RAVEN Community Council
	Murry Bentley 410-296-0732	TOWSON - Loch Raven Community Council

MICROFILMED

DATE:

PEOPLE'S COUNSEL'S SIGN IN SHEET

CASE:

The Office of People's Counsel was created by County Charter to participate in zoning matters on behalf of the public interest. While it does not actually represent community groups or protestants, it will assist in the presentation of their concerns if they do not have their own attorney. If you wish to be assisted by People's Counsel, please sign below.

[illegible]

Rept. Phil #2

Section 101-- DEFINITIONS. [B.C.Z.R., 1955.]

Words used in the present tense include the future; words in the singular number include the plural number; the word "shall" is mandatory. For the purposes of these regulations, certain terms and words are defined below: [B.C.Z.R., 1955; Bill No. 149, 1987.]

Any word or term not defined in this section shall have the ordinarily accepted definition as set forth in the most recent edition of Webster's Third New International Dictionary of the English Language, Unabridged. [Bill No. 149, 1987.]

Accessory Building: One which is subordinate and customarily incidental to and on the same lot with a main building. A trailer shall not be considered an accessory building. A structure connected to a principal building by a covered passageway or with one wall in common shall not be considered an accessory building. [B.C.Z.R., 1955.]

Accessory Use or Structure: A use or structure which: (a) is customarily incident and subordinate to and serves a principal use or structure; (b) is subordinate in area, extent, or purpose to the principal use or structure; (c) is located on the same lot as the principal use or structure served; and (d) contributes to the comfort, convenience, or necessity of occupants, business, or industry in the principal use or structure served; except that, where specifically provided in the applicable regulations, accessory off-street parking need not be located on the same lot. An accessory building, as defined above, shall be considered an accessory structure. A trailer may be an accessory use or structure if hereinafter so specified. An ancillary use shall be considered as an accessory use; however, a use of such a nature or extent as to be permitted as a "use in combination" (with a service station) shall be considered a principal use. [Bills No. 100, 1970; No. 26, 1988.]

["Acreage, Gross Residential..."] {Deleted by Bill No. 100, 1970.}

After-Hours Club: A commercial establishment whose principal business is the provision of live or recorded entertainment, with or without a dance floor, which is open primarily between 11:00 p.m. and 4:00 a.m. and which does not have a Baltimore County Liquor License. An After-Hours Club is not a nightclub as defined in the zoning regulations or the Building Code of Baltimore County, Maryland. [Bill No. 85, 1994.]

Agriculture, Commercial: The use of land, including ancillary structures and buildings, to cultivate plants or raise or keep animals for income, provided that the land also qualifies for farm or agricultural use assessment pursuant to Section 8-209 of the tax-property article of the Annotated Code of Maryland, as amended. Commercial agriculture includes the production of field crops, dairying, pasturage agriculture, horticulture, floriculture, aquaculture, apiculture, viticulture, forestry, animal and poultry husbandry, horse breeding and horse training and also includes

Revised Exhibit #3

"Neighborhood..." {Deleted by Bill No. 3, 1992.}

Nightclub: A tavern or other commercial establishment which provides live or recorded entertainment, with or without a dance floor, and which is categorized as a nightclub by the building code of Baltimore County. {Bill No. 110, 1993.}

Nonconforming Use: A legal use that does not conform to a use regulation for the zone in which it is located or to a special regulation applicable to such a use. A specifically named use described by the adjective "nonconforming" is a nonconforming use. [B.C.Z.R., 1955; Bill No. 18, 1976.]

Nonindustrial Use: Any use other than an industrial, quasi-industrial, or industry-related use. [Bill No. 178, 1979.]

Nudity: A state of dress in which a human buttock, anus, genitalia, or female breast is completely bared. [Bill No. 137, 1990.]

Nudity, Partial: A state of dress in which clothing covers no more than the genitals, pubic region, and areolae of the female breast, as well as portions of the body covered by supporting straps or devices. [Bill No. 137, 1990.]

Nursery, Horticultural: An agricultural operation primarily engaged in the production and marketing of trees, shrubs and plants. The plant materials may be produced on the premises and may be purchased elsewhere at any stage of maturity for further production. Horticultural nurseries may engage in accessory uses such as storage of plant materials, sale of products necessary for the health of the nursery stock, and provision of limited landscape services. A nursery which sells plant materials grown exclusively on-site and which does not offer any of the accessory services permitted at horticultural nurseries, shall be considered a farm. {Bill No. 41, 1992.}

Nursery School: A school or a level within a school providing educational instruction for children between two and four years old. [Bill No. 47, 1985.]

Nursing Home: (Formerly Convalescent Home): A facility which provides board, shelter, and nursing care to chronic or convalescent patients. This term also includes facilities which provide domiciliary care within a nursing home. [Bill No. 37, 1988.]

Office: A building or portion of a building used for conducting the affairs of a business, profession, service, industry, or government, including a medical office. The term "office" does not include a bank, a post office, a veterinarian's office, nor an establishment where merchandise is stored on or sold from the premises. [Bills No. 13, 1980; No. 167, 1980; No. 37, 1988; No. 186, 1994.]

Relat^{ions} Phil #4

The BOCA® National Building Code/1993

Commentary Volume 1

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BUILDING OFFICIALS AND CODE ADMINISTRATORS INTERNATIONAL, INC.

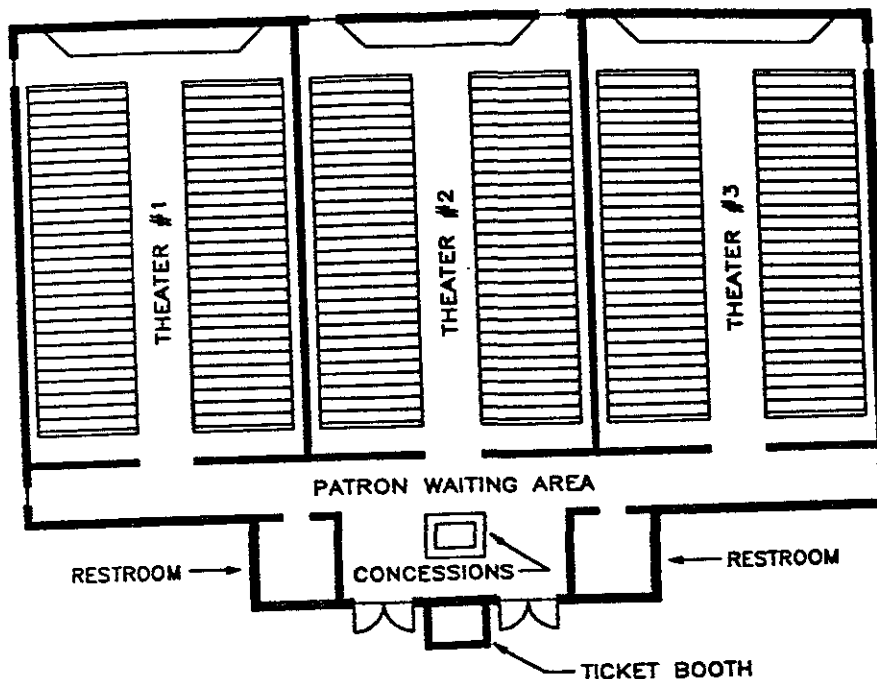


Figure 303.2(2)
USE GROUP A-1

occupied for the viewing of motion pictures. Facilities of this type ordinarily have fixed seating, no stage, a viewing screen, motion picture projection booth(s) and equipment [see Figure 303.2(2)].

Use Group A-1 presents a significant potential life safety hazard because of the large occupant loads and the concentration of people within confined spaces. The means of egress is an important factor in the design of such facilities. Theaters for the performing arts which require stages are considered particularly hazardous because of the amount of combustibles such as curtains, drops, leg drops, scenery, lighting equipment, burnable construction materials and other accessories normally associated with stage operation.

Where a stage or enclosed platform is utilized, Section 412.0 provides the construction and other requirements for the hazards associated with that type of space.

303.3 Use Group A-2 structures: This use group shall include all buildings and places of public assembly without theatrical stage accessories, including theaters, clubs, dance halls, nightclubs and for similar purposes including all rooms, bars and other spaces located therein with a common means of egress and entrance.

■ Occupancies included in Use Group A-2 are identified in this section.

Use Group A-2 includes occupancies in which people congregate in high densities for social entertainment such as drinking and dancing (e.g., nightclubs, dance halls, cabarets, etc). The uniqueness of these occupancies is characterized by the following:

- No theatrical stage accessories other than a raised platform;
- Low lighting levels;
- Entertainment by a live band or recorded music generating above-normal sound levels;
- Later-than-average operating hours;
- Tables and seating arranged or positioned so as to create ill-defined aisles;
- A specific area designated for dancing;
- Service facilities primarily for alcoholic beverages with limited food service; and
- High occupant load density.

The fire records are very clear in identifying that the characteristics listed above often cause a delayed awareness of a fire situation and confuse the appropriate response, resulting in an increased egress time and sometimes panic. Together, these factors may result in extensive life and property losses. These characteristics are only advisory in determining if Use Group A-2 is the appropriate classification. There will always be additional characteristics that are unique to a project, and these must also be taken into consideration when a classification is made.

Example 1: The Downtown Club, a popular local nightclub/dance hall, features a different band every weekend [see Figure 303.3(1)]. It is equipped with a bar and basic kitchen facilities so that beverages and appetizers can be served. There is a platform for a band to perform on, a dance floor in front of the platform and numerous cocktail tables

and chairs. The tables and chairs are not fixed, resulting in a haphazard arrangement such that there are no distinct aisles. When the band performs, the house lights are dimmed and spotlights are keyed in on the performers. The club is equipped with a sound system that is used at loud levels. The club is open until 3:00 a.m. — the latest time the local jurisdiction will allow.

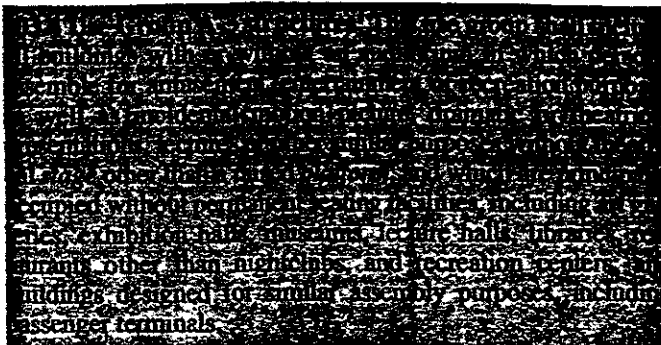
From this description of the Downtown Club, one can readily see that the appropriate classification is Use Group A-2. Sometimes, however, it is not this easy to determine the appropriate classification. In such cases, the code official must seek additional information regarding the function(s) of the building and each area within the building.

