

West End Citizens Association
Washington, D.C.

Boundaries: 15th Street on the East • Potomac Park on the South
Rock Creek and the Potomac on the West • N Street on the North

December 15, 2009

Mr. Jamison L. Weinbaum
Director, DC Office of Zoning
441-4th Street, N.W. - Suite 210
Washington, DC 20001

Re: WECA's Response to Foggy Bottom Grocery's 12/2/09 Motion to Dismiss BZA
No. 18031, WECA's 11/10 Appeal of 11/4 Certificate of Occupancy for 2140 F
Street, NW (Square 81, Lot 811)

RECEIVED
D.C. OFFICE OF ZONING
2009 DEC 15 PM 2:02

Dear Mr. Weinbaum:

This letter responds to the Foggy Bottom Grocery's 12/2/09 Motion to Dismiss BZA No. 18031, the 11/10 Appeal by the West End Citizens Association (WECA) of the 11/4 issuance by the Department of Consumer and Regulatory Affairs (DCRA) of a Certificate of Occupancy (CofO) for 2140 F Street, N.W. (Square 81, Lot 811). This CofO improperly expands – without the needed zoning relief by the Board of Zoning Adjustment (BZA) – the use of a limited grandfathered 1-story grocery store in an R-5-E District to a 3-story grocery store with “accessory prepared food shop.”

The 12/2 Motion to Dismiss is filled with factual errors and neither reflects the 12/2 Denial Order by the Alcoholic Beverage Control (ABC) Board of the Foggy Bottom Grocery's 10/27 untimely and unworthy “Motion to Reconsider and Challenge to WECA standing before the ABRA” (which is the 20-page Exhibit E at the end of the 12/2 Motion) nor the 12/9 ABC Board's Protest Hearing.

- **Attachment A** to this letter is the ABC Board's 12/2 Denial Order of the Foggy Bottom Grocery's 10/27 Motion.
- **Attachment B** is the WECA's 14-page 11/3 Response to the Foggy Bottom Grocery's untimely and unworthy 10/27 Motion, including an 11/2 affidavit from the WECA President, which corrects several factor errors in the Motion, and an attachment with “Rebuttals to Selective Statements.”
- **Attachment C** is the WECA's 16-page principal 12/9 testimony (the WECA presented 2 other witnesses as well) at the ABC Protest Hearing. Under the caption “Applicant's Witnesses” on pages 2-3, the WECA indicates that the Foggy Bottom Grocery presented no (zero) testimony or support correspondence from any permanent resident who lives East of 23rd Street, which is the immediately impacted neighborhood and that which the WECA represents. The testimony also speaks to the 3 statutory ABC “appropriateness” issues for proposed Substantial Changes.

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18031
EXHIBIT NO. 13

Post Office Box 58098 • Washington, D.C. 20037-8098

Board of Zoning Adjustment
District of Columbia
CASE NO. 18031
EXHIBIT NO. 13

- **Attachment D** is the WECA's 12/13 Motion to Stay issuance of an ABC Order on the several requested Substantial Changes to a limited grandfathered use in a Residential Zone until a new BZA Order is issued. Examples of the Substantial Changes are: (a) expanded hours of operation (from 10 AM-10 PM to 7 AM-12 AM), (b) expanded number of retail floors (from 1 to 3), and (c) a significant change in use to include on-site food preparation. The immediately prior grandfathered establishment was subject to the BZA's 4/16/98 Denial Order for its proposed change from a grocery to a grocery with a delicatessen. It had a grocery on one floor, one floor of storage, and one floor of offices. Also, the prior grocery only had pre-packaged sandwiches, i.e., no on-site food preparation of freshly made sandwiches, salads, etc. Thus, the WECA believes that BZA review and approval of the several Substantial Changes are needed before action by the ABC Board.
- **Attachment E** is a page-by-page Rebuttal to Selective Statements in the Foggy Bottom Grocery's 12/2 Motion to Dismiss, indicating some of the factual errors.

The WECA asks the Office of Zoning and the BZA to deny the Motion to Dismiss and to proceed with the 2/23/10 BZA hearing.

If any additional information is needed, WECA Secretary Barbara Kahlow can be reached during the day on (202) 965-1083 or at barbara.kahlow@verizon.net.

Sincerely,



John C. Batham
President

Attachments

cc Matt Le Grant, DCRA Zoning Administrator
Charles Brodsky, Acting ABC Board Chair
Louis Katz, GWU (owner of the property)
Constance J. Miller, attorney for Foggy Bottom Grocery (lessee)
Armando Irizarry, ANC-2A Chair

Applicant for Substantial Change
to Retailer's Class B License
at premises
2140 F Street, N.W.
Washington, D.C. 20037

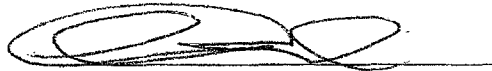
On October 27, 2009, Applicant filed a Motion to Reconsider and Challenge to WECA standing before the ABRA ("Motion"). This matter came before the Alcoholic Beverage Control Board ("Board") for a Protest Status Hearing ("Status Hearing") on October 28, 2009, in accordance with D.C. Official Code § 25-601 (2001). During the Status Hearing, the Applicant argued its Motion before the Board. Also, WECA, voluntarily and briefly, argued its opposition to the Motion before the Board. However, the Board allowed WECA to file a response in opposition to the motion within seven calendar days of the Motion, in accordance with Title 23 of the District of Columbia

Municipal Regulations ("23 DCMR") § 1716.2 (2004). On November 3, 2009, WECA filed its Response to Applicant's 10/27/09 Motion to Reconsider & Challenge to WECA Standing ("Opposition Motion").

Upon consideration of the Applicant's Motion, WECA's Opposition Motion, and the entire record of this matter, the Board, on this 2nd day of December, 2009, hereby **DENIES** Applicant's Motion.

District of Columbia
Alcoholic Beverage Control Board

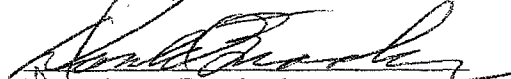
Charles Brodsky, Acting Chairperson



Mital M. Gandhi, Member



Nick Alberti, Member



Donald Brooks, Member



Herman Jones, Member

Pursuant to 23 DCMR § 1719.1 (April 2004), any party adversely affected may file a Motion for Reconsideration of this decision within ten (10) days of service of this Order with the Alcoholic Beverage Regulation Administration, 941 North Capitol Street, N.E., Suite 7200, Washington, D.C. 20002

West End Citizens Association
Washington, D.C.

Boundaries: 15th Street on the East • Potomac Park on the South
Rock Creek and the Potomac on the West • N Street on the North

November 3, 2009

Chairperson Peter B. Feather
Alcohol Beverage Control Board
941 North Capitol Street, N.E. #7200
Washington, DC 20002

Re ABRA-082431, Foggy Bottom Grocery, LLC, 2140 F Street – Response to
Applicant's 10/27/09 "Motion to Reconsider & Challenge to WECA Standing"

Dear Chairperson Feather:

This letter is in response to the Foggy Bottom Grocery's 10/27/09 late-filed Motion to Reconsider the West End Citizens Association's (WECA's) Protestant Standing, which the Board granted on 9/21. Under ABRA's rules (e.g., 23 DCMR §§1601-1603) and ABC case law, late challenges to Protestant status are not allowed, especially since the Applicant did not state any objections during the 9/21 roll call and did not reserve the right at that time to object for a specifically stated reason. Therefore, the WECA asks the Board to deny the untimely motion on procedural grounds. In addition, the WECA believes that the motion is without merit on substantive grounds, as discussed herein. In fact, the motion is an effort to distract from the Substantial Change issues for the Board's consideration.

The WECA is fully compliant with the ABC law, including §25-601(3) relating to the requirements for an incorporated citizens association to have "Standing to file protest against a license":

(3) A citizens association incorporated under the laws of the District of Columbia located within the affected area; provided, the following conditions are met:

- (A) Membership in the citizens association is open to all residents of the area represented by the association; and
- (B) A resolution concerning the license application has been duly approved in accordance with the association's articles of incorporation or bylaws at a duly called meeting, with notice of the meeting being given at least 10 days before the date of the meeting."

Attachment A to this letter is an affidavit from me, the WECA President, stating that the WECA meeting notices which Mrs. Kahlow circulated as Board Secretary were at my direction and were, in fact, in my words. Nonetheless, Robert's Rules of Order provides, "when there is only one secretary, it is his [or her] duty to send out proper notices of all called meetings, and of other meetings when necessary" (Robert's Rules of Order Revised, ¶59 Secretary, or Clerk, p. 246). Therefore, the WECA's meetings were properly noticed. In addition, the unanimous Board vote duly authorized Mrs. Kahlow to present the WECA's protest to the ABC Board.

With regard to recusal by a Board member with a financial stake in a contested case, the WECA's bylaws are pretty standard for non-profit organizations it is generally understood that Board Members with a financial interest in the outcome of a contested case must not participate in Board discussions and must recuse themselves from any vote on the matter. In fact, the WECA follows generally accepted guidance for non-profits:

- The well-regarded Board Source states, "Board members who have an actual or potential conflict of interest should not participate in discussions or vote on matters affecting transactions between the organization and the other group" (<http://www.boardsource.org/Knowledge.asp?ID=3.389>).
- Regarding recusals, the non-profit City Ethics, which provides a centralized location for information and resources for all forms of local government ethic programs, states, "'Acting on and discussing, formally or informally' means that the official should withdraw from any involvement with the matter, including conversations, appearances at meetings or portions of meetings concerned with the matter, and voting on the matter" (<http://www.cityethics.org/mc/ci/recusal>).

