

STATEMENT IN SUPPORT OF APPEAL

Stanton Park Neighborhood Association (SPNA) is a nonprofit citizen association representing the interests of north Capitol Hill residents in the area bounded by East Capitol Street, 2nd Street NE, H Street NE, and 10th Street NE. SPNA takes this appeal (pursuant to 11 DCMR § 3100.2 and 3112.2) to challenge a recent decision of the Zoning Administrator.

Factual Background

The Zoning Administrator issued Certificate of Occupancy CO 93212 (copy attached) to Howard Frampton on March 10, 2005 for a “carryout” use at 528 H St. NE operating under the name “Taste of Jamaica.” CO93212 does not specify a square/lot for the property, nor does it indicate the zoning classification.

The property lies within a C-2-A zone, as reflected on the application for the certificate of occupancy (copy attached). The application identifies the property as square 832, lot 90, although no such lot number exists. The property appears to be square 832, lot 9, listed in the District’s real property records as 800 6th St NE. Official records list the owner as UOF H Street LLC, 1730 Rhode Island Avenue NW, Suite 909, Washington, DC 20036.

The Certificate of Occupancy is Invalid and Must be Revoked

This is a case of clear error on the part of the Zoning Administrator. Even leaving aside the many clerical errors and omissions, CO 93212 is fatally defective.

Simply put, “carryout” is not a matter-of-right use in a C-2-A zone. Under 11 DCMR §§ 721.1 and 701.4(q), a “restaurant” use is matter-of-right, but the regulations clearly define “restaurant” to exclude carryouts:

a place of business where food, drinks, or refreshments are prepared and sold to customers primarily for consumption on the premises. ... In a restaurant, any facilities for carryout shall be clearly subordinate to the principal use providing prepared foods for consumption on the premises.

11 DCMR § 199 (emphasis added). Thus, any operation whose dominant use is “carryout” cannot, by definition, be a restaurant.

Moreover, “carryout” – a term undefined in the regulations – is apparently the Zoning Administrator’s attempt to describe a fast-food restaurant use, which is not matter-of-right in C-2-A zones. On the contrary, 11 DCMR § 733.1 states explicitly that such a use in a C-2-A zone requires a special exception approved by this Board. Clearly, no such special exception has been issued.

This is not the first such error committed by the Zoning Administrator in the C-2-A zone on H St. NE. Last year, ANC 6A filed a similar appeal of a certificate issued to a fast-food

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Exhibit No. 3

restaurant at 721 H St. NE. On November 2, 2004, this Board granted that appeal, finding that the Zoning Administrator had improperly issued the certificate of occupancy. See BZA Order 17214.

The Board should reach the same conclusion in this case. The listed use – “carryout” – is not matter-of-right in C-2-A, and at a minimum requires a special exception for a fast-food use. For that reason, and those described above, SPNA asks the Board to declare CO 93212 invalid.