



Manning Sossamon

December 2, 2009

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D.C. OFFICE OF ZONING

2009 DEC -7 PM 12:28

Mr. Jamison L. Weinbaum
Director, District of Columbia Office of Zoning
441 – 4th Street NW, Suite 210
Washington, Dc 20001

BZA # 18031

RE: Appeal of 11/4/09 Certificate of Occupancy for 2140 F. Street NW
(Square 81 Lot 811)

Dear Mr. Weinbaum:

Please accept this letter as Foggy Bottom Grocery's Motion to Dismiss the appeal filed by the West End Citizen's Association (the "WECA"). The bases of this motion are the following, which will be addressed individually:

1. The WECA does not represent the residents of Foggy Bottom; the WECA does not have standing to Appeal the Decision;
2. The Appeal is factually incorrect.
3. The Zoning Administrator, after due consideration of the facts, law and the equities, properly issued the Certificate(s) of Occupancy.
4. Estoppel and laches are applicable.
5. There is substantial community support for Foggy Bottom Grocery as a neighborhood facility.

Facts and Timeline

Beginning in 1946, the historical use of the property was as a grocery store. After 1958 zoning laws were enacted, the Foggy Bottom Grocery was "grandfathered in" or allowed to continue operating as a grocery store into a residential zoning district, currently R-5-E, as if it were in a C-1 zone.

Kristopher D. Hart, the managing member of Foggy Bottom Grocery, LLC, which owns Foggy Bottom Grocery, concluded coursework at The George Washington University in 2005 and open *relaxed* Spa in 2005. In mid 2006, Mr. Hart became interested in purchasing the Foggy Bottom Grocery owned by Mesco, Inc. and managed by Meseret Bekele. Early in his business planning, Mr. Hart considered the building would serve the community well as a grocery store sandwich shop or even as a sandwich shop alone. Considering that he might purchase the business from Ms. Bekele in 2007, he applied for a certificate of occupancy for the Foggy Bottom Grocery with a use designated as a Sandwich Shop. At his own request that the application be denied, it was denied. Mr. Hart continued to negotiate the purchase of the Foggy Bottom Grocery and in that process decided to keep the business as a grocery offering a full line of retail products and prepared food items.

1120 20th Street NW North Building SUITE 700 Washington DC 20036
202 973-2686 202 973-1212 f

BOARD OF ZONING ADJUSTMENT
District of Columbia

Board of Zoning Adjustment
District of Columbia
CASE NO. 18031
EXHIBIT NO. 99

On August 21, 2008, Mr. Hart applied again for a Certificate of Occupancy for a grocery store with the type of options offered in grocery stores nationwide, such as canned and packaged groceries, fresh and prepared foods, beer and wines, tobacco products (cigarettes and cigars), cosmetics and over the counter medicines. *See* Certificate of Occupancy dated August 21, 2008, marked Exhibit A.

In reliance on Certificate of Occupancy issued in by the Zoning Office in August 2008, Mr. Hart proceeded to:

- Purchase the business from Mesco, Inc.
- Sign a 15 year lease with The George Washington University, the owner of the building.
- Contract for architectural and engineering plans.
- Enter into contracts for construction, some of which was committed by the GWU for upgrades to code and renovations to the building (none of which increase the usable square footage of the building).
- Accept investments of and allocated over \$1,000,000 towards renovations, expenses and business operations.
- Begin paying the city the \$1,300 per month in real estate taxes.
- Notify the community of the improvements to and the re-opening of this neighborhood facility.
- Hire employees.
- Enter into contracts with distributors for grocery inventory.

In addition, others relied on the Certificate of Occupancy:

- GWU, the owner of the building, obtained approval from the federal Commission on Fine Arts for the architectural plans for the building due to its historic nature. *See* Excerpt from Minutes of Commission on Fine Arts, July 16, 2009, marked Exhibit B.
- GWU obtained demolition and building permits from the Zoning Office to begin renovations to the building according to the plans approved by the CFA. *See* Permits marked Exhibit C.
- The city conducted inspections of the site and, to date, has approved work completed.

Under pressure from Ms. Kahlow, Zoning Administrator Matt LeGrant issued a notice on October 14, 2009 to revoke the August 21, 2008 Certificate of Occupancy.¹ The Notice indicated that the Zoning Administrator *may* review Certificates of Occupancy to determine whether such certificates have been issued *in error*. There is no statement or indication in the Notice that either the Zoning Office or Zoning Administrator questioned Mr. Hart's good faith or that either believes that Mr. Hart

¹ The Notice of Revocation used the incorrect address for The George Washington University and incorrectly stated that the property was located in an R-5-A zoning district.
1120 20th Street NW North Building SUITE 700 Washington DC 20036
202 973-2686 202 973-1212 f

misrepresented any disclosures in his application for the Certificate of Occupancy in August 2008.

After receiving the Notice, Mr. Hart provided responsive information to Mr. LeGrant, which is a part of the Office of Zoning file in this matter, the result of which was that Mr. LeGrant re-issued a Certificate of Occupancy to Foggy Bottom Grocery on November 4, 2009. *See* Certificate of Occupancy dated November 4, 2009, marked Exhibit D. The very same day the Certificate of Occupancy was re-issued, Ms. Kahlow had already prepared and filed the present appeal.

WECA Representation and Standing

According to the 2000 US Census, the 20037² zip code had the following profile:

- 12,642 residents of which 55% was female and 45% male;
- 12.6% of the population was over 65; and
- There were 271 single family owner-occupied homes with median value of \$380,900.

More current statistics gathered by realtors indicate the population has grown by 4% while median home sales prices have increased to \$512,000.³ Within the two block area of Foggy Bottom Grocery there are approximately 4,000 residents – including 15 fraternity and sorority houses, student resident halls, six high rise apartments, and numerous businesses.

The WECA has a seven member Board of Directors (“Board”). Mr. Hart is a member of the WECA Board. Upon information and belief, WECA has a voluntary membership of less than 30 members, all of whom must reside in the District of Columbia and most of whom do *not* live within two blocks of Foggy Bottom Grocery. None of the WECA Board members are adjacent neighbors of Foggy Bottom Grocery. Based on numbers alone, the WECA is not representative of the Foggy Bottom neighborhood.

The WECA is registered with the District of Columbia as a non-profit organization. It is required to have a set of By-Laws. In order to have standing before public bodies, WECA’s actions must be properly authorized by its membership or Board of Directors. In this case, the facts and actions of the WECA Board demonstrate that WECA did not properly convene the Board Meetings, consider motions, or vote, and therefore WECA had no authority to appeal or to authorize either Ms. Kahlow or Jack Batham on behalf of WECA to appeal the zoning Administrator’s action in issuing the Certificate of Occupancy to Foggy Bottom Grocery on November 4, 2009. For an in depth discussion of these issues, *see* the Motion to Reconsider and Challenge to WECA standing before the ABRA, marked Exhibit E.

The WECA Board met on August 10, 2009 and October 3, 2009 (“the Board Meetings”) for the specific purpose of protesting all efforts of Foggy Bottom Grocery to

² http://factfinder.census.gov/home/saff/main.html?_lang=en

³ <http://homes.point2.com/Neighborhood/US/District-of-Columbia/Washington/Foggy-Bottom-Demographics.aspx>

operate as a business.⁴ The evidence shows that in violation of the WECA By-Laws, the Board Meetings were called and conducted in such a way to manipulate the appearance of authority for WECA Secretary Barbara Kahlow to pursue protests and appeals respecting Foggy Bottom Grocery.

Briefly stated:

- In violation of By-Law Article IV, Section 3, the Board Meetings were called by Ms. Kahlow not by the President.
- In violation of Robert's Rules, Sections 10, 20, and 48, the e-mail notices of the Board Meetings unlawfully represented, as if a Special Rule of Order had been properly adopted by WECA, that Mr. Hart was *not* allowed to participate in discussion or any voting on matters to be considered, even though Mr. Hart is a full Board member of WECA. See Exhibit E of Exhibit E.
- In violation of the WECA By-Laws, Article IV, Section 4 and Robert's Rule of Order, Sections 73 and 75, the e-mail notices of the Board Meetings falsely represented that Mr. Hart was properly excluded from discussion or implied that Mr. Hart was terminated from the Board and thereby unable to participate in the Board discussion and vote at the Board Meetings as if a Board action had been properly taken or a Special Rule of Order was in place, which neither had been.

These above noted violations of the By-laws and of Parliamentary procedure are substantial and significant violations of fairness and due process. District of Columbia corporations, including non-profit organizations like WECA, are licensed by the city and are governed by their By-Laws. The By-Laws of an association are intended to provide order and assurance that the Parliamentary body subject to those By-Laws is acting with proper authority. Parliamentary procedure intends to ensure that proceedings are fair and that due process is followed. When a Board of Directors fails to follow its own rules and the rules of Parliamentary process that it adopts by reference, its actions are void *ab initio* and any actions taken are unauthorized and have no force and effect.

