

IN RE: <b>PETITION FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>AND SPECIAL EXCEPTION</b>		
NE/S Liberty Road, 573' W of c/line of	*	ZONING COMMISSIONER
Marriottsville Road		
<b>(9946-9948 Liberty Road)</b>	*	OF
2 <sup>nd</sup> Election District	*	BALTIMORE COUNTY
4 <sup>th</sup> Council District		
	*	
Kings Point Associates, LLC, <i>Legal Owner</i>		
Shirelle A. Thorne, <i>Contract Lessee</i>	*	<b>Case No. 2009-0244-SPHX</b>

\* \* \* \* \*

**AMENDED ORDER**

This matter came before the undersigned Zoning Commissioner for consideration of a Motion for Reconsideration filed by M. Leo Storch Management Corporation, on behalf of the property owner, Kings Point Associates, LLC, and Shirelle A. Thorne, contract lessee, through their attorney, Benjamin Bronstein, Esquire. Petitioners sought approval to use approximately 6,158 square feet of the Kings Point Square Shopping Center (Shopping Center) for a community building and a catering hall that features live entertainment. Following the public hearing, I denied the requested special exception and dismissed as moot the special hearing relief by written Order dated June 24, 2007. Subsequently, on July 2, 2009 and with specificity on July 22, 2009, the Petitioners filed their Motion seeking a modification of the denial. Essentially, it is pointed out that clarification is needed regarding the appropriate parking requirements applicable to a shopping center that has a total gross floor area of over 100,000 square feet. My Order, at Page 3, erroneously required an *additional 124 parking spaces* for the subject community building, thereby failing to recognize the use (a community building – with its off-street parking spaces) were actually being provided for within the Shopping Center’s existing parking requirements.

In an effort to correct the record and address the concerns of the Petitioners, the Motion was granted and continued proceedings were resumed on Monday, September 21, 2009.

By way of background, the subject property contains 9.819 acres located within the B.L.-C.C.C. (Business, Local) – (Commercial, Community Core) zoning classification. The 47-year old Shopping Center positioned at the intersection of Marriottsville, Liberty and Deer Park Roads is improved with 108,153 square feet of floor area requiring 541 parking spaces ( $108.153 \times 5 = 540.765$ ). Thus, the 595 parking spaces provided are adequate. In this regard, Bruce Levine, Kings Point Shopping Center's Property Manager, testified that many of the center's occupants are of an "office" nature operating 8:00 AM to 5:00 PM during weekdays only. He stated that in his 21 years at the center, he has never seen the parking lot filled.

Keith Garner and Arthur Allen operate Diamondz Event Center, a catering hall facility in the Kings Point Shopping Center, that is available to the public for weddings, parties, crab feasts, etc. It has on-site food preparation and serves alcoholic beverages. This is to be distinguished from the proposed Pray'ers Club that is operated by Shirelle A. Thorne. Ms. Thorne testified that this is a limited operation, in that it will be operated as a Christian-based facility promoting faith oriented activities. There will be no on-site food preparation or use of alcoholic beverages. It will not be available for rent to the public for weddings, etc. There will be aerobic classes, light exercise equipment, entertainment, including but not limited to poetry night, jazz night and plays, which will be written and produced by its management. Any food served on the premises will be brought in rather than prepared on site.

Ms. Thorne, the principal of the Pray'ers Club, testified that she is willing to limit the occupancy to a maximum of 150 persons. The parking is more than adequate, particularly since some of the uses such as the day care center are not operational during the time that either

Diamondz or the Pray'ers Club are likely to schedule activities. While one can understand that Diamondz may be concerned about competition, it is unfounded here, nor should it be the basis for a denial of the Pray'ers Club zoning request. See *Kreatchman v. Ramsburg, et al* 224 Md. 209 (1961).

