



BEFORE THE BOARD OF ZONING ADJUSTMENT OF THE DISTRICT OF COLUMBIA



APPEAL

Before completing this form, please review the instructions on the reverse side.
Print or type all information unless otherwise indicated.

Pursuant to Section (s) §3100 and §3101 of the Zoning Regulations of the District of Columbia, an appeal is hereby taken

from the administrative decision of:

Matthew LeGrant, Zoning Administrator

made on

April 21, 2010

, to the effect that

Stadium Group LLC is granted a certificate of

occupancy (#1001838) for 2127 Queens Chapel Road NE for a "Restaurant with Nightclub...
Not a sexually oriented business establishment."

Address(es) of Affected Premises	Square(s)	Lot(s)	Zoning Districts
2127 Queens Chapel Rd NE	4258	0034	CM2

Present use of Property:

Nightclub with nude dancing

Proposed use of Property:

Nightclub with nude dancing

Owner of Property:

RF Holdings LLC

Telephone No.:

(202) 689-1900

Address of Owner:

1742 N Street NW, Washington DC 20036

Name, address and telephone number of lessee:

Stadium Group LLC, c/o Mallios & O'Brien

2600 Virginia Ave NW, Suite 1112, Washington DC 20037, (202) 625-7700

Name, address and telephone number of appellant, if other than owner:

Ward 5 Improvement Association,

1335 Lawrence Street NE, Washington DC 20017, (202) 832-4038

State specifically manner in which appellant is aggrieved by the administrative decision, the allegations of error in the

administrative decision, and the relevant sections of the Zoning Regulations (see reverse for more detailed explanation).

Please use a separate piece of 8 1/2" x 11" to respond and attach it to the Form 125 Appeal.

I/We certify that the above information is true and correct to the best of my/our knowledge, information and belief. Any person(s) using a fictitious name or address and/or knowingly making any false statement on this application/petition is in violation of D.C. Law and subject to a fine of not more than \$1,000 or 180 days imprisonment or both.
(D.C. Official Code § 22-2405)

Date:

June 11, 2010

Signature:

Don Padou

* If appeal is filed by agent of the Appellant, Form 125 Appeal shall be accompanied by a letter signed by the appellant and authorizing the agent to act on his behalf in this appeal.

To be notified of hearing and decision (Appellant or Authorized Agent):

Name:

Don Padou, Ward 5 Improvement Association

Address:

1335 Lawrence Street NE, Washington DC 20017

Phone No.:

(202) 832-4038

Fax No.:

--

E-Mail:

don.padou@yahoo.com

ANY APPLICATION THAT IS NOT COMPLETED IN ACCORDANCE WITH THE INSTRUCTIONS ON THE BACK OF THIS FORM WILL NOT BE ACCEPTED.

EXHIBIT NO. 1

DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT

In re Certificate of Occupancy No. 1001838 issued to Stadium Group LLC for 2127 Queens Chapel Road, NE.

APPEAL OF THE ISSUANCE OF A CERTIFICATE OF OCCUPANCY

The Department of Consumer and Regulatory Affairs (“DCRA”) erred in issuing Certificate of Occupancy No. CO1001838 to the Stadium Group LLC for 2127 Queens Chapel Road NE because the Certificate is for a “Restaurant with Nightclub . . . Not a Sexually Oriented Business Establishment” and Stadium Group is operating a sexually oriented business.

As laid out more fully in the attached memorandum, the Stadium Group is operating a strip club (The Stadium Club) at 2127 Queens Chapel Road NE. The Zoning Administrator failed to apply applicable zoning regulations governing the location of sexually oriented businesses and has, instead, relied upon a repealed liquor license provision to find that the Stadium Club is not a sexually oriented business.

The Zoning Administrator violated 11 DCMR §§ 199.1 and 801.2.

For the foregoing reasons, the Board of Zoning Adjustment should: revoke the current Certificate of Occupancy issued to Stadium Group LLC; require Stadium Group LLC to seek a variance from the Board before operating a strip club at 2127 Queens Chapel Road NE; and require Stadium Group LLC to obtain a sexually oriented Certificate of Occupancy if it wishes to offer nude dancing at 2127 Queens Chapel Road NE.

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF APPELLANT’S APPEAL

I. FACTUAL AND PROCEDURAL BACKGROUND

On April 21, 2010 The District of Columbia Department of Consumer and Regulatory Affairs (DCRA) issued a temporary Certificate of Occupancy for a “Restaurant with Nightclub . . . Not a Sexually Oriented Business Establishment” to the Stadium Group LLC (Stadium) for 2127 Queens Chapel Road NE. The temporary Certificate of Occupancy expired on May 21, 2010. The Certificate of Occupancy (“Certificate”) was issued on a temporary basis pending consolidation of the lots covered by the Certificate. See Temporary Certificate of Occupancy #CO1001838 issued April 21, 2010 by DCRA.

On May 21, 2010, the Zoning Administrator extended the temporary Certificate by one month to June 21, 2010. See May 21, 2010 letter from Zoning Administrator Matthew LeGrant extending CO1001838.

