



CERTIFIED MAIL

Ms. Yvonne Mosely
7318 Woodbourne Lane
Charlotte, NC 28273

**RE: APPEAL
3108 E. INDEPENDENCE BLVD
CASE NUMBER 11-018**

Dear Ms. Mosely:

On August 30, 2011, the City of Charlotte Zoning Board of Adjustment (“Board”) **overturned** the Zoning Administrator’s interpretation that the Upscale Restaurant and Lounge meets the definition of “nightclub” as defined in the Zoning Ordinance.

The Board based its decision on the following findings of fact:

1. The applicant is Upscale Restaurant & Lounge (Represented by Yvonne Mosely).
2. The applicant’s property is located at 3108 E. Independence Blvd. and is identified as tax parcel 159-053-22.
3. The subject property is currently zoned B-2 (Business District). The Zoning Ordinance defines nightclubs as any commercial establishment serving alcoholic beverages and providing entertainment for patrons including bars, lounges, and cabarets.
4. Per Code Section 9.803(19) principal commercial establishments such as nightclubs, bars and lounges are uses permitted under prescribed conditions in the B-2 district, provided that such establishments are located at least 400 feet from any residential use or residential district.
5. The applicant is appealing the Zoning Administrators interpretation that Upscale Restaurant & Lounge is considered a nightclub as defined by the Zoning Ordinance.
6. In the Zoning Ordinance a nightclub is defined differently than a restaurant.
7. The use located at 3108 E. Independence Blvd. serves alcohol and provides entertainment.
8. The use located at 3108 E. Independence Blvd. is closer than 400 feet to a residential use or district.
9. The lot is located adjacent to a residential district.
10. The primary use of the establishment is a restaurant.
11. Occasionally and infrequently, the establishment has characteristics of a nightclub.
12. The establishment is a restaurant based on its extensive menu, daily lunch specials, free deliveries within a five mile radius and testimony that 80% of sales come from food sales.

Based upon the above findings of fact, the Board concludes that the applicant has met the standard stated in §5.109(1) of the Ordinance, and more specifically:

The Zoning Administrator's decision that the use at 3108 E. Independence Blvd. is a nightclub and therefore, does not meet the 400 foot distance separation required from a residential use or zoned district is hereby overturned.

Sincerely,



Jeffrey Davis
Chairperson

9-23-11

Date

Cc: Robert Brandon

DECISION FILED IN THE PLANNING DEPARTMENT:

September 23, 2011
Date



Katrina Young, Zoning Administrator