

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of Petitions for Special Hearing and Special Exception filed by Lee Brahin, managing member on behalf of the property owner, Kings Point Associates, LLC, and Shirelle A. Thorne, contract lessee, through their attorney, Benjamin Bronstein, Esquire. Petitioners request a special exception to use the subject property for a community building and a catering hall, pursuant to Section 230.3 of the Baltimore County Zoning Regulations (B.C.Z.R.). In addition, a special hearing is requested, pursuant to B.C.Z.R. Section 500.7 to approve live entertainment in the community building/catering hall under consideration. The subject property and requested relief are more particularly described on the site plan submitted, which was accepted into evidence and marked as Petitioners' Exhibit 1.

Appearing at the requisite public hearing were Shirelle Thorne, contract lessee; Robert S Rosenfelt, P.E., Vice President of Colbert, Matz & Rosenfelt, Inc., who prepared the site plan for this property, and Benjamin Bronstein, Esquire, counsel for Petitioners. The issues presented in this case generated significant public interest. Appearing in opposition to the requests were

Keith L. Garner and Arthur Allen, managing members of Diamondz, LLC, t/a Diamondz Event Center, a nearby (9980 Liberty Road) business/competitor; John F. McPhaul, President of the Liberty Road Community Council, comprised of approximately 31 neighboring organizations. Additionally, written letters were submitted into evidence as Protestant's Exhibits 1 - 7 by business owners in the shopping center and community association leaders, namely: Sharon Ray - Body Holiday Spa; Jonzetta Carter - Pinky's Bridal & Special Occasion; Charleen Wylie - Liberty Road Business Association; Aaron Plymouth - Stevenswood Improvement Association, Inc., Danny M. Blount - Hernwood Heights Community Association, Inc.; and John McPhaul - Liberty Road Community Council, Inc.¹ It is also to be noted that David A. Green, a senior planner with the Office of Planning, assigned to the fourth councilmanic district, appeared and participated at the hearing in opposition to an additional event hall at this location.

An appreciation of the property's past history and use is relevant and briefly outlined. Prior to Petitioner's, Kings Point Associates, LLC, purchase of the shopping center's 9.819 acres of B.L.-C.C.C. (Business, Local) - (Commercial, Community Core) zoned land from the prior owner DP Limited Partnership in 2007, Deputy Zoning Commissioner John V. Murphy, by his Order dated September 19, 2005, in Case No. 06-012-X, granted special exception use to allow a 6,400 square foot community building (catering hall) on the same premises that required 128 parking spaces. (*See* Petitioners' Exhibit 2). As evidenced by Murphy's Order, the number of overall parking spaces at that time amounted to 776 and included a parking field with the adjacent bowling alley which DP Limited previously owned and shared parking spaces with the center. Following the sale of this bowling alley to Istar Bowling Centers, the available parking

¹ These witnesses/letters each offered their own individual assertions, but the clear tenor and theme of their remarks was that the Petitioners proposed community building use and attendant parking needs would conflict with other businesses and have a negative affect on available shopping center parking spaces.

at the subject shopping center was reduced to 577 spaces. A zoning variance in Case No. 83-6-A was approved to reduce the required parking by 18 spaces, allowing these spaces to be calculated, i.e., 577 spaces + 18 variances (83-6-A) = 595 spaces. In any event, the current shopping center's total leasable building area of 108,153 square feet requires 588 parking spaces that are allocated to the Food Lion, Prime American Insurance Company, convenience store, bank, karate school, Divine Wisdom Church, Diamondz, Body Holiday Spa, and various other commercial tenants. The proposal before me will require an additional 124 spaces for the proposed community building (9946 – 48 Liberty Road).²

On behalf of the Petitioners, Bob Rosenfelt offered testimony and evidence that the area surrounding the 47-year old shopping center, located at the intersections of Marriottsville Road, Liberty Road and Deer Park Road, was commercial, with a bowling alley, fuel service stations, and another shopping center in the immediate vicinity. He noted that this center had undergone extensive renovations and was anchored by a primary tenant – the Food Lion store positioned in the center's northeast quadrant. As illustrated on the colorized site plan in green (Exhibit 1), Ms. Thorne, currently an insurance agent and fitness instructor, would like to operate a multi-functional community building for civic, social, recreational and educational activities pursuant to Section 230.3 of the zoning regulations. During the weekdays, the primary use of the leased 6,158 square foot building space would be for educational workshops providing health, fitness programs, financial counseling and for the administrative functions that support the programs. There will be office space and a hall area for Christian entertainment on weekends and open

