GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Appeal No. 17249 of Advisory Neighborhood Commission 2A, pursuant to 11 DCMR §§ 3100 and 3112, from the administrative decision of the Zoning Administrator, Department of Consumer and Regulatory Affairs. Appellant alleges that the Zoning Administrator erred by issuing a certificate of occupancy permit (No. 81956, dated August 19, 2004) for a 34-seat restaurant (Coggins Sandwich Manufactory) located within a George Washington University dormitory. Appellant argues that the restaurant, and proposed sidewalk cafe, is a commercial use serving the general public. Appellant contends that this use was not contemplated by the Zoning Commission in Order No. 958. The R-5-D zoned subject premise is located at 616 23rd Street, N.W. (Square 43, Lot 26).

HEARING DATE: January 18, 2005
DECISION DATE: January 18, 2005

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 17429
EXHIBIT NO. 45

ORDER

Preliminary Matters

By letter dated October 1, 2004, the commissioner for single-member district 2A05 in Advisory Neighborhood Commission ("ANC") 2A requested review of a decision by the Zoning Administrator regarding a certificate of occupancy "for a commercial restaurant (Coggins Sandwich Shop)" open to the public in a university dormitory in an R-5-D zone. The commissioner asserted that the certificate of occupancy should be revoked because a commercial restaurant is not a use permitted in the R-5-D zone. At a public meeting on October 14, 2004, with a quorum present, ANC 2A unanimously approved a resolution requesting that the BZA "vacate the Zoning Administrator's improperly issued Certificate of Occupancy for Coggins Sandwich Shop, a commercial restaurant improperly operating in a residentially zoned area."

By memoranda dated October 22, 2004, the Office of Zoning mailed notice of the appeal to the Office of Planning, ANC 2A, the single-member district ANC 2A05, and the Councilmember for Ward 2. By letters dated November 22, 2004, the Office of Zoning sent notice of a public hearing on the appeal to ANC 2A; the Zoning Administrator; George Washington University, the owner of the property that is the subject of the appeal; and Coggins Sandwich Corporation, the operator of the restaurant in question. Notice of the hearing was also published in the *D.C. Register* on November 26, 2004 (51 DCR 10778).

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The public hearing on the appeal was held January 18, 2005. The Board received testimony and evidence from the parties in this proceeding: ANC 2A, George Washington University, and Coggins Sandwich Manufactory. The Board also heard testimony from the Zoning Administrator.

The ANC argued that commercial operations, open to the public, are not allowed in Residence zones. According to the ANC, the Zoning Commission order that approved the construction and use of the dormitory, including its spaces for food service venues, did not state or imply that the food services would be commercial restaurant facilities serving both students and the public.

George Washington University asserted that the certificate of occupancy was properly issued in conformance with zoning requirements. According to the University, the food service venue at issue is an accessory use customarily incidental to the principal use of the student dormitory, and exists primarily for the benefit of students and employees of the University but is also accessible to visitors. The University noted that similar food service venues, open to the public, exist on its campus and on other university campuses.

DCRA asserted that the certificate of occupancy was not issued in error because the food service venue operates in a dormitory included in the University's campus plan and approved by the Zoning Commission. DCRA noted that a university use is permitted by special exception in Residence zones pursuant to a two-stage application process requiring approval of both a campus plan, describing the university's general intentions for land use over a substantial time, and approval of individual projects that the university proposes to undertake consistent with the campus plan. DCRA testified that the food service venue contained in the dormitory was an accessory use incidental to the principal university use of the property.

Findings of Fact

1. Certificate of Occupancy No. CO81956 was issued August 19, 2004 to Coggins Sandwich Manufactory, permitting a 34-seat restaurant on the first floor of the building located at 616 23rd Street, N.W.

