

**DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**
441 4th Street, N.W.
Washington D.C. 20001

2010 JUN -9 PM 2:05

OFFICE OF ZONING

Appeal of ANC 6B

Appeal No. 18070

DISTRICT OF COLUMBIA'S PRE-HEARING STATEMENT

The Appellee, the District of Columbia Department of Consumer and Regulatory Affairs ("DCRA"), by and through undersigned counsel, respectfully submits its pre-hearing statement in opposition to the March 22, 2010 appeal filed by the Appellant, Advisory Neighborhood Commission 6B ("ANC 6B"). The instant appeal asks the Board to revoke Building Permit no. B0906887 issued to Airports Council International ("ACI") to renovate its property at 136 D St., SE ("the Property") for use as a private club. In support of its appeal, ANC 6B alleges that DCRA's Zoning Administrator erred in approving the issuance of this permit to ACI. This appeal must be denied because 1) it is untimely, and 2) the Zoning Administrator did not err in determining that the Property can be used as a private club.

FACTUAL HISTORY

In response to community concerns that ACI was planning on converting the Property into office space, DCRA placed a 'hold' in its computerized permit system to ensure that a building permit for an unauthorized use would not be issued. On March 27, 2009, the Zoning Administrator received a memorandum from ACI's counsel explaining that ACI, a trade association for airport operators, was intending to renovate the Property for use as a private club. See Memorandum attached to Owner's June 7, 2010 filing as Exhibit D. The memo described

BOARD OF ZONING ADJUSTMENT

District of Columbia

CASE NO. 18070

EXHIBIT NO. 14

Board of Zoning Adjustment
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the intended use of the Property as a private social club for its members and their guests. *See* Owner's Exhibit D at p. 3. The club would offer space for educational sessions, eating, drinking, travel scheduling, networking activities and sleeping accommodations for out of town members. *See* Owner's Exhibit D at p. 3. The Property is a townhouse on Capitol Hill, which after the renovation, would contain a kitchen, a dining room, 3 bathrooms, 2 bedrooms, and 2 studies/libraries on the first and second floors and a kitchen, a bedroom, a study/library and 2 bathrooms in the basement. *See* Owner's Exhibit D at p. 4. The memo also included verification of ACI's status as a non-profit corporation.

On April 24, 2009, after reviewing this information, the Zoning Administrator lifted the "hold." *See* Email of the Zoning Administrator of April 24, 2009 attached hereto as Exhibit A. Although the "hold" was lifted on April 24, DCRA issued a permit for interior demolition on April 9. *See* Permit no. B0904512 attached hereto as Exhibit B. On September 16, 2009, DCRA issued a building permit allowing for "interior alterations and repairs for existing basement apartment. For use as a private club." *See* Permit no. B0906887 attached hereto as Exhibit C. This appeal was stamped as received by the Office of Zoning on March 22, 2010.

Currently, DCRA understands that the private club use has not yet begun as the Property is still under construction. Further, no certificate of occupancy has been issued by DCRA to ACI for the private club use.

ARGUMENT

1) The Appeal must be denied as untimely

Under 11 DCMR § 3112.2(a), an appeal of a decision of the Zoning Administrator must be filed within sixty days from the date the person "reasonably should have had notice or knowledge of the decision complained of." Thus, in order for the Board to have jurisdiction over

this appeal, the Appellant must establish that it could not have reasonably known of the Zoning Administrator's decision to allow ACI to operate a private club at the Property before January 21, 2010 (60 days before the March 22, 2010 appeal was filed).

The Board must deny this appeal, as the evidence overwhelming shows that Appellant was aware of this decision well in advance of January 21. First, Permit no. B0906887 was issued on September 16, 2009. It plainly states that the permit is for "interior alterations and repairs for existing basement apartment. For use as a private club." ACI has asserted that this permit was posted on the Property on or about September 28, 2009. *See* Owner's June 7, 2010 filing at p. 3. Second, Appellant states in its appeal that it was informed that construction was underway on December 8, 2009. *See* Appellant's Appeal at p.1. The appeal also states that a neighbor of the Property informed the Appellant that the building permit was not posted on the Property until early January 2010. *See* Appellant's Appeal at p.1

Under these facts, Appellant should have known and in fact did know about the building permit, the construction, and ACI's intended use of the Property before January 21. Even if it is true that the permit was not posted until early January, the Appellant was aware of the construction and had been informed by DCRA of the proposed private club use by December 8. *See* Appellant's Appeal at p.1. Further, even if the Board decides to use "early January" as the date Appellant should have know about the decision, the appeal is still untimely by more than two weeks. Accordingly, the Board must deny it.