Therefore, my request for Board Member Hart to present his case and then excuse himself from the Board's deliberations and vote was appropriate. **Attachment B** is a copy of the final 8/10/09 WECA minutes (vs. the draft appended to the Applicant's motion). The minutes clearly evidence due process, including an opportunity for Mr. Hart, as a business owner vs. as a WECA Board Member, to present his case and provide any handouts.

The WECA very much objects to the Applicant's erroneous false statement claim on p. 8, especially since the Applicant filed three (3) false applications, which are subject to ABC law §25-401(c) ("The making of a false statement, whether made with or without the knowledge or consent of the applicant, shall, in the discretion of the Board, constitute sufficient cause for denial of the application or revocation of the license"):

- On 8/21/08, the Applicant claimed in a Certificate of Occupancy (CofO) application that the "Prior Use" included a "Sandwich Shop" (**Attachment C**). As a consequence, on 10/14/09, the Zoning Administrator revoked the CofO, directing the Applicant to file a Board of Zoning Adjustment (BZA) application. This revocation stated, "DCRA is revoking CofO No. 0800102 effective ten (10) business days from the mailing of this Notice." Contrary to the oral statement by the Applicant in the 10/28 status hearing, the CofO revocation was effective cob 10/28/09. **Attachment D** is a copy of an 11/3 e-mail from the Office of Zoning confirming that it has not yet received from the Foggy Bottom Grocery either an appeal to the BZA of the 10/14 CofO revocation or a zoning variance application to the BZA.
- On 6/19/09, the Applicant claimed in an ABRA "Substantial Change" application that he could operate a "Deli" (**Attachment E**) even though the

BZA unanimously denied this expansion of a limited grandfathered use. In fact, ABRA's placards include "Deli." The Board's rules at 23 DCMR §405.1(e) provide that the Board can approve an application without a CofO if "the zoning of the premises will allow the issuance of the license." Since the BZA Order denied a "deli," the WECA believes the Board must defer to the BZA's ruling.

- On 10/15/09, the Applicant claimed in a Demolition Permit application that the "Existing Use" was a "Restaurant," which was not true. **Attachment F** is a copy of the issued Demolition Permit.

Attachment G presents specific rebuttals to various erroneous statements in the Applicant's late-filed motion. They are presented in order of their appearance in the motion vs. in order of their importance.

Thank you for providing the WECA an opportunity to respond in writing to the spurious allegations and arguments in the Application's untimely motion. If you have any questions about this response, please contact WECA Secretary Barbara Kahlow on 965-1083 or at barbara.kahlow@verizon.net.

Sincerely,


John C. Batham
President

cc Constance J. Miller, Attorney for Foggy Bottom Grocery

Attachment A: AFFIDAVIT OF JOHN C. BATHAM

City of the District of Columbia

Before the undersigned, an officer duly commissioned by the laws of the District of Columbia, on this 2 day of NOVEMBER, 2009, personally appeared John C. Batham who having been first duly sworn depose and say:

1. My name is John C. Batham. I currently reside at 2000 F Street, N.W. #506, Washington, DC 20006.
2. I am President of the West End Citizens Association (WECA), a citizens association incorporated under the laws of the District of Columbia.
3. On July 28, 2009, August 10, 2009, and September 28, 2009 and in accordance with Robert's Rules of Order, I directed WECA Secretary Barbara Kahlow to notice the August 10, 2009 and October 3, 2009 WECA Board meetings. I provided to her the exact language to be included in these notices.
4. I also directed Mrs. Kahlow to sign on my behalf the August 31, 2009 letter of the WECA to Chairperson Peter B. Feather, Alcohol Beverage Control Board captioned "Re ABRA-082431, Foggy Bottom Grocery, LLC, 2140 F Street – Protest of Substantial Change Application (Retail Class "B")." As indicated herein, the WECA Board named Mrs. Kahlow to present the WECA's protest case before the Board.

District of Columbia, ss

John C. Batham, being first duly sworn on oath according to law, deposes and says that he has read the foregoing AFFIDAVIT of John C. Batham by his subscribed, that the matters stated herein are true to the best of his information, knowledge and belief.

John C. Batham
Signature of John C. Batham

SUBSCRIBED and SWORN to before me this 2 day of October, 2009.

[Signature]
Signature of Notary Public
My commission expires November 14, 2011
Notary Public District of Columbia
MCE April 14, 2011

Attachment B:

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 Board Members were present, including President Batham, Vice President Lynch, Secretary Kahlow, Treasurer Maddux, Mr. Hart, Ms. Mills, and Messrs. Palenzona and Singh.

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. Upon request of Mr. Batham, Mr. Hart agreed to provide the Board with written copies of his presentation to the Board.

After his presentation (as a business owner vs. as a WECA Board Member), Mr. Hart left the meeting at 6:29 PM since the WECA's bylaws require his recusal on this issue. 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 by a 7-0-1 vote (Messrs. Batham, Lynch, Palenzona and Singh, Mrs. Kahlow, Ms. Maddux, and Ms. Mills in support with Mr. Hart's recusal) 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

**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION
APPLICATION FOR CERTIFICATE OF OCCUPANCY**

Date 08/21/2008

Receipt No. _____

Application Fee \$33.00 Non Refundable
Certificate Fee is Based on square footage

CO 0800102

Cashier's No. _____

INFORMATION ON PROPOSED BUSINESS	1 Premise Address	<u>2140 F STREET NW</u>		Suite/Room No.	<u>—</u>			
	2 Business Telephone No.	<u>(202) 377-4652</u>	Fax No.	<u>—</u>	Lot	<u>—</u>	Square	<u>—</u>
	3 Trade Name of Business	<u>—</u>						
	4 Is Business Incorporated? Y/N	<u>Y</u>	Partnership? Y/N	<u>—</u>	Sole Proprietor? Y/N	<u>—</u>	New/Existing	<u>—</u>
	5 Corporate Name	<u>FOGGY BOTTOM GROCERY, LLC</u>						
	6 President	<u>KRIS HART</u>	Vice President	<u>—</u>	Secretary	<u>—</u>		
	7 Sole Proprietor	<u>—</u>						
	8 Business Owner's Mailing Address	<u>2112 F STREET NW #101</u> phone # (daytime) <u>—</u>						
INFORMATION ON OCCUPANCY	9 Ownership Change	☒ Partial Occupancy	☐ New Bldg.	☐ Use change	☐ Load Change	☐ BZA No.	<u>—</u>	
	10 Proposed Use of Premises	<u>GROCERY / RETAIL SALES / SANDWICH SHOP</u> <u>CIGARETTES AND MEDICINE / GROCERY STORE NOT SEXUALLY ORIENTED</u>						
	11 Prior Use of Premises	<u>GROCERY STORE (same as proposed)</u>						
	12 Proposed Occupancy Load	<u>15</u>	Square Feet Occupied	<u>1835</u>				
	13 Floors to be Occupied	<u>2</u>	<u>2</u>	Basement?	☒ Yes	☐ No		
	14 Is this Business Sexually Oriented according to the DC Zoning Regulations?	☐ Yes	☒ No					
INFORMATION ON ENTIRE BUILDING	15 Building Owner	<u>GEORGE WASHINGTON UNIV.</u> Telephone No. <u>(202) 994-1000</u>						
	16 Building Owner's Address	<u>—</u>						
	17 Square feet	<u>1835</u>	Numbers of floors	<u>3</u>	Basement	<u>YES</u>		
ATTESTATION & SIGNATURE	I certify that all of the statements on this application are true to the best of my knowledge and belief. I agree to comply with all applicable laws and regulations of the District of Columbia.							
	18 Owner of Business	<u>[Signature]</u>				Date	<u>8.21.08</u>	
	If Authorized Agent for owner of Business (Attach Authorization)							
	19 Agent's Name	<u>—</u>					Date	<u>—</u>
		Print Clearly			Signature			
20 Agent's Address	<u>—</u>							

NOTICE

TO REPORT WASTE, FRAUD OR ABUSE BY ANY D. C. GOVERNMENT OFFICE OR OFFICIAL,
CALL THE INSPECTOR GENERAL AT 1 - 800 - 521 - 1639. ALL CALLS ARE CONFIDENTIAL

OFFICE USE ONLY

ADDRESS	Premise Address <u>2140 F ST N.W</u> Suite/Room No _____
ZONING DIVISION	Zone <u>R5E</u> Overlay District <u>Y I N</u> BZA No _____ BZA approved date _____ Prior Use <u>CIGARETTES + MEDICINE / GROCERY STORE</u> Date of Last Certificate <u>9/18/00</u> Last Certificate No <u>168705</u> Prior BZA No _____ Accepted for filing by <u>[Signature]</u> Date <u>8/21/08</u>
EXAMINERS USE	Use Change ☐ Yes ☒ No Inspections Required ☐ Yes ☒ No By _____ Date _____ Building Permit Required ☐ Yes ☐ No By _____ Date _____ Inspection Fee \$ _____ Issuance Fee \$ _____ By _____ Date _____ Approved for Issuance by <u>[Signature]</u> Date <u>8/21/08</u>
C of O INSPECTION	Date of scheduled Certificate of Occupancy Inspection _____ Inspection Status ☐ Approved ☐ Disapproved By _____ Branch _____ Date _____ Inspector's Signature _____ Printed Name _____ Reason for Disapproval _____
C of O APPROVAL	☒ Approved ☐ Denied ☐ Canceled By <u>[Signature]</u> Reason for Denial/Cancellation _____ If Approved, Certificate of Occupancy No. <u>000800102</u> <u>0800102</u> Date of Issuance <u>8/21/08</u> Bldg _____ Electric _____ Plumbing _____ Fire _____ Zoning _____

Attachment D

Barbara Kahlow

From: Barbara Kahlow [Barbara.Kahlow@verizon.net]
Sent: Tuesday, November 03, 2009 9:43 AM
To: 'Nero, Richard (DCOZ)'; 'Moy, Clifford (DCOZ)'
Subject: RE: request for e-status rept on any BZA filing for 2140 F (Sq 81, Lot 811)
Rick – Thank you for your timely e-reply! – Barbara

From: Nero, Richard (DCOZ) [mailto:richard.nero@dc.gov]
Sent: Tuesday, November 03, 2009 9:44 AM
To: Barbara Kahlow; Moy, Clifford (DCOZ)
Cc: Nero, Richard (DCOZ)
Subject: RE: request for e-status rept on any BZA filing for 2140 F (Sq 81, Lot 811)

Dear Barbara,

To date, OZ has not received an application or appeal involving the above-cited property.

