★ ★ ★

Foggy Bottom and West End
Advisory Neighborhood Commission (ANC-2A)

c/o St. Mary's Court 725 24th Street, NW Washington, DC 20037 (202) 736-1775

October 20, 2004

Mr. Geoffrey H. Griffis, Chair
Board of Zoning Adjustment
441 4th Street, NW, Suite 210
Washington, DC 20001

Re: *Resolution #04-10B pertaining to a Review of the Zoning Administrator's Decision to Issue a Certificate of Occupancy (#CO 81956) for a Commercial Restaurant in a Residentially Zoned Area R-5-D (Lot 26 Square 43)*

Dear Chairperson Griffis:

DCMR 11 Sec. 3112.2 states: "Any person aggrieved by any order, requirement, decision determination, or refusal made by an administrative officer or body, including the Mayor of the District of Columbia, in the administration or enforcement of the Zoning Regulations may file a timely appeal with the Board."

Advisory Neighborhood Commission 2A, at its regular monthly public meeting on October 14, 2004, properly noticed and with a quorum present, unanimously approved Resolution #04-10B, requesting that the BZA review and vacate the Zoning Administrator's improperly issued Certificate of Occupancy for Coggins Sandwich Shop, a commercial restaurant improperly operating in a residentially zoned area. The Commission voted 5-0 to have Dorothy Miller, ANC-2A's chair, represent the commission at the BZA public hearing.

The ANC's concern is that protection for its residential neighborhood was violated when the ZA failed to even notify the ANC of the issuance of this permit. The Chair promptly notified Councilmember Sharon Ambrose, Chair of the committee on Consumer and Regulatory Affairs, which is the committee responsible for DCRA oversight. Councilmember Ambrose's reply is enclosed with this appeal.

The Home Rule Charter for the District gave ANC's the power to represent local residents in expressing community concerns before District agencies, and decreed that the concerns expressed by the ANC be given "Great Weight" and that a written rationale be given should the agency take a position different from that of the ANC.

Respectfully Submitted,

Dorothy Miller

Dorothy Miller, Chair
Advisory Neighborhood Commission 2A

Attachments

cc: Sharon Ambrose, Chair
Julie Lee, General Counsel, DCRA
Charles Barber, Counsel, GWU

RECEIVED
D.C. OFFICE OF ZONING
2004 OCT 20 PM 12:48

BZA
Case No. 17249
Exhibit No. 1

Board of Zoning Adjustment
District of Columbia
CASE NO. 17249
EXHIBIT NO. 77

Form 125 – Exhibit 1
(Revised 03/15/02)

Case No. BZA Case # 17249

BEFORE THE BOARD OF ZONING ADJUSTMENT OF THE DISTRICT OF COLUMBIA

APPEAL

Notice: See other side of appeal form for instructions

Pursuant to Section (s) §3100 and §3101 of the Zoning Regulations of the District of Columbia, an appeal is hereby taken

from the administrative decision of: ZONING ADMINISTRATOR (Name of administrative officer and title)

made on 08·19·2004 (Date of decision), to the effect that COGGINS SANDWICH CORPORATION A TENANT of GEORGE WASHINGTON UNIVERSITY, MAY OPERATE A COMMERCIAL RESTAURANT IN AN R-5-D ZONE ... SEE ATTACHED PAGE

Address(es) of Affected Premises	Square(s)	Lot(s)	Zoning Districts
616 23rd St NW	43	26	R-5-D

Present use of Property:	DORMITORY
Proposed use of Property:	RESTAURANT (including outdoor cafe)
Owner of Property:	GEORGE WASHINGON UNIVERSITY / Telephone No.: 202·994·1000
Address of Owner:	
Name, address and telephone number of lessee:	COGGINS SANDWICH CORPORATION, 616 23RD ST NW, WASHINGTON DC 20037
Name, address and telephone number of appellant, if other than owner:	ANC 2A, DOROTHY MILLER, CHAIR, 725 24TH ST NW, WASHINGTON DC 20037 736-1775

State specifically manner in which appellant is aggrieved by the administrative decision, the allegations of error in the administrative decision, and the relevant sections of the Zoning Regulations (see reverse for more detailed explanation).

Please use a separate piece of 8 ½" x 11" to respond and attach it to the Form 125 Appeal.

Date:		Signature:	Appellant*

* *If appeal is filed by agent of the Appellant, Form 125 Appeal shall be accompanied by a letter signed by the appellant authorizing the agent to act on his behalf in this appeal.*

To be notified of hearing and decision:
(Appellant or Authorized Agent)*

Name:	DOROTHY MILLER, CHAIR, ANC 2A				
Address:	ANC 2A, 725 24TH ST NW, WASHINGTON, DC 20037				
Phone No.:	202-331-0191	Fax No.:	202·331·0947	E-Mail:	dorothymiller5@aol.com

ANY APPLICATION THAT IS NOT COMPLETED IN ACCORDANCE WITH THE INSTRUCTIONS ON THE BACK OF THIS FORM WILL NOT BE ACCEPTED.

