

Law Offices
STEPHEN N. GELL
A Professional Corporation

1101 30th St. N.W.
Fifth Floor
Washington, D.C. 20007
Telephone: (202) 625-8311
Facsimile: (703) 522-5503
Email: SGELL@HIS.COM

Ms. Ruthanne Miller, Chairperson
District of Columbia Board
of Zoning Adjustment
Room 210
441 4th Street, N.W.
Washington, DC 20001

Statement on appeal

Re: Eddie's Sandwich Shop

On or about January 15, 2009, DCRA rejected an application by Lusk, Inc., for a certificate of occupancy for use of 1251 Bladensburg Road, N.E. for an Eddie's Sandwich Shop.

A C of O had been issued on January 27, 2007, as a temporary certificate for one year "in order for the owner to apply to the Board of Zoning Adjustment for a special exception for a fast food restaurant in a C-2-A District. Certificate expires 1-22-2008. "

It is our contention that the Building and Land Regulation Administration, DCRA, should have issued the C of O on January 27, 2007 on a permanent rather than temporary basis. There should have been no direction to the owner to apply to the BZA for a special exception. The building has been used for a sandwich shop, both eat-in and take out, for over 52 years, i.e., since 1956. It had been in the Eddie Leonard's Chain for most of that time. A certificate of occupancy dated October 1, 1992, shows the use of the restaurant as "carryout/restaurant - seating 16." Earlier certificates will, no doubt, show the same.

The amount of space given over to queuing as a percentage of the total square footage of customer accessible space has not changed substantially in that time.

Section § 6-641.06a of the DC Code regarding "nonconforming use" states as follows:

The lawful use of a building or premises as existing and lawful at the time of the original adoption of any regulation heretofore adopted under the authority of § 6-

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621.01, or, in the case of any regulation adopted after June 20, 1938, under this subchapter, at the time of such adoption, may be continued although such use does not conform with the provisions of such regulation, provided no structural alteration, except such as may be required by law or regulation, or no enlargement is made or no new building is erected. The Zoning Commission may in its discretion provide, upon such terms and conditions as may be set forth in the regulations, for the extension of any such nonconforming use throughout the building and for the substitution of nonconforming uses.

Section 5101 of the 1981 Zoning Regulations permitted "Lunch counter, lunch room, café, or restaurant." in C-1 Districts. Drive-in restaurants were also specifically permitted. See §5102.33 R.

Fast food restaurants were conforming in the C-1 and C-2 Districts until 1985 when Order #440, in Case No. 83-6 included a definition of fast food, (§ 199), permitted fast food restaurants in C-2-A as a special exception, (§ 733.1) and prohibited "drive-through" restaurants. (§ 733.5)

Considering that the use for which a C of O is being requested was in accord with Zoning Regulations up until 1985, and there has been no break in use or abandonment of use, we believe a certificate of occupancy should be issued.

We ask the Board of Zoning Adjustment to overturn the denial of a C of O and direct DCRA to issue one as soon as practicable.

Respectfully,

A handwritten signature in black ink, appearing to read "Stephen N. Gell". The signature is fluid and cursive, with the first name "Stephen" and last name "Gell" clearly distinguishable.

Stephen N. Gell