Example 2: The local Wallabys Club has a meeting hall which is used for club gatherings and social functions [see Figure 303.3(2)]. Based on this description alone, the Wallabys Club would be classified as Use Group A-3. One night a year the Wallabys Club sponsors a "Cabaret Night." A band and a show are featured, tables and chairs are placed close together, lights are dimmed for atmosphere, and beverages and snacks are served by waitresses.

Thus, on one night each year, the Wallabys Club is occupied for a purpose which has all of the characteristics indicative of a nightclub, Use Group A-2. Therefore, because Use Group A-2 represents an overall greater hazard to public safety and welfare than does the classification of Use Group A-3, the Wallabys meeting hall should be classified in Use Group A-2 instead of Use Group A-3. The greater of the relative hazards represented by all of the various uses of a space must be considered in assigning a use group classification to a structure.

Nightclubs, cabarets, dance halls, beer gardens, disco-

theques and other similar facilities are classified as Use Group A-2 because of the nature of their occupancies. Establishments of this type are frequently crowded, thus hindering access to exits. The level of risk to life safety in this use group is the highest when compared to all other assembly use groups and is reflected in the strictness of the code provisions.



■ Occupancies included in Use Group A-3 are identified in this section.

Structures in which people assemble for the purpose of social activities (such as entertainment, recreation and amusement) that are neither classified in Use Group A-1 or A-2 nor appropriately classified in Use Group A-4 or A-5 are to be classified in Use Group A-3.

Exhibition halls, restaurants, libraries, museums, gymnasiums, recreation centers, health clubs, indoor arenas, indoor shooting galleries, bowling centers, billiard halls and the like are among the facilities often classified in Use Group A-3. Also, lecture halls that are located in colleges, universities or in schools for students up to 12th grade, and which have an occupant load of 50 or more, are included in this use group classification.

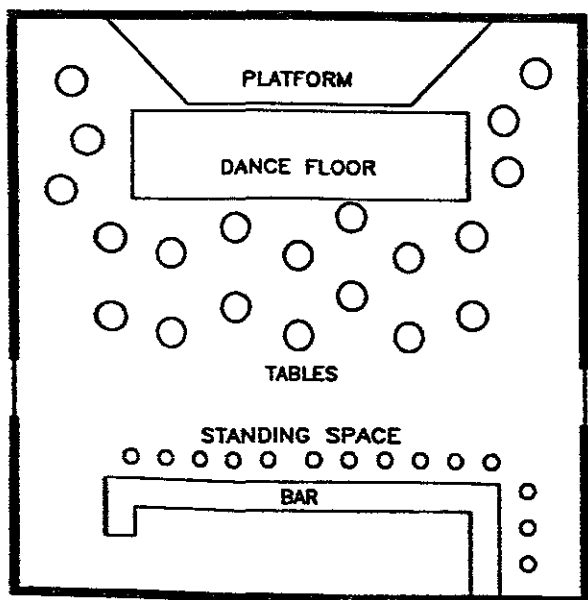


Figure 303.3(1)
USE GROUP A-2

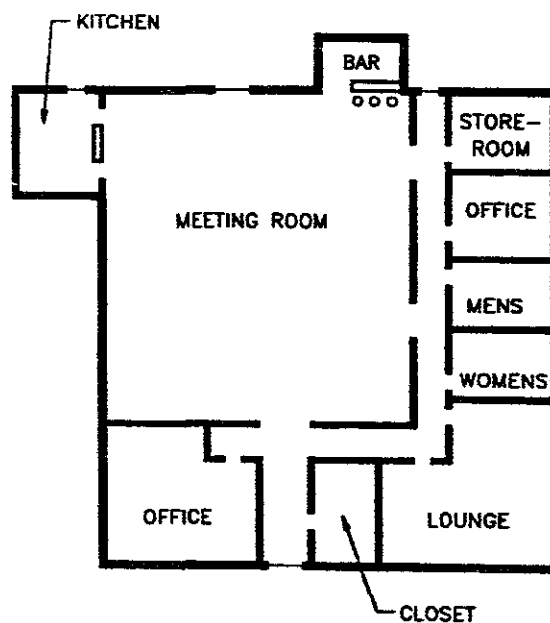


Figure 303.3(2)
USE GROUP A-3

302.1.1.1 Separation: Where Table 302.1.1 requires a fire-resistance rated separation, the specific occupancy area shall be separated from the remainder of the building with fire separation assemblies (see Section 709.0). Where Table 302.1.1 requires smoke partitions, the smoke partitions shall be constructed of materials consistent with the type of construction and shall be capable of resisting the passage of smoke. The smoke partitions shall extend from the floor to the underside of the fire-resistance rated floor/ceiling or roof/ceiling assembly or to the underside of the floor or roof deck above. All doors shall be self-closing or automatic-closing upon detection of smoke.

302.1.2 Accessory areas: Except for accessory areas of Use Group H in accordance with Section 302.1.2.1 and specific occupancy areas indicated in Section 302.1.1, where the area devoted to an accessory occupancy does not occupy more than 10 percent of any fire area nor more than 10 percent of the allowable area permitted by Sections 503.0 based on the accessory use group, a fire separation assembly shall not be required between the main use group and accessory areas. The required type of construction and the automatic fire suppression requirements in Section 904.0 shall be based on the main use group of the fire area.

302.1.2.1 High-hazard uses: In buildings that are three stories or less in height and equipped throughout with an automatic sprinkler system in accordance with Section 906.2.1, an occupancy in Use Group F or S is permitted to have accessory areas of Use Group H-2, H-3 or H-4, provided that such areas do not occupy more than 10 percent of any fire area nor more than 10 percent of the allowable area permitted by Section 503.0 based on the use group of the accessory area. A fire separation assembly shall not be required between the F or S use group and the accessory H use group. The maximum quantity of hazardous materials within the accessory H use group shall not exceed twice the permitted exempt amount specified in Table 307.8(1) or Table 307.8(2). The required type of construction shall be based on the main use group of the fire area.

302.2 Mixed use: All buildings and structures that include more than one use group shall be further designated as a mixed use and shall comply with Section 313.0. Specific occupancy areas and accessory areas complying with Sections 302.1.1 and 302.1.2, respectively, shall be classified in accordance with the main use group.

SECTION 303.0 ASSEMBLY USE GROUPS

303.1 General: All structures which are designed or occupied for the gathering together of persons for purposes such as civic, social or religious functions, recreation, food or drink consumption or awaiting transportation, shall be classified as Use Group A-1, A-2, A-3, A-4 or A-5. A room or space used for assembly purposes by less than 50 persons and which is accessory to another use group shall be included as a part of that main use group. The term "Use Group A" shall include Use Groups A-1, A-2, A-3, A-4 and A-5.

303.2 Use Group A-1, theaters: This use group shall include all theaters and all other buildings and structures intended for the

production and viewing of performing arts or motion pictures; and which are usually provided with fixed seats — including theaters, motion picture theaters and television and radio studios admitting an audience. Stages and platforms shall comply with Section 412.0.

303.3 Use Group A-2 structures: This use group shall include all buildings and places of public assembly, without theatrical stage accessories, designed for occupancy as dance halls, nightclubs and for similar purposes, including all rooms, lobbies and other spaces connected thereto with a common means of egress and entrance.

303.4 Use Group A-3 structures: This use group shall include all buildings with or without an auditorium in which persons assemble for amusement, entertainment or recreation purposes as well as incidental motion picture, dramatic or theatrical presentations, lectures or other similar purposes without theatrical stage other than a raised platform; and which are principally occupied without permanent seating facilities, including art galleries, exhibition halls, museums, lecture halls, libraries, restaurants other than nightclubs, and recreation centers; and buildings designed for similar assembly purposes, including passenger terminals.

303.5 Use Group A-4 structures: This use group shall include all buildings and structures which are occupied exclusively for the purpose of worship or other religious services.

303.6 Use Group A-5, outdoor assembly: This use group shall include structures utilized for outdoor assembly intended for participation in or reviewing activities, including grandstands (Section 1013.0), bleachers (Section 1013.0), coliseums, stadiums, amusement park structures (Section 413.0) and fair or carnival structures. Such structures shall comply with all pertinent provisions of this code.

SECTION 304.0 BUSINESS USE GROUP

304.1 General: All buildings and structures which are occupied for the transaction of business, for the rendering of professional services, or for other services that involve stocks of goods, wares or merchandise in limited quantities which are incidental to office occupancies or sample purposes, shall be classified as Use Group B.

304.2 List of business occupancies: The occupancies listed in Table 304.2 are indicative of and shall be classified as Use Group B.

Table 304.2
BUSINESS OCCUPANCIES

Airport traffic control towers	Fire stations
Animal hospitals, kennels, pounds	Florists and nurseries
Automobile and other motor vehicle showrooms	Laboratories; testing and research
Banks	Laundries; pickup and delivery stations and self-service
Barber shops	Police stations
Beauty shops	Post offices
Car wash	Print shops
Civic administration	Professional services; attorney, dentist, physician, engineer, etc.
Clinic, outpatient	Radio and television stations
Dry cleaning; pickup and delivery stations and self-service	Telecommunication equipment building
Electronic data processing	

(Held until admitted.)

**ART PARTNERSHIP
MPART PARTNERSHIP
CHARD ICE RINK, INC.**

Lease Agreement

EMENT, made this 15 day of March

19 97, by and between: **RAMPART PARTNERSHIP**
828 Warren Road
Cockeysville MD. 21030-2827

(hereinafter called "Lessor"), and : "101 Inc." t/a Liquids
or Club 101

(hereinafter called "Lessee").

WITNESSETH that, in consideration of the rents and covenants herein set for
Lessor hereby leases to Lessee, and Lessee hereby rents from Lessor, the following described
premises owned by Lessor and located at: 8817-19 - 21 Orchard Tree Lane
Towson MD 21286-2142 being 8505 sq.ft

The lease herein provided shall be for a term of 1 yr to commence
on the 1st day of April 19 97.

Lessee shall pay to Lessor for the use and occupancy of the premises a rental of \$72,000.00
seventy- two thousand dollars per annum, payable in equal month
installments of \$6,000.00 six thousand dollars
in advance of the first day of each and every month without any deduction or set - offs.

Premises are to be used by Lessee only for Dance center / or other(s)
addendum on page 19) Property is zoned BR

RECORDED

sion under the alcoholic beverage laws

Board of License Commissioners of
ose a fine, or both on any licensee who

d.

ther to fine or suspend a licensee, the
nts:

als would not be impaired by allowing
od set for the suspension; and
y will achieve the desired disciplinary

and regulations necessary to carry out

County the Board of License Commis-
an \$2,000 or suspend a license or both
at is cause for suspension under the
ico County.

ubsection applies only in Worcester

ers may impose both a fine of not more
verage license, for any violation of the
ster County.

ubsection shall be deposited into the
s, 1951, § 190; 1947, ch. 501, § 175;
7; 1978, chs. 561, 703, 707, 749; 1979,
37; 1981, chs. 15, 229, 423, 453; 1982,
hs. 61, 87; 1986, ch. 390; 1989, ch. 5,
hs. 149, 394, 413; 1994, ch. 55; ch. 80,
1997, chs. 81, 398.)

esort to in the appropriate circumstance: mon-
etary fines, license suspension, and license re-
ocation. Board of Liquor License Comm'rs v.
Hollywood Prods., Inc., 344 Md. 2, 684 A.2d 837
(1996).