The WECA Appeal is Factually Incorrect

The first erroneous statement is that on 11/4/09 the DCRA issued a Certificate of Occupancy for 2140 F. St, NW for a "Retail Grocery Store (sales of cigarettes & medicine with accessory prepared food shop) even though the BZA denied a change.

Neither the Board of Zoning Adjustment nor Zoning Administrator Matt LeGrant denied either the 8/21/08 or the 11/04/09 applications on behalf of Foggy Bottom Grocery for Certificates of Occupancy, which applications were clearly for a grocery store with accessory uses or services.

The second incorrect statement is that the "Present use of Property" is "long vacant one-story grocery."

⁴ In a parallel matter before the ABRA, WECA protested the transfer of the Class B ABRA license from the former owner of Foggy Bottom Grocery to Foggy Bottom Grocery. In that proceeding, after the initial Roll Call hearing, Mr. Hart obtained information that demonstrate that WECA violated its By-Laws in authorizing WECA Secretary Barbara Kahlow to pursue what appears to be any and all protests and appeals in the matters involving Foggy Bottom Grocery.

The building has not been “long vacant.” The Foggy Bottom Grocery building is under renovation and the grocery is temporarily closed for business. The business has a history of over 60 years and the entire building has been used in one way or another for the grocery. The former owner used primarily the basement and first floor for retail sales and the second (or top) floor for office, inventory and/or storage, related to the grocery.

The third incorrect statement is that the “Proposed Use of Property” is “3- story grocery with delicatessen.”

The proposed use is clearing stated on the November 4, 2009 Certificate of Occupancy as:

Retail Grocery Store (sales of cigarettes and medicine) with accessory prepared food shop

The prior owner had a business license for a “Delicatessen” because she sold prepared foods from the store. A Delicatessen License will be required for the sales of prepared foods. Mesco, Inc. and owners prior to Mesco, Inc., had prepared and sold prepared food items from the Foggy Bottom Grocery. The building, as leased, has prepared food service equipment and utilities in the basement level.

The Zoning Administrator considered the facts, law and the equities when he properly issued the November 4, 2009 Certificate of Occupancy.

As noted above, the Foggy Bottom Grocery was grandfathered as if a C-1 property into what is currently an R-5-E zoning district. The regulations provide that when a business is grandfathered into a zone in which its operations are not a matter of right, it is considered a pre-existing, non-conforming property. *See* Zoning Regulation 2003.4. Case law and zoning decisions provide that a nonconforming use is permitted to continue as grandfathered, as long as the grandfathered use is not abandoned.

In C-1 zoning districts certain businesses can expect to be able to operate as a matter of right. *See* Zoning Regulation 701.4. A grocery store may operate as a matter of right in a C-1 zone, as may, for example a bakery, a drug store or pharmacy, off-premises alcohol sales, or a prepared food shop for not more than 18 seating. *Id.* “[A]ccessory uses customarily incidental and subordinate to uses permitted in C-1 Districts” are also allowed, even though a property may be grandfathered into a zoning district. *See* Zoning Regulation 702.4.

Accessory Uses of Nonconforming Properties are Lawful

Although a case-by-case analysis is best, as a general rule, an incidental, subordinate or accessory use is one that is approximately 15% of an operation. *See* BZA Appeal No. 17675 of the Reed-Cooke Neighborhood Association, dated November 13, 2008. Although *changes* in use may require a variance or special exception, *accessory uses are not subject to variances or special exceptions.* *See* McQuillin, The Law of Municipal Corporations Section 25.125 “Primary and accessory uses” (October 2009) and citations. A change in use to a matter of right use can be allowed in non-conforming properties, but may require a variance or special exception. *See generally* BZA Appeal No. 16154 of Ping Lu, Inc., dated October 17, 1997.

The Certificate of Occupancy issued for Foggy Bottom Grocery identifies the uses permitted for the business; all of the uses identified are permitted in C-1 zoning districts, and each use is an accessory use of the premises. Foggy Bottom Grocery is a grocery store with a number of accessory activities intrinsic to grocery stores nationwide and which are listed in the zoning regulations as matter of right uses for C-1 properties. See Zoning Regulation 701.4.

While past decisions respecting properties are relevant, *prior events involving other property owners do not demonstrate the present intent to operate a business that is not lawful in the present or future.* In 1997, Mesco, Inc., the former owner, was preparing pizza and providing seating on site and delivering pizza. These activities led to BZA decision on Application No. 16259, dated April 16, 1998 that stated in part:

FINDINGS OF FACT:

Based on the evidence of record, the Board finds as follows:

1. This is a food delivery service, not just a delicatessen/grocery.

The BZA decision continued:

CONCLUSIONS OF LAW AND OPINION:

The Board concludes that the grocery store is first allowed as a matter-of-right in a C-1 District. *Under Section 2003, if the proposed use is deemed to be a neighborhood facility, the applicant may change that nonconforming grocery store use to another use allowed as a matter of right in the C-1 District.* While the applicant's request is for a delicatessen, the use described at the hearing is one of a pizza delivery service, with about 50 percent of the pizzas prepared being delivered to nearby locations. A food delivery service is first allowed as a matter of right in the C-2-B District under Subsection 721.3(s). It is not allowed as a matter-of-right in a C-1 District. Based on the Board's understanding of the Zoning Regulations, a grocery store cannot be changed to a food delivery service in an R-5-E District without variance relief. The Board believes that the use, as proposed, would impermissibly expand the existing nonconforming use. Finally, the Board concludes that to grant a special exemption for a deli/grocery store, where the actual deli use is that of a pizza delivery service would not be in harmony with the general purpose and intent of the zone plan for the R-5-E District. (Emphasis added.)

The relevance of this order is that *a pizza delivery service* would need a variance, because it would not be a nonconforming use that is not permitted in a C-1 zone. Foggy Bottom Grocery is not contemplating a pizza delivery service. The 1997 decision further stated:

SUMMARY OF EVIDENCE:

9. The D.C. Office of Planning (OP) offered evidence and testimony to support its recommendation that the special exception be granted. *OP found that the change of nonconforming use from a grocery store to a*

delicatessen would not have a significant adverse impact on the area or the character of the neighborhood.” (Emphasis added.)

Delicatessen services generally encompass prepared food options. In the more recent years, it is rare that a grocery store does not offer prepared food or delicatessen options to its customers, incidental to the primary purpose as a grocery. Foggy Bottom Grocery is not considering a *change* of use to allow another or different business to operate out of the building. Rather, approximately 250 square feet of the business premises will be utilized for assembly and service of prepared food options as incidental to grocery items. Notwithstanding the above, the lease between Foggy Bottom Grocery, LLC and The GWU prohibits the premises being used as a restaurant or for café seating or for any other use that is not lawful. The Zoning Administrator also provided clear guidance on the uses that will be permitted.

Application of Laches and Estoppel

Laches is defined as “neglect to assert a right or claim which, taken together with lapse of time and other circumstances cause prejudice to adverse party, operates as a bar in court of equity.” *See Black’s Law Dictionary, Sixth Edition (1990)*. In this instance, WECA’s efforts to attack the August 21, 2008 Certificate of Occupancy arose more than 12 months after it was issued and after hundreds of thousands of dollars had been invested in or committed to the property, leases, contracts with vendors, and renovations. Laches applies because the WECA did not pursue any actions until the renovations to the building commenced and it was clear that resources had been committed and expended.

In addition, the continuing efforts of WECA, to pursue the revocation or other actions on the November 4, 2009 Certificate of Occupancy before the Board of Zoning Adjustment, are subject to estoppel. To show that estoppel is justified, the aggrieved party, in this case Foggy Bottom Grocery, must show: (a) that it acted in good faith; (b) on the affirmative acts of a municipal corporation; (c) made expensive and permanent improvements in reliance on the affirmative acts of the municipal corporation; and (d) the equities strongly favor that party. *Sisson v. District of Columbia Board of Zoning Adjustment*, 805 A.2d 964, 972 (D.C. 2002).

The Zoning Board has previously noted that, “To make a case of Estoppel, [a party] must show that it: (1) acted in good faith, (2) on the affirmative acts of a municipal corporation; (3) made expensive improvements in reliance of the Certificate of Occupancy.” *See BZA Appeal 17109 of Kalorama Citizen’s Association dated November 8, 2008. See also, District of Columbia v. Cahill*, 60 App.D.C. 342, 54 Fed 2d 453 (1931)(City estopped to revoke certificate of occupancy due to the good faith of the parties, the mistakes of the municipal agency, the significant cost and change of position, and the balance of equities in favor of the property owner.)

The facts of this case and the law of estoppel are clear.

