

IN RE : **BEFORE THE**
THE EAGLE POINT CLUB, LLC : **BOARD OF APPEALS**
: **TOWN OF CHARLESTOWN**

OPINION

This matter comes before the Board of Appeals as an appeal of the September 24, 2019 determination of the Zoning Administrator that The Eagle Point Club, LLC (hereinafter referred to as “Appellee”) operates at 125 Conestoga Street, Charlestown, Maryland 21914 (hereinafter referred to as “125 Conestoga Street”) in a manner that is not in conformity with the Town of Charlestown Zoning Ordinance. Appellant owns the real property located at 125 Conestoga Street in fee simple. The real property is located within the “R-3” High-Density Residential District. The principal owner and resident agent for Appellant is Larry Metz. Larry Metz maintains 125 Conestoga Street as his residence.

The authority of the Board of Appeals to hear and grant such a request is found in Zoning Ordinance § 175-40, which states that the Board of Appeals shall have the power and duty to hear and decide appeals where it is alleged there is error in any “decision or determination made by the Zoning Administrator in the enforcement of this chapter.” Further, per Zoning Ordinance § 175-41:

“In exercising the above-mentioned powers, the Board of Appeals may, so long as such action is in conformity with the terms of this chapter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination as ought to be made and to that end shall have powers of the Zoning Administrator from whom the appeal is taken.”

On or about September 17, 2018, the Zoning Administrator received a complaint from a resident of the Town of Charlestown. Said complaint indicated that Appellant utilized 125 Conestoga Street as a commercial venue for the purpose of holding wedding ceremonies in violation of the Zoning Ordinance. Said complaint asserted that (1) Appellant's use of the 125 Conestoga is tantamount to a business operation; (2) that often more than one hundred individuals attend wedding services at the real property and in the rear yard; (3) that buses park at the real property to transport individuals to and from the wedding ceremony; (4) that there is increased pedestrian and vehicle traffic resulting from the alleged commercial use; and (5) that the alleged commercial use of the real property has changed the residential character of the dwelling.

Per Zoning Ordinance § 175-50, the Zoning Administrator properly initiated an investigation to "take whatever action is warranted" and informed the complainant in writing of such.

In response to the Zoning Administrator's investigation, Appellant asserted (1) that weddings are permitted in the "R-3" Residential Zone; (2) that the Town of Charlestown conducts weddings, for profit, on a regular basis at two locations within the "R-3" Residential Zone within one hundred feet (100') of the subject real property; (3) that The Eagle Point Club, LLC is a recognized Maryland entity in good standing; (4) that the entity operates as a private club, not a home occupation, to selected membership that is not open to the general public; (5) that private clubs are permitted uses within the "R-3" Residential Zone; (6) that there is no separate fee associated with the use of 125 Conestoga Street, but that it is instead one of three wedding ceremony locations made available to prospective brides and grooms; and (7) that The Eagle Point Club, LLC permits its members to conduct private ceremonies

on the club's premises. For these reasons, Appellant asserted that it was in compliance with the Zoning Ordinance.

The Zoning Administrator's investigation yielded the following findings memorialized in a September 24, 2019 correspondence: (1) Appellant offers the use of 125 Conestoga Street as "one of the services associated with the wedding reception business"; (2) Appellant's use of 125 Conestoga Street does not qualify as a home occupation since the wedding ceremonies are conducted outside the dwelling unit; and (3) Appellant's regular use of 125 Conestoga Street for wedding ceremonies changed the residential character and appearance of the dwelling. Further, in response to Appellant's assertion that it operated as a private club, which is a permitted use with the "R-3" High Density Residential District, the Zoning Administrator found "no evidence that the property is anything more than a private residence titled in the name of a private club."