INSTRUCTIONS

Any notice of appeal for an administrative ruling as provided by the District of Columbia Zoning Regulations (11 DCMR Zoning) that is not completed in accordance with the following instructions shall not be accepted. ***Do not mail this form to the Board of Zoning Adjustment.***

1. All applications shall be made on BZA Form 125. All appeal forms must be completely filled out and be typewritten or printed. All information shall be furnished by the appellant. If additional space is necessary, use separate sheets of 8½" x 11" paper to complete the form (drawings and plans may be no larger than 11"x 17").

2. Present this form and supporting documents, in person, to the Office of Zoning at 441 4th Street, N.W., Suite 210, Washington, D.C. 20001.

3. At the time of filing an appeal before the Board of Zoning Adjustment, the Appellant shall pay a filing fee of $800.00 in accordance with the Board of Zoning Adjustment Schedule of Fees (11 DCMR §3180), except as provided in §3180.3 and §3180.4.

4. ***REQUIRED information to be submitted when making an application submission, includes <u>one (1) original and twenty (20) copies</u> of the following:***

   A. All Appellants are required to submit in specific detail each and every exception they have to the administrative decision. Details should state the allegation of error in the administrative decision – "why it was an error" and reference the relevant Sections of the Title 11 DCMR Zoning Regulations and/or Map. It shall be typewritten or printed and attached to Form 125 of appeal.

   B. A detailed statement at the time of filing explaining how the appellant intends on proving their case.

   C. In the case of an area variance, a plat drawn to scale and certified by a DC licensed survey engineer or D.C. Surveyor's Office showing boundaries and dimensions of existing and proposed buildings and accessory buildings. Also required are, if any, architectural plans and elevations in sufficient detail to clearly illustrate any proposed building to be erected or altered, proposed landscaping/screens and building materials as they relate to the specifics of the appeal. Submittal of plans and drawings shall not exceed 11" x 17" in size. (See Form 130 – Plat, Plan and Elevation Specifications for the required information on these drawings.)

Note: All Appellants are required at the time of filing to serve all parties; including, as appropriate, the Appellee, the Owner of the property, the Lessee, and the Advisory Neighborhood Commission. Also please note, in an appeal only parties can testify or submit information into the record; however, parties may solicit pertinent information from affected persons to include in their submissions into the record.

Form 125, BZA Case #17249
Attachment to Appeal Form

. . .The certificate of occupancy issued on August 19, 2004 allows a commercial restaurant. It allows the use of public space for an outdoor café at 616 23rd Street in violation of the laws governing use of public space, ZC Order 958, Case No. 01-21CP/16553, 11 DCMR secs. 350-354, and granted permits for that construction without approval for the use of the public space by the Public Space Committee. In addition, no Certificate of Occupancy should have been issued on August 19, 2004 because there is no bathroom in the restaurant.

Government of the District of Columbia
Office of Advisory Neighborhood Commissions

September 20, 2004

Memorandum

To: Commissioner Dorothy Miller
From: Gottlieb Simon
Re: Requirement to Give ANCs 30 Business Days Notice

Here is the legal requirement to give ANCs 30 (business) days notice of District actions that may affect their ANC area:

1-309.10(a) Each Advisory Neighborhood Commission ("Commission") may advise the Council of the District of Columbia, the Mayor and each executive agency, and all independent agencies, boards and commissions of the government of the District of Columbia with respect to all proposed matters of District government policy including, but not limited to, decisions regarding planning, streets, recreation, social services programs, education, health, safety, budget, and sanitation which affect that Commission area. For the purposes of this part, proposed actions of District government policy shall be the same as those for which prior notice of proposed rulemaking is required pursuant to § 2-506(a) or as pertains to the Council of the District of Columbia.

1-309.10(b) Thirty days written notice, excluding Saturdays, Sundays and legal holidays of such District government actions or proposed actions shall be given by first-class mail to the Office of Advisory Neighborhood Commissions, each affected Commission, the Commissioner representing a single-member district affected by said actions, and to each affected Ward Councilmember, except where shorter notice on good cause made and published with the notice may be provided or in the case of an emergency and such notice shall be published in the District of Columbia Register. In cases in which the 30-day written notice requirement is not satisfied, notification of such proposed government action or actions to the Commissioner representing the affected single-member district shall be made by mail. The Register shall be made available, without cost, to each Commission. A central record of all such notices shall be held by the Office of Advisory Neighborhood Commissions.

1-309.10(c)(1) Proposed District government actions covered by this part shall include, but shall not be limited to, actions of the Council of the District of Columbia, the executive branch, or independent agencies, boards, and commissions. In addition to those notices required in subsection (a) of this section, each agency, board and commission shall, before the award of any grant funds to a citizen organization or group, or before the formulation of any final policy decision or guideline with respect to grant applications, comprehensive plans, requested or proposed zoning changes, variances, public improvements, licenses, or permits affecting said Commission area, the District budget and city goals and priorities, proposed changes in District government service delivery, and the opening of any proposed facility systems, provide to each affected Commission notice of the proposed action as required by subsection (b) of this section. Each District of Columbia government entity shall maintain a record of the notices sent to each Commission pursuant to subsection (b) of this section.

