

Appellant's Statement of Grievance

At all relevant times carry-out food eateries in the District were issued business licenses for delicatessen operation. Licensed food service uses included food products (pre-packaged food only), grocery (fresh produce, meats and food products), delicatessen (grocery use and/or service of prepared foods for on-of-off premises consumption), and restaurant (primarily sit-down, on-premises consumption of prepared food).

A carry-out delicatessen was previously operated on the first floor as a non-conforming use through December 2005 by Ming Jin Zhiang under certificate of occupancy B001180991 (misspelled as King Jin Zhang) issued for delicatessen use and a delicatessen license issued by the Department of Consumer and Regulatory Affairs (copy attached).

In October 2005 the District refused to renew the delicatessen license, resulting in a shut-down of Mr. Zhang's delicatessen as of December 2, 2005. In February 2006 Salvatore Gorgone, agent for Gorgone Investment Limited Partnership and now owner of the building, entered into a lease with Paul Luna for use of the premises as a delicatessen.

At some unknown time, it appears Mr. Luna applied for an occupancy permit authorizing delicatessen use. It appears the District lost the application and required Mr. Luna to re-submit an application.

On September 22, 2006, the acting zoning administrator Bill Crews denied the application of tenant Paul Luna for a certificate of occupancy for delicatessen use on the first floor of the building based on the ruling that the prior non-conforming delicatessen use had been discontinued for more than three years (copy attached), citing 11 DCMR sec 2005.

The zoning administrator has mistakenly and retroactively applied his own recent, unwritten definition of a delicatessen, and a recent BZA decision regarding "fast food restaurants" to this case (Appeal #17439) and has decided that the longstanding use of the premises as a carry-out delicatessen under occupancy permits issued for delicatessen use and business licenses issued for delicatessen use was outside of the permitted non-conforming use.

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 17589

EXHIBIT NO. 2

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Appellant intends to prove its case by use of the Districts Occupancy and Business Licencing records and testimony, if necessary, from district officials familiar with licensing of food businesses in the District.