Hours of operation. — The legislature has
pecifically designated the hours during which
coholic beverages may be sold and did not
nfer upon the Baltimore City Liquor Board
e power to deviate from those provisions; the
quor Board did not have explicit or implicit
thority to sanction a licensee by restricting
hours of operation. Board of Liquor License
omm'rs v. Hollywood Prods., Inc., 344 Md. 2,
4 A.2d 837 (1996).

§ 16-508. Expungement of violation.

(a) *Applicability.* — This section applies only in Kent County.

(b) *Expungement by Board after 7 years.* — A past violation of this article or
of any regulations adopted under it shall be expunged by the Board of License
Commissioners after 7 years from the date the violation occurred. (1997, ch.
431.)

Editor's note. — Section 2, ch. 431, Acts
1997, provides that the act shall take effect Oct.
1, 1997.

TITLE 18. ALCOHOLIC BEVERAGES IN THE COUNTIES.

Subtitle 1. General Provisions

§ 18-103. Reports of legislative enactments.

A copy of any legislative enactment concerning alcoholic beverages by the
local governing body under the authority of this subtitle shall be sent to the
Department of Legislative Services, 90 State Circle, Annapolis, Maryland
21401. (1986, ch. 216; 1989, ch. 5, § 15; 1997, ch. 635, § 9; ch. 636, § 9.)

Editor's note. — Section 9, chs. 635 and
636, Acts 1997, effective July 1, 1997, provides
that "any reference in the Annotated Code
rendered obsolete by this Act shall be corrected
by the publisher of the Annotated Code, the
Michie Company, in consultation with the Ex-
ecutive Director of the Department of Legisla-

tive Services, with no further action required
by the General Assembly. The Michie Company
shall adequately describe any such correction
in an editor's note following the section affect-
ed." Pursuant to § 9 of chs. 635 and 636,
appropriate changes have been made in this
section.

TITLE 20. PLACES OF PUBLIC ENTERTAINMENT.

§ 20-101. Baltimore County.

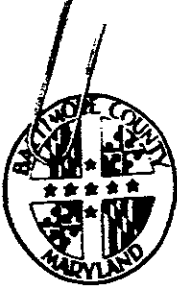
(a) *"Bottle club" defined.* — (1) In this section, "bottle club" means any club
that serves, gives, or allows alcoholic beverages to be consumed by patrons
after legal closing hours for establishments licensed under § 11-303 of this
article from supplies that the patrons previously purchased or reserved.

(2) "Bottle club" does not include any establishment if a license for the
premises had been issued under the provisions of this article.

(b) *Applicability.* — This section applies only in Baltimore County.

(c) *Restrictions.* — A bottle club may not give, serve, dispense, keep, or allow
to be consumed on its premises, or on premises under its control or possession,
any alcoholic beverages, setups, or other component parts or mixed alcoholic
drinks after legal closing hours for establishments under § 11-303 of this
article.

(d) *Violations.* — A violation of this section is a misdemeanor and a fine of up
to \$10,000 or imprisonment for up to 2 years, or both, may be imposed. (1997,
ch. 661, § 2.)



Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 8819 Orchard Tree Lane

which is presently zoned

BR

This Petition shall be filed with the Office of Zoning Administration & Development Management.

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 Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

See Attached

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

I, or we, agree to pay expenses of 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.

Contract Purchaser/Lessee

CLUB 101, INC.

(Type or Print Name)

Signature John Giorgilli, President

8126 Trumps Hill Road

Address

Baltimore, MD 21206

City

State

Zipcode

Attorney for Petitioner.

EDWARD C. COVAHEY, JR.

(Type or Print Name)

Signature

614 Bosley Avenue (410) 828-9441

Address

Phone No.

Towson, MD 21204

City

State

Zipcode

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).

RAMPART PARTNERSHIP

(Type or Print Name)

Signature

Paul M. Pardeew

Signature

828 Warren Road

Address

Phone No.

Cockeysville, MD 21030

City

State

Zipcode

Name, Address and phone number of legal owner, contract purchaser or representative to be contacted.

Edward C. Covahey, Jr., Esquire

Name

614 Bosley Ave., Towson, MD 21204 (410) 828-

Address

Phone No.

944

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

unavailable for Hearing

the following dates _____ Next Two Months

ALL _____ OTHER _____

REVIEWED BY: _____ DATE _____



MICROFILMED



Petitioner's
Official
#9

ATTACHMENT TO PETITION FOR SPECIAL HEARING

Petitioner's request that the Zoning Commissioner hold a Special Hearing for the purpose of:

(1) establishing the subject premises as a non-conforming use and to authorize the continued existing uses of the subject premises;

(2) establishing that Petitioners have "vested rights" in the property such that County Bill No. 85-94 and the Zoning Regulations contained therein relating to "after hours clubs" may not be enforced against Petitioners and the subject premises;

(3) establishing that Baltimore County Bill No. 85-94 and the Zoning Regulations contained therein relating to "after hours clubs" may not be enforced against Petitioners and the subject premises as same is unconstitutional as applied against Petitioners and the subject premises;

(4) establishing that Baltimore County Bill No. 85-94 and the Zoning Regulations contained therein relating to "after hours clubs" may not be enforced against Petitioners under the doctrine of estoppel.

CAUTION: NOT TO BE USED FOR
IDENTIFICATION PURPOSES

THIS IS AN IMPORTANT RECORD
SAFEGUARD IT

ANY ALTERATIONS IN SHADED
AREAS RENDER FORM VOID

DD FORM 214
1 JUL 79

PREVIOUS EDITIONS OF THIS
FORM ARE OBSOLETE.

CERTIFICATE OF RELEASE OR DISCHARGE
FROM ACTIVE DUTY

1. NAME (Last, first, middle) GIORGILLI, JOHN AMERICO		2. DEPARTMENT, COMPONENT AND BRANCH ARMY/RA		3. SOCIAL SECURITY NO. 219 94 7125	
4a. GRADE, RATE OR RANK SP4	4b. PAY GRADE E-4	5. DATE OF BIRTH 660806	6. PLACE OF ENTRY INTO ACTIVE DUTY Baltimore, MD		
7. LAST DUTY ASSIGNMENT AND MAJOR COMMAND HQ Co USAAPGSA, APG MD AMC X5			8. STATION WHERE SEPARATED Aberdeen Proving Ground, MD 21005-5001		
9. COMMAND TO WHICH TRANSFERRED ARPERCEN, 9700 Page Boulevard, St Louis, MO 63132-5200			10. SGLI COVERAGE AMOUNT \$ 50,000 ☐ NONE		
11. PRIMARY SPECIALTY NUMBER, TITLE AND YEARS AND MONTHS IN SPECIALTY (Additional specialty numbers and titles involving periods of one or more years) 11B10, Infantryman, 3 years and 9 months// NOTHING FOLLOWS			12. RECORD OF SERVICE		
			a. Date Entered AD This Period 84 09 05		
			b. Separation Date This Period 88 09 04		
			c. Net Active Service This Period 04 00 00		
			d. Total Prior Active Service 00 00 00		
			e. Total Prior Inactive Service 00 06 24		
			f. Foreign Service 00 11 29		
			g. Sea Service 00 00 00		
			h. Effective Date of Pay Grade 86 09 01		
i. Reserve Oblig. Term. Date 90 09 04					
13. DECORATIONS, MEDALS, BADGES, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED (All periods of service) Army Service Ribbon//Multinational Force and Observers Medal//Expert Infantry Badge// Expert Badge (Rifle)// NOTHING FOLLOWS					
14. MILITARY EDUCATION (Course Title, number weeks, and month and year completed) Infantryman Course, 13 weeks (1984)// NOTHING FOLLOWS					
15. MEMBER CONTRIBUTED TO POST-VIETNAM ERA VETERANS' EDUCATIONAL ASSISTANCE PROGRAM ☐ YES ☒ NO			16. HIGH SCHOOL GRADUATE OR EQUIVALENT ☐ YES ☒ NO		17. DAYS ACCRUED LEAVE PAID 07½
18. REMARKS Dental care was not provided within 90 days prior to separation//NOTHING FOLLOWS					
19. MAILING ADDRESS AFTER SEPARATION 5126 Trumps Mill Rd Baltimore, MD 21206			20. MEMBER REQUESTS COPY 6 BE SENT TO MD DIR. OF VET AFFAIRS ☐ YES ☒ NO		
21. SIGNATURE OF MEMBER BEING SEPARATED Member not available to sign			22. TYPED NAME, GRADE, TITLE AND SIGNATURE OF OFFICER AUTHORIZED TO SIGN SAMUEL A. GILLIAM, Asst Adjutant		

MICROFILMED

MEMO
#11



**Veterans
Administration**

Regional Office
Federal Building
31 Hopkins Plaza
Baltimore, MD 21201

September 11, 1989

*Mr. John A. Biorgilli
5126 Trumps Mill Rd.
Baltimore, Md. 21206*

Dear Mr. Biorgilli:

You are awarded Veterans Administration benefits payable in the amount and beginning with the date shown below.

<u>Monthly Amount</u>	<u>Beginning Date</u>
\$ 410.00	10-1-88
426.00	12-1-88

The attached form(s) furnish additional information concerning your award. It is important that you note their contents, as they may affect your right to continue to receive payment.

If you believe our decision is incorrect, please see the reverse side of this letter for the Notice of Procedural and Appellate Rights. You should keep this letter for future reference.

IMPORTANT: Please show the veteran's full name and VA file number on all correspondence or evidence submitted.

Sincerely yours,

James J. Shear
ADJUDICATION OFFICER

Encl. VAF 21-6782
VAF-28-1900
VAF-21-8764
VAF 28-8890

*Petitioner's Exhibit
#12*

In Reply Refer To:

*313/211A
219 94 7125*

MICROFILMED

**FL 21-822a
May 1980**

ORIGINAL DISABILITY COMPENSATION

check covering the initial amount due under your award of disability compensation will be mailed within 15 days. Thereafter, checks will be delivered at the beginning of each month for the preceding month. Payments will continue subject to the conditions shown on the reverse side of this form.

The Item(s) checked below apply to you:

- ☒ 1. This award has been made to you for the following service-connected condition(s) with a combined evaluation of 50 %. This combined rating is not arrived at by adding the percentages of your disabilities but is computed in accordance with a combined rating table.

