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April 24, 2009

Mark D. Loud, Chairman
District of Columbia
Board of Zoning Adjustment
Room 210
441 4th Street, N.W.
Washington, DC 20001

Re: 1179 Third Street, N.E., Sq. 773, Lot 277
BZA Case No. 17902
Summary of testimony on estoppel

Dear Mr. Loud:

At the hearing on Mr. Park's appeal challenging the revocation of his certificate of occupancy for a liquor store at 1179 Third Street, S.E., I cited several cases in connection with two points:

1. Whether the discontinuance of a nonconforming use for a period of three years is conclusive evidence of abandonment or whether it can be rebutted by other evidence.
2. Whether the District, having granted a certificate of occupancy in May, 2008, and a building permit in July, 2009, was estopped from revoking said grants.

It is not my intention in this letter to make any legal or factual statements that are not already in the record. However, since my legal arguments were given orally, mostly compressed into the closing statements, and since the transcript is not be ready for review, I felt it advisable to provide them to the Board in written form.

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1. Even if the BZA finds that the use as a liquor store was discontinued for 3 years, that is only prima facie evidence of the intent to abandon the use and said finding that only shifts the burden to the applicant to show by other evidence that he did not intend to abandon. The rule is stated fully in Appeal No. 15893 of Woodrow D. Malone.

2. The District, having granted a certificate of occupancy in May, 2008, and a building permit in July, 2009, was estopped from revoking them since the applicant meets the required showings for an estoppel, which are,

- a. Party claiming estoppel is acting in good faith. See Saah v. DCBZA 433 A 2d 1114, (DC App. 1981). Which also held that the BZA has the authority to take equitable estoppel into account.
- b. The claim involves affirmative acts of a municipal corporation. (Saah v. DCBZA)
- c. Party claiming estoppel has made expensive and permanent improvements in reliance thereon. (Saah v. DCBZA) Mr. Park testified that he spent over \$30,000.
- d. Equities favor the applicant. (Saah v. DCBZA)
- e. Applicant had no reason to know that it was in violation of regulations. (See D.C. v. Cahill, 60 app. D.C. 342; 54 F. 2d 453; 1931 U.S. App.)

Thank you for the opportunity to submit this document which I believe remains consistent with the Board's decision to close the record.

Respectfully submitted,



Stephen N. Gell

cc: Robert Rengel
Anne Phelps