Regards,
Rick

Richard S. Nero, Jr.
Deputy Director of Operations, HR Advisor & FOIA Officer
Government of the District of Columbia
Office of Zoning
441 4th Street, N.W., Suite 200-S
Washington, D.C. 20001

Tel: (202) 727-6311
Fax: (202) 727-6072
richard.nero@dc.gov
www.dcoz.dc.gov

From: Barbara Kahlow [mailto:Barbara.Kahlow@verizon.net]
Sent: Monday, November 02, 2009 11:26 AM
To: Moy, Clifford (DCOZ)
Cc: Nero, Richard (DCOZ)
Subject: request for e-status rept on any BZA filing for 2140 F (Sq 81, Lot 811)

Clifford – This e-mail follows up on my phone call a few minutes ago about that status of any recent Board of Zoning Adjustment (BZA) filing(s) for 2140 F Street (Square 81, Lot 811). I called to see if the Foggy Bottom Grocery, which is a tenant (The George Washington University (GWU) is the property owner), filed a BZA application for a variance or an appeal of the Zoning Administrator's 10/14/09 revocation of an improperly issued Certificate of Occupancy (CofO). Time is of the essence for a quick e-reply from you since the Alcohol Beverage Control (ABC) Board gave us 7 calendar days (ending tomorrow) to file a response to a motion.

For your information, we won a unanimous BZA denial in 4/98 (BZA Order No. 16259) for a requested expansion (deli, pizza carryout, etc.) of a limited grandfathered use in a residential zone. Also, FYI, this locale is outside of the GWU campus plan. Thank you. – Barbara (965-1083), on behalf of the West End Citizens Association

11/3/2009

GOVERNMENT OF THE DISTRICT OF COLUMBIA ABRA APPLICATION

DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE
REGULATORY ADMINISTRATION

OFFICIAL USE ONLY

2009 JUN 10 10:35

License Number: ABRA-082431		Date Accepted: 7/13/09		Accepted by: [Signature]		Hearing Date: 7/13/09	
Fees Paid: \$		From	To	Issue Date:	From	To	
Date Approved by Board / /		Initial: →					
Date Denied by Board / /		Initial: →					
Ward/ANC:	☐ New	☐ Transfer (new location)	☒ Transfer With Sale With Substantial Change	☐ Transfer without Sale	☐ Stock Transfer	☐ Storage	☐ Premise
TO BE COMPLETED BY APPLICANT							
1. CATEGORY	2. CLASS	3. TYPE		4. ENTERTAINMENT ENDORSEMENT	5. ENDORSEMENT	6. OTHER TYPES	
☐ Manufacturer ☐ Wholesaler ☒ Retailer	☐ A ☒ B ☐ C ☐ D	☐ Restaurant ☐ Tavern ☐ Nightclub ☐ Hotel	☐ Club ☐ Multi-Purpose Facility ☐ Common Carrier	☐ Entertainment ☐ Dancing ☐ Cover Charge	☐ Sidewalk Cafe ☐ Summer Garden ☐ Tasting ☐ Brew Pub	☐ Safekeeping ☒ 404.2 ☐ 405.1 ☐ No Substantial Change	
7. Number of Seating: 0				8. Number of Hotel Rooms: 0			
9. Applicant (Last Name, First Name, Middle Initial) or Entity FOGGY BOTTOM GROCERY, LLC				10. Trade Name FOGGY BOTTOM GROCERY			
11. Business Address 2140 F ST. NW WASHINGTON, D.C. 20037				12. Mailing Address if different from business SAME			
13. Business Telephone: (202)				14. Fax Number: () N/A		15. Email Address: KHART@FOGBOGEO.COM	
16. Type of Applicant ☐ Sole Proprietor ☐ Corporation ☐ Partnership ☒ LLC ☐ Other (LLP or LP)							
17. List the name of Sole Proprietors and All Partners below.							
KRISTOPHER HART							
CHRISTOPHER KIPLER							
SETH ROSENZWEIG							
18. List all Corporate Officers, LLC Managing Members, General Partners by name and title who have an ownership interest.							
KRISTOPHER HART				Number of Shares		Percent of Interest	
CHRISTOPHER KIPLER							
SETH ROSENZWEIG							
19. List the total number of stocks and shares distributed by the Corporation: Authorized 100 Issued 100							
20. Has there been any administrative action taken against the applicant or any person listed above regarding ABC violations in the District of Columbia or any state? ☐ Yes ☒ No If yes, please explain what administrative actions were taken, location of action, and the disposition.							
21. If applicant is a Sole Proprietor, the individual must sign, if Partnership, each partner must sign, if Corporation, President or Vice President must sign, if LLC, managing member must sign the below certification. Certification: I hereby certify under penalty of perjury that the information in this application is true and correct. I also certify that the above applicant is the true and actual owner of the business.							
Printed name: KRISTOPHER D. HART				Notary Public District of Columbia My Commission Expires 6/30/12			
Signature: [Signature]				Subscribed and sworn to before me on this 10th day of June , 20 09 Notary Public [Signature] My commission expires on _____			
Printed name: _____				Subscribed and sworn to before me on this _____ day of _____, 20____ Notary Public _____ My commission expires on _____			
Signature: _____				Subscribed and sworn to before me on this _____ day of _____, 20____ Notary Public _____ My commission expires on _____			
Printed name: _____				Subscribed and sworn to before me on this _____ day of _____, 20____ Notary Public _____ My commission expires on _____			
Signature: _____				Subscribed and sworn to before me on this _____ day of _____, 20____ Notary Public _____ My commission expires on _____			
22. In what language do you need vital documents translated?							

SPECIAL NOTICE

The District of Columbia will provide the appropriate services and auxiliary aids, including sign language interpreters, whenever necessary to ensure effective communication with members of the public who are deaf, hearing impaired or who have other disabilities affecting communications. Requests for services and auxiliary aids should be made at least ten (10) days prior to any scheduled hearing. Please notify the ADA Coordinator at (202) 442-4423.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION**



BUSINESS INFORMATION

1. Business Address: 2140 F St. NW Washington, D.C. 20037			
2. Trade Name FOGGY BOTTOM GROCERY		3. Floor(s) for area of storage 2 ND AND 3 RD	4. Floor(s) of licensed business 1 ST AND 2 ND AND 3 RD
5. Will you be the true and actual owner of the business? ☒ Yes ☐ No If no, please explain in an affidavit.			
6. Will any other business be conducted on the premises? ☐ Yes ☒ No If yes, please explain fully.			
7. Do you have or have you previously held a license for the sale of alcoholic beverages? ☐ Yes ☒ No If yes, please explain.			
8. Will any portion of the premises be used for a dwelling or a lodging house? ☐ Yes ☒ No If yes, is there interior access to the living quarters from the licensed area? ☐ Yes ☐ No			
9. Does any manufacturer, brewery, distiller, wholesaler or solicitor of alcoholic beverages, or any employee thereof, or any other individual or corporations have any financial interest directly or indirectly in this business or any other business holding an ABC License? ☐ Yes ☒ No If yes, please explain fully.			
10. List the hours below:			
Days	a. Hours of Operation	b. Hours of Alcoholic Beverage Sales/Service/Consumption	c. Hours of Live Entertainment occurring or continuing after 6:00 PM
Sunday	From 7 AM To 12 AM	From 10 AM To 10 PM	From To
Monday	From 7 To 12 AM	From 10 To 10	From To
Tuesday	From 7 To 12 AM	From 10 To 10	From To
Wednesday	From 7 To 12 AM	From 10 To 10	From To
Thursday	From 7 To 12 AM	From 10 To 10	From To
Friday	From 7 To 12 AM	From 10 To 10	From To
Saturday	From 7 To 12 AM	From 10 To 10	From To
List the hours for Summer Garden/Sidewalk Café below:			
Days	d. Hours of Operation	e. Hours of Alcoholic Beverage Sales/Service/Consumption	f. Hours of Live Entertainment occurring or continuing after 6:00 PM
Sunday	From To	From To	From To
Monday	From To	From To	From To
Tuesday	From To	From To	From To
Wednesday	From To	From To	From To
Thursday	From To	From To	From To
Friday	From To	From To	From To
Saturday	From To	From To	From To

KDH
9-18-09

11. If you checked the box for ☐ in question 5 in the ABRA Application, initial show that you understand that
your tasting hours may not exceed your approved alcoholic beverage hours. N/A

12. Provide below the name, address and distance (in feet) of the following:

	Name	Address	Distance
School	School without walls HS	2130 G St. NW	1742 Ft.
Public Library	West End Neighborhood Library	1101 24th St. NW	4382 Ft.
Day Care Center	(NW) School	1920 G St. NW	2587 Ft.
Recreation Center	YMCA	1101 17th St. NW	4910 Ft.

13. How were the above distances measured? MAPQUEST

Answer the following if you are an off-premise consumption establishment

14. Is there another ABC licensed establishment of the same class within 400 feet of your establishment? ☐ Yes

☒ No If yes, state name, address and distance.

15. Answer the following if you are applying for a Hotel, Tavern, Restaurant, Night Club, Club, Multi-purpose Facility, Boat or train license.