Mr. Hart’s Good Faith

In this matter, while negotiating the purchase of the Foggy Bottom Grocery from Mesco, Inc., Mr. Hart acted in good faith to apply for a Certificate of Occupancy from the Zoning Office in August of 2008. After the Zoning Administrator issued a Notice to Revoke the August 21, 2008 Certificate of Occupancy, *which notice indicated it was an*

error on the part of the Zoning Office, Mr. Hart acted promptly to respond to the Zoning Administrator's concerns, with the result that on November 4, 2009 the Zoning Office issued another Certificate of Occupancy.

Reliance on the Actions of the Zoning Office

After receiving the Certificate of Occupancy in August 2008, Mr. Hart undertook substantial and substantive steps in detrimental and reasonable reliance on the actions of the Zoning Office, including purchasing the business and commencing expensive renovations to the building premises. From the street (and from photographs in the Zoning Office file), it is clear that extensive and expensive improvements have been made to the premises since the Zoning Office's issuance of the August 21, 2008 Certificate of Occupancy. In fact, over \$350,000 have been invested in the building renovations alone; there has been no increase in the square footage of the premises. The building renovations, in addition to being subject to the Zoning Office approval, were also subject to the approval of the CFA because of the building's historic nature. The Zoning Office issued the demolition and building permits for the property renovations, has presumably reviewed all plans, and performed all inspections to date, which have met with approval.

Expensive and Extensive Investments Have Been Made

As enumerated above, Mr. Hart and The GWU entered into numerous contracts and made commitments to contractors and the community, sought and received building permits from the Zoning Office and approvals from the CFA in reliance on the Certificate of Occupancy. Mr. Hart also applied for transfer of the Class B Retail License from the Alcoholic Beverage Regulation Administration ("ABRA"), which transfer is pending. Substantial pecuniary and non pecuniary interests of numerous stakeholders, including the District of Columbia and the Zoning Office, are at risk. If construction were to be halted, dozens of contracts, jobs and the future of the business will immediately be placed at risk.

Although we do not believe it was a mistake to issue either the August 21, 2009 or November 4, 2009 Certificates of Occupancy to Foggy Bottom Grocery, if the actions of the Zoning Officer are deemed in error, any error was made within the Zoning Office. Mr. Hart and others have acted in reasonable, yet detrimental, reliance on the acts of the Zoning Office. Action against the Certificate of Occupancy at this late date will cause significant expense and financial loss to many parties, irreparable harm to Mr. Hart, his business, and others, and directly harm the local community and the District of Columbia.

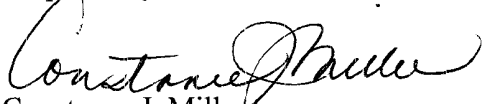
There is Substantial Community Support for Foggy Bottom Grocery

The WECA is a very small membership organization that often opposes community projects without due consideration or community input, but often in the interest of a couple of individuals, as is the case here. Foggy Bottom Grocery has been a neighborhood facility in Foggy Bottom for over 60 years. It hopes to serve local businesses, the neighboring student population, and other local residents. Mr. Hart provided to the Zoning Administrator extensive evidence including petitions signed by residents who live in the buildings adjacent to or across the street from Foggy Bottom

Grocery, which information is available to this Board, as part of the Zoning Administrator's file in this matter.

For the above reasons, the Appeal initiated by the WECA should be dismissed.

Respectfully submitted,



Constance J. Miller

Counsel for Foggy Bottom Grocery

CC: Linda Argo, DCRA Director
Matt LeGrant, DCRA Zoning Administrator
Peter B. Feather, ABRA
The George Washington University
Aramando Irizarry, ANC-2A Chair
WECA c/o Barbara Kahlow

Department of Consumer and Regulatory Affairs

Permit Operations Division

941 North Capitol Street NE Room 2100

Washington DC 20002

Tel. (202) 442 - 4589 Fax (202) 442 - 4862

ORIGINAL

C of O

CERTIFICATE OF OCCUPANCY

THIS PERMIT MUST ALWAYS BE CONSPICUOUSLY DISPLAYED AT THE ADDRESS OF WORK UNTIL
WORK IS COMPLETED AND APPROVED

PERMIT NO. CO0800102

Date: 08/21/2008

Address of Use:		Zipcode:	Zone:	Ward:	Square:	Suffix:	Lot:
2140 F ST NW				2	0081		0811
Description of Occupancy:							
retail,cigarettes and medicine,grocery store,sandwich shop							
Permission Is Hereby Granted To:		Trading As:		Floor(s) Occupied		PERMIT FEE:	
Foggy Bottom Grocery Llc						\$76.00	
Previous Use(s):		Approved Use(1):		Approved Use(2):			
Retail or Wholesale Store - M		Retail or Wholesale Store - M					
Type of Occupancy:		EZA Number:		Occupied Sq. Footage:		Occupant Load:	
Ownership Change				1835			
Conditions/ Restrictions:							
THIS CERTIFICATE SHALL BE POSTED CONSPICUOUSLY ON THE ABOVE PREMISES AT ALL TIMES. IT IS VALID INDEFINITELY, unless an expiration date is stated, VALID ONLY for the premise at the above address or part thereof, and for the purpose(s), indicated above, and IS NOT TRANSFERABLE to another person or premises under ANY conditions. ANY CHANGE in the type of business, ownership of business, or part of premises used therefore, will render this Certificate VOID and a new Certificate must be obtained.							
Director: Linda K. Argo		Permit Clerk: Joseph Bembry		Expiration Date:			
TO REPORT WASTE, FRAUD OR ABUSE BY ANY DC GOVERNMENT OFFICIAL, CALL THE DC INSPECTOR GENERAL AT 1-800-521-1639 FOR CONSTRUCTION INSPECTION INQUIRIES CALL (202) 442-9557 TO SCHEDULE INSPECTIONS PLEASE CALL (202) 442-9557.							

EXHIBIT B

**Excerpt from Shipstead-Luce Appendix to the
Minutes of Meetings of Commission on Fine Arts dated July 16, 2009:**

SL Number: S.L. 09-086

HPA Number: H.P.A. N/A

Address: 2140 F Street, NW

Owner(s): George Washington University - market -

Description: Renovation and window replacement - Concept/permit **RECOMMENDATION:** No objection to issuance of permit for renovations to a historically significant frame commercial structure, as shown in supplemental materials received and dated 14 July 2009. Note: Any subsequent modifications to the approved design, including those made during DCRA technical review, must be resubmitted to the Commission for approval.

See <http://cfa.gov/print/meetings/2009/jul/20090716.html>

B

BUILDING PERMIT

THIS PERMIT MUST ALWAYS BE CONSPICUOUSLY DISPLAYED AT THE ADDRESS OF WORK
UNTIL WORK IS COMPLETED AND APPROVED

Issue Date: 08/18/2009

PERMIT NO. B0907038

Expiration Date: 08/10/2010

Address of Project 2140 F ST NW	Zone: R-5-E	Ward: 2	Square: 0081	Suffix:	Lot: 0811
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Description Of Work:

RENOVATIONS TO EXISTING TOWNHOUSE. REPLACE WINDOWS, REPLACE REAR EXIT STAIRS. REPLACE FIRST FLOOR FRAMING WITH NEW FLOOR. REPLACE DOORS.

Permission is Hereby Granted To: George Washington University	Owner Address: C/O RICE HALL 2121 F ST NW #7TH FL	PERMIT FEE: \$456.00
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Permit Type: Alteration and Repair	Existing Use:	Proposed Use:	Plans:
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Agent Name: Sam Hollen	Agent Address: 3900 JERMANTOWN ROAD, # 300	Existing Dwelling Units:	Proposed Dwelling Units:	No. of Stories:	Floor(s) Involved:
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Conditions/ Restrictions:

This Permit Expires if no Construction is Started Within 1 Year or if the Inspection is Over 1 Year.

All Construction Done According To The Current Building Codes And Zoning Regulations;

As a condition precedent to the issuance of this permit, the owner agrees to conform with all conditions set forth herein, and to perform the work authorized hereby in accordance with the approved application and plans on file with the District Government and in accordance with all applicable laws and regulations of the District of Columbia. The District of Columbia has the right to enter upon the property and to inspect all work authorized by this permit and to require any change in construction which may be necessary to ensure compliance with the permit and with all the applicable regulations of the District of Columbia. Work authorized under this Permit must start within one(1) year of the date appearing on this permit or the permit is automatically void. If work is started, any application for partial refund must be made within six months of the date appearing on this permit.