Condition	%
Detached retina - right eye	40
Right ankle	10

- ☐ a. A temporary pre-stabilization disability evaluation has been assigned for your service-connected conditions shown above based on service medical records. This temporary rating will continue for 12 months from date of separation. A VA examination will be scheduled toward the end of this period to evaluate your disability for compensation purposes at that time.

- ☐ 2. Your disabilities listed below are service-connected but they are less than 10% disabling and compensation is not payable:

- ☒ 3. The evidence does not establish service-connection for:

Right shoulder condition. Although you had a separation in your right shoulder during service, no disability of that shoulder was found on the examination.

- ☐ 4. DEPENDENCY INFORMATION: Veterans having a 30% or more service-connected condition may be entitled to additional compensation for a spouse, dependent parents, or unmarried children under 18 (or under 23 if attending an approved school) or where prior to age 18 the child has become permanently incapable of self-support because of mental or physical defect. The additional benefit for a spouse is payable in a higher amount when the spouse is a patient in a nursing home or so disabled as to require the regular aid and attendance of another person.

In order that additional benefits may be payable from the earliest possible date, the evidence indicated below by check mark should be submitted within one year from the date of this notice. (NOTE: If you are unable to secure any of these documents, please let us know as other types of proof may be permitted.)

- ☐ a. A certified copy of your marriage certificate.
- ☐ b. Your certified statement showing the date, place and circumstances of the dissolution of your and your spouse's prior marriages, if any.
- ☐ c. VA Form 21-686c, Declaration of Marital Status.
- ☐ d. Certified copy of birth certificates of children meeting any of the above requirements.
- ☐ e. A certified copy of your birth record, on which the names of your parents are shown.
- ☐ f. VA Form 21-509, Statement of Dependency. This form should be completed by your parent(s).
- ☐ g.

IMPORTANT - SHOW YOUR FULL NAME AND VA FILE NUMBER ON ALL CORRESPONDENCE OR EVIDENCE SUBMITTED

ENCL: ☐ VA FORM 21-686c

☐ VA FORM 21-509

VA FORM 21-6782
JAN 1979

SUPERSEDES VA FORM 21-6782, OCT 1978,
WHICH WILL NOT BE USED.

IMPORTANT SEE REVERSE SIDE

MICROFILMED

Relatives Indicated #13

*11/01/77
219 94 7125*

**MILITARY ASSISTANCE COMMAND VIETNAM
STUDIES AND OBSERVATION GROUP
APO SAN FRANCISCO 96307**

SEE
PASSPORT
PICTURE

John A. Giorgilli E/4	
NAME	
Corporal	O/Pos
GRADE	BLOOD TYPE
5427125 U.S. Army S.F.	
SERVICE NO.	

SPECIAL IDENTIFICATION AND PASS

THE PERSON WHO IS IDENTIFIED BY THIS DOCUMENT IS
ACTING UNDER THE DIRECT ORDERS OF THE PRESIDENT
OF THE UNITED STATES!

DO NOT DETAIN OR QUESTION HIM!

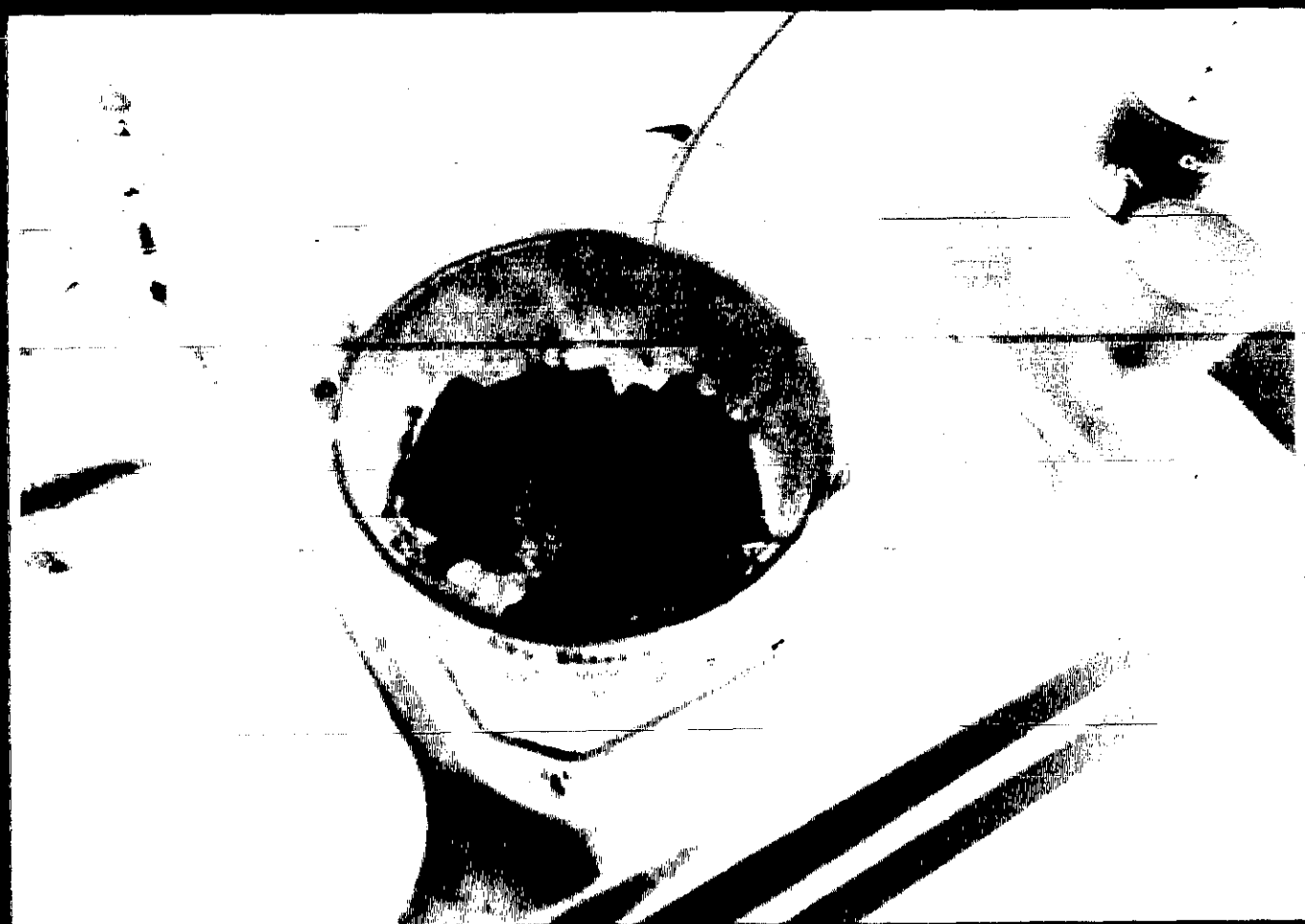
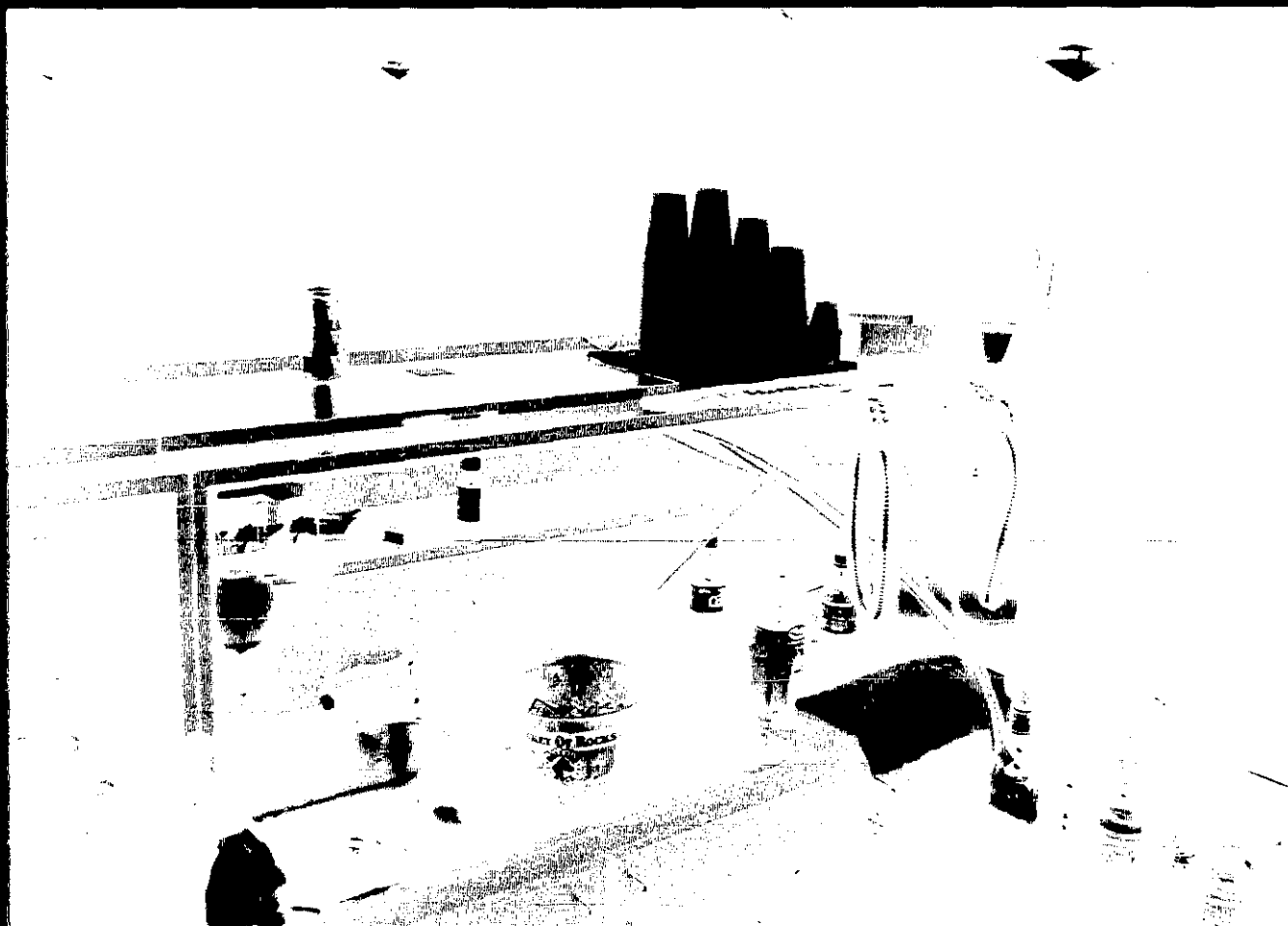
HE IS AUTHORIZED TO WEAR CIVILIAN CLOTHING, CARRY
UNUSUAL PERSONAL WEAPONS, TRANSPORT AND POSSESS
PROHIBITED ITEMS INCLUDING U. S. CURRENCY, PASS INTO
RESTRICTED AREAS AND REQUISITION EQUIPMENT OF ALL
TYPES INCLUDING WEAPONS AND VEHICLES.