Mr. Rosenfelt, the Petitioner's engineer, based on these enlightened facts, opined that the use meets with all the criteria of Section 502.1 of the B.C.Z.R. Mr. Bronstein cited the leading special exception cases in Maryland, i.e., *Schultz v. Pritts*, 291 Md. 1 (1981) and *People's Counsel for Baltimore County v. Loyola*, 406 Md. 54 (2008). These cases quoted for the premise of law that a special exception use is part of the Comprehensive Zoning Plan and thus, shares the presumption that it is in the interest of the general welfare and therefore valid. The *Schultz* Court set out the standard for adjudging the merits of a special exception use. In this regard, a comparison of uses permitted by right versus those permitted by special exception is not to be applied. Rather, the administrative body must determine whether a particular special exception use proposed at the particular location proposed would have an adverse affect above and beyond those inherently associated with such a use, irrespective of its location within the zone.

In *Mossburg v. Montgomery Co.*, 107 App. 1 (1995), the Court considered an appeal out of Montgomery County regarding a proposed solid waste treatment plant. The *Mossburg* Court recognized that such a use would, by its very nature, have adverse impacts on the surrounding locale. Indeed, the Court recognized that any special exception use would have adverse effects. These adverse effects are anticipated in the first instance by making the use a special exception, rather than a use permitted by right. The proper question, as framed by the

Court, is whether the adverse effects are above and beyond (i.e., greater at the proposed location) than they would generally be elsewhere.

In considering the argument and evidence presented and the legal standards to be applied, I am persuaded that the Petition for Special Exception should be GRANTED. Although I am appreciative of Messrs. Gardner, Allen and McPhaul's objections, I do not find the requested relief will adversely impact upon them or other adjacent properties.

NOW THEREFORE, in consideration of Petitioners' request for modification, my Order of June 24, 2009, shall be amended in accordance with the following:

IT IS ORDERED by the Zoning Commissioner for Baltimore County this 8<sup>th</sup> day of October 2009, that the Petition for Special Exception filed pursuant to Section 230.3 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a community building and a catering hall, in accordance with Petitioners' Exhibit 1, be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that the Petition for Special Hearing to allow live entertainment in a community building/catering hall, be and is hereby GRANTED, subject to the following restrictions, which are conditions precedent to the relief granted herein:

1. Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the thirty (30) day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.
2. The Petitioners, their successors and assigns, shall be limited to no more than 150 persons on the subject property at any one time, including cast members, employees and supporting staff.
3. No retail sales or uses of alcohol shall be permitted.
4. The Petitioners shall permit a representative of the Code Enforcement Division of the Department of Permits and Development Management (DPDM) reasonable access to the subject leased space to insure compliance with this Order.

IT IS FURTHER ORDERED that any appeal of this decision shall be made within thirty (30) days of the date of this Order in accordance with Baltimore County Code Section 32-3-401.

\_\_\_\_\_SIGNED\_\_\_\_\_  
WILLIAM J. WISEMAN, III  
Zoning Commissioner  
for Baltimore County

WJW:dlw

- c: Benjamin Bronstein, Esquire, Suite 205, Susquehanna Building, 29 W. Susquehanna Avenue, Towson, MD 21204
- Robert S. Rosenfelt, P.E., Vice President, Colbert, Matz & Rosenfelt, Inc., 2835 Smith Avenue, Suite G, Baltimore, MD 21209
- Shirelle A. Thorne, 4119 Spider Lily Way, Owings Mills, MD 21117
- Bruce Levine, 25 Hooks Lane, Suite 312, Baltimore, MD 21208
- Keith L. Garner, 3 Newbridge Court, Randallstown, MD 21133
- Arthur Allen, 13362 Grinstead Court, Sykesville, MD 21784
- John F. McPhaul, President, Liberty Road Community Council, 3627 Forest Garden Avenue, Gwynn Oak, MD 21207
- Sharon Ray, Body Holiday Spa, 9940 Liberty Road, Randallstown, MD 21133
- Jonzetta Carter, Pinky's Bridal & Special Occasion, 9988 Liberty Road, Randallstown, MD 21133
- Charleen Wylie, Liberty Road Business Association, P.O. Box 1417, Randallstown, MD 21133
- Aaron Plymouth, Stevenswood Improvement Association, Inc., 8546 Stevenswood Road, Windsor Mill, MD 21244
- Danny M. Blount, Hernwood Heights Community Association, Inc., 30 Millstone Road, Randallstown, MD 21133
- People's Counsel; Dave Green, Office of Planning; Code Enforcement Division, DPDM; File