

**BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA**

Appeal of Joseph Park

BZA Appeal No. 17902
ANC 6C
Public Hearing April 14, 2009

**APPELLEE'S STATEMENT IN OPPOSITION TO
THE APPEAL OF JOSEPH PARK**

Appellee, the District of Columbia Department of Consumer and Regulatory Affairs, ("District"), by and through undersigned counsel, respectfully files with this Board of Zoning Adjustment ("Board") an opposition to the above-cited appeal. As a basis for the District's Motion, the District submits that the appeal is wholly without merit as the overwhelming evidence indicates that Mr. Park has abandoned his nonconforming use.

INTRODUCTION

On October 28, 2008, Joseph Park filed an appeal to a Notice to Revoke Certificate of Occupancy No. CO 167331 issued by the D.C. Zoning Administrator. A Certificate of Occupancy was originally issued to Mr. Park on July 9, 1986 to operate a retail beverage store located at 1179 3rd Street, N.E. ("Property"). At that time, the Property was located in a C-M-1 zone. The Property was subsequently rezoned to an R-4 zone. Because a retail beverage store is not permitted in an R-4 zone, the business became a nonconforming use. On May 30, 2008, a Certificate of Occupancy was issued to Mikyung Yoon to operate a retail beverage store at the Property. However, DCRA later learned that Mr. Park has in fact abandoned the nonconforming use of the food

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 17902
EXHIBIT NO. 17

Board of Zoning Adjustment
District of Columbia
CASE NO. 17902
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products/liquor store. For the reasons set forth below, Appellee contends that the appeal is wholly without merit.

I. FACTUAL BACKGROUND

1. The Property that is the subject of this appeal is located at 1179 3rd Street, N.E. (Lot 0277, Square 0773) in an R-4 zone.
2. The subject Property is improved with a single story commercial dwelling.
3. Prior to August 4, 1997, the Property was located in a C-M-1 zone.
4. On July 9, 1986, the District issued Joseph Park a Certificate of Occupancy for a "Retail Beverage Store (Not Sexually Oriented)." Such a use is permitted in a C-M-1 zone. See DCMR § 11-801.
5. The current version of the Zoning Regulations became effective on August 4, 1997. As a result of the adoption of the regulations and the associated zoning map, the subject property was re-zoned as an R-4 zone.
6. In an R-4 zone, no type of food sales are permitted as principal uses.
7. However, because the use was lawfully established by the property owner prior to August 4, 1997, the use is considered "nonconforming." DCMR § 11-199.1.
8. Subject to an exception that is not applicable to the present case, a nonconforming use may continue until it is abandoned. A nonconforming use is presumptively deemed abandoned if discontinued for a period of at least three years. See DCMR § 11-2005.1.
9. On May 30, 2008, the District issued a Certificate of Occupancy (CO 167331) to Mikyung Yoon¹ for a change of ownership in a "retail business store." However, this Certificate of Occupancy was facially invalid as it indicated that the current zone was "C-M-1."
10. Mr. Park began renovation prior to applying for and receiving a building permit. Mr. Park was issued Notice of Infraction (N100885) for working without a building permit and working without a demolition permit. See Exhibit A. As a result a Stop Work Order was issued to Mr. Park on July 5, 2008. See Exhibit B.
11. On July 18, 2008, the District issued the Appellant, Mr. Park, Building Permit No. B0800178. The description of the work was "alter partition, repair walls 7 [stet]"

¹ Mr. Yoon is apparently a lessee of the Property.

painting, repair ceiling, replace window glass, repair roof fix drainage.” See Exhibit C.

12. On August 29, 2008, the District sent Mr. Yoon a Notice to Revoke Certificate of Occupancy No. 167331. See attached Exhibit D.
13. In support of the Notice to Revoke Certificate of Occupancy No. 167331, the following evidence will be presented at the April 14, 2009 hearing before the Board of Zoning Adjustments:
 - (a) Mr. Park held a Basic Business License/Endorsement for Food Products (BBL No. 20010302) which was valid from August 8, 2001 until July 31, 2003. Contrary to the assertions made by Mr. Park in his appeal, this license has not been renewed since July 31, 2003. See Exhibit E.
 - (b) If Mr. Park has been operating a business at the Property at any point after 2003 as he alleges in his appeal, he has done so without a valid basic business license as required by D.C. Code Title 47, Chapter 28. See Exhibit F.
 - (c) The District of Columbia Water and Sewer Authority records show that from April 2005 until May of 2008 the water service to the Property has been disconnected. See Exhibit G.
 - (d) Several neighbors who have lived in the vicinity of the Property for several years will testify that they passed by the Property at least daily and never saw any business taking place from 2005 through 2008. See Exhibit H.
 - (e) The same neighbors will also testify that other liquor and convenience stores are located within close proximity of the Property that currently provide the same products to the neighborhood. Reopening Oasis Liquor at the Property will offer nothing to the neighborhood.
 - (f) A letter from the Alcoholic Beverage Regulation Administration, dated November 9, 2005, states that the “agency’s records indicate that the licensed establishment is not operating, and that the license has not been placed in safekeeping.” See Exhibit I.
 - (g) On March 30, 2009, Karen Wirt, Chair of ANC 6C, sent a letter to the Board of Zoning Appeal supporting the revocation of the certificate of occupancy for Oasis Liquor. The letter further stated that the “Oasis Liquor building was unoccupied, unused, and unkempt for far longer than three years.” See Exhibit J.