1350 Pennsylvania Avenue, NW • Washington, DC 20004 • (202) 727-9945 v (202) 727-0289 fax

C of O

CERTIFICATE OF OCCUPANCY

PERMIT NO.
CO 81956

THIS PERMIT IS VALID ONLY FOR THE PREMISES OF THE PROJECT ADDRESS

DATE : 8/19/2004

ADDRESS	FLOOR(S)	SQUARE	LOT	WARD	ZONE
616 23RD ST NW	1ST FLR				

PERMISSION IS HEREBY GRANTED TO
CORPORATION : COGGINS SANDWICH MANUFACTORY-WASHINGTON DC LLC
ID No.: 18504

TRADING AS
COGGINS SANDWICH MANUFACTORY

APPROVED USES
RESTAURANT

PREVIOUS USES
OTHER - SEE DESCRIPTION

TYPE	OCCUPIED SQ FOOTAGE	OCCUP LOAD	EXPIRATION DATE
NEW C/O	1000	34	NONE

DESCRIPTION OF USE
RESTAURANT-34 SEATS

FEE
$75.00

THIS CERTIFICATE SHALL BE POSTED CONSPICUOUSLY IN THE ABOVE PREMISES AT ALL TIMES. IT IS INVALID UNLESS OTHERWISE STATED, VALID ONLY for the premises at the above address as part thereof, and for the purpose(s), indicated above, and is NON-TRANSFERABLE to other persons or premises under ANY conditions. ANY CHANGE in the type of business, ownership of premises, or part of premises from that first, will render this Certificate VOID and a new Certificate must be obtained.

David A. Clark
DIRECTOR

PERMIT CLERK
L. CLIFFORD DIXON

THE FOGGY BOTTOM AND WEST END ADVISORY NEIGHBORHOOD COMMISSION (ANC-2A) passed the following Resolution #04-10B

Pertaining to a Review by the BZA of the Zoning Administrator's Decision to Issue a Certificate of Occupancy Permit # 81956 for a Commercial Restaurant in a Residentially-Zoned Area R-5-D (Lot 26 Square 43)

WHEREAS, George Washington University (GWU), the owner of the above cited property in Square 43 Lot 26, is permitted under DCMR Title 11 Chapter 3 (352.2) to operate college or university use as a Special Exception in an R-5 District if approved by the Zoning Commission under § 3104; and

WHEREAS, in 2001 under the Special Exception/ Campus Plan process, GWU applied for permission to build a 739-bed dormitory project on this property, which until 2001, had been deliberately excluded from the GWU campus area by the BZA to protect the fragile Foggy Bottom residential community; and

WHEREAS, in GWU's October 17, 2001, presentation to the ANC and during the public hearing before the ZC, there was only a brief mention of student-serving dormitory "venues" and no discussion revealing GWU's actual intent to improperly locate a commercial restaurant open to the public in this project; and

WHEREAS, in its Order No. 01-21CP/16553 dated January 14, 2002, the Zoning Commission approved the construction of this GWU dormitory project, situated on the now-expanded Western campus boundary abutting a senior citizen complex and several residential dwellings in an R-5-D zoned area and Condition No. 7 of the order reads "...and spaces for three or four food venue services on the lower and first levels "; and

WHEREAS, there is no provision in Title 11 of the D.C. Municipal Regulations (DCMR 11) for a commercial restaurant to be located in a residentially zoned (R-5-D) area and the ZC would not have crafted a zoning order that violated 11 DCMR;

THEREFORE BE IT RESOLVED, that in its Order 01-21CP/16553, the Zoning commission contemplated student-serving dormitory food service in this project and not an improper commercial restaurant open to the public;

THEREFORE BE IT FURTHER RESOLVED that ANC-2A requests that the Zoning Administrator's decision be reviewed and that the improperly issued Certificate of Occupancy for a commercial restaurant in an R-5-D zoned area be vacated and that the use of the property revert to that allowed under the regulations.

DATE: October 14, 2004

SMD	AYE	NAY	ABSTAIN	ABSENT	MOVED	SECONDED
01 LEHRMAN	✓					
02 PRICE	✓					✓
03 TYLER	✓					
04 LEWIS				✓		
05 MILLER	✓				✓	
06 LONG	✓					

Dorothy Miller

CHAIRPERSON

Foggy Bottom and West End
Advisory Neighborhood Commission (ANC-2A)

c/o St. Mary's Court 725 24th Street, NW Washington, DC 20037 (202) 736-1775

I, Dorothy Miller, Chair of ANC-2A, hereby certify and attest that on October 20, 2004, a copy of the attached BZA Appeal No. 17249, of the ZA Decision to issue a Certificate of Occupancy (CO 81956) for a Commercial Restaurant in a Residentially Zoned Area was mailed first class postage prepaid to each party and public agency concerned with this matter, as listed below:

Sharon Ambrose, Chair
Committee on Consumer and Regulatory Affairs
1350 Pennsylvania Avenue, Suite 112
Washington, DC 20004

Julie Lee, General Counsel
DCRA
941 No. Capitol Street, NE,
Washington, DC 20002

Charles Barber, Esq.
General Counsel, GWU
2100 Pennsylvania Ave., NW, Suite 250
Washington, DC 20052