**IF HE IS KILLED OR INJURED, DO NOT REMOVE THIS
DOCUMENT FROM HIM. ALERT YOUR COMMANDING
OFFICER IMMEDIATELY.**

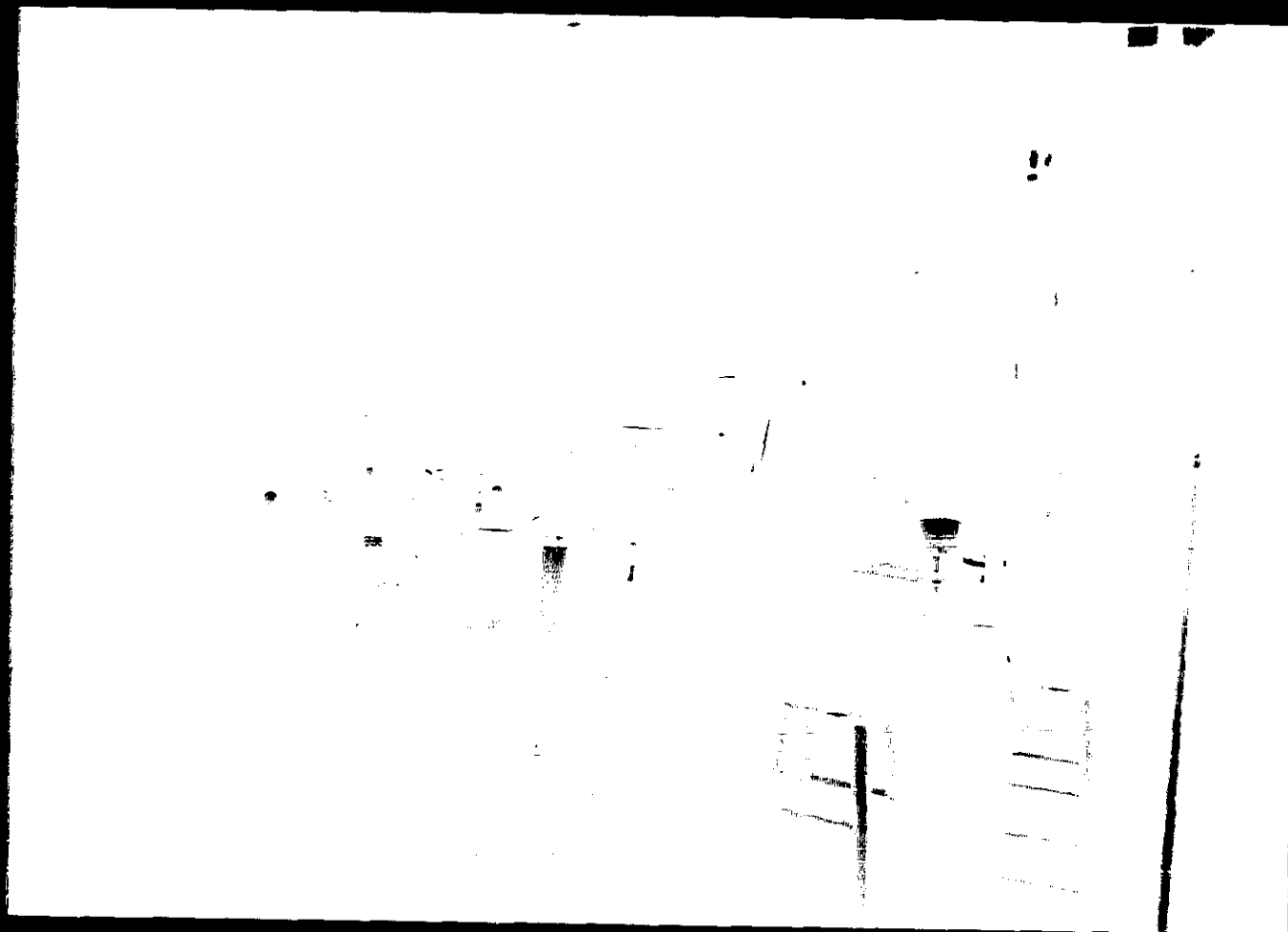
JPC - JAPAN

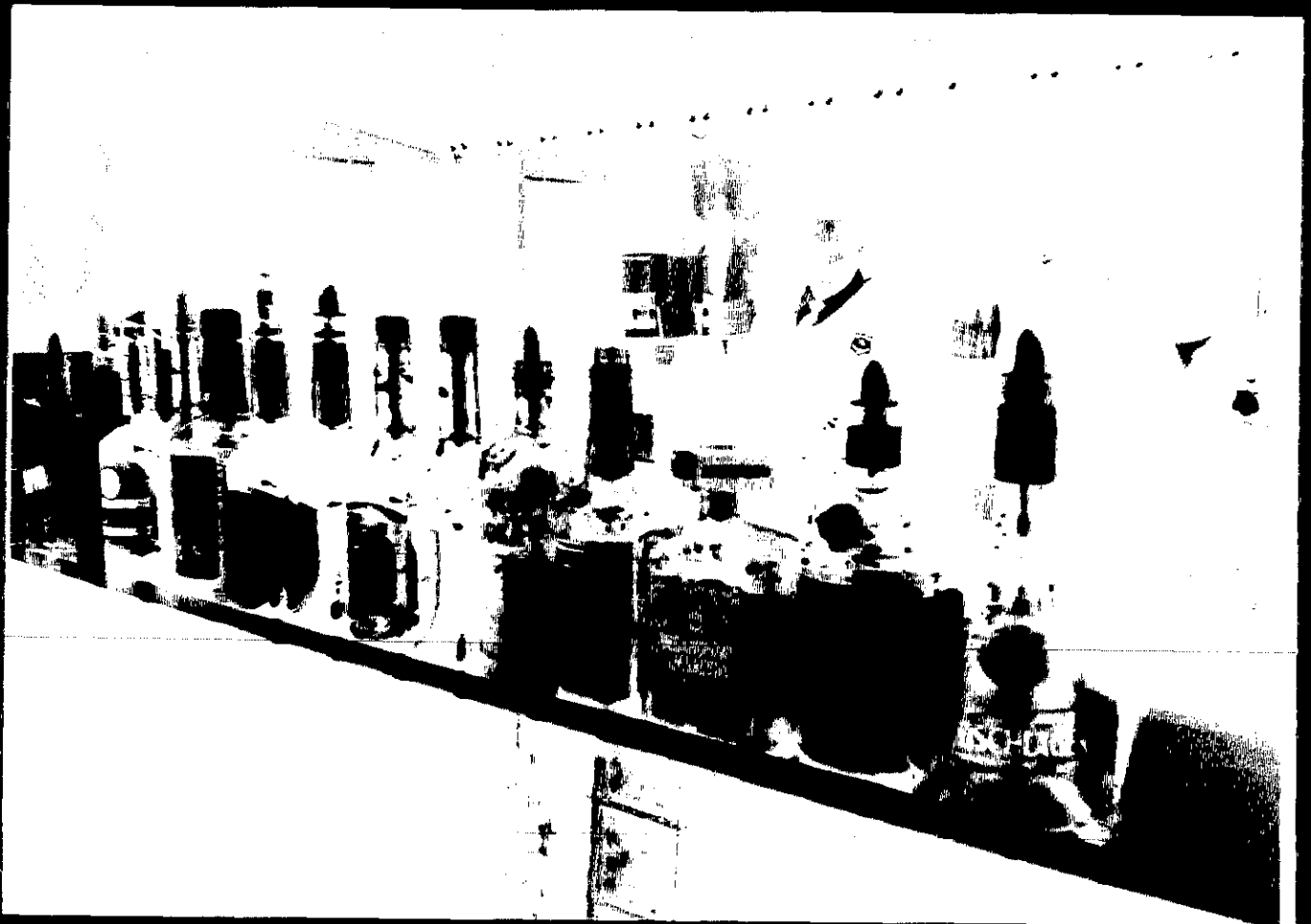
NOTIFIED

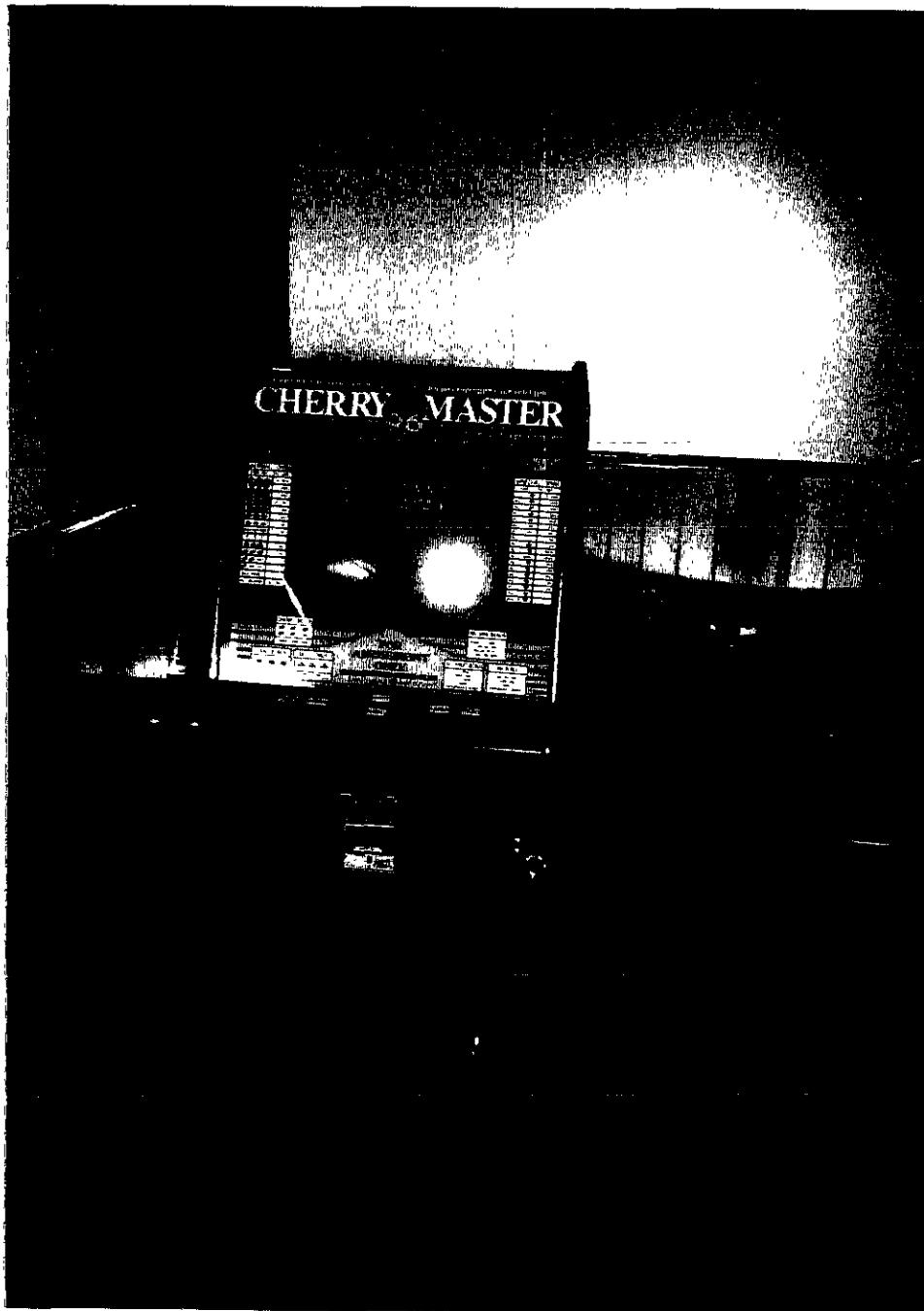
*Refugees Exhibit
#14*











County Board of Appeals
Room 219, Court House
Towson, Maryland 21204

County's Exh. 9A-9H
(8 photos)