During a several week period starting May 10, 2010, Don Padou contacted DCRA by phone, email and letter asking DCRA to require Stadium to obtain a Certificate

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reflecting the fact that Stadium Club, the business operated by Stadium Group LLC, is a sexually oriented business.

On June 7, 2010 The Zoning Administrator responded to Mr. Padou through Nicholas Majett, a DCRA employee. The Zoning Administrator said that the strip club operated by Stadium was not a sexually oriented business because the strippers performed on a stage that was at least 18" high and were at least three feet from customers.

Stadium offers nude dancing at the 2127 Queens Chapel Road NE location. See Alcoholic Beverage Regulation Administration ("ABRA") license file #82005; www.stadiumclubdc.com; *Washington Post* article "Southeast Strip Club Moving to Northeast" at http://voices.washingtonpost.com/dc/2010/03/southeast_strip_club_moving_to.html; *Urban Daddy* article "Pole Position" at http://www.urbandaddy.com/dc/nightlife/9344/Stadium_Club_The_Site_of_Your_Next_PAC_Fund_Raiser_DC_DC_Langdon_Nightclub.

The Alcoholic Beverage Control Board ("ABC Board") issued a temporary liquor license to Stadium Group for a night club with nude dancing. See Temporary liquor license issued by ABRA to Stadium Group LLC in ABRA license file #82005.

II. STANDING

The Ward 5 Improvement Association ("Association" or "Appellant") is a non-profit association formed pursuant to DC Code § 29-971. The Association has a civic purpose: to engage in civic activities intended to improve the quality of life of Ward residents and business owners. See Articles of Association for Ward 5 Improvement Association. Non-profit associations with a civic purpose have standing to appeal decisions of DCRA to the Board of Zoning Adjustment ("BZA"). DC Code § 6-641.07(f).

The Association, and its members, are in the "zone of interest" created by the statutes and regulations governing sexually oriented businesses generally and strip clubs specifically and, therefore, have standing to assert those interests. Brentwood Liquors v. DC ABC Board, 661 A.2d 652 (D.C. 1995).

The District has long recognized the problems associated with sexually oriented businesses and strip clubs, and has sought to strictly regulate these establishments. See, e.g. DC Code § 25-371 (imposing a moratorium on new strip club licenses); § 25-374 (strictly limiting where existing strip clubs may relocate); 11 DCMR §§ 199.1 and 801.2 (imposing special and strict zoning requirements on strip clubs); 10 DCMR A312 Policy LU-2.4.9 (policy limiting the proliferation of strip clubs); and 10 DCMR § B5002 (prohibiting the use of the District's borrowing authority on behalf of sexually oriented businesses).

Zoning regulations have long prohibited sexually oriented businesses from locating in certain places without first receiving a variance from BZA. 11 DCMR § 801.2. The plain intent of this regulation is to prohibit sexually oriented businesses from locating in CM-zoned districts. The Association has standing to assert an interest in ensuring that sexually oriented businesses do not locate in CM-zoned districts in Ward 5

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unless they have first obtained a variance from BZA and are operated under legitimate certificates of occupancy.

III. ARGUMENT

A. The Stadium Club is a sexually oriented business.

The Stadium Club offers nude dancing. The Stadium Club is currently operating under a liquor license from the Alcoholic Beverage Control Board for a night club with nude dancing.

Every court or administrative board in the District of Columbia that has considered the matter has found that nude dancing is a sexually oriented business under 11 DCMR §199.1. See, e.g. Upper Georgia Ave. Planning Cmte v. Alcoholic Beverage Control Bd, 500 A.2d 987 (D.C. 1985); President and Directors of Georgetown College for Georgetown Univ. v. Diavatis, 470 A.2d 1248 (D.C. 1983); In re California Steak House, Board of Zoning Adjustment Appeal No. 13967, slip op. (Nov., 22, 1983); and In re Jefferson Grill, Inc., ABC Bd. Order No. 2005-1, Jan. 5, 2005, 52 D.C. Reg. 743 (Jan. 28, 2005).

Of particular note is the BZA opinion in In re California Steak House, where this Board found that nude dancing is a sexually oriented business.

The Stadium Club is a sexually oriented business.

B. The Stadium Group LLC cannot operate a strip club at 2127 Queens Chapel Rd. NE without first obtaining a variance from the BZA.

DC Zoning Regulations provide that a sexually oriented business cannot locate in a CM-zoned district as a matter of right. 11 DCMR § 801.2.

2127 Queens Chapel Road NE is zoned CM2. See DCRA Certificate of Occupancy #CO1001838 and ABRA license file #82005 with Zoning Certification provided by DCRA Zoning Administration employee Xoan Mac.

Because The Stadium Club is a sexually oriented business and 2127 Queens Chapel Road NE is zoned CM2, DCRA should not have issued a Certificate of Occupancy to Stadium before Stadium had obtained a variance from the BZA to operate a sexually oriented business.

