

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

Appeal of Mehmet Kocak and  
Philly Pizza & Grill, Inc.

BZA Appeal No. \_\_\_\_\_  
ANC 2E

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**STATEMENT OF APPEAL AND REQUEST FOR STAY OF ENFORCEMENT**

The Appellant, Mr. Mehmet Kocak and Philly Pizza & Grill, Inc., by and through undersigned counsel, respectfully submits this Board of Zoning Adjustment ("Board") Appeal and Request for Stay of Enforcement of the October 14, 2009<sup>1</sup> determination by Mr. Matthew LeGrant, Zoning Administrator, Department of Consumer and Regulatory Affairs ("DCRA"), to issue a Notice to Revoke Certificate of Occupancy No. 0800124 ("RESTAURANT 7-SEAT-PREPARED FOOD SHOP", dated September 11, 2008). Exhibit A ("Notice to Revoke") and Exhibit B (Certificate of Occupancy No. 0800124).

**I. REQUEST FOR STAY OF ENFORCEMENT**

As more fully set forth, the Notice to Revoke is fatally flawed and unsupported based on DCRA's mistaken enforcement of the wrong, outdated certificate of occupancy. The Notice to Revoke clearly states that notwithstanding the Appellant's filing of this Appeal, DCRA has the authority and will proceed with enforcement actions to shut down this restaurant. Any enforcement action by DCRA while this Appeal is pending would be unjustified, improper and amount to a death sentence for this small minority-owned and operated business. Under the circumstances, the requested stay of enforcement is clearly warranted, appropriate and matter of fundamental fairness to the Appellant. Based on the Board's current docket, it is unlikely that

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<sup>1</sup> The Notice to Revoke was dated Friday, October 9, 2009, but not signed by Mr. LeGrant until Wednesday, October 14, 2009 and then served on the Appellant.

this Appeal hearing will occur before February 2010 with a final written decision coming months later.

## **II. ARGUMENT**

The Appellant is the lessor of 1211 Potomac Street, N.W. (Square 1207, Lot 124) ("Property"). In September 2008, after completing construction authorized by DCRA pursuant to valid building permits for conversion of the Property for restaurant use, the Appellant began operation of the Philly Pizza & Grill Restaurant. After final inspection of the building permit authorized construction, DCRA on September 11, 2008 generated and issued Certificate of Occupancy No. 0800124 for "Restaurant 7 Seat-Prepared Food Shop." ("Original Certificate of Occupancy"). The Original Certificate of Occupancy generated by DCRA was incomplete, incorrect and failed to properly reflect the work completed and restaurant operations authorized under the building permits.

In order to correct DCRA's issuance of the Original Certificate of Occupancy, the Appellant was required to apply for a new and correct certificate of occupancy. On September 21, 2009, DCRA issued Certificate of Occupancy No. CO 0903354 for "2-Floor 13- SEAT RESTAURANT (7 SEATS ON 1<sup>ST</sup> FLOOR & 6 SEATS ON 2<sup>ND</sup> FLOOR)" ("Current Certificate of Occupancy"). Exhibit C.

In support of this Appeal, the Appellant states as follows:

1. The Notice to Revoke is invalid on its face and applied to the Original Certificate of Occupancy which is no longer operative and has been superseded by the Current Certificate of Occupancy.
2. The Current Certificate of Occupancy clearly authorizes the nature and scope of the Appellant's operations, including use of the second floor for restaurant setting.

3. DCRA's "undercover" operations and allegations are undocumented, inherently unreliable and inconsistent with the permitted use authorized by the Current Certificate of Occupancy. A full documentation and review of the Appellant's operations will establish a restaurant in compliance with the C-2-A zoning of the Property.

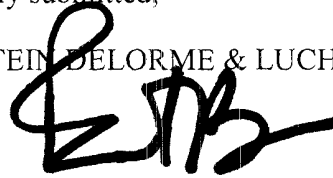
4. DCRA's Notice to Revoke is prohibited by Laches and Estoppel.

### III. CONCLUSION

For the foregoing reasons, the Zoning Administrator's Notice to Revoke is invalid and therefore, the Appeal must be GRANTED and DCRA is NOT authorized to enforce the Notice to Revoke while this Appeal is pending.

Respectfully submitted,

GREENSTEIN DELORME & LUCHS, P.C.



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*Counsel for Appellant – Mehmet Kocak and Philly  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Statement of Appeal and Request for Stay of Enforcement was served by first-class mail, this 23<sup>rd</sup> day of October 2009, upon the following:

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