14. After filing this appeal, Mr. Park has also submitted an application for a variance. In doing so, Mr. Park is essentially admitting that this appeal is not warranted.

II. LEGAL AUTHORITY

A. **The overwhelming evidence indicates that the Appellant Joseph Park has abandoned the nonconforming use of his business at 1179 3rd Street, N.E.**

According to DCMR § 11-199.1, a “nonconforming use” is defined as:

any use of land or of a structure, or of a structure and land in combination, lawfully in existence at the time this title or any amendment to this title became effective, that does not conform to the use provisions for the district in which the use is located. A use lawfully in existence at the time of adoption or amendment of this title that would thereafter require special exception approval from the Board of Zoning Adjustment shall not be deemed a nonconforming use. That nonconforming use shall be considered a conforming use, subject to the further provisions of §§ 3104.2 and 3104.3.

On July 9, 1986, the District issued Joseph Park a Certificate of Occupancy for the Property to operate a “Retail Beverage Store (Not Sexually Oriented).” At the time, the Property was located in a C-M-1 zone. There is no disagreement that a retail beverage store is permitted in a C-M-1 zone. However, by an order issued by the D.C. Zoning Commission on August 4, 1997, the Property was rezoned as an R-4 zone. A retail beverage store is not permitted in an R-4 zone. Therefore, the establishment became a nonconforming use as a result of the rezoning.

On May 30, 2008, the District issued a Certificate of Occupancy (CO 167331) to Mikyung Yoon to operate a “retail beverage store.” The certificate was facially invalid as it indicated that the location was zoned as C-M-1. After obtaining evidence that Mr. Park had in fact abandoned the nonconforming use, the D.C. Zoning Administrator issued a Notice to Revoke Certificate of Occupancy No. 167331. DCMR 11-2005.1 states:

Discontinuance for any reason of a nonconforming use of a structure or of land, except where governmental action impedes access to the premises, for a period of more than three (3) years, shall be construed as prima facie evidence of no intention to resume active operation as a nonconforming use. Any subsequent use shall conform to the regulations of the district in which the use is located.

See also *Wood v. District of Columbia*, 39 A.2d 67, 68 (1944); *George Washington University v. District of Columbia Board of Zoning*, 429 A.2d 1342, 1345 (1981).

In the present case, the overwhelming evidence supports the assertion that Mr. Park has discontinued use of the nonconforming use at business as a “retail beverage store” for a period of at least three years. First, Mr. Park held a Basic Business License/Endorsement for Food Products (BBL No. 20010302) which was valid from August 8, 2001 until July 31, 2003. Contrary to the assertions made by Mr. Park in his appeal, this license has not been renewed since July 31, 2003. No additional basic business licenses have been held (or applications for such licenses submitted) to operate a business at the Property. If Mr. Park has been operating a business at the property, he has done so in violation of D.C. Code Title 47, Chapter 28. Second, the records of the D.C. Water and Sewer Authority show that from April 2005 until May of 2008 the water service to the premises has been disconnected. Third, several neighbors who have lived in the vicinity of the Property for several years will testify at the hearing before this Board that they passed by the Property on a daily basis and never saw any business taking place from 2005 through 2008. Some of the witnesses will testify that the period is even longer. Fourth, a letter from the Alcoholic Beverage Regulation Administration, dated November 9, 2005, states that the “agency’s records indicate that the licensed establishment is not operating, and that the license has not been placed in safekeeping.”

Furthermore, it appears that Mr. Park began making alterations to the Property without first obtaining a building permit from the District. At some point in early 2008

and prior to obtaining a building permit, Mr. Park began renovations of the structure at the Property. As a result, a Notice of Infraction (N100885) was issued against Mr. Park for working without a building permit and working without a demolition permit. A Stop Work Order was also issued to Mr. Park on July 5, 2008. The D.C. Court of Appeal has stated that “unauthorized physical changes in a building, by contrast, may provide the overt act and indicate the intent necessary to show abandonment.” *George Washington University v. D.C. Board of Zoning Adjustment*, 429 A.2d 1342, 1347 n.4 (1981).

The overwhelming evidence supports a finding by this Board that Mr. Park has abandoned his nonconforming use (in this case a retail beverage store) for at least three years. Therefore, DCMR § 11-2005.1 requires that any subsequent use of the Property conform to the regulations of an R-4 zone in which the property is located.