Describe the nature of operation, including the type of food served, type of entertainment, including nude performance(s), and any goods & services to be provided. If dancing is provided please indicate the dimension of the dance floor(s) and the location(s).

NO SIT DOWN DINING OR CONSUMPTION OF ALCOHOL.
THE FIRST FLOOR HAS A SMALL DELI WITH NO
ALCOHOL. THE SECOND AND THIRD FLOOR HAVE GAMES
BEER AND WINE BUT WILL BE SECTIONED OFF AT 10PM.

16. Answer the following if you are applying for a Restaurant, Hotel, or Tavern License.

If you checked "Cover Charge" in Section 4 of the ABRA application instructions AND have a Certificate of Occupancy over four hundred (400) persons, please provide the following:

- 1) Copy of Public Hall Certificate of Occupancy from the Zoning Administrator; AND
- 2) Copy of Entertainment Endorsement for a Public Hall from the Department of Consumer and Regulatory Affairs.

17. Answer the following if you are a Hotel or Restaurant License.

a. What are your projected gross annual receipts from food sales for the next twelve months (\$)). How did you arrive at this amount?

N/A

b. What are your projected gross annual receipts from alcoholic beverage sales for the next twelve months? (\$) How did you arrive at this amount?

N/A

18. Answer the following if you are applying for a new application or transferring ownership with a substantial change or transferring to a new location.

a. Give a detailed explanation as to what effect your establishment will have on real property values on the relevant locality, section, or portion of the District of Columbia.

There will be no effect on real property values.

b. Give a detailed explanation as to what effect your establishment will have on peace, order, and quiet including noise and litter, on the relevant locality, section or portion of the District of Columbia.

There will be no effect on peace, order, or
quietness.

c. Give a detailed explanation as to what effect your establishment will have upon residential parking needs and vehicular traffic and pedestrian safety.

If applicant is a Sole Proprietor, the individual must sign, if Partnership, each partner must sign, if Corporation, President or Vice President must sign, if LLC, managing member must sign the below certification.

19. Certification: I hereby certify under the penalty of perjury that the information in this application is true and correct. I also certify that the above licensee is the true and actual owner of the business.

Printed name:

KRIS D. HART

~~Cheng Ho Choi~~

Notary Public District of Columbia
My Commission Expires 6/14/08

Signature *K. D. Hart*

Subscribed and sworn to before me
on this 16th day of June, 2007

Cheng Ho Choi
Notary Public

My commission
expires on _____

Printed name: _____

Signature _____

Subscribed and sworn to before me
on this _____ day of _____, 20____

Notary Public

My commission
expires on _____

Printed name: _____

Signature _____

Subscribed and sworn to before me
on this _____ day of _____, 20____

Notary Public

My commission
expires on _____

SPECIAL NOTICE

The District of Columbia will provide the appropriate services and auxiliary aids, including sign language interpreters, whenever necessary to ensure effective communication with members of the public who are deaf, hearing impaired or who have other disabilities affecting communications. Requests for services and auxiliary aids should be made at least ten (10) days prior to any scheduled hearing. Please notify the ADA Coordinator at (202) 442-4423.

Attachment B

Selected Real Property Assessments and Sales in Square 0081

Address	2009 Assessment	2010 Assessment	Earlier Sale	2008 Sale	2009 Sale
2140 F	919,000	919,000			
522-21 st #201	279,940	268,820	12/05 - 340,000		
522-21 st #401	279,940	268,820			
522-21 st #801	279,940	268,820		300,000	
522-21 st #901	279,940	268,820			266,500
522-21 st #504	204,810	197,470	8/05 - 287,000		
522-21 st #208	304,420	291,950	8/05 - 330,000		
522-21 st #708	304,420	291,950		325,000	
522-21 st #808	304,420	291,950			

Source: DC's Office of Tax & Revenue's Real Property Tax Database Search
(<http://otr.cfo.dc.gov/otr/cwp/view,a.1330,q.594345.asp>)

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

D**DEMOLITION PERMIT**THIS PERMIT MUST ALWAYS BE CONSPICUOUSLY DISPLAYED AT THE ADDRESS OF WORK UNTIL
WORK IS COMPLETED AND APPROVEDPERMIT NO. **D1000016**

Date: 10/15/2009

Address of Project: 2140 F ST NW		Zone: R-5-E	Ward: 2	Square: 0081	Suffix:	Lot: 0811
Permission Is Hereby Granted To: George Washington University		Owner Address: C/O RICE HALL 2121 I ST NW #7TH FL WASHINGTON, DC 20052-0001		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+B	Area of Disturbed Earth > 50sqft: No - Skip Questions (B and C)		
Roof Remain: Yes	Existing Use: Restaurants - A-2		Proposed Use: Restaurants - A-2		Plans: Yes	
Agent Name: Kimoy Lalloment	Agent Address: 9669C MAIN STREET	Existing Dwell Units: 0	Proposed Dwell Units: 0	No. of Stories: 20+B	Floor(s) Involved:	
Conditions/ Restrictions: Interior 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 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: Lucretia Hackney		Expiration Date: 10/15/2010		
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.						

Attachment G: Rebuttals to Selective Statements in the Applicant's Motion

- p. 1, 2nd para. – “WECA did not properly convene the certain meetings” – this is **UNTRUE**, as explained in the WECA's response cover letter.
- p. 3, para. 15 – “WECA Board held meetings on August 10, 2009 and October 3, 2009 (“the Meetings”). The Meetings were called by Ms. Kahlow” – this is **UNTRUE**, as explained in the cover letter. The Meetings were called by WECA President Batham (who does not have e-mail) and noticed by Secretary Kahlow.
- p. 4, para. 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” – **UNTRUE**. The WECA's 8/31/09 protest stated “WECA Secretary Barbara Kahlow will be presenting the WECA's protest case before the Board” (p. 4).
- p. 5, para. 24 – “the Meetings were not called by the President of the Board, but rather by the Secretary, Barbara Kahlow” – this is **UNTRUE**, as explained in the cover letter. The meetings were called by WECA President Batham.
- p. 6, para. 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” – this is **UNTRUE**, as explained in the cover letter. WECA President Batham, not Mrs. Kahlow, set the terms for Mr. Hart's recusal.
- p. 6, para. 28 – “Despite his resignation, Mr. Palenzona participated in and is believed to have voted at the August 10, 2009 meeting” – As the final minutes reflect (see Attachment B), Mr. Palenzona resigned at the very end of the meeting. So, his participation was appropriate.
- p. 6, para. 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” – this is **UNTRUE**. The 7-0-1 vote, as reflected in the final minutes (Attachment B), shows that the Board vote was unanimous, with Mr. Hart's recusal.
- p. 7, Discussion, 3rd para. – “the Meetings were not called by the President, they were called by Ms. Kahlow” – this is **UNTRUE**, as explained in the cover letter. The meetings were called by WECA President Batham.
- p. 8, 2nd para. – “WECA Secretary Kahlow flagrantly violated her duties” and “Ms. Kahlow and Ms. Maddux were not properly authorized to Protest” – this is **UNTRUE**.
- p. 8, 3rd para. – “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” – this is **UNTRUE**, as explained herein.

12/9/09 Testimony of Barbara Kahlow
on ABRA-082431, Foggy Bottom Grocery, LLC, 2140 F Street, N.W.

I, Barbara Kahlow, am testifying on behalf of the West End Citizens Association (WECA). The WECA was established in 1910, is one of the oldest citizens organizations in DC, and is the principal community organization in the Foggy Bottom-West End area East of 23rd Street. It is primarily interested in maintaining the quality of life for the existing residential community in Foggy Bottom-West End.

Summary

On 9/21/09, the WECA received "Protestant" status for ABRA Case No. 082431, Foggy Bottom Grocery, LLC, 2140 F Street, N.W. The Applicant is seeking several Substantial Changes for a limited nonconforming use in a Residential zone outside of the George Washington University (GWU) campus plan boundaries. GWU is the owner of the property. The Foggy Bottom Grocery is the tenant.

The long-shuttered facility at 2140 F Street used to be a small grocery store operated seven days a week from 10 AM to 10 PM. At the outset, let me state that the WECA supports this limited use but without any of the requested Substantial Changes.

The new owner of the grocery wants to morph a limited grandfathered use in a Residential zone to a late night establishment. A late night establishment in a Residential zone is entirely inappropriate, especially for maintaining peace, order and quiet. In fact, DC law governing alcohol establishments provides that "No retailer's license shall be issued for, or transferred to, a business operated in a residential-use district as defined in the zoning regulations" (§25-336(a)), i.e., no Retail Class B licenses in a Residential zone. The Alcohol Beverage Control (ABC) Board usually considers cases in a Commercial zone, not a Residential zone. The only reason that this case is before the Board today is that the Foggy Bottom Grocery received a limited grandfathered use from Zoning. There is an interplay between the ABC Board and the Board of Zoning Adjustment (BZA), with the ABC Board deferring to the BZA in many Substantial Change areas since they require zoning Special Exceptions or Variances for establishments in Residential zones.

Despite the DC law prohibition for "No retailer's license ... in a residential-use district," the original 6/19/09 Substantial Change application (accepted by ABRA on 7/13) requested 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). The revised 9/18 Substantial Change application requests a closing time all seven days to 12 midnight (i.e., 2 hours later). Today, the WECA will make the case for why these late night hours are inappropriate on multiple grounds in a Residential zone.

In addition to substantially increased operating hours, the requested Substantial Changes on ABRA's posted notice entail:

- (a) use on three floors as opposed to the prior use on one floor only;
- (b) selling alcohol on two floors as opposed to on one floor only;

- (c) use from 1,000 s.f. to 1,835 (or 1,845) s.f., which is an 84% increase in space; and
- (d) a change in use from a "Grocery Store" to "A retail, grocery store and **sandwich shop** ... with ... a small **deli**" (emphases added), including on-site food preparation (e.g., fresh salads, fresh sandwiches, pizza, etc.) (see ABRA Application #15).