Per Zoning Ordinance § 175-38, Appellant timely filed an appeal of the Zoning Administrator's determination. On November 21, 2019, the parties appeared for a public hearing. At said hearing, counsel for Appellant set forth the following arguments, in addition to the contents of its October 22, 2019 correspondence: (1) that there has been a long history of hosting weddings in Charlestown, and that the town benefits from its water views by permitting outside wedding ceremonies; (2) Appellant uses the real property as his primary residence and only otherwise conducts wedding ceremonies at 125 Conestoga Street; (3) Appellant does not supply alcohol or music; (4) receptions are not held on site; (5) there is a one hundred (100) square foot room inside the residence made available to brides as they prepare for and await the wedding ceremony. Everything else occurs outside of the dwelling unit; (6) Appellant is a private club and private clubs are permitted uses within the "R-3"

High-Density Residential District; and (7) that, historically, 125 Conestoga Street has been the location of a private club prior to Appellant's present use.

Larry Metz testified on behalf of Appellant. Mr. Metz testified that he purchased the real property to use as his residence and to offer as a wedding ceremony venue to prospective brides and grooms. Mr. Metz testified that Appellant has its own federal identification number, website, and phone number. Mr. Metz testified that Appellant is constituted of selected membership. Mr. Metz testified that Appellant requires a nominal membership fee to join the private club and that the bride and groom incur an additional fee to arrange and set up for chairs and the arch for the wedding ceremony, but no fee is incurred to use the real property. Mr. Metz testified that individuals that host their wedding ceremonies at 125 Conestoga Street become social members of the private club. Mr. Metz testified that the relationship between the Wellwood restaurant and Appellant is non-existent and that they are completely separate entities. Mr. Metz testified that prior to Appellant's purchase of 125 Conestoga Street, he met with neighbors to inform them of his intended use of 125 Conestoga Street to host wedding ceremonies. Specifically, Mr. Metz testified that spoke to Pauline Bryant, Mr. and Mrs. Thomas Kelly, and Mr. Albert VanDyke regarding the proposed use and that they had reached an agreement concerning methods of preserving privacy and addressing other concerns. Mr. Metz testified that, aside from the recent resident complaint, the Town of Charlestown never inspected 125 Conestoga Street concerning Appellant's use of the real property and that no one complained to him about the use. Mr. Metz testified that non-wedding related vehicles routinely park along the street, and that the area is devoid of signs prohibiting parking on Conestoga Street. Mr. Metz testified that parking for wedding ceremonies is located at the parking lot associated with the Wellwood restaurant and that Appellant provides a shuttle bus to transport guests between the respective

locations. Mr. Metz testified that 125 Conestoga Street has four (4) parking places. Mr. Metz testified that the building erected on 125 Conestoga Street exceeds one thousand five hundred (1,500) square feet in gross area. Mr. Metz testified that he was unaware of an accurate measurement of the gross square footage of the residence located on 125 Conestoga Street. Mr. Metz testified that there is a one hundred (100) square foot area located inside the residence that is specifically reserved for brides as they prepare for the wedding ceremony.

On cross-examination, Mr. Metz testified that Appellant maintains an application process for entry into the private club, and that the applicants state their wedding date as a part of said process. Mr. Metz testified that over the last eight (8) months Appellant hosted seven (7) weddings at 125 Conestoga Street. Mr. Metz testified that all receptions for the wedding ceremonies occurred at the Wellwood restaurant, except one that occurred at the North East Fire Hall. Mr. Metz testified that the wedding party that elected to host their wedding reception at the North East Fire Hall was only required to pay the membership dues and the fees for set up of chairs at 125 Conestoga Street.

Michael R. Pugh testified on behalf of Appellant. Mr. Pugh has a background in planning and zoning and his last position was as the Director of Planning and Zoning for Cecil County, Maryland. Mr. Pugh became a consultant subsequent to his employment with county government. Mr. Pugh testified that the Appellant is not in violation of the Town's zoning. Mr. Pugh testified that the Town of Charlestown's zoning ordinance allows for wedding ceremonies, and that private clubs are allowed and are a permitted use within the "R-3" High-Density Residential District. Mr. Pugh testified that Appellant does not receive compensation in exchange for use of 125 Conestoga Street for wedding ceremonies. Mr. Pugh testified that Appellant grants a private club social membership to individuals in exchange for a nominal fee and acceptance of an application. Mr. Pugh testified that a

private club is a permitted use, and, as a result, it cannot be encumbered save and except where it is enunciated in the code. Mr. Pugh testified that any effect on the neighborhood resulting from Appellant's use is irrelevant since the use is that of a private club and therefore permitted within the "R-3" High-Density Residential District. Mr. Pugh testified that if Appellant was not a private club that its use would not be permitted.