Finally, on March 30, 2009, Karen Wirt, Chair of ANC 6C, sent a letter to this Board indicating that the ANC 6C supports the revocation of the certificate of occupancy for Oasis Liquor. The letter further stated that the “Oasis Liquor building was unoccupied, unused, and unkempt for far longer than three years.” Ms. Anne Phelps, the Planning/Zoning Committee Chair for ANC 6C, will testify on behalf of the ANC at the April 14, 2009 hearing before this Board. See DCMR § 11-3115.2 (the BZA shall give “great weight” to the written report of the ANC”).

III. CONCLUSION

For the above stated reasons, the Appellant has failed to meet his burden of demonstrating that the D.C. Zoning Administrator erred in revoking Certificate of Occupancy Number CO 167331.

Respectfully Submitted,

PETER J. NICKLES
Attorney General
OFFICE OF THE ATTORNEY GENERAL

BENNETT RUSHKOFF
Acting General Counsel
DEPARTMENT OF CONSUMER AND
REGULATORY AFFAIRS

MELINDA BOLLING
Acting Deputy General Counsel
DEPARTMENT OF CONSUMER AND
REGULATORY AFFAIRS

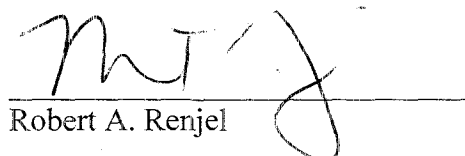


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(202) 442-8199 (office)
(202) 442-9447 (fax)
robert.renjel@dc.gov
Counsel for Appellee

CERTIFICATE OF SERVICE

I, Robert A. Renjel, hereby certify that on April 10, 2009, a copy of the Appellee's Statement in Opposition to the Appeal of Joseph Park filed by Petitioner's Counsel was sent to Respondent's counsel by email to sgell@his.com and via first class mail to Stephen Gell, 1101 30th Street, N.W., Fifth Floor, Washington, D.C. 20007.

A copy has also been sent to Ms. Anne Phelps, ANC 6C by email at anne.phelps@anc.dc.gov.



Robert A. Renjel

GOVERNMENT OF THE DISTRICT OF COLUMBIA

NOTICE OF INFRACTION

Notice No.

N100885

Issuing Agency: ☐ DOH ☐ DMH ☒ DCRA ☒ 1st NOI

Date of Service

☐ CFSA ☐ FEMS ☐ Other ☐ 2nd NOI (1st NOI No. _____)Location of Infraction: 1179 3RD ST N.E. Type of Location: ☐ Vacant Lot ☐ Construction Site ☐ Occupied ☐ Other _____Business/Company Name PARK JOSEPH M Charge as Respondent (circle): YES NO Telephone Number _____Individual Name (Last, First, Middle) 1179 3rd Street, NE Charge as Respondent (circle): YES NO Telephone Number _____Mailing Address Washington DC 20002City Washington State DC Zip Code 20002

Business License/Permit Type _____ Business License/Permit No. _____

You are charged with violating the District of Columbia laws or regulations stated below. You MUST SIGN and RETURN this form WITHIN 15 DAYS of the date of service. You must also indicate below each infraction whether you ADMIT, ADMIT WITH EXPLANATION or DENY. Instructions on back.

If you DENY one or more of the infractions, you must timely sign and return this form as your answer. If you do so, a hearing in your case is pre-scheduled on the _____ day of _____ at _____ AM / PM at the following location:

Office of Administrative Hearings, _____, Suite _____, Washington, D.C.

D.C. Official Code AND/OR D.C. Municipal Regulation Citation	Fine for Infraction	Statutory Penalty (if applicable)
<u>12 DCMR 105.1.1</u>	<u>\$ 2,000 -</u>	<u>\$</u>

Nature of Infraction WORK W/O BUILDINGDate of Infraction 7/05/08 Time of Infraction 3:30PM Previous Infractions Committed 1 2 3 4ANSWER: ☐ ADMIT (Pay Fine) ☐ DENY (Appear for a Hearing) ☐ ADMIT WITH EXPLANATION (Hearing by Mail)

Signature _____

D.C. Official Code AND/OR D.C. Municipal Regulation Citation	Fine for Infraction	Statutory Penalty (if applicable)
<u>12 DCMR 105.1.1</u>	<u>\$ 2,000 -</u>	<u>\$</u>

Nature of Infraction WORK W/O DEMOLITIONDate of Infraction 7/05/08 Time of Infraction 3:30PM Previous Infractions Committed 1 2 3 4ANSWER: ☐ ADMIT (Pay Fine) ☐ DENY (Appear for a Hearing) ☐ ADMIT WITH EXPLANATION (Hearing by Mail)

Signature _____

Total Fines and Penalties \$ 6,000Total Administrative Fees \$ 10.00Total Amount Due for ALL Infractions \$ 6,000

WARNING: Failure to answer (see reverse) each infraction on this Notice within 15 days of the date of service by signing and returning this form will result in assessment of a penalty equal to and in addition to the specified amount of the fine. You also may be subject to other penalties and actions allowed by law including suspension and non-renewal of your license or permit, the sealing of your business, a lien being placed on your property, and attachment of your equipment. If this is your second Notice for the charges, your failure to respond within 15 days of the date of service will result in the assessment of a penalty equal to twice the amount of the fine. For Medical-funded facilities: This Notice and information obtained through this proceeding may be used for evaluation under applicable law, including 42 CFR Chs. 442 and 483 and for any proceeding under 42 CFR Ch. 431. For information call (202) 442-9091.