96-60-XA

Fairport / Club 101

MICROFILMED



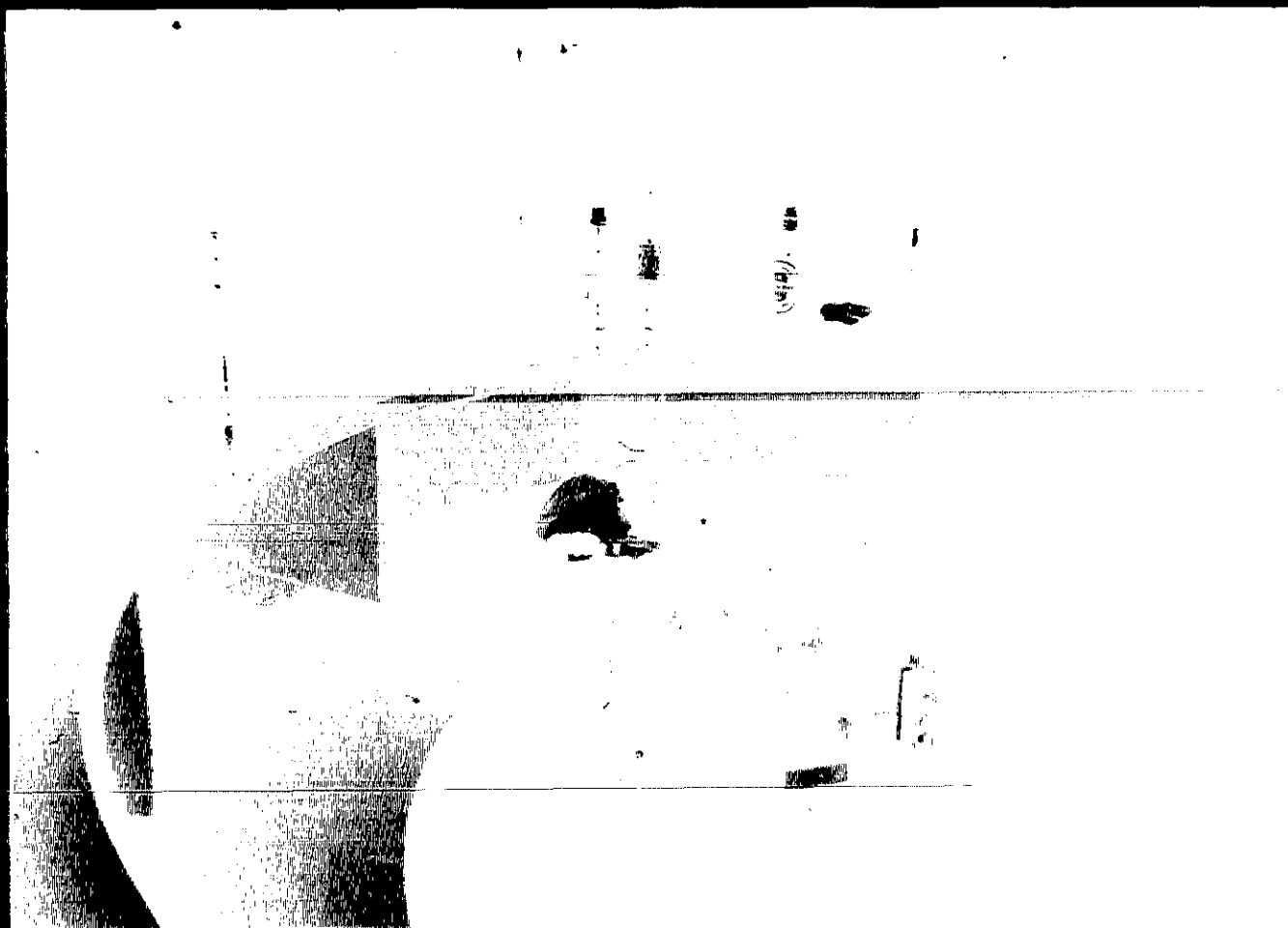
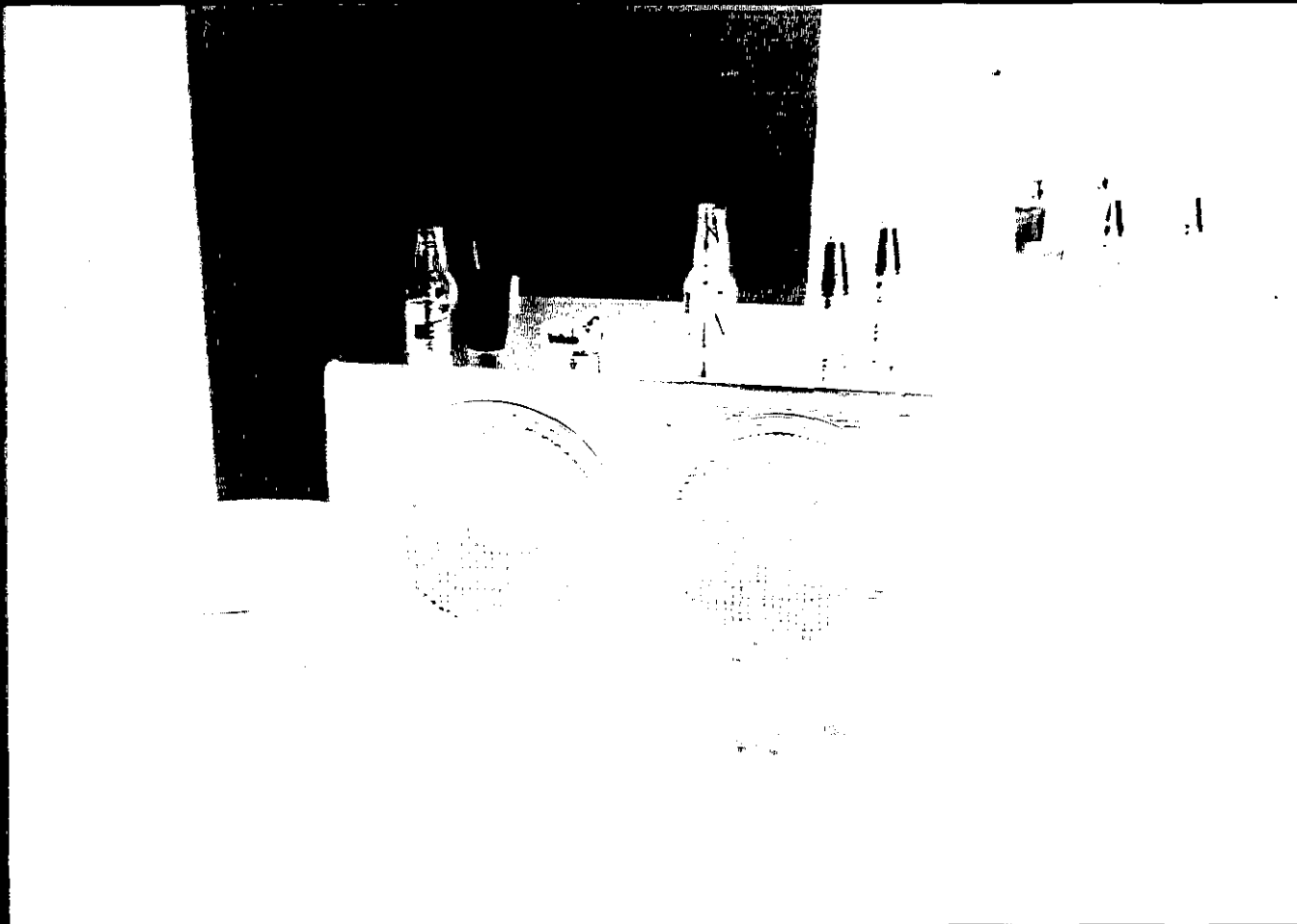
County Board of Appeals
Room 219, Court House
Towson, Maryland 21204

Case # 96-60-KR

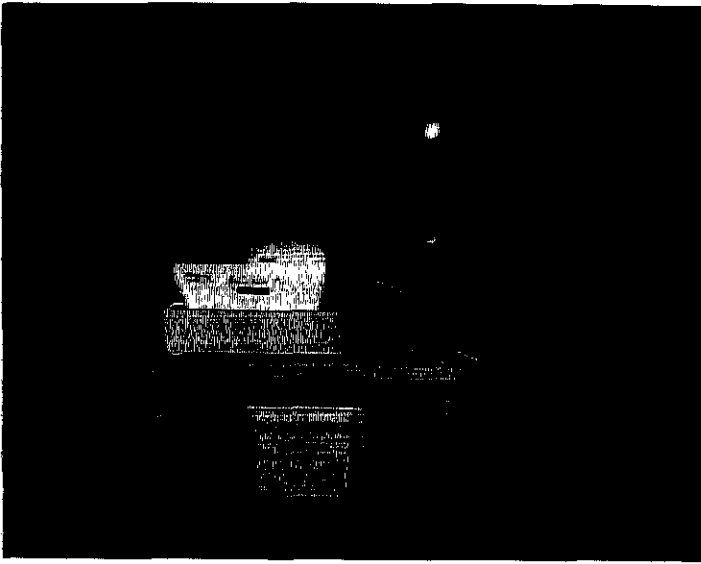
Forfeiture / Club 101

Petitioner 5A-5F (photos 6)
" 8A-8G (" 7)
" 10K-10E (" 3)

