ANC 6A Appeal of CO 76349

At a regularly scheduled and properly noticed meeting on July 8, 2004, Advisory Neighborhood Commission 6A voted 5-0 (with 5 Commissioners required for a quorum) to file an appeal of the administrative decision of the Zoning Administrator in the Department of Consumer and Regulatory Affairs to issue a Certificate of Occupancy (CO) for a "restaurant" at 721 H St., NE.

On May 19, 2004, DCRA issued CO 76349 to Chans Foods Inc. for a "restaurant" at 721 H St., NE. Since then, the applicant has opened a food-service establishment operating both as a Blimpie and as Noble Roman Pizza. Although the CO indicates that the establishment is in an R-4 District, the property is actually in a C-2-A District. Per 11 DCMR § 733.1, a special exception is mandatory for the operation of a "fast food restaurant" in a C-2-A District. As defined at 11 DCMR § 199.1, a food-service establishment is a "fast food restaurant" if it meets two criteria:

1) the floor space for customer queuing is greater than 10% of the publicly accessible floor space on any one floor; and

2) either a) 60% of the food items are prepackaged or b) the establishment primarily serves its food and drink in disposable containers and provides disposable tableware.

The Blimpie/Noble Roman operation at 721 H St., NE meets this definition. The queuing area occupies substantially more than 10% of the publicly accessible floor space, and Blimpie/Noble Roman provides disposable plates, flatware, and napkins, and serves its food and drink in disposable containers. As an operating business, these conditions can be verified through photographs, floor plans, and testimony of customers and residents of the area. Furthermore, Blimpie/Noble Roman cannot qualify as a "restaurant"as listed on the existing CO since the explicit definition of that term "shall not include a fast food restaurant" per 11 DCMR § 199.1.

Based on a copy of the CO application materials obtained by ANC 6A, there is no indication that the Zoning Administrator considered floor plans, queuing area, menus, or operating practices with respect to diposable containers and tableware. Furthermore, if the Zoning Administrator thought the property to be in the R-4 District as indicated on the CO, it is unclear why a CO for a "restaurant" would be issued without a variance.

ANC 6A believes that CO 76349 was improperly issued due to the lack of a special exception approved by the Board of Zoning Adjustment. By issuing this CO, the residents of the area surrounding the property (including many residents represented by ANC 6A) were denied an opportunity to provide input through the special exception process on objectionable aspects of a fast-food restaurant such as inadequate screening, noise, odors, lights, hours, traffic safety, and other conditions. ANC 6A asks the Board of Zoning Adjustment to overturn the administrative decision of the Zoning Administrator in DCRA to issue CO 76349 until the owner or lessee obtains a special exception for the fast-food restaurant use.

BZA
Case No. 17214
Exhibit No. 3

Board of Zoning Adjustment
District of Columbia
CASE NO. 17214
EXHIBIT NO. 33