

**DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

APPEALS OF:

L. Napoleon Cooper

)
) BZA Appeal No. 17830
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DISTRICT OF COLUMBIA'S OPPOSITION TO MOTION TO CONTINUE

Appellee, District of Columbia Department of Consumer and Regulatory Affairs ("District"), by and through undersigned counsel respectfully files its opposition to Appellant L. Napoleon Cooper's ("Mr. Cooper/Appellants") Motion to Continue the hearing currently scheduled for Tuesday, November 18, 2008. The basis for the District's opposition is that the District of Columbia Court of Appeals ("Court of Appeals") proceeding mentioned in Appellants' pleading has no bearing on this instant appeal before this Board of Zoning Adjustment ("Board/BZA") and delays the finality that everyone including the neighborhood desires.

SUMMARY OF CASE

On March 21, 2008, the Zoning Administrator issued a Certificate of Occupancy to Harris Teeter to operate at 1631 Kalorama Road, N.W., a "grocery store with accessory delicatessen-prepared food shop and off-premises alcoholic beverage sales as an accessory use – subject to BZA orders 17395-A, 17675 and 17677." See Certificate of Occupancy No. 163333. Subsequently, on May 22, 2008, Mr. Cooper on behalf of himself and other resident-neighbors filed BZA Appeal No. 17830 challenging the Zoning Administrator's issuance of Certificate of Occupancy No. 163333.

On August 19, 2008, this Board scheduled the hearing for November 18, 2008.

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 17830

EXHIBIT NO. 17

Board of Zoning Adjustment
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On November 12, 2008, after receiving Harris Teeter's Motion to Dismiss, Mr. Cooper filed an opposition and a motion to continue.

ARGUMENT

Mr. Cooper's motion to continue the November 18, 2008 hearing should be denied because Mr. Cooper mistakenly believes that "disqualifying unlawful actions and rules violations" are relevant to the matter pending before this Board. He mentions a "lawsuit filed with the District of Columbia Superior Court" and a briefing order from the Court of Appeals, but does not attach the decision from the District of Columbia Superior Court nor the briefing order. Furthermore, Mr. Cooper is mistaken that a D.C. Court of Appeals briefing order is an indication that a decision is "imminent."

The instant appeal is for this Board to determine whether the Zoning Administrator erred by issuing Certificate of Occupancy No. 163333 for Harris Teeter to operate a "grocery store with accessory delicatessen-prepared food shop and off-premises alcoholic beverage sales as an accessory use – subject to BZA orders 17395-A, 17675 and 17677." Whether Mr. Cooper can convince the D.C. Court of Appeals to allow him a jury trial on any other issue is not germane to the matter pending before this Board.

Furthermore, Mr. Cooper does not acknowledge that all parties concerned including the developer, Harris Teeter, the District and the Reed Cooke Overlay District neighborhood are harmed by granting a continuance and allowing this matter to continue any longer than necessary. Mr. Cooper and others have fought to stop and alternatively

¹ It is noteworthy that Mr. Cooper's Motion is entitled "Motion for Postponement," but seeks relief akin to a motion to continue and the District opposes such accordingly. Additionally, Mr. Cooper failed to seek consent of either the District or Harris Teeter as required by D.C. Superior Court Rules of Civil Procedure.

limit the operations of Harris Teeter at 1631 Kalorama Road, N.W. even prior to its opening day. Harris Teeter has been legally operating since April 2008. A continuation of this hearing promotes uncertainty, undermines the effectiveness of the District's approval process, and unduly delays resolution of the issues raised. Finally, it is unnecessary to have this matter continued while waiting for an outcome at the D.C. Court of Appeals which is not relevant to whether the Zoning Administrator erred in issuing Certificate of Occupancy No. 163333.

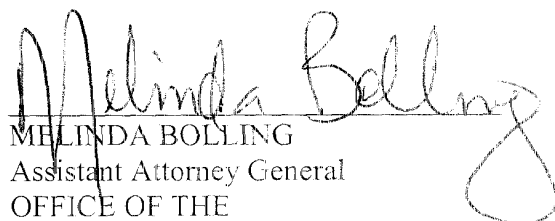
WHEREFORE, for these foregoing reasons, the Appellee requests this Board deny Mr. Cooper's Motion for Stay.

Respectfully submitted,

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for the District of Columbia

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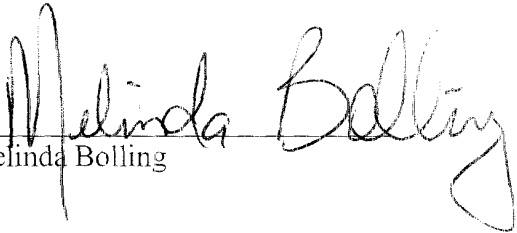
A handwritten signature in black ink, appearing to read "D Parker-Woolridge", with a horizontal line underneath.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing District of Columbia's
Opposition to Motion to Continue was served this 14th day of November, 2008, via
electronic mail or first-class postage prepaid mail to the following persons:


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