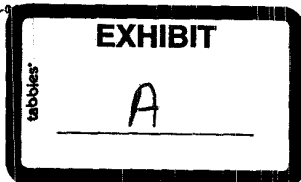
I personally declare under penalty of perjury that I observed and/or determined that the infraction(s) charged have been committed.

Inspector's/Investigator's Signature KEVIN SMITH Print Name KEVIN SMITH Date 7/05/08 Badge/Identification Number 2020

I sign my name below to acknowledge receipt of this Notice of Infraction and not as an admission of guilt or liability to the charge(s) listed.

Respondent's Signature _____ Print Name _____ Date _____
OAH (WHITE) RESPONDENT (YELLOW) INSPECTOR (PINK) ENFORCEMENT (GOLDENROD)

Form OAH-412, Rev. 12-07



GOVERNMENT OF THE DISTRICT OF COLUMBIA

NOTICE OF INFRACTION

SUPPLEMENTAL INFRACTION(S) FORM

NOI No. 100885

INSTRUCTIONS: This form is used in conjunction with the issuance of the Notice of Infraction (NOI) noted above. You are also charged with the infractions listed below, occurring at the location specified on the Notice of Infraction (NOI). You may respond to these infractions by following the instructions provided on the back side of the Notice of Infraction (NOI) issued to you. Your total amount due is noted on the front side of the Notice of Infraction (NOI) issued to you and includes all of the infractions listed.

D.C. Official Code AND/OR D.C. Municipal Regulation Citation	Fine for Infraction \$ 2,000-	Statutory Penalty (if applicable) \$
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Nature of Infraction WORK W/O ELECTRICAL PERMIT
 Date of Infraction 7/05/00 Time of Infraction 3:30PM Previous Infractions Committed 1 2 3 4

ANSWER: ☐ ADMIT (Pay Fine) ☐ DENY (Appear for a Hearing) ☐ ADMIT WITH EXPLANATION (Hearing by Mail)

Signature _____

D.C. Official Code AND/OR D.C. Municipal Regulation Citation	Fine for Infraction \$	Statutory Penalty (if applicable) \$
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Nature of Infraction _____

Date of Infraction _____ Time of Infraction _____ Previous Infractions Committed 1 2 3 4

ANSWER: ☐ ADMIT (Pay Fine) ☐ DENY (Appear for a Hearing) ☐ ADMIT WITH EXPLANATION (Hearing by Mail)

Signature _____

D.C. Official Code AND/OR D.C. Municipal Regulation Citation	Fine for Infraction \$	Statutory Penalty (if applicable) \$
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Nature of Infraction _____

Date of Infraction _____ Time of Infraction _____ Previous Infractions Committed 1 2 3 4

ANSWER: ☐ ADMIT (Pay Fine) ☐ DENY (Appear for a Hearing) ☐ ADMIT WITH EXPLANATION (Hearing by Mail)

Signature _____

D.C. Official Code AND/OR D.C. Municipal Regulation Citation	Fine for Infraction \$	Statutory Penalty (if applicable) \$
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Nature of Infraction _____

Date of Infraction _____ Time of Infraction _____ Previous Infractions Committed 1 2 3 4

ANSWER: ☐ ADMIT (Pay Fine) ☐ DENY (Appear for a Hearing) ☐ ADMIT WITH EXPLANATION (Hearing by Mail)

Signature _____

D.C. Official Code AND/OR D.C. Municipal Regulation Citation	Fine for Infraction \$	Statutory Penalty (if applicable) \$
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Nature of Infraction _____

Date of Infraction _____ Time of Infraction _____ Previous Infractions Committed 1 2 3 4

ANSWER: ☐ ADMIT (Pay Fine) ☐ DENY (Appear for a Hearing) ☐ ADMIT WITH EXPLANATION (Hearing by Mail)

Signature _____

I sign my name below to acknowledge receipt of this Notice of Infraction and not as an admission of guilt or liability to the charge(s) listed.