2. The building is owned by George Washington University and is used principally as a dormitory known as the "Ivory Tower." Construction and use of the building was granted special exception approval by the Zoning Commission as further processing of the University's approved campus plan in Z.C. Order No. 958 (Case N o. 01-21CP/16553; January 14, 2002). Order No. 958 states that the building would contain dormitory residence rooms for undergraduate students, below-grade parking spaces, and spaces for three or four food service venues on the lower and ground levels (Paragraphs 7, 20).

3. The University contracted with Coggins Sandwich Corporation to provide food services. The food venues close to the public at 10:00 p.m. but remain open for students until 2:00 a.m.

4. The Board credits the University's testimony that approximately 86 percent of persons who use the food service venues in the Ivory Tower are students. Other users include University employees and visitors to the campus, as well as the general public, such as workers from nearby offices.

5. The Board credits the testimony of the Zoning Administrator and the University that the food service venue is customarily incidental and subordinate to the principal university use of the subject property, reasonably related to the University's mission.

Conclusions of Law

Pursuant to the § 8 of the Zoning Act of 1938, D.C. Official Code § 6-641.07(g)(4) (2001), the Board may hear and decide appeals where it is alleged by the appellant that there is error in any decision made by any administrative officer or body in the administration or enforcement of the Zoning Regulations. In an appeal, the Board may reverse or affirm, wholly or partly, or may modify the decision appealed from, or may make any order that may be necessary to carry out its decision or authorization, and to that end shall have all the powers of the officer or body from whom the appeal is taken. *Id.*

ANC 2A appeals the administrative decision of the Zoning Administrator to issue a certificate of occupancy for a restaurant located in a university dormitory in the R-5-D zone. According to the ANC, the certificate of occupancy was issued improperly because restaurants, open to the public, are a commercial use not permitted in Residence zones.

The Board is not persuaded by the ANC that the Zoning Administrator erred in issuing the certificate of occupancy. Rather, the Board agrees with the testimony of the Zoning Administrator and the University that the food service venue is accessory to the principal university use of the subject property. The subject property is located within the campus boundaries adopted in the University's approved campus plan, and is improved with a building principally used as a dormitory for undergraduate students, as approved by the Zoning Commission in further processing of the campus plan. The food service venue is an accessory use that overwhelmingly serves the University population, especially students as well as some University employees and visitors to the University, and incidentally offers food service to the public. Access to the food service venue by persons not affiliated with the University does not alter its character as an essentially accessory use incidental and subordinate to the principal university use of the subject property. *See, e.g. Georgetown Residents Alliance v. District of Columbia Bd. of Zoning*

Adjustment, 816 A.2d 41 (D.C. 2003) (child development center permitted as accessory use on university campus); and *Citizens Coalition v. District of Columbia Bd. of Zoning Adjustment*, 619 A.2d 940 (D.C. 1993) (cogeneration facility built on university property would be accessory use subordinate, incidental, and related to principal use of university).

The Zoning Commission order approving construction and use of the dormitory specifically indicated that food service venues would be provided in the building; however, nothing in the order restricted public access to the food service or limited its availability only to students. The Zoning Administrator acted reasonably in issuing the certificate of occupancy for the restaurant use without precluding access by the general public.

Based on the findings of fact, and having given great weight to the issues and concerns of ANC 2A, the Board concludes that the Appellant has not satisfied the burden of proof with respect to the appeal alleging that a certificate of occupancy permit (No. 81956; dated August 19, 2004) was issued in error for a 34-seat restaurant, located within a George Washington University dormitory and open to the general public, in the R-5-D zone at 616 23rd Street, N.W.

Accordingly, it is therefore **ORDERED** that the appeal is **DENIED**.

VOTE: 5-**0**-**0** (Geoffrey H. Griffis, Ruthanne G. Miller, Curtis L. Etherly, Jr., John A. Mann II and Anthony J. Hood to deny).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring Board member approved the issuance of this order.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: FEB 0 8 2006

PURSUANT TO 11 DCMR § 3125.6, THIS DECISION AND ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.