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October 28, 2008

**Appeal of Joseph Park
from the action of the Zoning Administrator
in revoking a Certificate of Occupancy
for 1179 3rd Street, N.E.**

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 17902
EXHIBIT NO. 2

History

Mr. Park and his family have owned and operated a liquor and convenience store at 1179 3rd Street, N.E. since 1986. The building was built as a commercial building in 1938 and has been used continuously until September 2006. Mr. Park operated the store himself until health problems forced him to slow down a few years ago. He continued to operate the store one or two days a week as his health permitted, until September, 2006. Mr. Park sought a lessee or buyer but continued to hope that his health would permit him to resume the operation himself. He renewed the liquor license, each year but eventually his health forced him to ask the ABC to keep the license in "safe keeping" until he could find a buyer. Throughout, he kept the food and lottery licenses in force, paid taxes, and kept the property in good repair. He advertised and notified real estate brokers and business brokers of the availability of the store. Some prospective lessees had to back out when they could not raise the requisite capital. Even some neighbors expressed interest but that never materialized. He has continued to market the property as a liquor and convenience store. Recently he found a lessee and applied for a certificate of occupancy. It was granted, along with a building permit to allow more alterations for the new tenant. However, on August 29, 2008, the Zoning Administrator concluded that the C of O had been granted in error and sent a notice of revocation.

Zoning history

A Certificate of Occupancy B146037 was granted to Mr. Park on July 9, 1986, for a liquor store called Oasis Liquor. The zoning at the time was C-M-1, an industrial zone. In 1997 the Zoning Commission re-zoned the area R-4. It should be noted that the property is at the Southeast corner of third and M Streets. The other three corners of the intersection are zoned C-M-1, C-M-1, and C-M-3.

Action of the Zoning Administrator

In an effort to reduce non-conforming uses in the District, the Zoning Administrator has followed a policy of refusing Certificates of Occupancy where it can be shown that the non-conforming use was abandoned. This is appropriate. However, since the facts do not fit the

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Zoning Administrator's assumptions, his action was contrary to law and public policy. 11
DCMR § 2005.1, under which the Zoning Administrator acted states the following:

Discontinuance for any reason of ... a structure or of land, ... for a period of more than three years, shall be construed as *prima facie* evidence of no intention to resume active operation as a non-conforming use.

Prima facie evidence is not "conclusive evidence." Webster's Ninth New Collegiate Dictionary defines *prima facie* as "true, valid, or sufficient at first impression: apparent; self evident." It merely permits a rebuttable presumption that the owner does not intend to continue the historic use. It can be rebutted by evidence to the contrary. Here there is ample evidence that Mr. Park did not abandon the use for three years, nor was it his intention to abandon the commercial use at any time. Simple investigation on the part of the Zoning Administrator could have revealed these facts.

Community impact

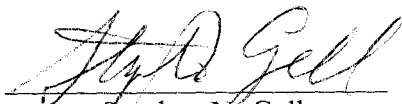
Oasis Liquor was a benefit to the Community. In addition to beer, wine, and spirits, Mr. Park had licenses to sell food and paper products, over-the-counter medicines, soft drinks, prepared sandwiches, sundries, and lottery tickets which were sought by the neighborhood. Neighbors came out to support him when he sought renewal of his liquor license, which was granted. Many senior citizens enjoyed the convenience of the store and the neighborly way he operated it. Over one hundred neighbors signed a petition in favor of his retaining his liquor license.

The remainder of the block on which the subject property is situated is solidly residential while the other three corners are zoned C-M-1 and C-M-3. There is little likelihood that maintaining this one-story building in commercial use will have any effect on the residential character of the surrounding properties. Moreover, a convenience and liquor store in that location will benefit the employees of the many businesses which have recently come into that neighborhood.

Conclusion

We urge the Board to overturn the revocation action of the Zoning Administrator and restore Mr. Park's rights to him.

Respectfully submitted


Stephen N. Gell

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

2008 OCT 28 PM 2:30

U.S. OFFICE OF ZONING

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

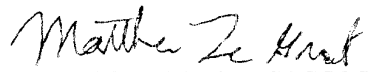
DCRA erred by issuing C/O 167331 because an applicant must apply for a new use of the premises once the prior use has been discontinued. Accordingly, DCRA is revoking C/O 167331, effective 10 business days from the date this Notice is received.

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."

C of O**CERTIFICATE OF OCCUPANCY****PERMIT NO.****CO 167331**THIS PERMIT IS VALID ONLY FOR THE PREMISES
OF THE PROJECT ADDRESS**DATE : 5/30/2008**

ADDRESS :	FLOOR(S):	PRCLID : 0773 (square)	-0000-	0277 (lot)
1179 3RD ST NE	FIRST FL.	WARD : 6	ZONE :	CM1

PERMISSION IS HEREBY GRANTED TO :

SOLE PROPRIETOR : MIKYUNG YOON

TRADING AS:

APPROVED USES :

RETAIL

PREVIOUS USES :

RETAIL

TYPE :

CHANGE OF OWNERSHIP

BZA NO. :

OCCUPIED SQ. FOOTAGE:

837

OCCUP. LOAD:

EXPIRATION DATE:

NONE

DESCRIPTION OF USE:

RETAIL BEVERAGES STORE**FEE :****\$75.00**

THIS CERTIFICATE SHALL BE POSTED CONSPICUOUSLY ON THE ABOVE PREMISES AT ALL TIMES. IT IS VALID INDEFINITELY, unless an expiration date is stated, VALID ONLY for the premise at the above address or part thereof, and for the purpose(s), indicated above, and IS NOT TRANSFERABLE to another person or premises under ANY conditions. ANY CHANGE in the type of business, ownership of business, or part of premises used therefor, will render this Certificate VOID and a NEW Certificate must be obtained.

Director

Linda K. Argo
Linda K. Argo

PERMIT CLERK:

THINGOC MACXOAN*Anthony Merrill*

2008 OCT 28 PM 2:31

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 OFFICIAL, 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.								