Respondent's Signature

Print Name

Date

OAH (WHITE)

RESPONDENT (YELLOW)

INSPECTOR (PINK)

ENFORCEMENT (GOLDENROD)

DISTRICT OF COLUMBIA
Office of Administrative Hearings
P.O. Box 77718
Washington, DC 20013-8717

Summary Motion For Dismissal of Charge(s) or Reduction of Fine(s)

TO BE COMPLETED BY
REQUESTING OFFICIAL:

Notice of Infraction (NOI) OR

Notice of Violation (NOV) Number: N100885

Ken Wilson, Acting Program Manager, Commercial Inspections

Name/Title

Joseph M. Park - 1179 3rd St. NE Office/Administration 7-5-08

Respondent's Full Name (First, Middle, Last) or Business Name

Date of Infraction

CHECK THE APPROPRIATE BOX:

Dismiss Charge(s) ☒	Suspend All Fines/Penalties ☐	Partial Fine Reduction ☒	Other: ☐
---	--	--	---------------------------------

Please indicate the charge(s) originally cited, proposed suspensions or reductions of fines and an explanation to justify the action being sought. Explanation must include the original fine(s) cited and the amended total to be collected. Attach additional explanation as needed.

New/Revised NOI/NOV Issued? ☐ Yes ☐ No

NOI/NOV Number:

Date Issued:

D.C. Code 3306.1.1a D.C. Municipal Regulation DA 105.1 Fine \$ 250.00

Nature of Infraction: WORKING W/O Permit Penalty \$

Explanation: NO OBTAIN Permit to Alter Partition

D.C. Code D.C. Municipal Regulation DA 105.1 Fine \$ 2000

Nature of Infraction: WORKING W/O Demo Permit Penalty \$

Explanation: NO Demo Being

Total Fines/Penalties (Originally Cited) \$6000.00 New Total Fines/Penalties (Proposed) 250.00

Approval: K. Wilson K.D. Wilson 7-17-08

Deputy Director/Bureau Chief/Enforcement Attorney

Print Name

Date

SO ORDERED: GRANTED ☐ DENIED ☐

Presiding Administrative Judge

OAH (WHITE)

RESPONDENT (YELLOW)

INSPECTOR (PINK)

ENFORCEMENT (GOLDENROD)

ADDENDUM

Joseph Park

7-5-08

Respondent's Full Name (First, Middle, Last) or Business Name

Date of Infraction

1179 3rd St NE

Premises Address

NOI/NOV Number:

N100885

Date Issued:

7-5-08

12A DCMR 105.1

w/o Electrical Permit

Fine \$

Penalty -\$0-

Explanation:

No Permit NEEDED

Fine \$

Nature of Infraction:

Penalty

Explanation:

NOI/NOV Number:

Date Issued:

Fine \$

Nature of Infraction:

Penalty -\$

Explanation:

NOI/NOV Number:

Date Issued:

Fine \$

Nature of Infraction:

Penalty -\$

Explanation:

Fine \$

Nature of Infraction:

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Date Issued:

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Nature of Infraction:

Penalty -\$

Explanation:

Fine \$

Nature of Infraction:

Penalty

Explanation:

NOI/NOV Number:

Date Issued:

Fine \$

Nature of Infraction:

Penalty -\$

Explanation:

GOVERNMENT OF THE DISTRICT OF COLUMBIA



Inspections & Compliance Administration
941 North Capitol Street, NE #2000
Washington, DC 20002

EXHIBIT

B

STOP WORK ORDER

1179 3RD ST. N.E.

(address)

You are hereby ordered to IMMEDIATELY STOP all work at this building or structure.

- ☒ You are performing work that violates the Construction Code:
☐ You are performing work in an unsafe and dangerous manner:

Code Section (s)	Violation (s)	What You Must Do to Correct the Violation (s)
12DCMR 105.1.1	WORK W/O BUILDING PERMIT	OBTAIN AND POST BUILDING PERMIT
12DCMR 105.1.1	WORK W/O DEMOLITION PERMIT	OBTAIN AND POST DEMOLITION PERMIT
12DCMR 105.1.1	WORK W/O ELECTRICAL PERMIT	OBTAIN AND POST ELECTRICAL PERMIT

Do NOT work at this address until you:

- ☒ Correct the violation(s)
☒ Pay the fine amount
☒ Obtain and post the required permits

☒ Electrical ☐ Plumbing ☒ Construction ☐ Boiler ☐ Fire ☐ Elevator ☒ Other DEMOLITION

☒ Receive approval from the Code Official to remove the Stop Work Order.

WARNING

Unauthorized removal of a posted Stop Work Order is a Construction Code violation, subject to penalties and injunctive relief under DC Official Code §§ 6-1406 and 6-1407 and 12A DCMR § 114.3.

A Stop Work Order for illegal construction under 12A DCMR §§ 113.7 and 114.6 requires you to stop all work at the building or structure, whether or not the work requires building permits.

It is a Stop Work Order violation for an owner or agent to enter the site for any reason without the Code Official's approval. (The Code Official may allow temporary access to ensure the property's security and safety, under 12A DCMR § 114.6.1.)

Anyone who continues any work in or around a structure posted with a Stop Work Order – except to do work that the Code Official approves to remove a violation or unsafe condition – is subject to penalties and injunctive relief under DC Official Code §§ 6-1406 and 6-1407, 12A DCMR §§ 105.8 and 114.10.

