

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF THE ZONING ADMINISTRATOR



October 15, 2009

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2009 OCT 23 PM 3:17

PERSONAL SERVICE and
FIRST CLASS MAIL

Muhammet Kocak, Owner
Philly Pizza & Grill
4377 Potomac Street, NW
Washington, DC 20007

Philly Pizza & Grill
Muhammet Kocak, Registered Agent
4377 Potomac Street, NW
Washington, DC 20007

NOTICE TO REVOKE CERTIFICATE OF OCCUPANCY No. 0800124

On October 14, 2009, notice ("Notice") from the Department of Consumer and Regulatory Affairs ("DCRA"), that pursuant to 12A DCMR §110.5, Certificate of Occupancy No. 0800124 is revoked. The specific grounds for the revocation are found in 12A DCMR §110.5 1, which states that "any certificate of occupancy previously issued pursuant to Section 110 shall be revoked by the Director, after notice, if the occupancy does not conform with that permitted."

On September 11, 2008, DCRA issued Certificate of Occupancy No. 0800124, authorizing you to use the property, located in a C-2-A zone, at 1211 Potomac Street, NW (the "Property") as a "restaurant 7 seat-prepared food shop" establishment.

On October 14, 2009, DCRA conducted a zoning compliance investigation concerning the Property. A search of the DCRA database revealed that Philly Pizza & Grill was issued a Certificate of Occupancy ("CofO") on September 11, 2008 that authorized its use of the Property as a restaurant.

On October 15, 2009, a DCRA investigator conducted an undercover surveillance at the Property and noted numerous individuals picked-up food orders and delivery people took food orders out, but no patrons consumed food orders onsite. The Property was also

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18027

EXHIBIT NO. 5

observed on August 18, 19, and 20, 2009 by a DCRA investigator who noted that the Property was primarily used for carryout and delivery orders, with one or no patrons consuming food orders inside the restaurant at any given time. Based upon the investigations, DCRA concluded that the primary use of the Property is consistent with that of a fast food establishment, and although PPG possesses a CofO for a restaurant¹, it does not possess a CofO for a fast food establishment². Moreover, pursuant to the District's Zoning Regulations, a CofO for a fast food establishment in a C-2 zone requires a special exception from the Board of Zoning Adjustment. See 11 DCMR § 731.1

Additionally, on August 20, 2009, the DCRA investigator conducting a business compliance inspection at the Property, noted that PPG used the basement, a backyard that contained food storage in a walk-in freezer, and the first and second floors for its business operations. However, CofO No. 0800124 authorizes only the first floor to be used for this purpose. Accordingly, you have exceeded the scope of your restaurant CofO by operating primarily as a fast food establishment and extending the business use beyond the first floor of the Property.

Therefore, DCRA is revoking CofO No. 0800124 effective ten (10) business days from the mailing of this Notice.

RIGHT TO APPEAL AND SHOW CAUSE

You have the right to appeal the revocation of your CofO. To appeal, you must file the appeal with the Board of Zoning Adjustment within sixty (60) 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 may be directed to the Office of the Zoning Administrator at (202) 442-4576.

October 14, 2009

Date

Matthew LeGrant

Matthew LeGrant
Zoning Administrator

¹ Pursuant to 11 DCMR §199 a restaurant is "a place of business that does not meet the definition of a "fast food establishment" or "prepared food shop," where food, drinks, or refreshments are prepared and sold to customers primarily for consumption on the premises. Any facilities for carryout shall be clearly subordinate to the principal use providing prepared foods for consumption on the premises." [underscore added]

²Pursuant to 11 DCMR § 199 a fast food establishment is "a place of business, other than a "prepared food shop," where food is prepared on the premises and sold to customers for consumption and at least one of the following conditions apply: (a) The premises include a drive-through; (b) Customers pay for the food before it is consumed. One characteristic that would satisfy this element would be building permit plans that depict a service counter without seating unless the applicant certifies that the intended principal use is for a restaurant or grocery and that the counter is part of a carry out service that is clearly subordinate to that principal use; or (c) Food is served on/in anything other than non-disposable tableware. Characteristics that would satisfy this element include, but are not limited to: the building permit plans do not depict a dishwasher or do depict trash receptacles in public areas.