2) The Zoning Administrator did not err in determining that the Property can be used as a private club

Should the Board decide to address the merits of this appeal, it must find that the Zoning Administrator did not err in determining that the Property can be used as a private club. Since

the Property is zoned CAP/R-4, the private club use is permitted as a matter of right. *See* 11 DCMR §§ 330.5(i), 1201.2(a).

Further, based on the information that has been provided to the Zoning Administrator, the use described by ACI fits within the definition of a private club. A private club is defined in the Zoning Regulations as:

Building and facilities or premises used or operated by an organization or association for some common avocational purpose such as, but not limited to, a fraternal, social, educational, or recreational purpose; provided, that the organization or association shall be a non-profit corporation and registered with the U.S. Internal Revenue Service; goods, services, food, and beverages shall be sold on the premises only to members and their guests; and office space and activities shall be limited to that necessary and customarily incidental to maintaining the membership and financial records of the organization.

See 11 DCMR § 199.1.

This definition essentially contains three elements: 1) the property must be used for avocational purposes (with some accessory office space permitted), 2) by a non-profit organization, 3) where the goods and services provided are limited to members and guests. Here, Appellant's objection to the proposed private club is limited to the first element in that Appellant argues that because ACI will provide sleeping accommodations to its members, the use of the Property is akin to a hotel and "is thus 'vocational' rather than 'avocational.'" *See* Appellant's Appeal at p.2.

Appellant's argument fails as case law shows that ACI's proposed use is consistent with the Zoning Regulations and other existing private clubs. The Board has previously held that providing sleeping accommodations is permitted as a part of a private club use. In Application of the Cosmos Club, the Board described the club and the use of the property as follows:

The Cosmos Club is a private club permitted as a matter-of-right in a D/R-5-B or SP-1 District. Its membership approximates 3200 of which 1600 are local members. It has an auditorium which accommodates 150 people. It has five

meeting rooms, three dining rooms and forty-eight transient bedrooms. The Club has daily and monthly activities. The facility is also used for seminars and conferences.

See BZA Application No. 13279 of the Cosmos Club at p.1 (1980).

In that case, the ANC objected to the club's application for a special exception to operate an accessory parking lot on the basis that the dining and lodging services were essentially commercial functions. The Board rejected this argument stating:

The Cosmos Club is a private club. It is permitted as a matter-of-right in a D/R-5-B or SP-1 Districts. It is inherent in its structure as a private club that it will have such amenities as dining assembly and lodging facilities as accessory uses. The Club is not a commercial venture nor a hotel.

See BZA Application No. 13279 of the Cosmos Club at p.4.

In Application of the University Women's Club, the Board also described transient lodging as a part of a private club use of the property:

The present use of the subject site is for a private club. This club, the University Women's Club, is a non-profit organization which provides educational programs for its members holds weekly meetings and luncheons, and provides transient housing for its members in the building. The building has approximately fifteen rooms available for overnight stays in the Washington area.

See BZA Application No. 13740 of the University Women's Club at p.2 (1982).

Further, none of the other uses proposed by ACI are vocational in nature. The use of the Property for socializing, networking, educational sessions, and dining all fit squarely within what the Board has previously accepted as being avocational. *See e.g. BZA Application No. 14113 of the National Republican Club (1984)*(club used for dining, receptions, seminars, and conferences); *BZA Application No. 16815 of Adams Alley, LLC (2002)*(club used for music and arts education for children). Although out of town members will occasionally sleep there, there is no indication that the Property will be used as a hotel or inn as rooms will not be available for rent by the public. *See Owner's Exhibit D at p.3.*

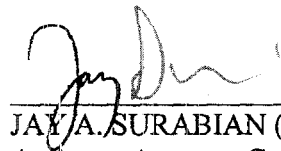
Therefore, the Zoning Administrator did not err in determining that the Property can be used as a private club and this appeal should be denied.