² The 128 parking spaces for the prior community building and catering hall (now occupied by Diamondz) are located in the westerly parking field (*See* Petitioners' Exhibit 2) while the present request of Ms. Thorne for an additional community building and catering hall requires 124 parking spaces that will be adjacent to and east of the Diamondz allocated parking. Combined these two uses would consume 252 of the shopping center's 595 available spaces.

space for aerobics and light exercise equipment for aerobic classes that she will offer to the community. When questioned by Messrs. Garner, Allen and McPhaul, Ms. Thorne indicated her hours of operation would be from 9:00 AM to 8:00 PM Mondays through Thursdays and from 8:00 PM to 1:00 AM on Fridays and Saturdays. She stated that there were no kitchen facilities contemplated and most of the food needs would be provided by a catering service. She projected the maximum number of people at any one time would be approximately 200 and that the peak hours of her operation would be during the shopping center's "off hours". After several objections³ and discussions with counsel, Ms. Thorne agreed to a restriction, as a condition of approval that she would neither rent nor sublet her space to other organizations and that the demised premises would be used only for her own multi-use based activities. Following this colloquy, Mr. Rosenfelt continued his testimony and stated that the plan and Petitioners proposed use met all criteria of Section 502.1 of the B.C.Z.R. He noted that there will be no adverse impact on the community since all events will be conducted inside the building, the tenant space meets all code requirements, including fire codes, and there is a surplus of parking at this center and the outlined programs above would be conducted primarily in the evening hours.

As noted above, the individuals who appeared in opposition to this request and letters submitted by surrounding community associations primarily objected to traffic and parking problems. Diamondz was previously licensed for 265 people and the instant proposal is for another 200. As illustrated on the site plan, the entranceways are next to each other and it is conceivable that 465 people would be using the same entrance area at the same time. Additionally, other businesses, based on observations, currently use a large volume of parking

³ Mr. Bronstein aptly pointed out that detrimental impacts to Diamondz Event Center brought about by the Petitioners competitive services were, if in fact true, not a proper element to be considered in a zoning case. See *Kreatchman v. Ramsburg, et al* 224 Md. 209 (1961).

spaces. It was the combined consensus that the current parking venue cannot support the addition of 124 more parking spaces required by the B.C.Z.R. This would cause less available parking for the other business owners and institutional users of the center that would ultimately prove detrimental to existing tenants and customers and exacerbate further parking problems in the neighborhood. Let it also be noted that the Office of Planning recommended a denial of this special exception on the basis that they concluded it “would be detrimental to efforts to provide parking for existing uses on the site ... the addition of another ‘community building’ (catering hall) is just not an appropriate land-use”.

The undersigned is required to focus upon the impacts of the proposed use and how they particularly affect the locality involved. The undersigned has reviewed the proposal in that light and I find that the special exception request has failed to meet the test set out in B.C.Z.R. Sections 502.1.A as it will be (“Detrimental to the health, safety or general welfare of the locality involved”) and D also (“tend to overcrowd land and cause undue concentration of population”). In sum, I find that the proposed use does not meet the applicable criteria set forth in *Schultz v. Pritts*, 291 Md. 1, 432 A.2d 1319 (1981). Based upon the testimony and evidence presented, I am persuaded to deny this request.

Pursuant to the advertisement, posting of the property, and public hearing on these Petitions held, and for the reasons set forth herein, the Petitions for Special Hearing and Special Exception shall be denied.

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 24TH day of June 2009, that the Petition for Special Exception filed pursuant to 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 DENIED.

IT IS FURTHER ORDERED that the Petition for Special Hearing to allow live entertainment in a community building/catering hall, be and is hereby DISMISSED AS MOOT.

Any appeal of this decision must be taken in accordance with Section 32-3-401 of the Baltimore County Code and filed within thirty (30) days of the date of this Order.

WJW:dlw

 SIGNED
WILLIAM J. WISEMAN, III
Zoning Commissioner
of Baltimore County