Director: Linda K. Argo	Permit Clerk: Erika King
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TO REPORT WASTE, FRAUD OR ABUSE BY ANY DC GOVERNMENT OFFICIAL, CALL THE DC INSPECTOR GENERAL AT 1-800-521-1639
FOR CONSTRUCTION INSPECTION INQUIRIES CALL (202) 442-9557
TO SCHEDULE INSPECTIONS PLEASE CALL (202) 442-9557

Department of Consumer and Regulatory Affairs

Permit Operations Division
 341 North Capitol Street NE Room 3100
 Washington DC 20002
 Tel: (202) 442-9557 Fax: (202) 442-9557
 TO SCHEDULE INSPECTIONS PLEASE CALL (202) 442-9557

D

DEMOLITION PERMIT

THIS PERMIT MUST ALWAYS BE CONSPICUOUSLY DISPLAYED AT THE ADDRESS OF WORK UNTIL WORK IS COMPLETED AND APPROVED

PERMIT NO. **D1000016**

Date: 10/15/2008

Address of Project 2140 F ST NW		Zone R-5-E	Ward 2	Square 0081	Section 0811
Permission is hereby Granted To: George Washington University		Owner Address: 2121 F ST NW 17TH FL WASHINGTON DC 20054-0001		PERMIT FEE: \$72.60	
Description of Work: INTERIOR DEMOLITION ONLY					
Type of Demolition: Interior	Type of Walls: Load Bearing	# of Ext. Walls Removed:	Existing # of Stories: 2+3	Area of Disturbed Earth: 50sqft No - Skip Questions (B and C)	
Prop. Remain: Yes	Existing Use: Restaurants - A-2	Proposed Use: Restaurants - A-2			Plans: Yes
Agent Name: Kinoy Laliment	Agent Address: 9480 G MAIN STREET	Existing Dwell Units: 0	Proposed Dwell Units: 0	# of Stories: 20+3	Person(s) Involved:
Conditions/Restrictions: Master work only. Does not include approval for replacement of exterior windows, doors, or other exterior features. This Permit Expires if no Construction is Started Within 1 Year or if the Inspection is Over 4 Years. All Construction Done According To The Current Building Codes And Zoning Regulations. As a condition precedent to the issuance of this permit, the owner agrees to comply with all conditions set forth herein, and to perform the work authorized hereby in accordance with the approved application and plans on file with the District Government and to accede to and comply with all applicable laws and regulations of the District of Columbia. The District of Columbia has the right to enter upon the property and to inspect all work authorized by this permit and to require any change in construction which may be necessary to insure compliance with the permit and with all the applicable regulations of the District of Columbia. Work authorized under this Permit must start within one(1) year of the date appearing on this permit or this permit is automatically void. If work is started, any application for partial refund must be made within six months of the date appearing on this permit.					
Director: Linda K. Argo		Permit Clerk: Lucy H. Harris		Expiration Date: 10/15/2018	
TO REPORT WASTE, FRAUD OR ABUSE BY ANY DC GOVERNMENT OFFICIAL, CALL THE DC INSPECTOR GENERAL AT 1-800-521-1699 FOR CONSTRUCTION INSPECTION INQUIRIES CALL (202) 442-9557 TO SCHEDULE INSPECTIONS PLEASE CALL (202) 442-9557					

Department of Consumer and Regulatory Affairs

Permit Operations Division

941 North Capitol Street NE Room 2100

Washington DC 20002

Tel. (202) 442 - 4589 Fax (202) 442 - 4862

TO SCHEDULE INSPECTIONS PLEASE CALL (202) 442 9557



CERTIFICATE OF OCCUPANCY

THIS CERTIFICATE MUST ALWAYS BE CONSPICUOUSLY DISPLAYED AT THE ADDRESS MAIN ENTRANCE

PERMIT NO. CO1000323

Date: 11/04/2009

Address of Use:

2140 F ST NW

Zone:

R-5-E

Ward:

2

Square:

0081

Suffix:

Lot:

0811

Description of Occupancy:

Retail Grocery Store (sales of cigarettes and medicine) with accessory prepared food shop

Permission Is Hereby Granted To:

Foggy Bottom Grocery, Llc

Trading As:

FO BO GRO

Floor(s) Occupied

3

PERMIT FEE:

\$76.00

Property Owner:

George Washington University

Previous Use(s):

Retail or Wholesale Store - M

Occupant Load:

0

BZA Number:

Type of Occupancy:

Use Change

Occupied Sq. Footage:

1835

Approved Use(1):

Retail or Wholesale Store - M

Conditions/ Restrictions:

Retail Grocery Store (sales of cigarettes and medicine) with accessory prepared food shop

As a condition precedent to the issuance of this Certificate, the owner agrees to conform with all conditions set forth herein, and to maintain the use authorized hereby in accordance with the approved application and plans on file with the District Government and in accordance with all applicable laws and regulations of the District of Columbia. The District of Columbia has the right to enter upon the property and to inspect all spaces whose use is authorized by this Certificate and to require any changes which may be necessary to ensure compliance with all the applicable regulations of the District of Columbia.

Director:
Linda K. Argo

Permit Clerk

Stacie Williams

Expiration Date:

TO REPORT WASTE, FRAUD OR ABUSE BY ANY DC GOVERNMENT OFFICIAL, CALL THE DC INSPECTOR GENERAL AT 1-800-521-1639

FOR CONSTRUCTION INSPECTION INQUIRIES CALL (202) 442-9557

TO SCHEDULE INSPECTIONS PLEASE CALL (202) 442-9557.



Manning Sossamon

October 27, 2009

Attention: Thea Davis and La Verne Fletcher
Alcoholic Beverage Regulation Administration
Office of the General Counsel
941 North Capitol Street, NE, Suite 7200
Washington, DC 20002

RE: Motion to Reconsider and Challenge to WECA standing before the ABRA

Dear Ms. Davis and Ms. Fletcher:

On behalf of Foggy Bottom Grocery, LLC this document is intended as a Motion to Reconsider the September 21, 2009 finding that the West End Citizens Association, Inc. ("WECA") had standing to protest before the Alcoholic Beverage Regulation Administration ("ABRA") the application for transfer of the License No. ABRA -082431 from Mesco, Inc. to Foggy Bottom Grocery, LLC ("the Protest"). Through due diligence and inquiry, it is evident that WECA's actions with respect to the Protest were void *ab initio* and violated the WECA By-Laws,¹ parliamentary procedure according to Robert's Rules of Order ("Robert's Rules")² as adopted by reference by WECA, due process, and therefore, were without authority.

Briefly, the violations of the By-Laws and of Parliamentary procedure in this matter are substantial and significant violations of fairness and due process. When a Board violates its own By-Laws, its actions are void *ab initio* and any actions taken are unauthorized and have no force and effect.³ According to its By-Laws, and, by adoption, Robert's Rules, WECA did not properly convene the certain meetings prior to the Protest, consider motions, or vote, and therefore the WECA as a whole does not have standing in this Protest and Ms. Kahlow and Ms. Maddux were not properly authorized to advance the Protest of the transfer of License No. ABRA-82431.

This Motion is supported by the following Statement of Facts, legal authority and Exhibits.

Statement of Facts

1. Kristopher Hart is the Managing Member of Foggy Bottom Grocery, LLC and also a member of the Board of Directors for WECA.

¹ See WECA By-Laws. Marked Exhibit A.

² See Excerpts from Roberts Rules, marked Exhibit B.

³ *Id.*

Letter for Reconsideration of Standing in Protest
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2. WECA was organized as a community association and registered with the District of Columbia as a non-profit organization in February 2008.
3. WECA adopted a set of by-laws, which are applicable to the Board and to the membership of WECA.⁴
4. According to By-Law Article IV, WECA operates under the direction of a Board of Directors ("the Board").⁵
5. On or about August 10, 2009, the WECA Board consisted of the following persons: Jack Batham, Barbara Kahlow, Sara Maddux, Elizabeth Mills, Terry Lynch, Corrado Palenzona, Sonu Singh, and Kristopher Hart.
6. Jack Batham is the President of WECA and the WECA Board of Directors.
7. Barbara Kahlow is Secretary of WECA and the WECA Board of Directors.
8. Sara Maddux is the Registered Agent for WECA and works closely with Individual Ms. Kahlow.
9. Foggy Bottom Grocery began operating as a grocery store in the central area of Foggy Bottom on or about 1946. Because Foggy Bottom Grocery was operating as a grocery store in 1958 when the District of Columbia zoning laws were established, it was grandfathered as a nonconforming [C-1] property in a zoning district currently classified R-5-E.⁶
10. Beginning in 2006, Mr. Hart, began negotiating with Meseret Bekele for the purchase of Foggy Bottom Grocery from Mesco, Inc.
11. On August 21, 2008 Foggy Bottom Grocery, LLC became registered as a limited liability company in the District of Columbia.
12. Due to the anticipated change of ownership, as Managing Member of Foggy Bottom Grocery, LLC, Mr. Hart applied for and was issued a Certificate of Occupancy on August 21, 2008, for the Foggy Bottom Grocery building located at 2140 F Street NW, Washington DC 20037.⁷ The building is owned by The George Washington University ("GWU").

