

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: Irvin M. Baddock, Trustee of the **16-089-SPH**
Richard K. Adolph Residuary Trust – Legal Owner
SAHBI Hookah, Inc. – Lessee

DATE: October 6, 2016

BOARD/PANEL: Maureen E. Murphy, Chairman
Benfred B. Alston
James H. West

RECORDED BY: Tammy A. McDiarmid, Legal Secretary

PURPOSE: To deliberate Petition for Special Hearing filed pursuant to § 500.7 of the BCZR to approve the continued use of the premises as a Hookah Lounge including hours of operation from 12 midnight to 6 a.m. every day.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

- The Board held a de novo hearing on the Petition for Special Hearing.
- The Board reviewed the history of this matter. The Petitioners own and operate a hookah lounge and wish to remain open until 2:00 a.m. The Petitioners have raised several issues regarding County Council Bill 16-14, including constitutional matters.
- The Board discussed the issue of whether or not the County Council can enact a zoning law which regulates time, place and manner. People’s Counsel argued that the County can regulate the use of a commercial building and the activity conducted therein. The activity associated with a hookah lounge meets the rationale basis test. The Board finds that the County has the authority under the Land Use Article to regulate the use of a commercial building and the activity conducted therein.
- The Board discussed the argument of whether or not Bill No. 16-14 violates due process. The Petitioners argue that there is no purpose in the Bill as to why it was enacted, or what the rationale was. The Board notes that there was sufficient evidence as to public safety and evidence that the criminal activity at hookah lounges increased after midnight. It was noted that the increase in criminal activity was County wide, not just at this location. The Board finds that there was adequate evidence and testimony presented from the Baltimore County Police as to the history of prior Code violations for the Board to reach this conclusion.
- The Petitioners argue that the hookah lounge is BYOB establishment and should be able to remain open until 2:00 a.m. like other BYOB establishments such as restaurants. The Board stated that Bill 16-14 regulates smoking lounges, not alcohol.
- The Board discussed the argument that the 45 day Amortization Period of a lawful non-conforming use is a denial of due process. The Board notes that Bill 16-14 does not terminate the non-conforming use, but does limit the hours of operation from 6:00 a.m. to midnight.
- The Board also noted that the County Council Resolution to study the issues associated with hookah lounges was adopted by the County Council prior to the issuance of the occupancy permit, thus providing notice to the Petitioner.