MICROFILMED



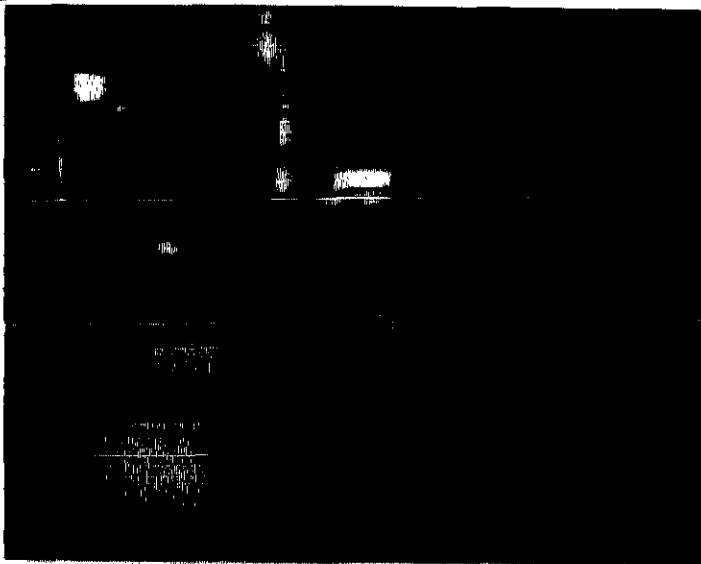




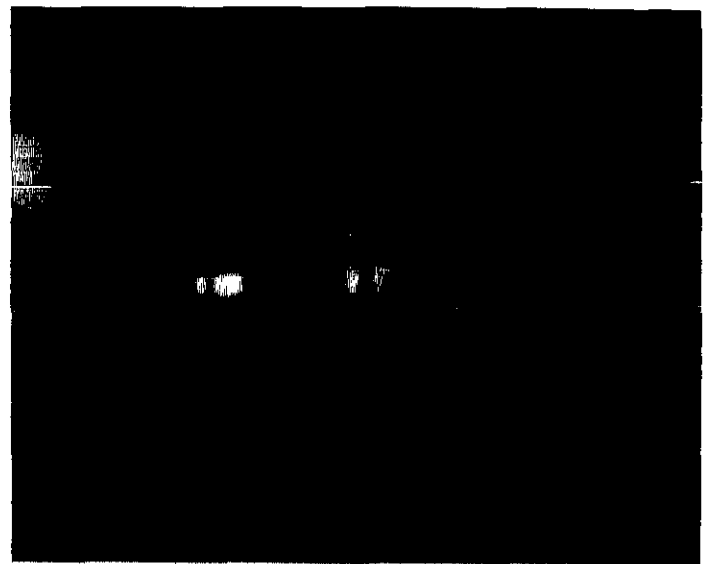
Petitioner's Exhibit #8B



Petitioner's Exhibit 8A



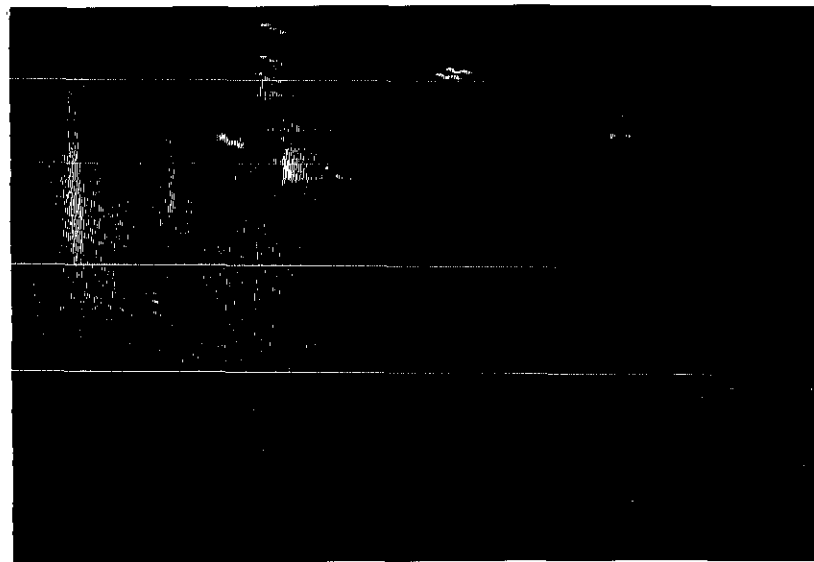
Petitioner's Exhibit #8D



Petitioner's Exhibit #8C



Reiter's Ophid #8 E



Reiter's Ophid #7



Reiter's Ophid #9



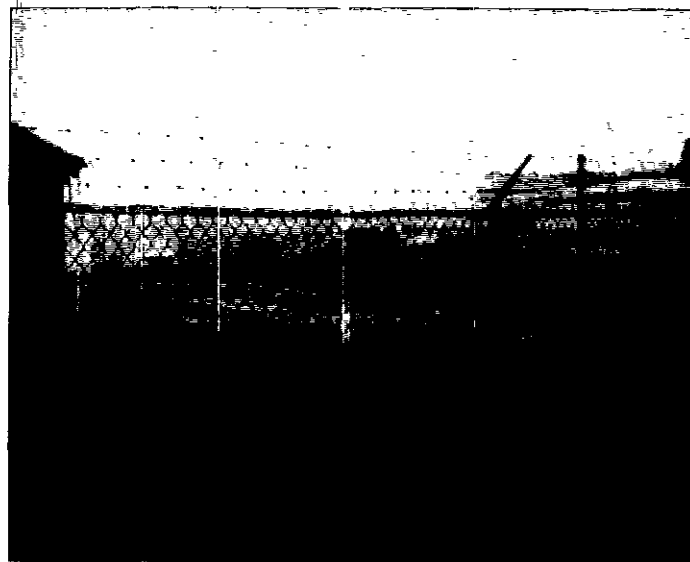
10A

(6)



10C

(6)



10B

(6)

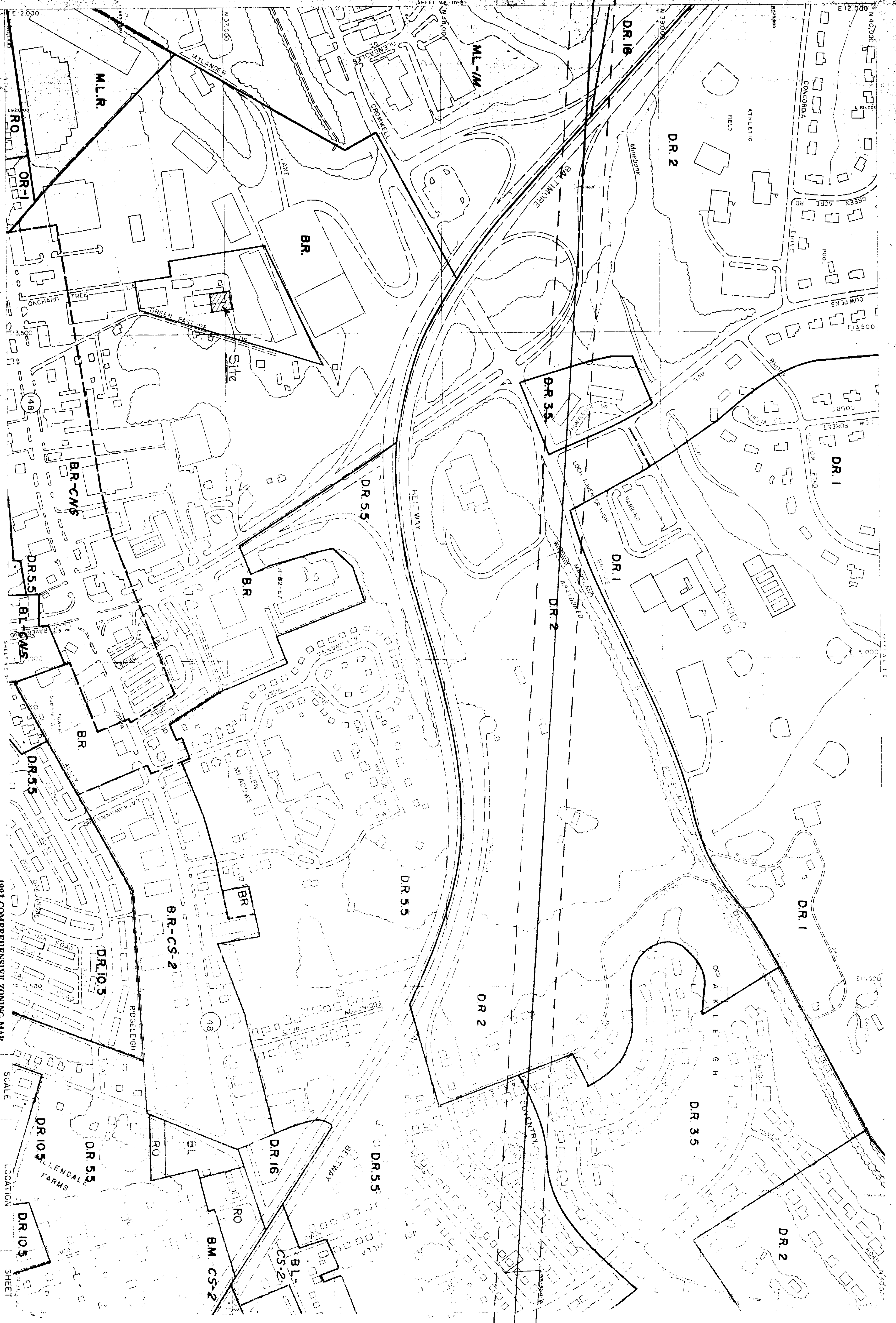
THIS MAP HAS BEEN REPRODUCED IN SELECTED AREAS
 TOPOGRAPHY COMPILED BY PHOTOGRAMMETRIC METHODS
 BY BUCHART-HORN, INC. BALTIMORE, MD. 21219