On 4/16/98, the BZA **denied** an application for expanded use from a retail grocery to a grocery and **delicatessen** (BZA No. 16259). The ABC Board's rules at 23 DCMR §405.1(e) provide that the Board can approve an application without a CofO if "the zoning of the premises will allow the issuance of the license." Since the BZA denied a deli, the Board must defer to the BZA's ruling.

The 1998 Zoning Order states, "The granting of such special exception relief requires a showing through substantial evidence that the application can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map [R-5-E District] and that granting the application will not adversely affect the use of neighboring property ... The Board concludes that the applicant has not met the burden of proof. ... The Board believes that the use, as proposed, would impermissibly expand the existing nonconforming use" (p. 3).

On 10/14/09, the Zoning Administrator **revoked** the improperly issued 8/21/08 CofO, stating, "a '**sandwich shop**' ... requires a variance from the Board of Zoning Adjustment before a CofO authorizing such use may be issued" (p. 1). Therefore, the Board cannot approve a sandwich shop without a new application to the BZA and a new Zoning Order.

On 11/4/09 (i.e., a week after the effective date of the CofO revocation), the Zoning Administrator issued a new CofO for a "Retail Grocery Store ... with accessory prepared food shop." **Attachment A** is a copy of an 11/5 *GW Hatchet* newspaper article entitled, "FoBoGro receives deli license," which demonstrates the intention of the Foggy Bottom Grocery to interpret the 11/4 CofO for an "accessory prepared food shop" to mean deli. As a consequence, on 11/10, the WECA **appealed** this CofO to the BZA since it believes that zoning relief would be needed for such an expansion of a limited grandfathered use. The BZA is scheduled to hear the WECA's Appeal on 2/23/10. We ask the ABC Board to await the results of the Appeal to the BZA before approving any of the requested Substantial Changes, which are properly within the purview of the BZA.

In addition, the 1998 BZA Order opined that Variance relief (including having the property owner GWU, not the Foggy Bottom Grocery lessee, meet the 3-part Variance test at 11 DCMR §3103.2) would be required. Neither GWU nor the Foggy Bottom Grocery has submitted an Application to the BZA (see Attachment D to the WECA's 11/3/09 Response to Applicant's 10/27/09 Motion).

Applicant's Witnesses

Before turning to the Protest Appropriateness Issues, let me indicate problems with the Applicant's intended Witnesses and Exhibits, as indicated on its late-filed Protest Information Form (PIF). The PIF indicated three in-person witnesses who would be

subject to cross examination, including two Foggy Bottom Grocery personnel and a GWU Government Relations (i.e., not Real Estate or Operations) employee who lives outside of Foggy Bottom-West End. On Monday, we learned that this GWU employee will not be available for cross examination today and that he does not represent the landlord.

The seven other named supporters, who are expected to be unavailable for cross examination, do not include anyone living in the immediate vicinity of the establishment (including in the six nearby high-rise residential buildings) or with first-hand knowledge of late night noise East of 23rd Street. The five non-GWU witnesses live in Maryland (Jamie Molinelli), outside of Foggy Bottom-West End (Jeremy Pollock, the business owner of Tonic), North of Pennsylvania Avenue and West of 23rd Street (Gary Griffith), or West of 23rd Street (Anne Savage and Eleanor Becker). In addition, the WECA suspects that the petition signatures are largely from GWU students who are not permanent residents of DC and many of whom are under aged 21.

On Monday, we learned that Ms. Savage and GWU undergraduate student Jason Lifton may testify.

Also, the WECA notes that the Applicant's Exhibits (10/28/09 letter from former Foggy Bottom Grocery owner Meseret Bekele and Applicant Exhibit 7's 8/31/07 Basic Business License for a Delicatessen) indicate that the former owner apparently operated in part in violation of the BZA denial Order. Lastly, there are multiple errors in other parts of the case file. An example is that the Foggy Bottom and West End Advisory Neighborhood Commission (ANC-2A) has not yet considered the proposed Substantial Changes (p. 7 of the Protest Investigation Report states, "Mr. Hart stated that he met with Advisory Neighborhood Commission ANC(2A) in September and early November 2009, and received no objections to his proposed substantial changes"). To date, ANC-2A has stated no position and has not taken any action on the proposed Substantial Changes. A second example relates to Applicant Exhibit 5 (which is Exhibit 8 in the Protest Investigation Report), which states that the area immediately East of the establishment is a "Public Alleyway." The WECA's witness Ms. Maddux will indicate that this area, which is without any curb-cut for access, is not a public alleyway.

* * * * *

WECA Protest Issues

As noted in the WECA's 8/31/09 Protest of Substantial Change, the WECA opposes the proposed Substantial Changes due to: (1) the effect of the establishment on real property values; (2) the effect of the establishment on peace, order, and quiet ...; and, (3) the effect of the establishment upon residential parking needs and vehicular and pedestrian safety. WECA Board Members Sara Maddux and Elizabeth Mills live in the Monroe House Condominium in the same Square as the applicant. Both will testify to these adverse effects. In addition, I will be presenting summary evidence in all three areas.

Real Property Values

Foggy Bottom real estate prices have generally followed the economic trend in DC, i.e., recently, they have diminished in value. **Attachment B** is chart – prepared from DC’s Office of Tax and Revenue’s Real Property Tax Database Search – for selected real property assessments and sales in Square 0081, which includes the Foggy Bottom Grocery and the Monroe House Condominium at 522-21st Street. The chart verifies this economic trend. For example, for Monroe House 01 tier units, one sold for \$340,000 in 2005, another for \$300,000 in 2008, and another for \$266,500 in 2009. The chart reflects similar trends for the 04 and 08 tiers. Adding a late-night establishment in a Residential Zone would undoubtedly further diminish these property values since late-night noise would adversely impact the quality of life for long-term community residents.

Peace, Order, and Quiet

Attachment C is a copy of a 6/16/09 e-mail from Foggy Bottom Grocery owner Kris Hart to me in which he commits to no later hours of operation. In addition, he mentions an additional desired Substantial Change for a **food-delivery service**, which was also **denied** in the 1998 BZA Order. He wrote, “The liquor license allows for beer and wine sales, seven days a week from 10 AM to 10 PM. **I would of course not want to amend that license** and follow those guidelines strictly. What I would like to seek as a compromise is to allow me to deliver food and sandwiches later in the evening similar to the Pita Pit model” (emphasis added).

Attachment D are two pages from GWU’s 11/20/09 Foggy Bottom Campus Plan Compliance Report, which show Community Concerns “Complaints by Month and Year from 7/1/07 - 6/30/09” (i.e., the last 2 years and probably under-reported) and by “Types of Complaints: 7/1/08 – 6/30/09” (i.e., the last year). The latter shows that 78% of community complaints relate to Noise. This is especially important because a just-opened GWU dorm is across the street from the establishment.

Residential Parking Needs and Vehicular and Pedestrian Safety

In many testimonies before the Zoning Commission, the WECA has repeatedly expressed concern about improper student parking in the limited on-street residential parking places in this immediate vicinity, including in the 2100 block of F Street. As a consequence, Zoning Order No. 06-11/06-12 for the GWU Campus Plan includes various restrictions (see pp. 44-45, **Attachment E**). The Order states, “The University shall implement the following measures to minimize adverse impacts associated with parking and traffic: ... (d) Student Vehicles: ... ii. The University shall prohibit freshmen and sophomores from bringing cars to the Foggy Bottom / West End Area ... each freshmen and sophomore must provide a signature to indicate he or she has read and understands this parking policy ... In addition, the University shall notify all undergraduate and graduate students that parking is prohibited on the streets adjacent to and surrounding the Foggy Bottom campus.”

In addition, the WECA will oppose any new curb-cut for deliveries or pick-ups since it would reduce the limited number of on-street residential parking places.

Conclusion

The WECA's principal concern is the Peace, Order, and Quiet appropriateness standard but all three appropriateness areas pose potential adverse impacts. The WECA believes that the requested Substantial Changes will adversely affect the quality of life in the surrounding neighborhood, which houses several high-rise apartment buildings (including some in the same city Square) with many elderly residents.

As stated in the WECA's 8/31/09 Protest, the enabling Act behind the zoning regulations indicated that nonconforming uses are to be construed narrowly, with the goal that they eventually be phased out. The DC Court of Appeals stated, "one of the major purposes of the Zoning Regulations, namely, the 'gradual elimination of ... existing [nonconforming] structures.'" The DC Court of Appeals ruled that nonconforming uses are not favored and must be regulated strictly so that the goals of the districting scheme established by the Zoning Commission are not undercut (see pp. 2-3 of WECA's 8/31 Protest for case law citations).

As a consequence, we ask that the Board again approve only a small grocery store selling alcohol which is operated seven days a week from 10 AM to 10 PM and disapprove all of the requested Substantial Changes. Thank you.

[< Back](#) | [Home](#)

FoBoGro owners Daniel Blake, left, Devlin Keating and Kris Hart go over floorplans for the store, which is now slated to open next semester. The team received a new certificate of occupancy, but still faces legal battles regarding their hours of operation.

FoBoGro receives new deli license

By: Gabrielle Bluestone

Posted: 11/5/09

A D.C. agency told the new owners of FoBoGro they could legally operate a deli Wednesday - ending what had been a major point of contention between the new management and a community group protesting the store. But there is still another battle to fight - the two parties remain deadlocked over the store's proposed hours of operation, something that must be resolved before the store may receive an alcohol license.