Dorothy Miller

Dorothy Miller, Chair, ANC-2A

Watergate Dental Associates

The Watergate • 2506 Virginia Avenue, N.W. • Washington, D.C. 20037 • (202) 965-5400 • FAX: (202) 298-7760

September 22, 2004

Denise Wiktor
Manager of Public Space
DOT PSMA
941 No. Capitol St. NW
Washington, DC, 20002

Re: GWU's Ivory Tower Outside Venue

Dear Ms. Wiktor,

I am the sole remaining townhome owner on Square 43, shared with the Ivory Tower. This project has a direct impact on the residential community and me. This Square is zoned R-5-D. It is my understanding that an outside-sidewalk café venue is not permitted in a R-5-D. Please do not approve this permit at this time and properly refer this issue back to Zoning. They should apply to change the zoning designation for this Square which will allow for an outside-sidewalk restaurant venue.

On August 28, 2004, the University's move-in weekend, I brought to the attention of Dorothy Miller, our ANC 2A Commissioner, what I thought were violations of public space policy. Signs were taped to all the tree trunks and street signs on both sides of 23rd Street. Large 3'X 4' placards on tripods were taped to public garbage cans and traffic signal poles on the corners of 'F' St, Virginia Ave and 23rd Streets. A large sign on a tripod, advertising the restaurant in question, blocked the middle of the public sidewalk on the corner of G and 23rd Streets. The placement forced all pedestrians to go around it. I personally moved it, under the direction of Ms. Miller, and placed it inside the lobby of the building just outside the entrance of the restaurant as she went to consult with the manager. A University Security vehicle and officer blocked G Street. Cars were parked perpendicular to the curbs restricting traffic.

GW University has a history of doing whatever and whenever they want to. Please have them abide by proper procedures and respect their neighbors and the Foggy Bottom community.

Sincerely yours,

Donald W. Kreuzer

Dr. Donald W. Kreuzer

2500 Virginia Ave, NW #308
Washington, DC 20037
July 18, 2004

Denise Wiktor
Public Space Manager
DDOT
942 N Capitol St, NE 20002

Dear Ms. Wiktor:

I write to express opposition to any outdoor venue at the new GWU dorm on 23rd and G Streets, NW.

This gigantic dormitory has been built at the very edge of what remains of our fragile residential community. Any further disruption to what little remains of the peace and quiet of our permanent residents should not be sanctioned by our government.

An outdoor venue as now proposed by the University will create noise and disturbance to residents who live just yards from this new building. The damage done to our residential neighborhood will be far greater than any legitimate good that can ensue for those requesting such use. This, after all is a dormitory in a residential neighborhood not a luxury hotel or restaurant on a main thoroughfare.

Finally, when the University brought this project before ANC 2A it hid its intent to operate any outdoor venue in language none of us could be reasonably expected to comprehend. That omission was not innocent. ANC 2A would not have approved such a use had that intent been made plain.

ANC 2A should have at least as much right to deny this use of public space as it would for such a request from a commercial operator.

Thank you.

Sincerely,

Ronald Cocome, President
Foggy Bottom Association

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10-1-04

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF TRANSPORTATION

★ ★ ★

Office of Public Space
Management Administration

September 27, 2004

The George Washington University
2121 I Street, NW
Suite 701
Washington, DC 20052

Dear Property Owner:

On September 23, 2004, the District of Columbia Public Space Committee approved the request to use public space for an unenclosed sidewalk café for Coggins' Sandwich Manufactory, located at 616 23rd Street, NW. Approval was granted with the following conditions:

1. That the applicant secure the permit within six months of the date of this letter, or the approval granted herein will expire;
2. That the applicant secure a certificate of use within six (6) months of the issuance of the sidewalk café permit;
3. That a certificate of use be obtained yearly;
4. That the permit shall expire if the insurance to the benefit of the District of Columbia not be maintained;
5. That the permit is for the use of Coggins Sandwich Manufactory and is not transferable;
6. That there be no alcohol served;
7. That the property owner will be responsible for maintaining the area free of trash and debris;
8. That the property owner display no logos, insignias or advertising of any kind on any structure, fixture or material in public space;
9. That the applicant adheres to the hours of operation from 7:00am to 10:00p.m seven (7) days a week;
10. That no material be placed in public space earlier than one half hour before opening and that all material be removed from public space within one half hour of the hours of operation;
11. That the applicant may use the café from April 1st through October 31st;
12. That the proposed installation shall be in accordance with the approved drawing, and no deviation from the drawing is allowed without prior approval from the Public Space Committee;
13. That the applicant adhere to the proposed use of 26 tables and 52 chairs with 5 umbrellas in the proposed design, for a total of 834 square feet;
14. That the use of public space to establish and operate an unenclosed sidewalk café at 616 23rd Street, NW, shall conform to all applicable provisions of Title 24 DCMR, Chapters 2 and 3; and
15. That the rental fee is paid annually in accordance with Title 24 DCMR, Chapter 3.

Please contact 202.442.4670 to arrange to pick up of your permit at 941 North Capitol Street, Suite 2300. If you have any questions, please contact me directly at 202.535.2699. Thank you.

Sincerely,

Denise L. Wiktor
Executive Secretary

Cc: Andrew W. Kline
ANC 2A



THE GEORGE
WASHINGTON
UNIVERSITY
WASHINGTON DC

not submitted for
CO/14/04 ANC-D.