RIGHT TO APPEAL

You have the right to appeal this Order to the Reviewing Official (Don Masoero, Chief Building Code Official, Inspections and Compliance Administration) within 15 days of its posting, under 12A DCMR § 112.1. You may call the Reviewing Official at (202) 442-STOP. You may obtain a Stop Work Order Appeal Request Form at the address above or at dcra.dc.gov. If the Reviewing Official denies your appeal or takes no action within 3 working days of receiving it, you may appeal to the Director.

If the Director denies or takes no action on your appeal within 3 working days of receiving it, you may appeal to the DC Office of Administrative Hearings (OAH). You may deliver your written request for a hearing to OAH at 941 North Capitol Street, NE #9100, Washington, DC 20002 or mail it to PO Box 77718, Washington, DC 20013-8713.

Signature of Issuing Official

Date

7/05/09

Time 3:30PM

Print Name:

KEVIN SMITH

Phone Number

442-STOP

C O F O

Department of Consumer and Regulatory Affairs

Permit Operations Division

941 North Capitol Street NE Room 2100

Washington DC 20002

Tel. (202) 442 - 4589

Fax (202) 442 - 4862

B

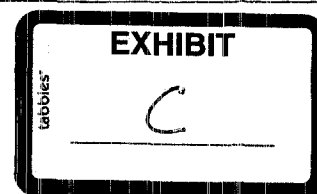
BUILDING PERMIT

THIS PERMIT MUST ALWAYS BE CONSPICUOUSLY DISPLAYED AT THE ADDRESS OF WORK UNTIL
WORK IS COMPLETED AND APPROVED

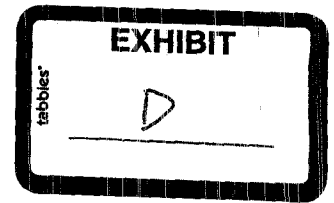
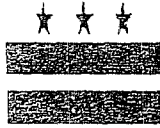
PERMIT NO. B0800178

Date: 7/18/2008

Address of Project: 1179 3RD ST NE		Suite No:	Zipcode:	Zone: R-4	Ward: 6	Square: 0773	Suffix:	Lot: 0277
Description Of Work: ALTER PARTITION, REPAIR WALLS 7 PAINTING, REPAIR CEILING, REPLACE WINDOW GLASS, REPAIR ROOF, FIX DRAINAGE								
Permission Is Hereby Granted To: Park Joseph M		Owner Address: 1179 3RD ST NE WASHINGTON, DC 20002-3405				PERMIT FEE: \$66.95		
Permit Type: Alteration and Repair		Existing Use: Retail or Wholesale Store - M		Proposed Use: Retail or Wholesale Store - M			Plans: No	
Agent Name: Joseph Park		Agent Address: WASHINGTON, DC		Existing Dwell Units:		Proposed Dwell Units:		No. of Stories: Floor(s) Involved:
Conditions/ Restrictions: This Permit Expires if no Construction is Started Within 1 Year or If the Inspection is Over 1 Year. All Construction Done According To The Current Building Codes And Zoning Regulations; As a condition precedent to the issuance of this permit, the owner agrees to conform with all conditions set forth herein, and to perform the work authorized hereby in accordance with the approved application and plans on file with the District Government and in accordance with all applicable laws and regulations of the District of Columbia. The District of Columbia has the right to enter upon the property and to inspect all work authorized by this permit and to require any change in construction which may be necessary to ensure compliance with the permit and with all the applicable regulations of the District of Columbia. Work authorized under this Permit must start within one(1) year of the date appearing on this permit or the permit is automatically void. If work is started, any application for partial refund must be made within six months of the date appearing on this permit.								
Director: Linda K. Argo		Permit Clerk: Lucretia Hackney		Expiration Date: 07/18/2009				
TO REPORT WASTE, FRAUD OR ABUSE BY ANY DC GOVERNMENT OFFICAL, CALL THE DC INSPECTOR GENERAL AT 1-800-521-1639 FOR CONSTRUCTION INSPECTION INQUIRIES CALL (202) 442-9557 TO SCHEDULE INSPECTIONS PLEASE CALL (202) 442-9557								



GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF THE ZONING ADMINISTRATOR



August 29, 2008

BY PERSONAL SERVICE
CERTIFIED MAIL, RETURN RECEIPT REQUESTED;
U.S. FIRST CLASS MAIL

Mikyung Yoon
d/b/a Oasis Liquors
1179 3rd Street, NE
Washington, D.C. 20002

Joseph Park
7208 Morrison Drive
Greenbelt, MD 20770

NOTICE TO REVOKE CERTIFICATE OF OCCUPANCY No. 167331

This is official notice ("Notice") from the Department of Consumer and Regulatory Affairs ("DCRA") that Certificate of Occupancy No. 167331 is revoked effective 10 business days (excluding Saturdays, Sundays, and legal holidays) from the date this Notice is received. This action is taken pursuant to Title 11 and Title 12A of the District of Columbia Municipal Regulations (DCMR), which authorize the Director to revoke any certificate of occupancy previously issued or issued pursuant to Section 110 (12A DCMR), after notice, if it is found to have been issued in error. 12A DCMR §§ 110.5.3. *See also* 11 DCMR § 3203.