Kris Hart, a GW alumnus and owner of Relaxed Tans, said Wednesday that he had procured a new certificate of occupancy from the D.C. Department of Consumer and Regulatory Affairs that authorizes the store to operate a delicatessen - something Barbara Kahlow, secretary of the West End Citizens Association, had previously declared to be illegal. Kahlow, who has been an integral part of the protest against the store, declined to comment Wednesday evening.

Hart said he and his partners are happy to get the certificate, and said it shows the support of the D.C. Department of Regulatory and Consumer Affairs. Still, he said the store has always had a certificate allowing a deli.

"We've already had the approval, my original certificate of occupancy was dated on August

21, 2008, so we already had the approvals," Hart said. "But a couple of community members tried to get really loud and really protest us, so we submitted basically a briefing to DCRA. Basically they issued us a certificate in the last certificate's place."

That certificate should help them on Dec. 9 when Hart and his team will sit down for a third time with WECA to negotiate the store's operating hours, an integral part of getting a liquor license. Due to construction, zoning and mediation issues, the store, previously set to open in November, will instead be open for the second semester, Hart said.

"The only reason we were behind was that it took us a long time to get to the point where [we were ready to renovate], and then we were reticent to finish up our work until we clarified with the D.C. government that all the permits that we had and what the business was doing we could continue to

do," Hart said. "We're meeting with the contractors tomorrow morning and going from there we'll have a real good sense of the timeline."

Hart said one of the issues holding the store back from opening was whether the store could legally operate. Hart said Kahlow had testified at the last status hearing Oct. 28 that the store did not have a certificate of occupancy.

"Her standing and her basis for arguing against our liquor license transfer was the fact that we didn't legally occupy the space. Now that issue is cleared up, the zoning administration has chimed in and that's done," Hart said.

Hart and his team, which consists of 2006 GW alumnus Devlin Keating and junior Daniel Blake, hope to keep the store open from from 7 to 2 a.m. on weeknights and until 3 a.m. on weekends, hours that Kahlow has said will be disruptive to the neighborhood.

Hart said the legal battle has taken a toll on the team's preparations.

"I want to work with Ms. Kahlow, but when she decides she's against something, she's really strong about her perspectives," Hart said. "The most frustrating part is here we are wanting to focus on the business. We want to focus on hiring employees, we want to focus on having products, we want to focus on marketing and instead we find ourselves down at the D.C. government."

© Copyright 2009 GW Hatchet

Attachment C

From: Kris Hart [mailto:khart@fobogro.com]
Sent: Tuesday, June 16, 2009 12:26 AM
To: 'Barbara Kahlow'
Cc: 'M. Devlin Keating'; dblake@fobogro.com; 'Sara Maddux'
Subject: RE: Letter to Petition for Extended Hours

Barbara:

I did buy it from the old business. The liquor license allows for beer and wine sales, seven days a week from 10 AM to 10 PM. I would of course not want to amend that license and follow those guidelines strictly. What I would like to seek as a compromise is to allow me to deliver food and sandwiches later in the evening similar to the Pita Pit model.

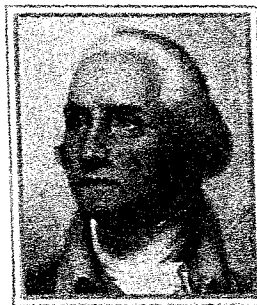
We can definitely discuss all of these things in person if you like on Saturday.

Thanks for your help and support.

Kris

--

Kris Hart
Owner
Foggy Bottom Grocery
2140 F Street, NW
Washington, DC 20037
c. 215.740.2663

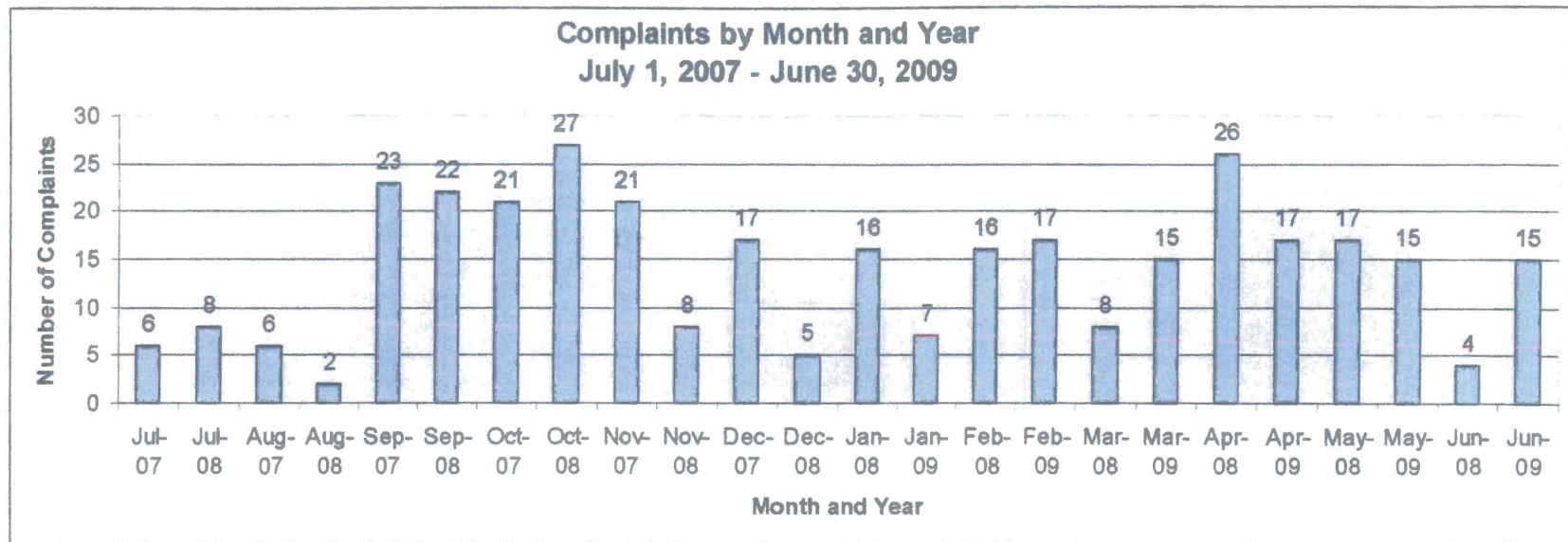


THE GEORGE
WASHINGTON
UNIVERSITY
WASHINGTON DC

**Foggy Bottom Campus Plan Compliance Report
Foggy Bottom Campus Plan (2007)
Zoning Commission Case Nos. 06-11 and 06-12
as directed by Condition C-15**

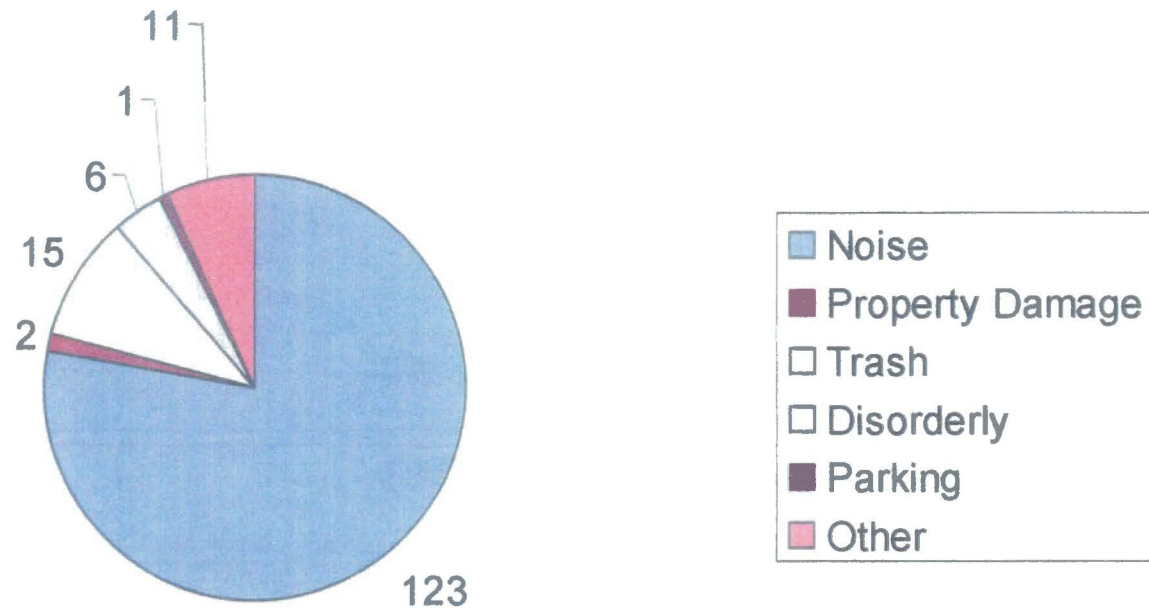
The George Washington University

November 20, 2009



2007 – 2008: Total = 181
2008 – 2009: Total = 158

Types of Complaints July 1, 2008 - June 30, 2009



Total =158

Noise complaints include loud talking, music and parties originating from inside residence hall rooms, private townhouses and private apartments as well as on public streets and sidewalks.

Property Damage complaints involve any theft of or damage to neighborhood property.

Disorderly complaints include public arguments, use of fireworks, playing ball in the street, suspected marijuana use and harassment.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 06-11/06-12

Z.C. Cases No. 06-11 and 06-12

**Applications of George Washington University for Special Exception Approval of a
Campus Plan and for Approval of a First-Stage Planned Unit Development and
Related Zoning Map Amendments for the Foggy Bottom Campus
March 12, 2007**

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing to consider two applications from George Washington University ("Applicant" or "University") concerning its Foggy Bottom campus: Z.C. Case No. 06-11, an application for special exception approval of a new Campus Plan¹ ("Campus Plan") and Z.C. Case No. 06-12, an application for review and first-stage approval of a planned unit development and related amendments to the Zoning Map of the District of Columbia applicable to University-owned properties within the campus boundaries. The Commission considered the application in Case No. 06-11 pursuant to §§ 210, 3035, and 3104 of the Zoning Regulations and the application in Case No. 06-12 pursuant to Chapters 24 and 30 of the Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the applications, subject to conditions.