September 22, 2004

Mr. Andrew J. Kline, Esq.
1225 19th Street, NW
Suite 320
Washington, DC 20036

Dear Mr. Kline

Pursuant to your request, this letter confirms the public access to Coggins, located on the ground floor of a newly opened residence hall of The George Washington University, located at 616 23rd Street, NW. The University anticipates that Coggins and the food service venues located on the lower level will be patronized by members of the community as well as by University students, faculty and staff. Access to the portion of the building containing dormitory residence rooms is restricted by a key card system to student residents and staff.

Coggins is the one food service venue located on the ground floor of the building. It can be accessed by the public both from outside the premises on G Street and from within the building by entering the building doors located at the corner of 23rd and G Streets. The proposed unenclosed sidewalk café abuts Coggins. The area applied for can only be used as a sitting area and as it abuts a restaurant, the area would benefit from being used as an unenclosed outdoor café.

Sincerely,

Michele L. Beamer
Director, Institutional Real Estate

OFFICE OF THE
EXECUTIVE
VICE PRESIDENT

2121 I STREET, NW
WASHINGTON, DC 20052
202-994-6600
FAX 202-994-9304

RECEIVED
10-3-04

COUNCIL OF THE DISTRICT OF COLUMBIA

WASHINGTON, D. C. 20001

(202) 724-8072

SHARON AMBROSE
Councilmember-Ward 6

September 29, 2004

Mr. David Clark, Director
Department of Consumer and Regulatory Affairs
941 North Capitol Street, NE
Washington, DC 20002

Re: Complaints from 2 ANC Commissioners regarding lack of notice from DCRA

Dear Mr. Clark: Dave

Last week my office received two disturbing complaints from two different ANC Commissioners regarding a lack of legally required notice and due process from DCRA to ANCs. Since I see similarities in these matters from a policy-making stance, I want to bring them to your attention and to bring them up together. Nevertheless, each of them needs a separate response to the underlying issue in each case.

The first matter was brought up by ANC Commissioner Absalom Jordan, ANC 8D, Chair, Committee on Housing and Public Safety, regarding a series of raze permits that were issued to Potomac Job Corps last year on Danbury Street, SW, without prior notification to the ANC. Also, Commissioner Jordan shared a copy of a building permit (No. B454780) issued by DCRA of which he claims that the Commission was never notified. Apparently, Denzil Noble wrote to the Commission acknowledging the responsibility of the agency to notify the Commission, but no final resolution occurred after that. With this letter, I am enclosing a letter addressed to me from Commissioner Jordan outlining the complaint together with the attachments he shared with me, including your letter to the Commissioner of July 23, 2004; Mr. Noble's letter of March 5, 2004; a copy of the above-referenced building permit; and an Attorney General (then Corporation Counsel) opinion written into a letter to ANC Commissioner David Bardin, dated May 31, 2001. Would you please review this matter and get back to me on what the agency's current policy and practice is with regard to providing notice to ANCs of raze and building permits. I particularly want to understand how DCRA is distinguishing among permits in its policy, since Commissioner Jordan seems to be referring to raze and building permits, as opposed to postcard and walk through permits, and the former kinds of permits were normally provided to ANCs so they could complete their consideration as required by law.

The second call my office received came from ANC Commissioner Dorothy Miller, ANC 2A05. She complained that Denzil Noble has illegally issued a zoning permit for a Certificate of Occupancy for a sidewalk café (a commercial enterprise) in a R-5 zone (a residential zone) in her SMD. Moreover, she claims that the agency did not inform the ANC of the C of O application so

that not only did the ANC not get to determine whether this was an appropriate use, but also the 60-day protest period would run out before any realistic protest to this sidewalk café could be mounted. Again, I would ask that you respond to the specific complaint, but also that this and the prior complaint be looked into for systemic consideration about policy on information sharing with ANCs by DCRA. Further, I would like a report on the implementation of the FY 2005 Budget Support Act of 2004 as it pertains to the Office of Zoning Administrator and BLRA.

While I am sympathetic to the agency's need to manage its information requests from the public to review permit applications, the permit process includes ANCs in the process to determine their "great weight" on these matters. ANCs cannot perform their functions if they do not receive appropriate and timely notice of permits so as to be able to take action that they are legally mandated to consider.

Thank you for your attention to this serious matter. Please feel free to contact me or my Committee Clerk, Esther Bushman, at 724-8072 with any questions.

Sincerely,

Sharon

Councilmember Sharon Ambrose, Chair
Committee on Consumer and Regulatory Affairs

Attachments
cc: Commissioner Absalom Jordan, ANC 8D
Commissioner Dorothy Miller, ANC 2
Councilmember Sandy Allen, Ward 8
Councilmember Jack Evans, Ward 2
Robert Bobb, City Administrator
Gregory McCarthy, Office of Policy

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Corporation Counsel

Office of Government Operations
Legal Counsel Division



May 31, 2001

David J. Bardin
Chair
Advisory Neighborhood Commission 3F
P.O. Box 39290
Washington, D.C. 20016-9290

Re: Notice of raze permit

Dear Mr. Bardin:

This responds to your letter dated April 4, 2001 wherein you request advice regarding the requirement of notice to Advisory Neighborhood Commission (ANC) 3F of the application for a raze permit.