Counsel for the Zoning Administrator argued that Appellant's use unequivocally fails to qualify as a "home occupation" since it is not a "business conducted entirely within an enclosed dwelling" as required per Zoning Ordinance § 175-1. Counsel for the Zoning Administrator argued that, per Zoning Ordinance § 175-1, a private club is "any building which serves as a meeting place for a selected membership, together with recreation and dining facilities, which are not open to the general public." Counsel for the Zoning Administrator argued that Appellant's use exists solely to host wedding ceremonies as a bargained for benefit from a commercial transaction. Counsel for the Zoning Administrator argued that several federal bodies have determined the definition of private club and that Appellant does not satisfy the requisite requirements to be deemed a private club. Counsel for the Zoning Administrator argued that Appellant lacks a screening process for membership save for scheduling a wedding. Counsel for the Zoning Administrator argued that social members fail to exert any influence over the management or business of Appellant. Counsel for the Zoning Administrator questioned the legitimacy of the process for membership and a lack of membership fees. Counsel for the Zoning Administrator argued that Appellant was a commercial entity masquerading as a private club. Counsel for the Zoning Administrator argued that many businesses have the word "club" in their name and are open to the public. Counsel for the Zoning Administrator questioned whether the nature of the membership pivoted solely on a bride's ability to host her wedding at 125 Conestoga Street. Counsel for

the Zoning Administrator argued that any funds exchanged were a commercial transaction and not a membership fee. Counsel for the Zoning Administrator argued that, if Appellant is operating a private club, then Zoning Ordinance § 175-26 requires Appellant to provide one parking space per one hundred (100) square feet of gross floor area for “each building.” Counsel for the Zoning Administrator argued that Appellant’s four (4) available parking spaces is insufficient and in noncompliance with the Zoning Ordinance given Mr. Metz’s testimony that the building located on 125 Conestoga Street exceeds one thousand five hundred (1,500) square feet. Counsel for the Zoning Administrator argued that, per Zoning Ordinance § 175-26(C), parking must be “on the same or nearby premises” and that the parking lot at the Wellwood restaurant exceeded the distance expressed as a permitted “nearby premises.”

David Ashworth was sworn in as witness and testified in support of the Zoning Administrator’s September 24, 2019 determination. Mr. Ashworth testified that he owns the real property located at 408 Calvert Street, Charlestown, Maryland 21914. Mr. Ashworth testified that his residence is near 125 Conestoga Street and that the wedding ceremonies are visible from his real property. Mr. Ashworth testified that jitneys from the Wellwood restaurant circle the area and park in front of 125 Conestoga Street before, during, and after wedding ceremonies. Mr. Ashworth provided photographs that he indicated show said jitneys at the real property. Mr. Ashworth testified that Appellant is operating a commercial business at 125 Conestoga Street, and that it is not a private club. Mr. Ashworth testified that he observed people walking to and from wedding ceremonies at 125 Conestoga Street with solo cups allegedly containing alcohol.

Per the Town of Charlestown Zoning Ordinance § 175-1, a “home occupation” is “a business conducted entirely within an enclosed dwelling unit, by the resident, which is

incidental and secondary to residential occupancy and does not change the residential character of the dwelling.” Per Zoning Ordinance § 175-18(A)(1), all uses permitted in the “R-1” Low-Density Residential District are permitted within the “R-3” High-Density Residential District. Per Zoning Ordinance § 175-16(A)(7)(a), “home occupations” are permitted within the “R-1” Low-Density Residential District and are, therefore, permitted within the “R-3” High-Density Residential District. Here, Appellant and Mr. Metz testified to facts, such as Mr. Metz’s residential occupancy at 125 Conestoga Street and the inclusion of a designated area within the dwelling unit devoted to brides in preparation of the wedding ceremony, that appeared to lean toward an argument that Appellant was operating a “home occupation” within the residence. However, Appellant expressly argued that it did not operate a home occupation. Further, all evidence points to the wedding ceremonies proceeding outside of the dwelling unit, which negates Appellant’s ability to fit within the definition expressed within the Zoning Ordinance. As a result, Appellant’s use of 125 Conestoga Street is not a “home occupation.”