FINDINGS OF FACT

Applications, Parties, and Hearing

1. On February 16, 2006, the University submitted an application seeking special exception review and approval of a new campus plan for the Foggy Bottom campus. Also on February 16, 2006, in conjunction with the campus plan application, the University submitted an application for first-stage approval of a planned unit development ("PUD") and related amendments to the Zoning Map of the District of Columbia. Both applications were subsequently amended by filings submitted on July 13, 2006 and on August 25, 2006, as well as through several additional submissions made during the

¹ The application sought approval of "The Foggy Bottom Campus Plan: 2006-2025." The Commission understands that the intent of the application was to seek approval of a twenty-year term. As will be explained later, the Commission has chosen to begin that term upon the effective date of this Order.

PARKING & TRAFFIC

C-13. The University shall implement the following measures to minimize adverse impacts associated with parking and traffic:

- a. Support of Mass Transit: The University shall maintain the Metrocheck program offered by the Washington Metropolitan Area Transit Authority ("WMATA") to allow employees to pay for public transportation costs on a pre-tax basis. The University shall maintain an introduction to public transportation program for incoming students that includes provision of WMATA's "SmarTrip" cards to incoming students. The University will work with WMATA to schedule SmarTrip "carding events" at various locations around campus to provide additional information about public transportation to the University community. In the event these programs are discontinued over the term of the campus plan, the University will work to identify alternative programs to support the goal of encouraging mass transit ridership.
- b. Parking: The University shall continue to provide at least 2,800 off-street parking spaces, including proposed spaces to be dedicated for University use on Square 54 and all University-owned parking spaces on Square 122 (specifically including the parking lot and garage spaces at Old Main located at 1922 F Street, N.W.). The number of off-street parking spaces required to be provided may be increased in any subsequent further processing order pursuant to this plan if necessary to mitigate the adverse impact of the approved uses on the University's parking resources. The University shall monitor its utilization of University parking facilities to determine usage patterns and conduct an ongoing assessment of parking needs.
- c. Notice: The University shall notify affected property owners or occupants, ANC 2A, and members of the Advisory Committee in a timely manner of the occurrence of any temporary street closing necessary to accommodate University-related functions. For the purposes of this Condition "affected property owners or occupants" shall be defined in a manner consistent with the notice requirements of DDOT temporary street closure petition procedures.
- d. Student Vehicles:
 - i. The University, through its Office of Parking Services, shall maintain an accurate record of the license plate numbers of motor vehicles kept by students in University parking facilities, to be updated annually at the beginning of each Fall semester.

- ii. The University shall prohibit freshmen and sophomores from bringing cars to the Foggy Bottom / West End Area other than in exceptional circumstances. Exceptional circumstances may include, for example, transportation needs related to a disability or health condition of the student or member of his/her family. Requests for a policy exception due to exceptional circumstances must be documented by the student and approved by the University. If such an exception is granted, the vehicle must be parked in a University parking facility. Any violation of this policy shall be grounds for discipline under the University's Code of Student Conduct. The University shall appropriately sanction any discovered violators and keep a full accounting of all violations and sanctions.
- iii. Notice of this restriction will be included in at least one written document (e.g., the college catalog) mailed to parents of prospective freshmen and returning sophomores. In addition, each freshman and sophomore must provide a signature to indicate he or she has read and understands this parking policy, regardless of whether he or she drives to school or is eligible to have a car on campus. In addition, the University shall notify all undergraduate and graduate students that parking is prohibited on the streets adjacent to and surrounding the Foggy Bottom campus

C-14. The University shall maintain, and periodically update, its comprehensive Transportation Management Plan ("TMP") addressing traffic and parking associated with events on campus that are attended by a significant number of persons not normally associated with the University and the campus. The transportation management plan shall include the following:

- a. Measures to schedule events at times that reduce conflicts with other traffic and other demands for parking.
- b. Measures to discourage travel by private automobile and encourage travel by public transportation.
- c. Measures to encourage persons who drive to park in commercial or University PARKING garages.
- d. Designation of a Transportation Management Coordinator responsible for implementing and monitoring the TMP program.
- e. Promotion of various technology initiatives (currently including, e.g., the use of video conferencing, podcasts, online library resources, the Bb@GW on-line

Attachment F



FOGGY BOTTOM GROCERY EST. 1946

**YOUR NEIGHBORHOOD GROCERY STORE FOR ALL YOUR ON-THE-GO-NEEDS
SERVING PIZZA, SALADS, SANDWICHES, AND MORE...COMING SOON!**

2140 F STREET, NW ★ WASHINGTON, DC 20037 ★ 202.296.0125

West End Citizens Association
Washington, D.C.

Boundaries: 15th Street on the East • Potomac Park on the South
Rock Creek and the Potomac on the West • N Street on the North

December 13, 2009

Acting Chairperson Charles Brodsky
Alcoholic Beverage Control Board
1250 "U" Street, N.W.
Washington, DC 20009

Re ABRA-082431, Foggy Bottom Grocery, LLC, 2140 F Street – Motion to Stay ABC
Order until BZA Order

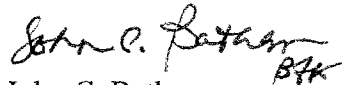
Dear Acting Chairperson Brodsky:

This letter is a Motion to Stay the issuance of an Alcoholic Beverage Control (ABC) Board Order in ABRA-082431, Foggy Bottom Grocery, LLC at 2140 F Street, N.W., until issuance of a Board of Zoning Adjustment (BZA) Order for the accompanying BZA Case No. 18031. Protestant West End Citizens Association (WECA) believes that the ABC Board should await the ruling of the BZA on the appropriateness of the 11/4/09 Certificate of Occupancy (CofO), which expanded a limited grandfathered use in a R-5-E Residential District at 2140 F Street, N.W. (Square 81, Lot 811). The BZA hearing will be held on 2/23/10, i.e., within the ABC Board's 90-day window (after its 12/9/09 protest hearing) to issue an Order. See the attached BZA Public Hearing Notice which was published in the 12/11/09 DC Register.

The prior use at 2140 F Street was a 1-story grocery store (with an upstairs story of office use and a downstairs story of storage) with beer and wine sales and without any on-site prepared food. The prior operating hours were from 10 AM until 10 PM seven days a week. The Substantial Change application (ABRA-082431) would expand this limited grandfathered use in terms of: (a) hours of operation, (b) retail use on three floors as opposed to prior retail use on one floor only, (c) selling alcohol on two floors as opposed to prior use on one floor only, (d) retail use from 1,000 s.f. to 1,845 s.f., and (e) a significant change in use.

Thank you for considering WECA's Motion to Stay. If you have any questions about this response, please contact WECA Secretary Barbara Kahlow on 965-1083 or at barbara.kahlow@verizon.net.

Sincerely,



John C. Batham
President

Attachment

cc Constance J. Miller, Attorney for Foggy Bottom Grocery
Matthew LeGrant, Zoning Administrator

**BOARD OF ZONING ADJUSTMENT
PUBLIC HEARING NOTICE
TUESDAY, FEBRUARY 23, 2010
SECOND FLOOR HEARING ROOM, SUITE 220-S
441 4TH STREET, N.W.
WASHINGTON, D.C. 20001**

TO CONSIDER THE FOLLOWING: The Board of Zoning Adjustment will adhere to the following schedule, but reserves the right to hear items on the agenda out of turn.

**9:30 A.M. TO 12:00 P.M. MORNING HEARING SESSION
1:00 P.M. TO 6:00 P.M. AFTERNOON HEARING SESSION**

A.M.

WARD THREE

18033 **Application of Leon Morse and Amanda Lonsdale**, pursuant to 11
ANC-3C DCMR § 3104.1, for a special exception for a two story rear addition to an
existing one-family detached dwelling under section 223, not meeting the
side yard requirements (section 405), in the R-1-B District at premises
2723 36th Place, N.W. (Square 1933, Lot 8).

WARD SIX

**THIS APPLICATION WAS CONTINUED FROM THE OCTOBER 20, 2009,
PUBLIC HEARING SESSION:**

17978 **Application of Diana Embrey**, pursuant to 11 DCMR § 3104.1, for a
ANC-6C special exception to construct a new accessory garage under section 223,
not meeting the lot occupancy requirements (section 403), in the R-4
District at premises 612 A Street, N.E. (Square 867, Lot 98).

WARD TWO

18028 **Application of United Unions Inc.**, pursuant to 11 DCMR §§ 3014.1 and
ANC-2A 3103.2, for a special exception to allow retail and service uses under
section 518, and variances to allow an addition to a nonconforming office
building exceeding the allowable floor area ratio limitations under
subsections 531.1 and 2001.3, in the SP-2 District at premises 1750 New
York Avenue, N.W. (Square 171, Lot 33).

P.M.

WARD ONE

BZA PUBLIC HEARING NOTICE

FEBRUARY 23, 2010

PAGE NO. 2

18034 **Application of William Basiliko**, pursuant to 11 DCMR § 3104.1, and
ANC-1B 3103.2, for a variance from the lot occupancy requirements under section
403, a variance to enlarge a structure devoted to a nonconforming use
under subsection 2002.5, and a special exception to change a
nonconforming use (beauty salon) to another nonconforming use (art
gallery and community center) under section 2003, in the R-4 District at
premises 1916 9th Street, N.W. (Square 361, Lot 122).