Background

On March 1, 2001, the Department of Consumer and Regulatory Affairs (DCRA) received an application for and issued a raze permit to the Jewish Primary Day School (JPDS) to raze a building located at 3031 Gates Road, N.W., within the boundaries of ANC 3F. The raze permit was issued pursuant to 12 DCMR § 107.2.4, and is referred to as an over the counter permit. The over the counter permit states on it, pursuant to 12 DCMR § 107.2.10, the restriction that no razing operations shall commence until a supplemental razing operations permit is obtained. You state that the ANC was not notified by DCRA of the application for a raze permit, however, you became aware of the raze permit on March 19, 2001 when someone mentioned it at an ANC meeting. A list of raze permits including the JPDS over the counter raze permit was published in the D.C. Register on April 6, 2001. ANC 3F, by letter dated April 17, 2001, forwarded to DCRA its recommendation that the JPDS raze permit be rescinded. The ANC seeks advice regarding whether DCRA is required to give notice to the ANC, with an opportunity for the ANC to make a recommendation, prior to issuing a raze permit. If so, the ANC asks whether having failed to notify the ANC, the raze permit issued to JPDS is null and void.

Analysis

The process for obtaining two permits prior to razing was created in November 1999 when the Construction Codes were amended by DCRA. Prior to November 1999, only one permit was issued in response to an application for a raze permit. The single permit process did not issue an over the counter permit, instead it issued only one permit after complete review of the

application. The JPDS claims that the issuance of the over the counter raze permit vests the JPDS with the authority to raze the building, and that the issuance of the second permit is merely a ministerial action by DCRA. As support for its vesting argument, the JPDS cites a letter dated January 26, 2000 signed by Armando Lourenco, then-Administrator of the Building and Land Regulation Administration at DCRA, and an undated raze permit procedures fact sheet. The two-step permitting process was established by DCRA pursuant to its regulatory authority, *i.e.*, it is contained in the Construction Codes, which, contrary to the name, is not legislation but is merely a regulation. In fact, the language of the regulation found at 12 DCMR § 107 does not state that the over the counter permit vests the right to raze. It is DCRA's interpretation of the regulation that the over the counter permit vests the right to raze.

DCRA's interpretation that the over the counter permit immediately vests the holder with the right to raze a property is not reasonable because it directly conflicts with the provision of District law requiring notice of such permits to the ANCs and the giving of great weight to ANC recommendations.[1] The current ANC law provides in section 13(c)(3) of the Advisory Neighborhood Councils Act of 1975, effective October 10, 1975, D.C. Law 1-21, as added by the Advisory Neighborhood Commission Additional Notice Act of 1977, effective October 26, 1977, D.C. Law 2-30, D.C. Code § 1-261(c)(3), (ANC Notice Law) as amended, as follows:

> The Department of Consumer and Regulatory Affairs shall ensure that each Advisory Neighborhood Commission is provided at least twice a month by first-class mail with a current list of applications for construction and demolition permits within the boundaries of that Advisory Neighborhood Commission.

Furthermore, section 13(d) of the ANC Notice Law provides:

> (d)(1) Each Commission so notified pursuant to subsections (b) and (c) of this section of the proposed District government action or actions shall consider each such action or actions in a meeting with notice given in accordance with section 14(c) which is open to the public in accordance with section 14(g). The recommendation of the Commission, if any, shall be in writing and articulate the basis for its decision.
>
> (2) At the close of business of the day after which the notice period concludes as provided in subsection (b) or (c) of this section, the affected District government entity may proceed to make its decision.

1 This memorandum does not address other arguments against vesting that have been raised by the ANC and other interested parties.

> (3)(A) The issues and concerns raised in the recommendations of the Commission shall be given great weight during the deliberations by the government entity.

In light of the specific statutory requirement of notice to the ANC of applications for demolition permits and subsequent great weight for ANC recommendations, the argument that the issuance of the over the counter permit vests the right to raze is unconvincing. The JPDS argues that the notice provided to the ANCs under section 13(c)(3) is not equivalent to the notice provided to ANCs under the rest of section 13(c). Instead, JPDS asserts that it is merely an informational list provided to the ANC. JPDS bases its argument on the failure to use the term "notice" in paragraph (c)(3), the fact that the requirement of notice of such permits is separate from other notice requirements to ANCs, and the fact that no notice period is provided in paragraph (c)(3). JPDS also argues that the ANC statute does not provide for any action by the ANC in response to the list, *i.e.*, even if the ANC is entitled to notice, its recommendations should not be given great weight by DCRA under section 13(d).