N - NW N - NE
 R - SW R - SE

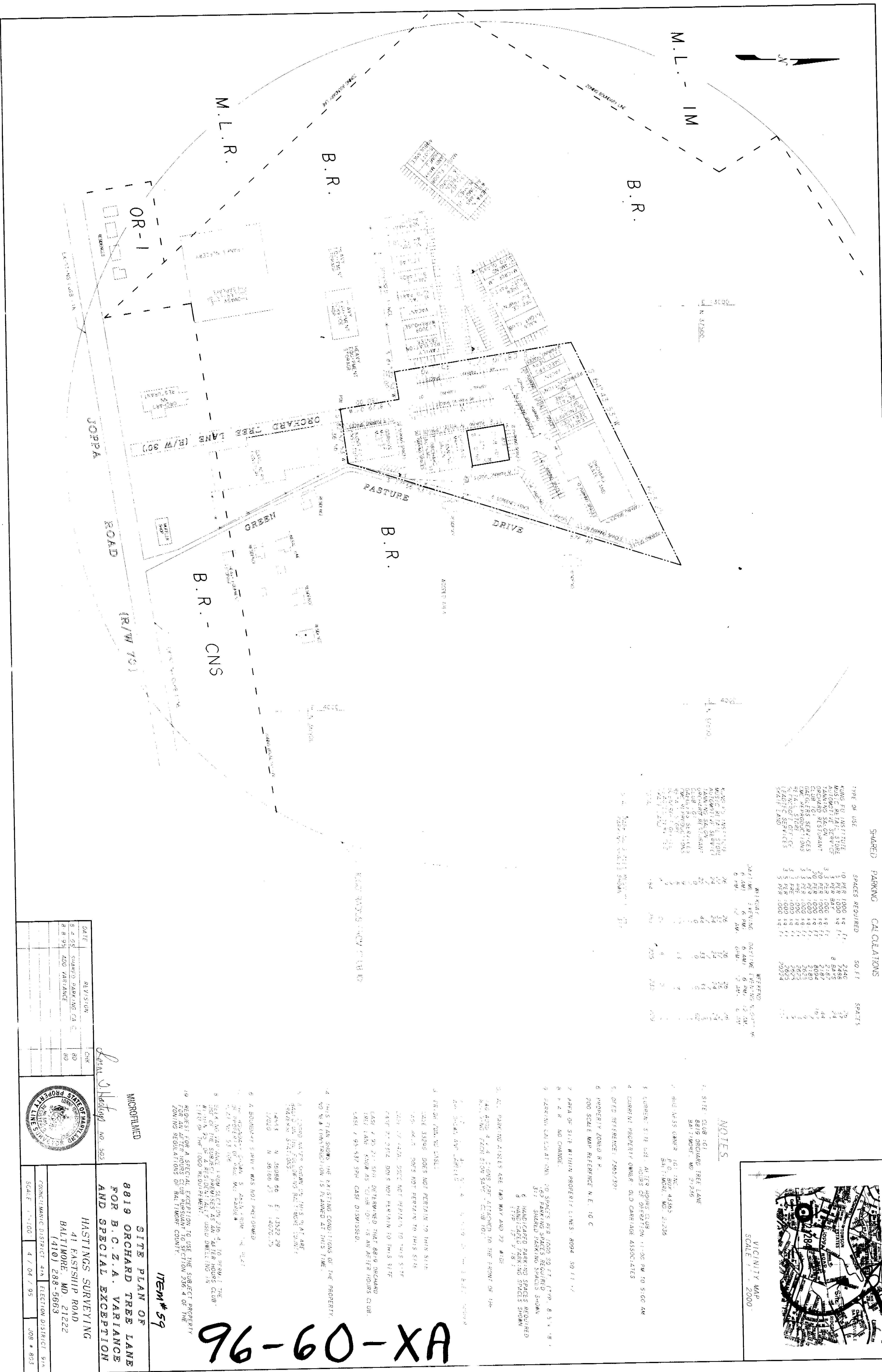
**BALTIMORE COUNTY
 OFFICE OF PLANNING AND ZONING
 OFFICIAL ZONING MAP**

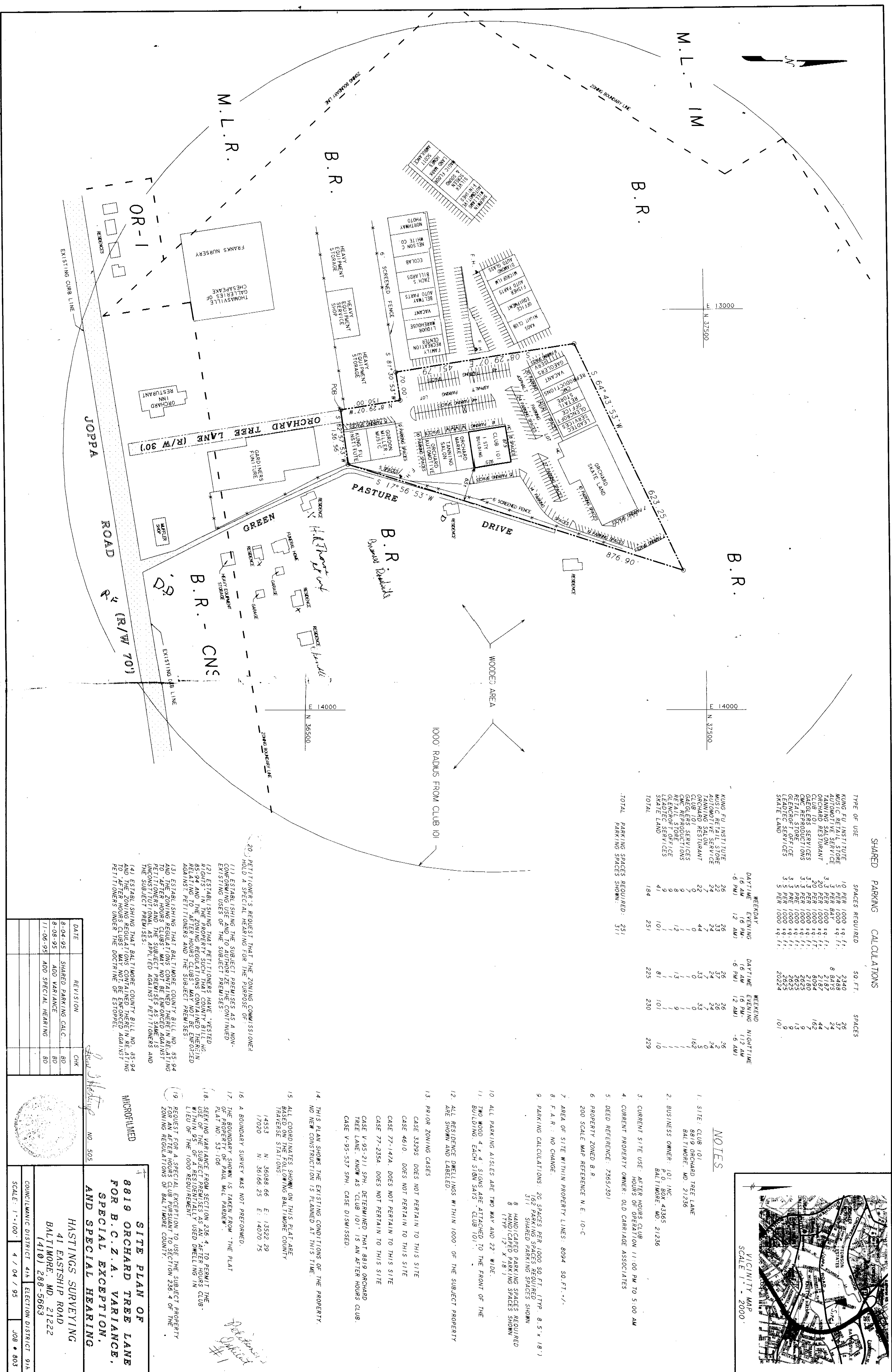
1992 COMPREHENSIVE ZONING MAP
 Adopted by the Baltimore County Council
 Oct. 15, 1992
 Billie A. Howard
 Chairman, County Council

SCALE	LOCATION	SHEET
1" = 200'	MACDONALD OAKLEIGH BAYNESVILLE	NE 10-C
DATE OF PHOTOGRAPHY	ITEM # 59	
JANUARY 1986		



96-60-XA





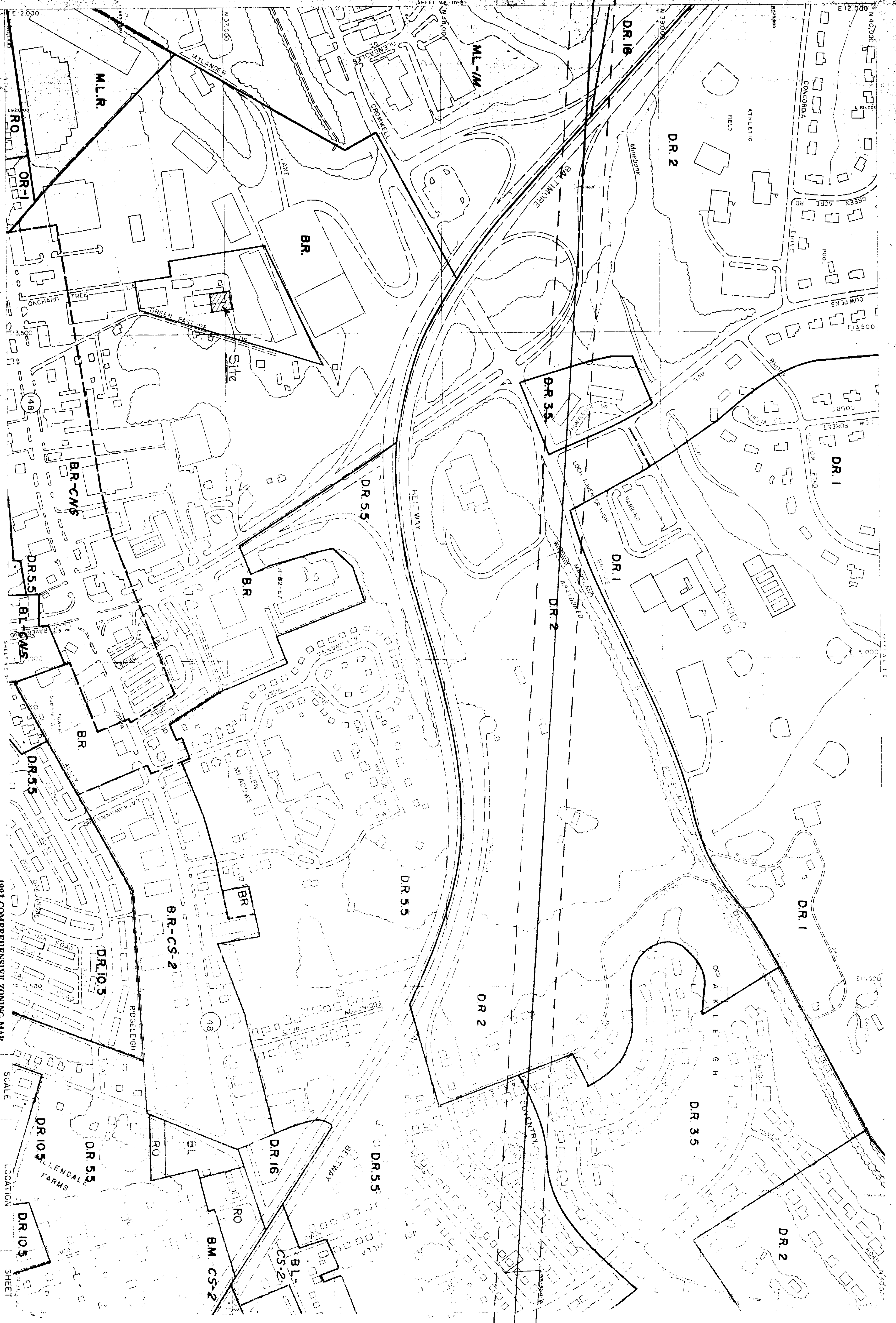
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N - NW N - NE
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**BALTIMORE COUNTY
 OFFICE OF PLANNING AND ZONING
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