Per the Town of Charlestown Zoning Ordinance § 175-1, a “private club” is “any building which serves as a meeting place for a selected membership, together with recreation and dining facilities, which are not open to the general public.” Per Zoning Ordinance § 175-18(A)(1), all uses permitted in the “R-1” Low-Density Residential District are permitted within the “R-3” High-Density Residential District. Per Zoning Ordinance § 175-16(A)(3), “private clubs” are permitted within the “R-1” Low-Density Residential District and are, therefore, permitted within the “R-3” High-Density Residential District. Per Zoning Ordinance § 175-26(B), “private clubs” must provide not less than one off-street parking space per one hundred (100) square feet of gross floor area for each building. Per Zoning Ordinance § 175-26(C), a “private club” parking area must be “on the same or nearby

premises.” Further, if on a “nearby premises”, the nearest point of the parking lot shall not be further than one hundred feet (100') for a commercial use and two hundred feet (200') for a residential use from the nearest point of the real property served. “The parking area must remain under the control of the owner or operator of the use to which the parking area is appurtenant.”

Here, Appellant argues that it operates a “private club,” which is a permitted use within the “R-3” High-Density Residential District. Mr. Metz testified that Appellant maintains only four (4) off-street parking spaces and that the residence is at least one thousand five hundred (1,500) square feet in gross area. As a result, Appellant requires at least fifteen (15) off-street parking spaces, and likely more once the actual square footage of the gross area is identified. Mr. Metz testified that Appellant utilizes the parking lot available at the Wellwood restaurant; however, the distances in evidence to that parking lot exceed the permitted distances allowed pursuant to Zoning Ordinance § 175-26(C). The Board of Appeals does not make a finding as to whether Appellant utilizes “jitneys,” “shuttle buses,” or “buses” to transport guests to the wedding venue, but regardless of the term utilized the off-street parking ordinance is still invoked.

Whether Appellant fulfills the defined requirements of a “private club” is not necessarily dispositive as to whether or not it is acting in conformity with the Zoning Ordinance. Obviously, if Appellant is not a “private club” then it is not a permitted use within the “R-3” High-Density Residential District. However, even if Appellant is a “private club,” it is clearly not in compliance with the Zoning Ordinance § 175-26(B) or (C) off-street parking requirements. Appellant may attempt to correct this defect by applying for and receiving a variance from the Town of Charlestown for the off-street parking, but no such application is before the Board of Appeals.

Per Zoning Ordinance § 175-41, the Board of Appeals may "...affirm, wholly or partly, or may modify the order, requirement, decision or determination as ought to be made and to that end shall have powers of the Zoning Administrator from whom the appeal is taken." Under that broad grant of authority and with the understanding that it possesses all "powers of the Zoning Administrator from whom [this] appeal is taken," the Board of Appeals **AFFIRMS** the September 24, 2019 finding of the Zoning Administrator on the basis that Appellant is in violation of the Town of Charlestown Zoning Ordinance. The support for this finding is based Appellant's violation of the off-street parking requirements expressed in Zoning Ordinance § 175-26(B) and (C). This Board of Appeals makes no finding as to whether Appellant is a "private club" as defined in the Zoning Ordinance. As a result, Appellant is prohibited from hosting wedding ceremonies on the real property located at 125 Conestoga Street, Charlestown, Maryland 21914 until it is in compliance with the Zoning Ordinance.

12/4/19
Date

John W. Gilley
John Gilley, Esq.
Chairman

12/4/19
Date

Ursula Boudart
Ursula Boudart

12/03/19
Date

Richard Mahan
Richard Mahan