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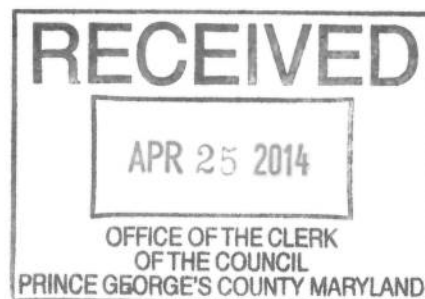
Bradley S. Farrar
L. Paul Jackson, II*

* Also admitted in the District of Columbia

April 25, 2014

Redis Floyd
Clerk of the County Council
County Administration Building
14741 Governor Oden Bowie Drive
Upper Marlboro, MD 20772

RE: S.E. 4720 Maages Auditorium



Dear Ms. Floyd:

Please accept this letter as my client's, Maages Auditorium, appeal of the Zoning Hearing Examiner's (hereinafter "ZHE") decision in the above-referenced special exception. It is my client's position the ZHE made the following errors:

The ZHE erred as a matter of law when she held that Council Bill 56-2011 (hereinafter "CB-56") is constitutional. ZHE Dec. pp 2 -3. In particular, the Applicant states that the ZHE did not address its primary argument that the District Council eliminated a by right use (i.e. an auditorium with no limitation on the types of entertainment that are allowed) without either making the use nonconforming or amortizing the Applicant's investment. See Exhibit 12, Applicant's Supplement to Statement of Justification.

The ZHE erred as a matter of law when she held that "for the Applicant to have a vested right in this alleged nonconforming use it needed to maintain a valid use and occupancy permit that expressly permits adult entertainment activities. (ZHE Dec. p 2.) Prior to CB-56, this Council did not limit or specify the type of entertainment, adult or otherwise, that was permitted in an auditorium. As such, there would have been no reason for Applicant to have a use and occupancy permit that expressly states that adult entertainment is permitted. Additionally, until the passages of CB-56 the term adult entertainment was not defined in the Zoning Ordinance, so it could not have been used on any use and occupancy permit. The ZHE is equating adult entertainment, and action, with an auditorium, which is a place where entertainment is allowed.

The ZHE erred as a matter of law when she held that CB-56 is in compliance with *Mayor and City Council of Baltimore v. Dembo, Inc.*, 123 Md. App. 527, 542, 719 A.2d 1007, 1015 (1998) because the Bill does not effectively preclude continuation of the Applicant's business. ZHE Dec. p 2. CB-56 did "effectively" preclude the continuation of the Applicant's

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business, because it required the Applicant submit to an extremely subjective special exception process where the final arbitrator is the same Council that enacted the faulty legislation.

The ZHE erred in holding that “the Applicant committed fraud in obtaining use and Occupancy Permit 832911-2000 and consequently Use and Occupancy Permit 18348-2002 by specifically misrepresenting his ultimate intentions for the use of the subject property.” ZHE Dec. p 13. First, there was no legal requirement that the Applicant identify any of his intended entertainment uses. Moreover, the fact that Applicant may have had “intended uses” when he applied for the 2000 permit, does not preclude the Applicant from using the auditorium for all other legal uses. The ZHE also does not state any legal authority for this holding. With reference to the 2002 permit, there was no representation about intended uses when the 2002 permit was applied for and issued. The ZHE cannot boot strip the harmless nonbinding representations from the 2000 permit on the new and separate 2002 permit.

The Applicant also never testified that he intended to provide “Adult Entertainment” when he applied for the U&O permits in 2000 and 2002. Furthermore, assuming arguendo that that was his testimony, there was legal requirement that he identify all possible uses and there was no limitation on the type of entertainment which could be provided in an auditorium. The Applicant had no motive to misrepresent what his intended uses would be, because there was no legal impediment stopping him from offering any type of entertainment that he wanted. If you take the ZHE’s ruling to its illogical conclusion, the Applicant’s facility could not host the RNC or the DNC national convention, because he did not state back in 2000 that he wanted to have political conventions at his auditorium. This is totally illogical.

The ZHE erred when she held as a matter of law that the Use and Occupancy Permits for an Auditorium for the subject property are limited to the uses as set forth by the Applicant in 2001-comedy shows, contest (games), hair shows, fashion shows, model calls, poetry reading nights and sport shows.” ZHE Dec. p 13. First and foremost, the ZHE does not state any legal authority for this outrageous position. Second, the activities provided by the Applicant that this Council now deems as “Adult Entertainment” can easily defined as contest (games), fashion shows, model calls and even sport shows. For example, the Applicant can have a contest or game that involves a dancer collecting the most tokens from patrons by providing services which may meet the definition of “Adult Entertainment.”

The ZHE erred when she found that Lt. Sudik “testified as to the extensive history of repeated violations of the Fire Code, the correction Orders issued, the Uniform Civil Citations, and the violations of the Fire Capacity Certificates, by the Applicant, all at the subject property. ZHE Dec. p 14. In actuality, Lt. Sudik said that since 2009, or for five years, there have been NO citations issued, despite the fact that the establishment is checked twice a month. Tr. p 13. This is a blatant example of how biases and subjective this entire special exception process been.

The ZHE erred when she found that “the neighbors testified to the detrimental effect that this adult business operation has had upon their residential neighborhood.” ZHE Dec. 14. All of the neighbors testified that they did not know that the business was their until the

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Applicant was required to send out the informational mailings. For example, Father Kramer, a married Roman Catholic Priest, who testified in opposition to the special exception, stated that he purchased his home in 2010 and did not even know the business was there. Tr. 40-41. Another example is Mr. Boyd, who also testified against the special exception. He stated that he lived in the immediate area since 1980, but did not know that the business was there until he got the informational mailing. Tr. Pp 54-56. Again, this is a blatant example of how biases and subjective this entire special exception process been.

The ZHE erred with reference to findings numbered 37-40. The ZHE totally ignores the unrefuted testimony of the Applicant's expert land planner. Tr. pp 83- 89 and Exhibis 13 and 56. This is just another example of how biases and subjective this entire special exception process been.

Sincerely,

A handwritten signature in black ink that reads "Dennis Whitley, III". The signature is written in a cursive style with a large, circular initial "D" and the letters "Whitley" written in a flowing script. The Roman numeral "III" is written at the end of the signature.

Dennis Whitley, III

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Request for Oral Argument

The applicant respectfully request oral argument before the District Council.

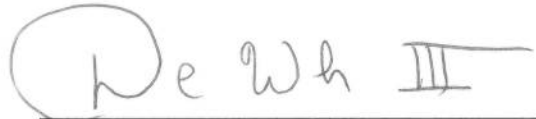
Certificate of Service

I **HEREBY CERTIFY** that a copy of the foregoing was served by postage prepaid united States Mail April 25, 2014, to:

Stan Brown, Esquire
People's Zoning Counsel
1300 Caraway Court
Suite 101
Largo, MD 20774

Persons of Record (60)

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A handwritten signature in cursive script that reads "Dennis Whitley, III". The signature is written in dark ink and is positioned above a horizontal line.

Dennis Whitley, III