

**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

**APPELLANT'S RESPONSE TO THE
ANC 6C'S MOTION FOR RECONSIDERATION**

Appellant, Joseph Park, herewith responds to the Motion of Advisory
Neighborhood Commission 6C (the "ANC") for Reconsideration pursuant to DCMR §
11-3126.5 in the above case. Movant contends the following:

1. There was insufficient evidence to rebut the presumption that Mr. Park had
abandoned his business at 1179 3rd Street, N.E.
2. The ANC was not given copies of documents filed with the Board in a timely
manner.

I. **ARGUMENT**

**The Board applied the correct test for abandonment, i.e., that the
presumption can be contradicted if the owner of the nonconforming use can
make the appropriate showing that he did not intend not to resume the
nonconforming use.**

Statements by Mr. Park in the original appeal, in the prehearing submissions, and
in testimony, that he intended to resume the use of the property for a liquor store, were
supported by letters from nearby residents that they had made purchases at the store
during the three years deemed by the Zoning Administrator to be the period of
abandonment. Admittedly, business activity during that period was infrequent and
sporadic. Mr. Park's age and health were cited continually as reasons why he did not
conduct regular business at the site. In addition, Mr. Park took several other actions
which showed intent not to abandon. Inventory was maintained in the store. He made
many attempts to find a buyer for the business as a liquor store, made extensive repairs to
the building, and kept the liquor license in safe-keeping so that it could be used by
himself or a successor operator.

Appellee, DCRA, asserts

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EXHIBIT NO.36

In reaching its decision, the Board relied on documentary evidence improperly submitted prior to and after the hearing that directly contradicts testimony given by Park at the hearing.

Unfortunately for their position, they never explain how the documents directly contradict Mr. Park's testimony. Mr. Park never said that he made money from the operation during that period. He was, however, actively seeking new business operators and tried, to the best of his ability, to maintain the appearance of a going business. These efforts finally paid off in the signing of a lease with Mr. Yoon. The Board was fully justified in finding that he had successfully rebutted the harsh presumption of abandonment.

II. If there were any failures to serve parties in a timely manner, they were inadvertent and not harmful to the Movant's case

The ANC, as a party to the proceedings, was entitled to submissions at the same time that the Board received them. However, if there was a slip-up with regard to the attachment to the March 31 submission, it is regrettable but did not substantially change the picture in any material way. The ANC and the Office of Attorney General had adequate opportunity to cross examine Mr. Park on the issues that were fully placed before the Board. Moreover, it is my recollection that most, if not all of these materials, were given to the ANC as part of its own deliberations.

Later submissions which were requested by the Board after the record was closed likewise did not add substantially to the picture.

Accordingly, Appellant requests that the Board confirm its original decision to grant Mr. Joseph Park's appeal.

Respectfully Submitted,

Stephen N. Gell

Stephen N. Gell

CERTIFICATE OF SERVICE

I, Stephen N. Gell, hereby certify that on July 31, 2009, a copy of the Appellant's Response to the ANC's Motion for Reconsideration and the accompanying Motion to Consider Appellant's Response to the Motion for Reconsideration was sent to ANC 6C Commissioner, Ann Phelps by email to anne.phelps@anc.dc.gov, and Appellee's Counsel, Robert A. Renjel by email to robert.renjel@dc.gov.

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**APPELLANT'S MOTION TO CONSIDER APPELLANT'S RESPONSE TO THE
ANC 6C'S MOTION FOR RECONSIDERATION OUT OF TIME**

Appellant, Joseph Park, herewith requests leave to file the attached Response to ANC 6C's Motion for Reconsideration, notwithstanding it fails to comply with the 7 day deadline. In the intervening period since the publication of the Order in the subject case Counsel has sought to retire from the practice of law and so notified Mr. Park. When it appeared that Mr. Park was not able to secure the assistance of substitute counsel, I agreed to continue the case.

I do not believe that Counsel for Appellee ANC or the ANC are in any way prejudiced by the Board's consideration of this submission and therefore commend it to the Board's attention.

Thank you for any favorable treatment you can give to this request.

Respectfully Submitted,

Stephen N. Gell

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