⁴ See Exhibit A.

⁵ *Id.*

⁶ The building, formerly a row house on F Street NW is located in the Washington, DC zip code 20037 and it has three floors, including a basement, first or ground level floor and a second or upstairs [loft] level. The second level has a rear entrance and small deck off the rear of the building. Mesco, Inc. used all three floors for the grocery business activities to the business, including inventory storage, office activities, receiving, and prepared foods sales. In addition, the basement level is equipped with the utilities access for a full kitchen and the requisite equipment for the preparation of food items.

⁷ See Certificate of Occupancy, marked Exhibit C.

13. After obtaining and in reliance on the Certificate of Occupancy, Mr. Hart acting on behalf of Foggy Bottom Grocery, LLC and:
 - a. Completed negotiations and the purchase of the business known as the Foggy Bottom Grocery from Mesco, Inc.;
 - b. Entered into a 15 year lease for the grocery store with The GWU, owner of the building;
 - c. Engaged and hired architects and obtained building plans;
 - d. Entered into various vendor and supplier contracts pertinent to the operation of a grocery store with adjunct, accessory services and sales of cigarettes, beer and wine, prepared foods and snacks, paper goods, sundries, canned goods, fresh produce drinks candy, cosmetics and over-the-counter medicines;
 - e. Engaged in discussion with local businesses, neighbors, and others promoting the business as a neighborhood grocery that would serve the needs of the nearby residents; and
 - f. Applied for a transfer, with substantial change, of the Mesco, Inc. Class B License No. ABRA-082431 on July 13, 2009. The substantial change includes among other things, extending the hours of operation, but *not* the hours of alcohol sales and renovations to the interior and exterior of the building.
14. In addition, the owner of the Foggy Bottom Grocery building, GWU:
 - a. Applied to the Commission of Fine Arts (“CFA”) for approval of the proposed renovations to the Foggy Bottom Grocery building and on July 16, 2009 that approval was given⁸; and
 - b. Applied to and received from the DC Department of Consumer and Regulatory Affairs (of which the Zoning Office, which had also issued the Certificate of Occupancy is a part), the necessary building permits and co-invested in renovation construction efforts on the building, which renovations are currently approximately two-thirds complete.
15. After Mr. Hart, submitted an application for the transfer of the License No. ABRA-82431, WECA Board held meetings on August 10, 2009 and October 3, 2009 (“the Meetings”). The Meetings were called by Ms. Kahlow.⁹ At the Meetings, the Board improperly authorized Ms. Kahlow and Ms. Maddux to (a) file a Protest to the transfer of the ABRA license from Mesco, Inc. to Foggy Bottom Grocery,¹⁰ and (b) take other steps to disparage and damage Mr. Hart’s business reputation, interfere with Mr. Hart’s business interests, and to influence the regulatory actions of city officials.

⁸ See Excerpt from the Minutes of the CFA marked Exhibit D.

⁹ See E-mail Notices of the Meetings dated July 28, 2009 and September 28, 2009, marked Exhibit E.

¹⁰ Ms. Kahlow actually filed the Protest, signing President Batham’s name and providing her own initials to the signature.

16. On or about August 31, 2009 Ms. Kahlow and Ms. Maddux falsely represented to the ABRA that they had due authority of the WECA Board to protest Mr. Hart's application for transfer of the License No. ABRA-082431.¹¹

WECA By-Laws Require Adherence to Proper Parliamentary Procedure

17. WECA By-Laws provide the following:
- a. Meetings of the Board of Directors are called by the President;¹²
 - b. A Director may be removed for adequate reason by a two-thirds vote of the Board of directors, with the Director being considered for removal provided advance notice of such action, but not participating in the vote¹³; and
 - c. Parliamentary authority, definitions and guidance, and the rules of procedure are governed by the current edition of "*Robert's Rules of Order: Simplified and Applied*," as revised, unless modified by rules prescribed by the Board of Directors.¹⁴

18. Generally, Robert's Rules:

Provides common rules and procedures for deliberation and debate in order to place the whole membership on the same footing and speaking the same language. The conduct of ALL business is controlled by the general will of the whole membership - the right of the deliberate majority to decide. Complementary is the right of at least a strong minority to require the majority to be deliberate - to act according to its considered judgment AFTER a full and fair "working through" of the issues involved. Robert's Rules provides for constructive and democratic meetings, to help, not hinder, the business of the assembly. Under no circumstances should "undue strictness" be allowed to intimidate members or limit full participation.¹⁵

19. According to the WECA By-Laws, the President has a duty to call meetings of the Board. In addition, Robert's Rules, Section 58, provide that the President

¹¹ In a collateral matter, Ms. Kahlow and Ms. Maddux have demanded that the Zoning Administrator revoke the Certificate of Occupancy issued on August 21, 2008. To date the Certificate of Occupancy has not been revoked. On or about October 15, 2009, Ms. Kahlow and Ms. Maddux falsely stated before LaVerne Fletcher, Mediator for the ABRA that the Certificate of Occupancy for the Foggy Bottom Grocery, LLC *had been revoked* and that Mr. Hart *had been served* a letter of revocation. Therefore, Mr. Hart and undersigned counsel believe that Ms. Kahlow and Ms. Maddux were proceeding in bad faith and were interested in using the proceeding to gather "information" to further their unauthorized actions, when they attended the mediation on October 15, 2009 that was intended to resolve the protest.

¹² See Exhibit A, Article IV, Section 3 of the By-Laws.

¹³ See Exhibit A, Article IV, Section 4 of the By-Laws

¹⁴ See Exhibit A, Article IX of the By-Laws.

¹⁵ See <http://robertsrules.org/>.

or Chairman of a parliamentary body has a duty to ensure that the rules of Parliamentary procedure are followed by the pertinent body, in this case the WECA Board and membership.¹⁶

20. According to Robert's Rules, Section 59, the Secretary has a duty to keep accurate records, provide notices of Board meetings properly called by the President of the WECA Board, and respond to reasonable requests for information made by Board and general members.¹⁷
21. According to Robert's Rules, Section 15, a Special Rule of Order must be adopted by a Parliamentary body if there is to be any limitation of discussion of a motion properly brought before a Parliamentary body.¹⁸
22. According to Robert's Rules, Sections 10 (3), 12, 30, and 47, for a Special Rule of Order to apply, it must be properly placed before a parliamentary body, as a Motion for Special Rule of Order.¹⁹ Special Rules of Order limiting debate or discussion of motions require a 2/3 vote of the duly elected and authorized members of the Parliamentary body, in this case the WECA Board.²⁰
23. To exclude, expel or terminate a member from a Parliamentary body, Robert's Rules of Order provides certain order must follow. Likewise, the WECA By-Laws, Article IV Section 4, provide for removal of a direction by two-thirds vote.²¹

Unlawful Board Actions to Limit Discussion, Vote on Motion(s), and Expulsion of Mr. Hart from Participation in WECA Board Meetings on 8/10/09 and 10/3/09

24. In this matter, the Meetings were not called by the President of the Board, but rather by the Secretary, Barbara Kahlow.²² Neither E-mail Notice states that the Meetings are called at the direction of the President.
25. Ms. Kahlow, without Motion and 2/3 vote of the Board, and therefore without proper Board action or authority, stated intentionally, wrongfully, and erroneously in the purported notices of the Meetings, that Mr. Hart was excluded from participation in Board discussion on matters related to Board business to be undertaken at the Meetings, even though he is a member of the WECA Board.²³

¹⁶ See Exhibit B.

¹⁷ See Exhibit B.

¹⁸ See Exhibit B.

¹⁹ The unabridged Robert's Rules of Order also provide that *prior notice* properly given in addition to requiring a 2/3 vote.

²⁰ See Exhibit B, including Question 20.

²¹ See Exhibit B.

²² See Exhibit E.