Contrary to JPDS' argument, it is clear that notice to ANCs under section 13(c)(3) is the same as all other notices to ANCs under section 13(c) and that an ANC recommendation in response to such notice is entitled to great weight. In Shiflett v. District of Columbia Board of Appeals and Review, 431 A.2d 9 (D.C. 1981) the court held that the language of paragraph (c)(3), providing for notification of construction permits, places such permits in the category of "permits of significance" under paragraph (c)(1). Therefore, the court held that notices under paragraph (c)(3) are equivalent to other notices to ANCs under subsection (c). Furthermore, the history of the provision reveals that the placement of the demolition permit application notice requirement in a separate paragraph of subsection (c) does not support JPDS' argument. In a 1976 opinion, this Office concluded that paragraph (c)(1), then designated as simply subsection (c), did not include such permits.[2] In response the Council passed the ANC Notice Law, which redesignated the original subsection (c) as paragraph (c)(1) and added paragraphs (c)(2) and (c)(3) to specifically require certain notices to ANCs, including notice of construction and demolition permits. A short time later the court in Kopff v. District of Columbia ABC Board, 381 A.2d 1372 (D.C. 1977) held that the Corporation Counsel's opinion was flawed. If the Council had waited for the Court to speak before changing the statute, there would have been no separate paragraphs enacted. As to the argument that providing the list to the ANCs could not have been intended to be notice because the ANC Notice Law requires distribution of a list twice monthly instead of requiring individual notices of each application, the statute is just as susceptible to an alternative interpretation that less frequent notice was a policy concession to DCRA, *i.e.*, without the ability to do a twice-monthly list, DCRA would have to mail out individualized notices of each permit application, a burden the Council apparently did not deem necessary. Notice by list, however, is no less notice under the law than individualized notice. As to the argument that no great weight applies to the ANCs' recommendations regarding raze permits, JPDS cites no

2 *See* 1 Op. CCDC 236 (1976).

supporting authority. In fact, the plain language of section 13(d) applies the great weight requirement to section 13(c) and does not limit that applicability to paragraph (c)(1). After review of the arguments and the law, I conclude that notice to ANCs of construction and demolition permits under paragraph (c)(3) is treated identically to notices under paragraph (c)(1), and that such notice includes a 30-day notice period and entitlement to great weight for recommendations made by ANCs. Since the ANC is entitled to notice of the application for a raze permit and its recommendation is entitled to great weight under District law, DCRA may not impliedly amend the ANC Notice Law either by a regulation, or an interpretation of a regulation, that abrogates the right to notice and great weight by vesting the right to raze at the over the counter permit stage.

In answer to your specific questions, I conclude that DCRA was required to give notice to the ANC of the JPDS raze permit application[3], the ANC is entitled to make a recommendation on the application, and that recommendation is required to be given great weight by DCRA. I do not conclude, however, that the over the counter permit in this case is null and void. I conclude, instead, that the over the counter permit does not vest any right to raze the property; therefore, the ANC may make a recommendation regarding the application, and that recommendation, if timely made, must be given great weight prior to the issuance of the second raze operations permit.[4]

If you have any further questions with regard to this issue, please contact Annette Elseth, Assistant Corporation Counsel, Legal Counsel Division, at 724-5537, or me at 724-5493.

Sincerely,

ROBERT R. RIGSBY
Corporation Counsel

Darryl Gorman

By: DARRYL G. GORMAN
Senior Deputy Corporation Counsel for
Government Operations

DGG/abe
(AL-01-238)

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3 While clearly the ANC did not receive the statutory notice from DCRA by first class mail to which it was entitled, there is evidence that the ANC received actual notice in this case, which may be considered adequate under Shiflett to begin the running of the notice period.

4 The ANC is entitled to make a recommendation to DCRA anytime before the final decision is made by DCRA on the raze operations permit. However, DCRA may take final action on the raze operations permit any time after the ANC notice period of 30 days expires.

cc: David Clark
Acting Director
DCRA

Theresa Lewis
Acting Administrator
Building and Land Regulation Administration
DCRA

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Consumer and Regulatory Affairs

Office of the Director

July 23, 2004

Commissioner Absalom Jordan
Advisory Neighborhood Commission, 8D
4601 Martin Luther King Jr. Avenue, S.W.
Washington, D.C. 20032

Dear Commissioner Jordan:

This letter is in response to your recent inquiry regarding the Department of Consumer and Regulatory Affairs'("DCRA") practice of not providing notice to Advisory Neighborhood Commissions ("ANC") when postcard and walk-though permits are filed with DCRA.

Please be advised that DCRA's position is that ANCs are not entitled to notice of permit filings which have no significant impact on neighborhood planning and development. As such, postcard and walk-through permits, which typically involve small-scale, residential construction, are not among those of which DCRA provides notice. DCRA's position is not intended to deny the ANCs, or any person or entity, access to permit records to which they may be entitled pursuant to a Freedom of Information Act, D.C. Official Code § 2-531, et seq. (2001).

Finally, DCRA is in the process of developing written policies regarding ANC access to permit information. We anticipate having that process completed by the end of the fiscal year. At that time, DCRA will be happy to provide you with a copy of those polices.

Sincerely,

David A. Clark
Director

561-3078
574-5657

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

Building and Land Regulation Administration
Office of the Administrator

March 5, 2004

Commissoner Solsette Lumpkin
Chair, Advisory Neighborhood Commission 8D
4601 Martin Luther King Jr. Avenue SW
Washington DC 20032

Ref: Danbury Street SW

This is to follow up on my letter dated February 6, 2004, in which I informed you that I was asking the advice of DCRA's Office of the General Counsel (OGC) regarding whether or not the notice of raze and filed building applications currently provided by DCRA meets the requirements of the DC Code. The concern raised by you and your fellow commissioners was that DCRA failed to provide notice to the affected Single Member Commissioner, the affected Ward Councilmember and the Office of Advisory Neighborhood Commissions. You acknowledged receipt of notices that are sent to the Advisory Neighborhood Commissions.