The basis for this revocation is that DCRA erred when it issued you (Mikyung Yoon) Certificate of Occupancy No. 167331 ("C/O" or "C/O 167331") because 1179 3rd Street, NE, Washington D.C. 20002 ("premises" or "building") has not been used as a retail beverage store (i.e., liquor store) since 2003 and thus the use has been discontinued.

As background, DCRA issued Certificate of Occupancy B146037 ("C/O B146037") to Joseph Park – the owner of the building – on July 9, 1986, in order to use the premises as a retail beverages store known as Oasis Liquor. In 1986, a retail beverages store was a permitted use in a C-M-1 industrial zone, where the building was located. However, on August 4, 1997, the District of Columbia Zoning Commission re-zoned the C-M-1 zone to a residential (R-4) zone. When this rezoning occurred, Oasis Liquor became a nonconforming use because a retail beverages store is not permitted in an R-4 zone. *See* Zoning Commission Order No. 821. *See also* 11 DCMR §§ 330-332.

After issuing C/O B146037, DCRA also issued a basic business license ("BBL") to Joseph Park to operate Oasis Liquor at the premises. The BBL was valid from August 1, 2001 to July 31, 2003. Mr. Park did not renew his BBL after the July 31, 2003 expiration date; thereby evidencing that Oasis Liquor would no longer operate from the premises. On November 9, 2005, the District of Columbia Alcohol Beverage Control Board ("ABC Board") sent a letter to Mr. Park which stated in pertinent part, "the agency's records indicate that the licensed establishment is not operating..." Additionally, the District of Columbia Water and Sewer Authority ("WASA") records show that from April, 2005 to May, 2008, water service for the premises had been disconnected.

Based on the foregoing, the premises have not been used as a liquor store or a retail beverages store since 2003. Pursuant to 11 DCMR § 2005.1, "discontinuance for any reason of ... a structure or of land, ... for a period of more than three (3) years, shall be construed as prima facie evidence of no intention to resume active operation as a nonconforming use." DCRA issued C/O 167331 without further inspection or investigation because you stated on your application, dated May 30, 2008, that a "change in ownership" was the basis for the certificate of occupancy and where there is no change in use or increase in occupancy load, DCRA must issue a certificate of occupancy to a new owner. *See* 12A DCMR § 110.1.2.¹

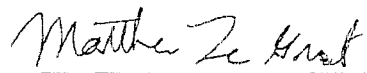
DCRA erred by issuing C/O 167331 because an applicant must apply for a new use of the premises once the prior use has been discontinued. Accordingly, DCRA is revoking C/O 167331, effective 10 business days from the date this Notice is received.

RIGHT TO APPEAL

You have the right to appeal the revocation of your Certificate of Occupancy. To appeal, you must file the appeal with the Board of Zoning Adjustment within 60 calendar days of this notice. Complete filing instructions may be found at 11 DCMR § 3112. Filing an appeal of this revocation does not automatically stay the execution of the revocation.

Any questions about this Notice and Order may be directed to the Office of the Zoning Administrator at (202) 442-4576.

Date: 8/29/09

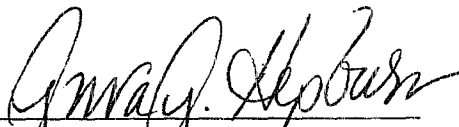

Matthew LeGrant
Zoning Administrator

¹ 12A DCMR § 110.1.2 states "for changes in ownership of structures, land, or parts with an existing valid Certificate of Occupancy, a new Certificate of Occupancy shall be issued in the name of the new owner, (without reinspection), provided there is no proposed change in use or increase in occupancy load."

- 6) In order to sell any food products in the District a basic business license/endorsement for Food Products is required. In order to sell over the counter medicine in the District, a basic business license/endorsement for Patent Medicine is required.
- 7) According to the records kept in the regular course of business by the Basic Business License Division of the D.C. Department of Consumer and Regulatory Affairs, it appears that Mr. Joseph Park held the following licenses:
- (a) Food Product License (BBL No. 20010302), which was valid from August 8, 2001 until July 31, 2003. The business address associated with this license was 1179 3rd Street, N.E. This license has not been renewed at any point since July 31, 2003.
- (b) Patent Medicine License (BBL No. 53000558), which was valid until January 31, 2004. This license has not been renewed at any point since January 31, 2004. However this license was held for 1734 P Street, not 1179 3rd Street, N.E.
- 8) The records kept in the regular course of business by the Basic Business License Division of the D.C. Department of Consumer and Regulatory Affairs do not reflect that any additional licenses were held by Mr. Park to engage in business at 1179 3rd Street, N.E.

