



Government of the District of Columbia

Advisory Neighborhood Commission 6C

March 30, 2009

Ms. Ruthanne Miller, Chairperson
Board of Zoning Adjustment
441 4th St NW
Suite 210 South
Washington DC 20001

RE: BZA Application No. 17902

Dear Ms. Miller:

At Advisory Neighborhood Commission 6C's duly noticed, regularly scheduled monthly meeting on March 11, 2009, with a quorum of five out of nine Commissioners and the public present, ANC 6C reviewed the following application:

BZA Application No. 17902

Appeal of Joseph Park from an August 29, 2008 decision of the Zoning Administrator ("ZA"), to revoke Certificate of Occupancy No. 167331, for a liquor store (Oasis Liquors) in the R-4 District at premises 1179 3rd Street NE (Square 773, Lot 277).

After hearing from the applicant and the Single Member District Commissioner, the ANC 6C Commissioners voted 5-0 to support the revocation of the certificate of occupancy and to oppose the applicant's appeal.

Background:

Oasis Liquor opened in 1986 at 1179 3rd St NE. At that time, the lot was zoned C-M-1, which permits use as a liquor store. In 1997, the Zoning Commission rezoned the C-M-1 zone to an R-4 zone. When this rezoning occurred, the liquor store became a nonconforming use because, as you know, a retail beverage store is not permitted in an R-4 zone.

Under the DC Municipal Regulations, discontinuance for any reason for a period of more than three years shall be construed as prima facie evidence of no intention to resume active operation as a nonconforming use.

DCRA issued the above-referenced certificate of occupancy (CO), then revoked it when DCRA determined that the CO had been issued in error. The CO application cited a simple "change in ownership" as the basis for a new CO. However, DCRA subsequently discovered that the premises had not been used as a liquor store since at least 2003, and that therefore the nonconforming use had been discontinued. Mr. Park now appeals the revocation of the CO.

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 17902

EXHIBIT NO. 15

Board of Zoning Adjustment
District of Columbia
CASE NO. 17902
EXHIBIT NO. 15

Nonconforming Use Abandoned

- 1) ANC 6C supports the revocation of the CO. DCRA's investigation confirmed that Oasis Liquor had not been operating for more than three years. DCRA's investigation revealed that:
 - Oasis did not have a Basic Business License after July 2003;
 - ABRA's spot check of the establishment in November 2005 showed that the store was not operating – something that neighbors who walked by the abandoned building every day since at least when the New York Avenue Metro opened in November 2004 already knew;
 - After finding Oasis closed, ABRA wrote to Mr. Park to notify him that his liquor license must be surrendered for safekeeping or that it would be referred for cancellation; and
 - WASA records showed that from April 2005 to May 2008, water service to the address had been discontinued.
- 2) The CO applicant has the burden of proof at this point to show that the nonconforming use was not abandoned. Nothing in the application provides any evidence to rebut the presumption spelled out in 11 DCMR § 2005.1. In fact, the evidence is entirely to the contrary: no water, no business license, a liquor license that was, at best, in safekeeping, and no noticeable activity at the site itself.
- 3) The applicant first asserts, without evidence, that until September 2006 the building was used “continuously,” which he seems to define as “one or two days a week.” Even if the applicant operated on some irregular schedule, he did so in violation of several regulatory requirements: As noted above, he was without a Basic Business License (DCRA), lacked running water (Department of Health), and his liquor license was purportedly in safekeeping (ABRA). An illegal operation – again, assuming it really was open at all – should not be rewarded with a new CO and a nonconforming use exception.
- 4) The applicant also states, also without supporting evidence, that he kept lottery and food licenses in force, “paid taxes,” and advertised the store to brokers. Even if true (which we do not concede), none of this shows that his store was open or that it would open at that particular address in the future.
- 5) The applicant further asserts that he kept his property in good repair, that neighbors supported renewal of his liquor license at some unspecified point in the past, and that “over one hundred neighbors signed a petition in favor of his retaining his liquor license.” Again, whether true or not, these statements do not support the proposition that Oasis Liquor was open during the past several years. The property certainly appeared to be abandoned, with signs falling off the side of the building and no snow or ice removal in the winter. To the extent it is relevant at all to this action, many neighbors protested Mr. Park's license being returned from safekeeping – 56 neighbors signed a protest petition, and the neighborhood association along with this ANC formally protested. Fewer than 50 of the people who signed the petition the applicant circulated indicated that they live in the

affected neighborhood. The liquor license matter remains unresolved, given that the ABC Board cannot hear an applicant without a CO.

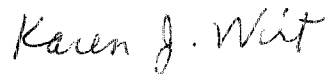
Conclusion

For all of the above reasons, the ANC 6C Commissioners voted 5-0 to support the revocation of the certificate of occupancy and to oppose the applicant's appeal. The Oasis Liquor building was unoccupied, unused, and unkempt for far longer than three years. That discontinuance creates a presumption of abandonment of the nonconforming use, and the applicant presents no real evidence to rebut that presumption. ANC 6C supports the CO revocation and urges the Board to deny the applicant's appeal.

As a point of information, the ANC also notes that the CO at issue was granted to Mikyung Yoon as a "sole proprietor." Mr. Park was not listed on that CO, yet he is the one appealing its revocation and he is the one who authorized Mr. Gell to represent an unspecified "us" in this appeal. ANC 6C does not know if the law allows Mr. Park to appeal the revocation of someone else's CO. Regardless, the appeal should fail.

ANC 6C authorizes Commissioner Anne Phelps or Planning/Zoning Committee Chair Rob Amos to represent the Commission in this matter.

On behalf of the Commission,

A handwritten signature in cursive script that reads "Karen J. Wirt".

Karen Wirt
Chair, ANC 6C



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District of Columbia

CASE NO. 17902EXHIBIT NO. 15

FAX

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On behalf of the Commission,

Karen J. Wirt

Karen Wirt
Chair, ANC 6C



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Advisory Neighborhood Commission 6C

Fax Cover Sheet

Date: March 30, 2009

Time: 11:25 am

To:

Name

Ruthanne Miller

Office

BZA Chairperson

Phone

Fax

(202) 727-6072

From:

Name

Karen Wit

Office

ANC 6C chair

Phone

(202) 707-8479

Fax

Message:

Original follows by mail. Hearing is April 7.

Please call me at the above number to confirm that
this has been received.

Thank you.