²³ *Id.*

26. In the notices of the Meetings, Ms. Kahlow intentionally, wrongfully and erroneously stated that Mr. Hart must be excluded because of a conflict of interest requiring recusal, even though Robert's Rules, Section do not require recusal and there is no By-Law requiring exclusion or recusal.²⁴
27. Thereafter, Mr. Hart was intentionally and wrongfully denied participation in the meeting, discussion and vote of the Board at the August 10, 2009 and October 3, 2009 WECA Board Meetings.
28. Board member Correndo Palenzona resigned at that the August 10, 2009 Meeting. Despite his resignation, Mr. Palenzona participated in and is believed to have voted at the August 10, 2009 meeting.²⁵
29. Board member Sonu Singh is the manager / owner of an ABC liquor store, known as Riverside Liquor, located within a blocks of Foggy Bottom Grocery.²⁶ Despite Mr. Singh's pecuniary interest in the granting of ABRA licenses to neighborhood competitors, and the granting or revocation of any duly authorized Certificate of Occupancy to a competitor, such as Foggy Bottom Grocery, LLC, he was permitted and encouraged to participate in the discussion and vote of the WECA Board at the Meetings.
30. In the interest of maintaining peace, order and civility, Mr. Hart did not insist on staying at the Meetings from which the Board intentionally and wrongfully excluded him.
31. After intentionally and wrongfully excluding Mr. Hart from participation at the Meetings, the remaining Board members unlawfully considered and voted upon motions brought by Ms. Kahlow and Ms. Maddux.²⁷
32. Due to the improper notice of the Meetings, the intentional and wrongful exclusion of Mr. Hart and the intentional and wrongful limitation on discussion *without* properly considering a Special Rule of Order, the Board unlawfully passed one or more resolutions to authorize Ms. Kahlow and Ms. Maddux to protest the transfer of ABRA-082431.
33. The wrongful notice, limitation on discussion, and exclusion of Mr. Hart from the Meetings renders all actions of the Board void *ab initio*.²⁸
34. The statements made to the ABRA by Ms. Kahlow on behalf of the Board that the Board vote on August 10, 2009 was unanimous, are false and contrived.

²⁴ See Robert's Rules, Exhibit B; WECA By-Laws, Exhibit A.

²⁵ See Unrevised Minutes of the 8/10/09 Meeting, marked Exhibit E.

²⁶ Mr. Singh is believed to be the owner operator of other ABC liquor stores in the District of Columbia and in Virginia, also.

²⁷ See Minutes of the 8/10/09 Meeting, marked Exhibit F.

²⁸ See Exhibits A and B.

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Had the Meetings been properly noticed, attended, and participated in, the Board's action would have been lawful. However, any proper vote would not necessarily have been unanimous. Although Parliamentary procedure permits that a member of a Parliamentary body *may elect to recuse him or herself from a vote on a matter*, such a member is not required to recuse him or herself and, therefore, had Mr. Hart been permitted to participate in the discussion, he could have voted against what appears to have been the Board's unlawful action.²⁹

Discussion

Corporations are governed by their by-laws.³⁰ The By-Laws of an association are intended to provide order and assurance that the Parliamentary body subject to those By-Laws is acting with proper authority.³¹ Parliamentary procedure intends to ensure that proceedings are fair and that due process is followed. When a Parliamentary body fails to follow its own rules and the rules of Parliamentary process that it adopts by reference, then its putative actions cannot stand.³²

The By-Laws of the WECA adopt Robert's Rules of Order by reference as a supplement to the WECA by-laws. Therefore, by adopting Robert's Rules of Order, the WECA is likewise governed by Robert's Rules of Order. It is evident from the Exhibits, that the WECA Board, and in particular the President and Secretary acted improperly in pursuing the following actions:

- In violation of By-Law Article IV, Section 3, the Meetings were not called by the President, they were called by Ms. Kahlow.³³
- In violation of Robert's Rules, Sections 10, 20, and 48, the e-mail notices of the Meetings falsely represented as if a Special Rule of Order had been adopted that discussion of the issues the Ms. Kahlow and Ms. Maddux intended to present to the Board, including the Protest being considered by this Board, were to be limited.³⁴
- In violation of the WECA By-Laws, Article IV, Section 4 and Robert's Rule of Order, Sections 73 and 75, the e-mail notices of the Meetings falsely represented that Mr. Hart was properly excluded from discussion or terminated from the Board and thereby unable to participate in the Board discussion and vote at the Meetings as if a Board action had been properly taken, which it had not been.³⁵

²⁹ See Exhibit B, Question 9.

³⁰ See DC Code Sections 29-301.02(5) and 301.13.

³¹ See DC Code Section 29-301.2(5) which states: "Bylaws" means the code or codes of rules adopted for the regulation or management of the affairs of a corporation irrespective of the name or names by which such rules are designated.

³² See Robert's Rules, Section 47, Exhibit B.

³³ See Exhibit A.

³⁴ See Exhibit B and E.

³⁵ See Exhibits A, B and E.

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In violation of the WECA By-Laws, Article IV, Section 4 and Robert's Rule of Order, Sections 73 and 75, Mr. Hart was wrongfully excluded from the Meetings and discussion was wrongfully and intentionally limited.³⁶

The violations of the By-laws and of Parliamentary procedure in this matter are substantial and significant violations of fairness and due process. WECA President Batham failed to adhere to his duties under the WECA By-laws and Robert's Rules; WECA Secretary Kahlow flagrantly violated her duties under the WECA By-laws and Robert's Rules. According to its own by-laws, and, by adoption, Robert's rules of Order, WECA did not properly convene the Meetings, consider motions, or vote, and therefore Ms. Kahlow and Ms. Maddux were not properly authorized to Protest of the transfer of license ABRA-82431. When a Board violates its own By-Laws its actions are void *ab initio* and any actions taken are unauthorized and have no force and effect.³⁷

Furthermore, the statements upon which the ABRA relied in making its determination of standing at the Roll Call hearing are false. The statements made by WECA in its protest dated August 31, 2009 are false because the statements misrepresented the authority of the Board and the unanimity of the alleged vote. Making a false statement in submissions to the Mayor, which includes a submission to an office or agency, under the Mayor's authority, is a crime pursuant to DC Code Section 29-301.109.

Conclusion

Therefore, based upon the above facts, legal authority, discussion, and evidence contained in the attached Exhibits, Foggy Bottom Grocery, LLC moves that the WECA protest be dismissed for lack of standing.

Respectfully Submitted,

/CJM/

Constance J. Miller
Attorney for Foggy Bottom Grocery

³⁶ See Exhibits A and B.

³⁷ See Robert's Rules, Section 47, Exhibit B.

BY-LAWS
OF
THE WEST END CITIZENS ASSOCIATION

A NON-PROFIT CORPORATION

ARTICLE I

NAME AND PURPOSE

1. **Name:** The name of the organization is The West End Citizens Association, a not-for-profit corporation organized under the laws of the District of Columbia.
2. **Location:** The principal office of the West End Citizens Association shall be within the District of Columbia.
3. **Nature:** The West End Citizens Association is a non-governmental, voluntary, non-profit, and non-stock corporation.
4. **Purpose:** The purposes for which The West End Citizens Association is organized and operated are as stated in the Articles of Incorporation. The West End boundaries are 15th Street on the East, N Street on the North, Rock Creek and the Potomac River on the West, and the Potomac River on the South.

ARTICLE II

MEMBERSHIP

1. **Eligibility:** Any legal resident of the District of Columbia.
2. **Dues:** The members shall pay annual dues. The annual dues for the first year shall be \$10.00. The amount of the annual dues may thereafter be increased or decreased as set by the Board of Directors. A written notice of the amount and the due date for renewal of dues shall be sent to each member annually to be paid on or before January 1st. Any member who fails to pay annual dues by October 1st shall be deemed suspended from membership without action by the West End Citizens Association. A member suspended for nonpayment of dues shall be restored to full membership on payment of all indebtedness.

ARTICLE III

MEETINGS

1. **Membership Meetings:** The membership of the The West End Citizens Association shall meet at least once during each calendar year quarter at a date, time, and place to be determined by the Board.

2. **Special Meetings:** Special meetings of The West End Citizens Association shall be held on the written request of ten (10) members filed with the President or on the call of the President; provided, however, a written notice stating the purpose of the meeting shall be mailed to each of the members at least ten (10) days previous to the day of the meeting.
3. **Notice:** The West End Citizens Association shall provide notice to be mailed by a designated Board Member of a membership meeting to each active member at least ten (10) days before a meeting. This notice requirement is suspended if the President calls an emergency meeting of the membership.
4. **Quorum:** The presence of at least ten (10) active members or of at least ten percent of the active members, whichever is greater, is required before action can be taken at a Membership or Special meeting.
5. **Voting:** At each meeting, each active in good standing member is entitled to one vote. A simple majority of those voting controls a decision unless required otherwise by these By-Laws, by D.C. law, or by rules of procedure adopted beyond these By-Laws. Members may not vote by proxy.

ARTICLE IV

BOARD OF DIRECTORS

1. **Board of Directors:** There shall be 5 members of the Board of Directors who shall serve staggered two-year terms. The Board may, at any time, increase or decrease the number of directors of the Corporation who shall be elected by the Board and shall serve until the next annual election by the active membership. The initial directors of the Corporation shall be named in the Certificate of Incorporation.
2. **Authority:** The Board of Directors supervises, directs, and controls the policies and programs of The West End Citizens Association. The day-to-day oversight of the activities and programs of The West End Citizens Association shall be administered by the President, consistent with any policies established by the Board.
3. **Meetings:** Meetings of the Board of Directors are called by the President. Notice of a meeting of the Board, specifying the business to be conducted, shall be provided to the Directors at least five (5) business days in advance of the meeting. The presence of the majority of the Directors constitutes a quorum; a quorum must be present in order for the Board to take any action. Meetings may take place by a means of a conference telephone or by any other means of communications equipment which allows all persons to hear each other at the same time.
4. **Removal:** A Director may be removed for adequate reason by a two-thirds vote of the Board of Directors, with the Director being considered for removal provided advance notice of such action, but not participating in the vote. The Board of Directors shall fill by appointment any vacancies on the Board.