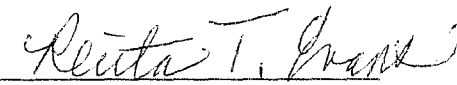
This affidavit consists of eight (8) numbered paragraphs on two (2) pages. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed on


Juva J. Hepburn

District of Columbia, ss:

Signed and affirmed before me on this 7th day of April, 2009, by Juva J. Hepburn.


NOTARY PUBLIC, D.C.

My Commission expires: January 31, 2014

Utility Contacts By Account DEWASA (UCBE) - C53355 - DEWASA PRODUCTION FILES

File Edit Functions Co Path Help

Path Account# UC819 Name PARK JOSEPH M

UC List/Account UC Account Info UC Account Address UC Comments UC Comment Hist Letter Select UC Data Response

Comment Line:

CONREM2 Comm Lien Reminder Call

RECORD SENT FOR OUTBOUND CALL

Past Due: \$3,159.75 Total Due: \$3,172.89

LIVE ANSWER

Phone Number Called 202 215-4539 ; Alert ID 1532912127

Trans. Result Ind: None

Term Check Point: Already Paid

Contact # 2724225 Date: 7/02/08 Rep: DCWLOVEC Contact Type: 8

MR PARKS CAME IN FOR A LEDGER FOR 2867. INFORMED HIM THAT WAS

TURN OFF FROM 4-4-05 TO 5-14-08.

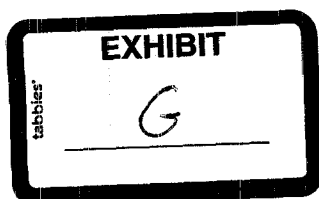
Contact # 2659885 Date: 5/23/08 Rep: DCWKEI61 Contact Type: 1

MR PARKS CALLED TO REQUEST WATER SERVICE BE RESTORED PIPES ARE

FIXED NOW...ADVS THAT HE NEEDS TO HAVE THE PLUMBER TURN WATER ON

OK Cancel

Property Address
1179 3rd Street, NE



AFFIDAVIT OF SALIM MOIZ BHABHRAWALA

1. My name is **Salim Moiz Bhabhrawala**. I reside at **1160 Abbey Place NE** in the District of Columbia. I am over 18 years of age.
2. I have lived at my current address since on or about **November 2004**.
3. I live within **100 feet** of the building known as "Oasis Liquor" at 1179 3rd St NE. I have had occasion to walk or drive past the Oasis Liquor building **several** times a day nearly every day, including during daytime hours, evening hours, and on both weekdays and weekends. I have not seen Oasis Liquor open for business at any time since **November 2004**.

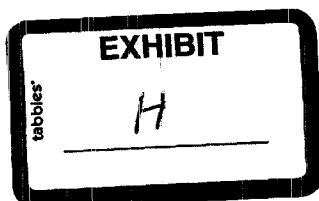
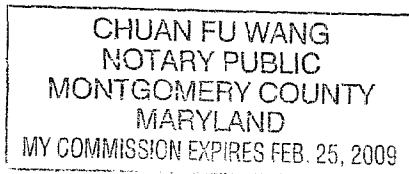
I certify and declare under penalty of perjury that the foregoing is true and correct.

Executed on **July 21, 2008**: _____

Signature: Salim Moiz Bhabhrawala

Name (printed): Salim Moiz Bhabhrawala

7/21/08



GOVERNMENT OF THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION



November 9, 2005

Mr. Joseph Park
1734 P Street, N.W.
Washington, DC 20036

RE: Oasis Liquors, License no. 25010, Application no. 8777, Retailer's Class A License

Dear Mr. Park:

The agency's records indicate that the licensed establishment is not operating, and that the license has not been placed in safekeeping.

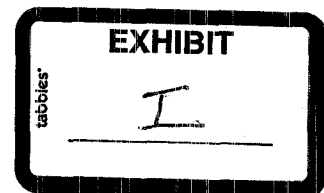
For your convenience I have enclosed a safekeeping application that must be filed immediately with the Alcoholic Beverage Control (ABC) Board. Failure to do so will result in a referral for the cancellation of the license to the ABC Board.

In the event that all fees are paid and the safekeeping application is approved, you will be notified in writing. Further, to maintain the safekeeping status, (1) future extensions for the safekeeping period must be requested in writing to the ABC Board, and (2) the request must include the reason, the length of time for the extension, name, signature and the current home address of the licensee of record. *All fees must be kept current during the safekeeping period.*

If you have any questions, do not hesitate to contact me at 202-442-4359.

Sincerely,

Laura S. Byrd
Program Manager
Licensing Division





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.



ANC 6C page 2

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;
 - ABFA'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

ANC 6C page 3

affected neighborhood. The liquor license matter remains unresolved, given that the ABC Board cannot bear 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,

Karen J. Wirt

Karen Wirt
Chair, ANC 6C