Respectfully Submitted,

PETER J. NICKLES
Attorney General
for the District of Columbia

MELINDA M. BOLLING
Acting General Counsel

June 9, 2010



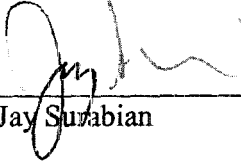
JAY A. SURABIAN (DC Bar # 977657)
Assistant Attorney General
Department Of Consumer And
Regulatory Affairs
Office of General Counsel
1100 4th Street, SW, 5th Floor
Washington, DC 20024
(202) 442-8403 (office)
(202) 442-9447 (fax)
jay.surabian@dc.gov

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Pre-Hearing Statement was served by first class mail, postage prepaid, this 9th day of June 2010, to the following:

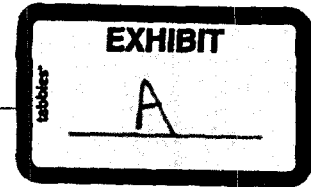
ANC 6B
c/o David Garrison
703 D Street, SE
Washington, DC 20003

Richard L. Aguglia, Esq.
Hunton & Williams LLP
1900 K Street, NW
Washington, DC 20006



Jay Surabian

Surabian, Jay (DCRA)



From: Aguglia, Richard [raguglia@hunton.com]
Sent: Friday, April 24, 2009 5:27 PM
To: LeGrant, Matt (DCRA)
Cc: mkemp@aci-na.org; Joseph, Rochelle (DCRA); Pemberton, Reuben (DCRA)
Subject: RE: 136 D St SE

Thanks you for lifting the hold, much appreciated. Regards, Richard

From: LeGrant, Matt (DCRA) [mailto:matt.legrant@dc.gov]
Sent: Friday, April 24, 2009 4:53 PM
To: Aguglia, Richard
Cc: mkemp@aci-na.org; Joseph, Rochelle (DCRA); Pemberton, Reuben (DCRA)
Subject: RE: 136 D St SE

Richard Aguglia--

I have had a chance to review and discuss your package of materials documenting the organization as a Private Club. I have concluded that it does meet the definition set forth in 11 DCMR 199.1. Accordingly, I have directed that the hold that was placed on the address be lifted.

Please note that I will be out of the office April 27th through 29th , and will be back on April 30th.

Best Regards,

Matthew Le Grant

Zoning Administrator
Dept of Consumer and Regulatory Affairs
Government of the District of Columbia
941 North Capitol St NE Suite 2000
Washington, DC 20002
Phone: 202 442-4652
FAX: 202 442-4871
Email: matt.legrant@dc.gov

From: Aguglia, Richard [mailto:raguglia@hunton.com]
Sent: Friday, April 24, 2009 10:19 AM
To: LeGrant, Matt (DCRA)
Cc: mkemp@aci-na.org
Subject: 136 D St SE

Please recall that you advised me that you would make a decision today whether or not to lift the hold on the interior building permit for this property for a private social club. Thanks.

Richard Aguglia
Counsel

HUNTON & WILLIAMS LLP

1900 K Street, N.W.

Washington, DC 20006

Phone: (202) 955-1634

Fax: (202) 862-3605

eMail: raguglia@hunton.com

website: www.hunton.com

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

EXHIBIT

B

B

BUILDING PERMIT

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

Issue Date: 04/09/2009

PERMIT NO. **B0904512**

Expiration Date: 04/09/2010

Address of Project: 136 D ST SE		Zone: CAP/R-4	Ward: 6	Square: 0733	Suffix:	Lot: 0041
Description Of Work: interior demolition at basement of existing row house.						
Permission Is Hereby Granted To: Airports Council International		Owner Address: 136 D ST SE WASHINGTON, DC 20003-1810		PERMIT FEE: \$626.40		
Permit Type: Alteration and Repair	Existing Use: Two-Family Flat - R-3		Proposed Use: Two-Family Flat - R-3		Plans: Yes	
Agent Name: Michelle Miller	Agent Address: 2529 Herrell Court Falls Church, VA 22043	Existing Dwell Units: 2	Proposed Dwell Units: 2	No. of Stories: 2	Floor(s) Involved:	
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 Lucretia Hackney				
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

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

EXHIBIT

C

B

BUILDING PERMIT

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

Issue Date: 09/16/2009

PERMIT NO. B0906887

Expiration Date: 09/16/2010

Address of Project: 136 D ST SE		Zone: CAP/R-4	Ward: 6	Square: 0733	Suffix:	Lot: 0041
Description Of Work: INTERIOR ALTERATIONS AND REPAIRS FOR EXISTING BASEMENT APARTMENT. FOR USE AS A PRIVATE CLUB.						
Permission Is Hereby Granted To: Airports Council International		Owner Address: 136 D ST SE WASHINGTON, DC 20003-1810		PERMIT FEE: \$1,095.00		
Permit Type: Alteration and Repair	Existing Use:		Proposed Use:		Plans: Yes	
Agent Name: Michelle Miller	Agent Address: 2529 Herrell Court Falls Church, VA 22043	Existing Dwell Units:	Proposed Dwell Units:	No. of Stories:	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				
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