5. **Written Consent:** Any action that is required at a meeting of the Directors may be taken without a meeting, if a consent in writing, setting forth the action so taken, is sent via U.S. Postal Service or by fax to the designated Board Member, is signed by all members of the Board. Such consent in writing shall have the same force and effect as a unanimous vote of the Board and shall be filed with the corporate Minutes of the Board of Directors' meetings.
6. **Compensation:** Directors shall receive no compensation for their services as Directors, provided that nothing contained in this Section shall be construed to preclude any Director from receiving reimbursement for reasonable expenses actually incurred, subject to prior approval by the Board.

ARTICLE V

OFFICERS

1. **Officers:** The elected officers of The West End Citizens Association are the President, Vice President, Secretary, and Treasurer whose duties are outlined in parliamentary authority.
2. **Election and Term of Officers:** The Board of Directors shall elect the officers from among the Board of Directors. The term of office is (1) year with annual elections.
3. **Vacancies:** If a vacancy occurs, the position will be filled by the Board of Directors by appointment for the unexpired portion of the term.
4. **Delegates:** The West End Citizens Association Board of Directors shall designate two(2) delegates to the Federation of Citizens Association, of which it is a constitutional member, for the same period of time and under the same conditions as officers serve on the Board of Directors.

ARTICLE VI

EMPLOYEES, ETHICS, AND INDEMNIFICATION

1. **Employees:** The Board of Directors may engage employees or outside consultants as necessary.
2. **Conflicts of Interest:** The Board of Directors shall adhere to the adopted conflicts of interest policy. If a Director is found by the Board to have violated or not to have conformed to the conflicts of interest policy, the Director may be subject to removal by the Board in accordance with Article IV, Section 4.
3. **Indemnification:** Directors, officers and other authorized employees or agents shall be indemnified against claims for liability resulting from their official duties in connection with their positions or activities on behalf of the organization.

ARTICLE VII

AMENDMENTS

Amendments: Amendments to these By-Laws may be adopted at any meeting of the Board of Directors at which a quorum is present where notice of the proposed amendments was provided to the Directors in accordance with Article IV, Section 3.

ARTICLE VIII

SEAL

Seal: The corporate seal shall be circular in form and shall have inscribed the name of The West End Citizens Association and the words "District of Columbia" and the words "Corporate Seal."

ARTICLE IX

PARLIAMENTARY AUTHORITY

Parliamentary Authority: Parliamentary authority definitions and guidance and the rules of procedure are governed by the current edition of *"Robert's Rules of Order: Simplified and Applied,"* as revised, unless modified by rules prescribed by the Board of Directors.

ARTICLE X

FISCAL YEAR

Fiscal Year: The fiscal year for The West End Citizens Association is the calendar year.

EXHIBIT B

EXCERPTS FROM ROBERT'S RULES OF ORDER

<http://robertsrules.org/rror--00.htm>

10. Proper Motions to Use to Accomplish Certain Objects. . . . They include all of the Subsidiary Motions [12], which are designed for properly disposing of a question pending before the assembly; . . . Motions, as a general rule, require for their adoption only a majority vote -- that is, a majority of the votes cast, a quorum being present; but motions to suppress or limit debate, or to prevent the consideration of a question, or, without notice to rescind action previously taken, require a two-thirds vote [48]. . . .

(3) *To Suppress Debate.* (a) If it is desired to close debate now and bring the assembly at once to a vote on the pending question, or questions, the proper course is to move, or demand, or call for, the previous question on the motions upon which it is desired to close debate. The motion, or demand, for the previous question should always specify the motions upon which it is desired to order the previous question. If no motions are specified, the previous question applies only to the immediately pending question. It requires a two-thirds vote for its adoption. After it has been adopted, privileged and incidental motions may be made, or the pending questions may be laid on the table, but no other subsidiary motion can be made nor is any debate allowed. If it is lost the debate is resumed. (b) If it is desired to limit the number or length of speeches, or the time allowed for debate, the proper course is to move that the speeches or debate be limited as desired, or that the debate be closed and the vote be taken at a specified time. These motions to limit or close debate require a two-thirds vote for their adoption, and are in order, like the previous question, when any debatable question is immediately pending.

12. Subsidiary Motions are such as are applied to other motions for the purpose of most appropriately disposing of them. . . . The motions affecting the limits of debate may be applied to any debatable question regardless of its privilege, and require a two-thirds vote for their adoption.

30. Limit or Extend Limits of Debate. Motions, or orders, to limit or extend the limits of debate, like the previous question, take precedence of all debatable motions, may be applied to any debatable motion or series of motions, and, if not specified to the contrary, apply only to the immediately pending question. . . . They are undebatable, and require a two-thirds vote for their adoption.

45. Voting. . . . It is a general rule that no one can vote on a question in which he has a direct personal or pecuniary interest. . . . A sense of delicacy usually prevents a member from exercising this right of voting in matters affecting himself except where his vote might affect the result. (*Note: See Commentary following, noted as Question 9.*)

47. Votes that are Null and Void even if Unanimous. No motion is in order that conflicts with the laws of the nation, or state, or with the assembly's constitution or by-laws, and if such a motion is adopted, even by a unanimous vote, it is null and void. . . .

48. Motions requiring more than a Majority Vote. *Majority Vote.* Any legitimate motion not included among those mentioned below as requiring more than a majority vote, requires for its adoption only a majority; that is, more than half of the votes cast, ignoring blanks, at a legal meeting where a quorum is present, unless a larger vote for its adoption is required by the rules of the assembly.

General Consent or Unanimous Vote. By general, or unanimous, or silent, consent the assembly can do business with little regard for the rules of procedure, as they are made for the protection of the minority, and when there is no minority to protect, there is little use for the restraint of the rules, except such as protect the rights of absent members, or the right to a secret vote. . . .

By the legitimate use of the principle that the rules are designed for the protection of the minority, and generally need not be strictly enforced when there is no minority to protect, business may be greatly expedited. . . .

Two-thirds Vote. A two-thirds vote means two-thirds of the votes cast, ignoring blanks which should never be counted. . . .

There has been established as a compromise between the rights of the individual and the rights of the assembly the principle that a two-thirds vote is required to adopt any motion that suspends or modifies a rule of order previously adopted; or prevents the introduction of a question for consideration; or closes, or limits, or extends the limits of debate; or limits the freedom of nomination or voting; or closes nominations or the polls; or deprives one of membership or office. It will be found that every motion in the following list belongs to one of the classes just mentioned.

Motions Requiring a Two-thirds Vote.¹

<i>Limit, or Extend the Limits, of Debate</i>	<u>30</u>
<i>Expel from Membership: it also requires previous notice and trial</i>	<u>75</u>
<i>Depose from Office: it also requires previous notice</i>	

58. Chairman or President. The presiding officer, when no special title has been assigned him, is ordinarily called the Chairman, or the President, . . . If a member of the assembly, he is entitled to vote when the vote is by ballot (but not after the tellers have commenced to count the ballots), and in all other cases where the vote would change the result. . . . The chairman cannot close debate unless by order of the assembly, which requires a two-thirds vote; nor can he prevent the making of legitimate motions by hurrying through the proceedings. . . . But the chair should never adopt such a course merely to expedite business, when the opposition is not factious. It is only justifiable

when it is perfectly clear that the opposition is trying to obstruct business. [See Dilatory Motions, 40].

59. Secretary, or Clerk. The recording officer is variously called Clerk, or Secretary, or Recording Secretary (where there is also a Corresponding Secretary), or Recorder, or Scribe, etc. The secretary is the recording officer of the assembly and the custodian of its records except such as are specifically assigned to others, as the treasurer's books. These records are open, however, to inspection by any member at reasonable times, and where a committee needs any records of a society for the proper performance of its duties, they should be turned over to its chairman. The same principle applies in boards and committees, their records being accessible to members of the board or committee, as the case may be, but to no others.

In addition to keeping the records of the society and the minutes of the meetings, it is the duty of the secretary to keep a register, or roll, of the members and to call the roll when required

In addition to the above duties, when there is only one secretary, it is his duty to send out proper notices of all called meetings, and of other meetings when necessary, and to conduct the correspondence of the society, except as otherwise provided. . . .

73. Right of an Assembly to Eject any one from its Place of Meeting. Every deliberative assembly has the right to decide who may be present during its session; and when the assembly, either by a rule or by a vote, decides that a certain person shall not remain in the room, it is the duty of the chairman to enforce the rule of order, using whatever force is necessary to eject the party.

