

BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Appeal of:)
)
L. Napoleon Cooper)
(Appellant Representative);) **BZA Appeal No. 17830**
)
Yeheyis Getachew;)
) Response to Appellee
) (Motion to Dismiss)
)
)
)

This Appeal Is Being Taken From a March 21, 2008)
Issuance by DCRA of Certificate of Occupancy No.)
CO163333 to Harris Teeter: On Grounds that Said)
Issuance Contradicts and Is Therefore in Violation)
of Reed-Cooke Overlay District Zoning Regulations)
And, this Appeal Questions *Whether* the DCRA)
Building Permit (No. 98040), Issued in Connection)
With this Project (and from which the Certificate of)
Occupancy is Derived) *Continues* in Effect, Given)
Actions Alleged to Have Been Engaged in by Harris)
Teeter and the Property Owner are "Unlawful" As)
A Matter of Law, and Constitute A Disqualifying)
Violation of District of Columbia Department of)
Consumer and Regulatory Affairs Rules and Regs.)

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APPELLANT OPPOSITION TO APPELLEE MOTION TO DISMISS

AND

**APPELLANT'S MOTION TO POSTPONE BZA APPEAL NO. 17830
(PENDING D.C. SUPERIOR COURT TRIAL ON APPELLANT'S
ALLEGATIONS OF DISQUALIFYING RULES VIOLATIONS)**

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 17830
EXHIBIT NO. 15

Board of Zoning Adjustment
District of Columbia
CASE NO. 17830
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I. INTRODUCTION

L. Napoleon Cooper, hereby sets forth below the opposition of BZA Appeal No. 17830 Appellants (the “Appellants”) to the “PROPERTY OWNER’S MOTION TO DISMISS” filed with the District of Columbia Board of Zoning Adjustment (the “Board”), by Harris Teeter, Inc. and Intervenor, Jemal’s Citadel, LLC (the “Owner”), on November 3, 2008. This opposition is submitted by Appellant Cooper, on behalf of himself, and in his capacity as agent and representative of appellant, Yeheyis N. Getachew, owner of the Dorchester Grocery & Deli, adjoining the subject property, (whose consent to be joined was attached to the “Addendum To Form 125” filed with the Board on May 22, 2008).

II. ARGUMENT

Appellants’ opposition to the Harris Teeter, Inc. and Property Owner’s Motion to Dismiss, filed on November 3, 2008 incorporates, hereby, the allegations, complaint, objectives and issues presented in Appellants’ “Addendum to Form 125” of BZA Appeal No. 17830 filed on May 22, 2008.

For these reasons and for others more fully asserted below and in the requested oral argument thereon, the “Property Owner’s Motion to Dismiss” BZA Appeal No. 17830 should be denied.

Grounds for Opposition to Appellees Motion to Dismiss:

Appellants respectfully represents that the Motion to Dismiss should be denied:

1. Because Appeal is timely given when it was reasonable for Appellant to have learned of Certificate of Occupancy issuance; and
2. Because the Appeal is not duplicative given that it does not challenge initial issuance of building permit, per se, but, instead, challenges the continuing validity of same, in context of Certificate of Occupancy issuance, given alleged intervening District of Columbia Department of Consumer and Regulatory Affairs, rules violations engaged in by Harris Teeter, Inc. and the Property Owner.

Grounds for Motion to Postponement of Appeal:

Appellants respectfully represents that the Appeal should be postponed:

1. Because an essential element of this appeal is whether or not, disqualifying unlawful actions and rules violations have occurred, as alleged, involving the Property Owner and its principal Tenant, Harris Teeter, Inc.;
2. Because Appellant's allegations in this connection cannot be proven without the ability seek:
 - a. A jury's consideration;
 - b. To compel witness testimony under oath; and
 - c. To subpoena documentary evidence for review, and.
3. Because the Appellant nor the Board has the ability to subpoena evidence to support allegations made;
4. Because the Appellant does not have the ability and the Board does not have the authority to compel such witness testimony under oath; and
5. Because to proceed with the Appeal without Appellant being afforded the ability to prove his claim would constitute an effective, in context of alleged disqualifying rules violations, denial of the due process rights guaranteed by the Constitution of the United States;

6. Because a lawsuit filed with the District of Columbia Superior Court, where Appellant sought a jury trial and declaratory and injunctive relief (including financial compensatory and punitive damages), in connection with these same allegations, is now before the District of Columbia Court of Appeals;
7. Because Appellants, on information and belief, are of the opinion that a decision in that matter is imminent (within 120 days out), as the D.C. Court of Appeals by Order, issued October 17, 2008, has required briefs to be filed beginning November 18 and November 22, 2008; and
8. Because a postponement would be beneficial to all parties concerned, including the Board of Zoning Adjustment, and add significantly to the efficiency of the process for BZA Appeal No. 17830.

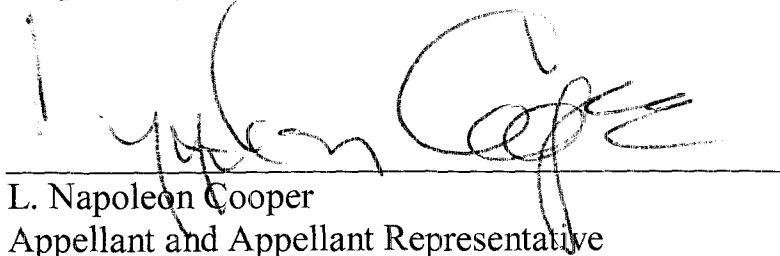
III. CONCLUSION

Whereas, based on the forgoing and incorporating Appellants appeal complaint filed on May 22, 2008 and oral argument, this Honorable Board

should reject the Motion to Dismiss filed on November 3, 2008 on all counts.

And the Board should postpone Appeal No. 17830 for a minimum 120 days, pending a status hearing being schedule by the Board thereafter, at the Board's discretion and at its convenience (and that of the parties).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "L. Napoleon Cooper", is written over a horizontal line.

L. Napoleon Cooper
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CERTIFICATE OF SERVICE

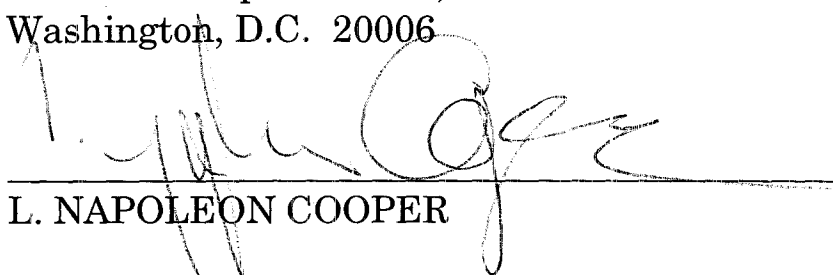
I Hereby Certify that a copy of the forgoing Opposition to Appellee Motion to Dismiss and Motion for 120 day postponement of Board of Zoning Adjustment Appeal No. 17830, was served this 12th day of November, 2008, via first-class mail, postage prepaid or via overnight hand delivery, upon the following:

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