WARD TWO

18031 **Appeal of West End Citizens Association**, pursuant to 11 DCMR §§
ANC-2A 3100 and 3101, from a November 4, 2009, decision of the Zoning
Administrator, Department of Consumer and Regulatory Affairs, to issue
Certificate of Occupancy No. CO1000323, for a grocery store (FoBoGro),
in the R-5-E District at premises 2140 F Street, N.W. (Square 81, Lot 811).

PLEASE NOTE:

Failure of an applicant or appellant to appear at the public hearing will subject the application or appeal to dismissal at the discretion of the Board.

Failure of an applicant or appellant to be adequately prepared to present the application or appeal to the Board, and address the required standards of proof for the application or appeal, may subject the application or appeal to postponement, dismissal or denial. The public hearing in these cases will be conducted in accordance with the provisions of Chapter 31 of the District of Columbia Municipal Regulations, Title 11, and Zoning. Pursuant to Subsection 3117.4 of the Regulations, the Board will impose time limits on the testimony of all individuals.

Individuals and organizations interested in any application may testify at the public hearing or submit written comments to the Board. Individuals and organizations wishing party status in any case before the Board must request that status and should do so in writing not less than fourteen (14) days prior to the date set for the public hearing on the particular application in accordance with Subsection 3106.2. All requests and comments should be submitted to the Board through the Director, Office of Zoning, 441 4th Street, NW, Suite 210, Washington, D.C. 20001. Please include the case number on all correspondence.

FOR FURTHER INFORMATION, CONTACT THE OFFICE OF ZONING AT (202) 727-6311.

MARC D. LOUD, CHAIRMAN, SHANE L. DETTMAN, MERIDITH H. MOLDENHAUER AND A MEMBER OF THE ZONING COMMISSION -----

----- BOARD OF ZONING ADJUSTMENT, BY CLIFFORD MOY, SECRETARY TO THE BZA, JAMISON L. WEINBAUM, DIRECTOR.

BZA PUBLIC HEARING NOTICE

FEBRUARY 23, 2010

PAGE NO. 2

18034 **Application of William Basiliko**, pursuant to 11 DCMR § 3104.1. and
ANC-1B 3103.2, for a variance from the lot occupancy requirements under section
403, a variance to enlarge a structure devoted to a nonconforming use
under subsection 2002.5, and a special exception to change a
nonconforming use (beauty salon) to another nonconforming use (art
gallery and community center) under section 2003, in the R-4 District at
premises 1916 9th Street, N.W. (Square 361, Lot 122).

WARD TWO

18031 **Appeal of West End Citizens Association**, pursuant to 11 DCMR §§
ANC-2A 3100 and 3101, from a November 4, 2009, decision of the Zoning
Administrator, Department of Consumer and Regulatory Affairs, to issue
Certificate of Occupancy No. CO1000323, for a grocery store (FoBoGro),
in the R-5-E District at premises 2140 F Street, N.W. (Square 81, Lot 811).

PLEASE NOTE:

Failure of an applicant or appellant to appear at the public hearing will subject the application or appeal to dismissal at the discretion of the Board.

Failure of an applicant or appellant to be adequately prepared to present the application or appeal to the Board, and address the required standards of proof for the application or appeal, may subject the application or appeal to postponement, dismissal or denial. The public hearing in these cases will be conducted in accordance with the provisions of Chapter 31 of the District of Columbia Municipal Regulations, Title 11, and Zoning. Pursuant to Subsection 3117.4 of the Regulations, the Board will impose time limits on the testimony of all individuals.

Individuals and organizations interested in any application may testify at the public hearing or submit written comments to the Board. Individuals and organizations wishing party status in any case before the Board must request that status and should do so in writing not less than fourteen (14) days prior to the date set for the public hearing on the particular application in accordance with Subsection 3106.2. All requests and comments should be submitted to the Board through the Director, Office of Zoning, 441 4th Street, NW, Suite 210, Washington, D.C. 20001. Please include the case number on all correspondence.

FOR FURTHER INFORMATION, CONTACT THE OFFICE OF ZONING AT (202) 727-6311.

MARC D. LOUD, CHAIRMAN, SHANE L. DETTMAN, MERIDITH H. MOLDENHAUER AND A MEMBER OF THE ZONING COMMISSION -----

----- **BOARD OF ZONING ADJUSTMENT, BY CLIFFORD MOY, SECRETARY TO THE BZA, JAMISON L. WEINBAUM, DIRECTOR.**

Attachment E: Rebuttals to Selective Statements in the Foggy Bottom Grocery's Motion.

- p. 1, #1 – “The WECA does not represent the residents of Foggy Bottom; the WECA does not have standing to Appeal the Decision” – untrue and untrue – the WECA does represent the permanent residents and does have standing, as evident by the fact that it has been accepted as a “Party” in many zoning cases before the Zoning Commission and the BZA.
- p. 1, #2 – “The Appeal is factually incorrect” – untrue.
- p. 1, # 5 – “There is substantial community support for Foggy Bottom Grocery” – untrue – as indicated in the cover letter, in the WECA’s 12/9/09 ABC Board testimony, the WECA stated that the Foggy Bottom Grocery presented no (zero) testimony or support correspondence from any permanent resident who lives East of 23rd Street, which is the immediately impacted neighborhood.
- p. 1, para. 1 under Facts & Timeline – “as if it were in a C-1 zone” – untrue – the Foggy Bottom Grocery is a limited grandfathered use in an R-5-E zone, i.e., it has never had any Commercial (C) zoning.
- pp. 2-3, last para. & ff – “There is no statement or indication in the [Revocation] Notice that either the Zoning Office or Zoning Administrator ... believes that Mr. Hart misrepresented any disclosures in his application for the Certificate of Occupancy in August 2008” – as stated on page 2 of **Attachment B**:

“The WECA very much objects to the Applicant’s erroneous false statement claim on p. 8, especially since the Applicant filed three (3) false applications, which are subject to ABC law §25-401(c) (“The making of a false statement, whether made with or without the knowledge or consent of the applicant, shall, in the discretion of the Board, constitute sufficient cause for denial of the application or revocation of the license”):

 - On 8/21/08, the Applicant claimed in a Certificate of Occupancy (CofO) application that the “Prior Use” included a “Sandwich Shop” (Attachment C). As a consequence, on 10/14/09, the Zoning Administrator revoked the CofO, directing the Applicant to file a Board of Zoning Adjustment (BZA) application.”
- p. 3, para. 3 under WECA Representation and Standing – “Upon information and belief, WECA has a voluntary membership of less than 30 members ... and most of whom do *not* live within two blocks of Foggy Bottom Grocery” – completely untrue (i.e., total fabrication) and untrue.
- p. 3, para. 4 under this section – “WECA did not properly convene the Board meetings, consider motions, or vote, and therefore WECA had no authority to appeal” – untrue – see full discussion in **Attachment B**.

- p. 4, top – “in violation of the WECA By-Laws, the Board Meetings were called and conducted in such a way to manipulate the appearance of authority” – untrue – see full discussion in **Attachment B**.
- p. 4, 1st bullet – “the Board Meetings were called by Ms. Kahlow not by the President” – untrue – see the WECA President’s affidavit in **Attachment B**.
- p. 4, 2nd bullet – “Mr. Hart was *not* allowed to participate in discussion or any voting” – Mr. Hart does not understand recusal by Board Members – also, see the p. 2 discussion in **Attachment B** of standard practice for recusals by Board Members on non-profit Boards.
- p. 4, below bullets – “These above noted violations of the By-Laws and of Parliamentary procedure are substantial and significant violations of fairness and due process” – untrue – there were no violations of the WECA’s bylaws and no violation of parliamentary procedure.
- p. 4, 2nd para. under The WECA Appeal is Factually Incorrect – “Neither the Board of Zoning Adjustment nor Zoning Administrator Matt LeGrant denied either the 8/21/08 or the 11/04/09 applications” – untrue since, the Zoning Administrator issued a 10/14/09 Revocation of the 8/21/08 CofO, stating that it “was issued in error” because “[f]or changes in ownership of structures ... a new Certificate of Occupancy shall be issued in the name of the new owner ... provided there is no proposed change in use” (pp. 1-2).
- p. 5, para. 1 in this section – “The building has not been ‘long vacant’” – the grocery has been closed well over 1 year and was closed many months before any renovation began.
- p. 5, para. 1 - “The former owner used primarily the basement and first floor for retail sales” – untrue – the former owner only used the first floor for retail sales, as so testified in the 12/9/09 ABC hearing; in fact, the prior owner’s application to also use the basement was denied by the BZA (4/16/98 BZA Denial Order No. 16249).
- p. 5, last para. in this section – “Mesco, Inc. had prepared and sold prepared food items” – untrue.
- p. 5, 1st para. in next section – “the Foggy Bottom Grocery was grandfathered as if a C-1 property” – untrue, as indicated above – thus, the following text is not applicable.
- p. 7, para. 1 under Application of Laches and Estoppel – “WECA’s efforts to attack the August 21, 2008 Certificate of Occupancy arose more than 12 months after it was issued” – the WECA had no knowledge of the 8/21/08 CofO until close to the time it filed its 8/31/09

ABC Protest. In fact, the Foggy Bottom Grocery was closed the whole year, not allowing anyone to review the CofO.

- p. 8, 1st para. under There is Substantial Community Support for Foggy Bottom Grocery – untrue, as stated above: “the Foggy Bottom Grocery presented no (zero) testimony or support correspondence from any permanent resident who lives East of 23rd Street, which is the immediately impacted neighborhood” – however, there is support from George Washington University (GWU) students who are not permanent residents.
- p. 8, same para. – “often in the interest of a couple of individuals” – untrue and an outrageous claim.