75. Trial of Members of Societies. Every deliberative assembly, having the right to purify its own body, must therefore have the right to investigate the character of its members. It can require any of them to testify in the case, under pain of expulsion if they refuse.

Question 9:

Isn't it true that a member who has a conflict of interest with respect to a motion cannot vote on the motion?

Answer:

Under the rules in RONR, no member can be compelled to refrain from voting simply because it is perceived that he or she may have some "conflict of interest" with respect to the motion under consideration. If a member has a direct personal or pecuniary (monetary) interest in a motion under consideration not common to other members, the rule in RONR is that he *should not* vote on such a motion, but even then he or she cannot be *compelled* to refrain from voting. [RONR (10th ed.), p. 394, l. 15-25.]

<http://www.robertsrules.com/faq.html>

Question 20:

How can we get rid of officers we don't like before their term is up?

Answer:

It depends. If the bylaws just state a fixed term for the officer, such as "two years," or if they say the officer serves for a specified term "*and* until [the officer's] successor is elected" (or words to that effect), then the group must use formal disciplinary proceedings, which involve the appointment of an investigating committee, preferral of charges by such a committee, and the conduct of a formal trial. The procedure is complex, and should be undertaken only after a careful review of Chapter XX of RONR.

On the other hand, if the bylaws state a term for the office but add "or until [the officer's] successor is elected," or contain other wording explicitly indicating that the officer may be removed before the term expires, then the election can be rescinded (see Chapter 7 of RONR In Brief) and a successor then elected for the remainder of the term.

Of course, if the bylaws themselves establish a procedure for removal from office, that procedure must be followed. [RONR (10th ed.), p. 642-43.]

<http://www.robertsrules.com/faq.html>

EXHIBIT C
CERTIFICATE OF OCCUPANCY

Department of Consumer and Regulatory Affairs
Permit Operations Division
941 North Capitol Street NE Room 2100
Washington DC 20002
Tel. (202) 442 - 4589 Fax (202) 442 - 4862

ORIGINAL

C of O

CERTIFICATE OF OCCUPANCY

THIS PERMIT MUST ALWAYS BE CONSPICUOUSLY DISPLAYED AT THE ADDRESS OF WORK UNTIL
WORK IS COMPLETED AND APPROVED

PERMIT NO. CO0800102

Date: 08/21/2008

Address of Use:	Zipcode:	Zone:	Ward:	Square:	Suffix:	Lot:
2140 F ST NW			2	0081		0811

Description of Occupancy:
retail,cigarettes and medicine,grocery store,sandwich shop

Permission Is Hereby Granted To:	Trading As:	Floor(s) Occupied	PERMIT FEE:
Foggy Bottom Grocery Llc			\$76.00

Previous Use(s):	Approved Use(1):	Approved Use(2):
Retail or Wholesale Store - M	Retail or Wholesale Store - M	

Type of Occupancy:	BZA Number:	Occupied Sq. Footage:	Occupant Load:
Ownership Change		1835	

Conditions/ Restrictions:

THIS CERTIFICATE SHALL BE POSTED CONSPICUOUSLY ON THE ABOVE PREMISES AT ALL TIMES. IT IS VALID INDEFINITELY, unless an expiration date is stated, VALID ONLY for the premise at the above address or part thereof, and for the purpose(s), indicated above, and IS NOT TRANSFERABLE to another person or premises under ANY conditions. ANY CHANGE in the type of business, ownership of business, or part of premises used therefore, will render this Certificate VOID and a new Certificate must be obtained.

Director: Linda K. Argo	Permit Clerk: Joseph Bemby	Expiration Date:
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TO REPORT WASTE, FRAUD OR ABUSE BY ANY DC GOVERNMENT OFFICIAL, CALL THE DC INSPECTOR GENERAL AT 1-800-521-1639

FOR CONSTRUCTION INSPECTION INQUIRIES CALL (202) 442-8557

TO SCHEDULE INSPECTIONS PLEASE CALL (202) 442-9557.

EXHIBIT D

EXCERPT FROM THE SHIPSTEAD-LUCE APPENDIX TO THE MINUTES OF THE

COMMISSION ON FINE ARTS, JULY 16, 2009

SL Number: S.L. 09-086

HPA Number: H.P.A. N/A

Address: 2140 F Street, NW

Owner(s): George Washington University - market -

Description: Renovation and window replacement - Concept/permit

RECOMMENDATION: No objection to issuance of permit for renovations to a historically significant frame commercial structure, as shown in supplemental materials received and dated 14 July 2009. Note: Any subsequent modifications to the approved design, including those made during DCRA technical review, must be resubmitted to the Commission for approval.

See <http://cfa.gov/print/meetings/2009/jul/20090716.html>

EXHIBIT E

E-MAIL NOTICES OF MEETINGS

From: Barbara Kahlow [mailto:Barbara.Kahlow@verizon.net]
Sent: Tuesday, July 28, 2009 12:38 PM
To: 'saramaddux@hotmail.com'; 'Eamills1@aol.com'; 'audettelynych@verizon.net';
'khart@dcrelaxed.com'; 'riversideliquor@gmail.com'
Subject: Special Meeting of the WECA Board

All – There will be a Special Meeting of the WECA Board on 8/10/09 at 6 pm in the Hotel Lombardy at 2019 Pennsylvania Avenue, NW to consider 2140 F Street. Kris Hart is the lessee of this building. He is pursuing substantial changes to the site's prior operation as the Foggy Bottom Grocery. Under the WECA's bylaws and due to his obvious conflict of interest, Kris must recuse himself from any discussion or vote on this issue. However, he is invited to make a short presentation to the Board at this Special Meeting without any questioning by the Board. After his short presentation, he will have to leave the Special Meeting for the rest of the Board's discussion. – Barbara

From: Barbara Kahlow [mailto:Barbara.Kahlow@verizon.net]
Sent: Monday, September 28, 2009 2:49 PM
To: khart@dcrelaxed.com
Subject: REMINDER: Sat 10/3 WECA Board meeting at 11 am at Monroe House

Kris – Consistent with the WECA's bylaws, you will have to leave the room during any discussion of the WECA's protest of the Foggy Bottom Grocery. – Barbara

From: Barbara Kahlow [mailto:Barbara.Kahlow@verizon.net]
Sent: Monday, September 28, 2009 2:47 PM
To: 'saramaddux@hotmail.com'; 'Eamills1@aol.com'; 'audettelynych@verizon.net';
'riversideliquor@gmail.com'
Subject: REMINDER: Sat 10/3 WECA Board meeting at 11 am at Monroe House

All – This e-mail is a reminder about this Sat.'s WECA Board meeting at 11 am at the Monroe House Condominium. Also, I wanted to alert the Board to the mis-information about the WECA in some recent publications (e.g., the 9/21/09 GW Hatchet), including when our last Membership meeting was (on 5/30, i.e., less than 4 mos. ago vs. 6 mos. ago) & the WECA Board composition, including the # of Board members living w/i 5 blocks of the Foggy Bottom Grocery (i.e., over a majority vs. less than a majority). Lastly, on Sat., I will be distributing a revised version of my draft 8/10 Board minutes. – Barbara

EXHIBIT F

THE WEST END CITIZENS ASSOCIATION

Minutes for 8/10/09 WECA Board Meeting

President Batham called the meeting to order at 6:08 PM. All eight Board Members were present.

The Board unanimously approved without change the 7/18/09 minutes. Mrs. Kahlow announced that City Council Chair Vince Gray agreed to speak at a 10/17 WECA Membership meeting which will be held at 2 PM in the recently renovated School Without Walls.

Mr. Hart made a presentation on his plans for the Foggy Bottom Grocery at 2140 F Street, including his 6/11/09 Substantial Change application to the Alcoholic Beverage Control Board. The old Foggy Bottom Grocery operated seven days a week from 10 AM to 10 PM. Mr. Hart's application requests substantially increased operating hours – from 7 AM seven days a week (i.e., 3 hours earlier) to 2 AM Sunday-Thursday and to 3 AM Friday-Saturday (i.e., 5 hours later). In addition, he discussed his plans for sandwiches and pizza “like the GW deli” across from the School Without Walls and a possible delivery service.

After his presentation, Mr. Hart left the meeting at 6:29 PM. Then, the rest of the Board discussed his Substantial Change application and other plans which would require a zoning variance from the Board of Zoning Adjustment (BZA). The Board unanimously passed a resolution to protest the Substantial Change application.

Due to other commitments, Mr. Palenzona resigned from the Board but will continue as a WECA Member. The next Board meeting will on 10/3/09 at 11 AM in the Monroe House Condominium.

The meeting adjourned at 7:06 PM.

Respectfully submitted,

Barbara F. Kahlow
Secretary