In its response, OGC has advised that, pursuant to Section 1-309.10(c)(3) of the District of Columbia Code (2001), DCRA is required to at least twice a month notify the Office of Advisory Neighborhood Commissions, each Advisory Neighborhood Commission, and each affected Councilmember.

DCRA's Building and Land Regulation Administration will immediately review its notification procedures to ensure compliance with OGC's opinion. Do not hesitate to contact me at 442-4455 if you have additional questions, and thank you for bringing this matter to our attention.

Sincerely,

Dogel Noble
Administrator

cc: Theresa Lewis
Julie Lee
Joseph McCarley
Lennox Douglas
Candy Hall
Loraine Bennett
Vanessa Akins, DHCD

Form BLRA-15
(Rev. 8/00)

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION

BUILDING PERMIT

PERMIT NO. B454780

PERMIT

Date 9/8/03 (Type) NEW BLDG.

Address of work #1 DC VILLAGE LANE SW. Lot 253/19 Square

Permission is hereby granted to (Owner) TOTAL PERMIT FEE $

DEPT. OF LABOR NO. FILING FEE $

and is authorized to perform the work described herein at the Address shown above in strict accordance with the conditions stated on BOTH sides of this permit. DATE

Authorized work and conditions of performance thereof: FEE PAYABLE $ 10,001.50

FOR INSPECTIONS CALL Phone 442-4641

NEW CAFETERIA AND RECREATION BLD. PRIVATE PROPERTY ONLY.
THIS PERMIT DOES NOT AUTH. CROSSING PUBLIC SIDEWALK W/TRUCKS.
SEPARATE ELEC., PLUMB., & MECH. INSTALLATION PERMITS ARE REQUIRED.

Builder— Value $ No. of Bldgs.

Width of Bldgs. Length Height No. of Stories 2

Zone DD/C-4 To be occupied as NEW CAFETERIA/RECREATION BLDG.

Height of terrace above grade Projections: Chief, Permit Operations Branch

Address of owner BANK

Deposit N/A Amount $ By K. DYER
Permit Clerk

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

D. CLARK 32901
DIRECTOR

ADVISORY NEIGHBORHOOD COMMISSION 8D
Government of the District of Columbia

September 22, 2004

Councilmember Sharon Ambrose
Chair
Committee on Consumer
and Regulatory Affairs
Suite 102
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Dear Chairperson Ambrose:

I am writing this letter at the request of Ester Bushman of your staff. Our Commission has been engaged in a running battle with Mr. Clarke of the Department of Consumer and Regulatory Affairs concerning the matter of notification to the ANC of applications for demolition and building permits issued by his agency. Last year a series of raze permits were issues on Danbury Street, SW without notification to the Commission. Most recently, we received a copy of a building permit issued by DCRA of which our commission was never notified. (A copy of the permit is attached.)

The ANC Law is clear about the requirement of DCRA to notify an ANC of the applications for both demolition and building permits. In an effort to make Mr. Clarke aware of the problem and have the matter resolved, we have made repeated contacts with the Agency and Mr. Clark. We even asked for a meeting with Mr. Clarke but never received a response to our request.

In March of this year, a letter was received from Mr. Denzil Noble of DCRA that acknowledged the responsibility of the agency to notify the Commission but there was no final resolution of the issue. We further pursued the matter and most recently were informed by Mr. Clarke that his agency would not notify ANC 8D of applications for "... postcard and walk-through permits." I do not have any idea to what he is referring when he references the above permits, but the requirements of the ANC law regarding notice to ANCs is clear. I have included a copy of a decision of the Attorney General which is explicit about raze permits. I would note that the Commission does not receive notice of raze (demolition) or building (construction) permits.

We have requested the assistance of the Attorney General is resolving this matter because opinions of the Attorney General take precedence over any advice the Director may receive from his General Counsel. During the interim period, we discovered that a building permit was issued at D.C. Village without notice to our ANC.

4601 MARTINLUTHER KING JR. AVENUE, SW. WASHINGTON, D.C. 20032
TELEPHONE NO. (202) 561-0774 FAX (202) 561-3076

The Commission is requesting your assistance in this matter. We are requesting that Permit NO. B454780 be rescinded pending notification to our Commission, and the receipt our comments which will then be afforded "great weight." We are also requesting that Mr. Clarke be instructed to comply with all provisions of the ANC Law regarding notice of applications for licenses and permits.

Thanking you in advance for your assistance in this matter. Should the need arise to obtain additional information regarding the request you may contact me at (202) 574-5657.

Sincerely,

Absalom Jordan
Chair, Committee on
Housing and Public Safety


NOW
OPEN
OPENING
AUGUST 25th
George Washington University


Coggins'
OPENING
AUGUST 25th
Designers and Builders
of Exceptional