C. DCRA and the Zoning Administrator erred in failing to apply the relevant zoning regulations and, instead, relied on a repealed liquor license provision.

The Zoning Administrator relied on a repealed provision governing the issuance of liquor licenses to find that the Stadium Club is not a sexually oriented business. In a June 7, 2010 email to Don Padou, the Zoning Administrator said (through DCRA employee Nicholas Majett) that the Stadium is not a sexually oriented business because “its performers are at least 18 inches off the floor [and] at least three feet from and not touching the customers.”

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23 DCMR § 904.5 (1997) required that strippers perform on a stage that was at least 18" high and at least 3 feet from customers in establishments licensed by the ABC Board.

There are several problems with the Zoning Administrator's reliance on 23 DCMR § 904.5 (1997). First, the provision was repealed. See 23 DCMR (2008).

Second, the provision was a prohibition of certain activities at establishments with liquor licenses and was not a definition of a sexually oriented business.

Third, the Zoning Administrator is charged with implementing and enforcing *zoning regulations* and not liquor licensure regulations. The relevant zoning regulations regarding sexually oriented businesses are: 11 DCMR §§ 199.1 and 801.2.

The Zoning Administrator erred in failing to apply zoning regulations to determine if the Stadium Club is a sexually oriented business. If the Zoning Administrator had applied the appropriate zoning regulations he would have found that the Stadium Club is a sexually oriented business because the Stadium Club offers nude dancing. After finding that the Stadium Club is a sexually oriented business, the Zoning Administrator should have refused to issue a Certificate of Occupancy because 2127 Queens Chapel Road NE is zoned CM2.

IV. STATEMENT OF PROOF

Appellant will prove the foregoing by providing witnesses who will testify about the nature of the nude dancing at the Stadium Club. Appellant will provide documentary evidence that will support the testimony of witnesses regarding the actions of performers at the Stadium Club. This documentary evidence will include: Stadium Group LLC's application to the ABC Board for a liquor license for a night club with nude dancing; Stadium Club advertisements highlighting the Club's "Las Vegas" style strip club atmosphere; as well as news media accounts of the Club and its offerings. The foregoing evidence will establish that the Stadium Club is a sexually oriented business as defined by 11 DCMR § 199.1.

Appellant will establish that 2127 Queens Chapel Road NE is zoned CM2 by introducing into evidence DCRA Certificate of Occupancy #CO1001838 and the Zoning Certification for the property, signed by DCRA Zoning Administration employee Xoan Mac.

Appellant will introduce into evidence correspondence between DCRA employees and Don Padou in which Mr. Padou laid out his concerns in detail and DCRA responded with a short note justifying the issuance of a Certificate of Occupancy to Stadium based on a repealed provision from the ABRA regulations governing the issuance of liquor licenses.

Appellant will provide to the Board copies of opinions by the District of Columbia Court of Appeals in which the court found that nude dancing is a sexually oriented business as defined by 11 DCMR § 199.1. Appellant will also provide rulings from the Board of Zoning Adjustment and the ABC Board that found that nude dancing is a sexually oriented business.

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V. CONCLUSION

For the foregoing reasons, Appellant respectfully requests that the Board find that the Stadium Club is a sexually oriented business and that, therefore, DCRA issued a Certificate of Occupancy to Stadium Group LLC for a non-sexually oriented business in error. Appellant further requests that the Board revoke the Certificate of Occupancy issued in error and require Stadium Group LLC to seek a variance from the Board before operating a strip club at 2127 Queens Chapel Road NE.

Respectfully submitted,



6/11/10

Don Padou
President, Ward 5 Improvement Association
1335 Lawrence Street NE
Washington, DC 20017

Date

CERTIFICATE OF SERVICE

On June 11, 2010 I mailed a copy of this appeal and all attachments to the following by first class mail, postage pre-paid:

Stadium Group LLC
Attn: James Redding
2127 Queens Chapel Road NE
Washington, D.C. 20018

Stadium Group LLC
Attn: Steve O'Brien
Mallios & O'Brien
2600 Virginia Ave NW, Suite 1112
Washington DC 20037

RF Holdings LLC
c/o Shapiro, Lifschitz & Schram
1742 N Street NW
Washington DC 20036

Matthew LeGrant
DC Zoning Administrator
1100 4th Street SW
Washington DC 20024

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Advisory Neighborhood Commission 5B
2100 New York Ave NE
Washington DC 20002



Don Padou

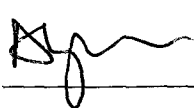
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WARD 5 IMPROVEMENT ASSOCIATION

Articles of Association

1. The Ward 5 Improvement Association is an Unincorporated Nonprofit Association pursuant to DC Code § 29-971.
2. The purpose of the Ward 5 Improvement Association is to engage in civic activities intended to improve the quality of life of Ward 5 residents and business owners. The Ward 5 Improvement Association has no real property and will not engage in any real property transactions.
3. Membership: Membership is open to any resident or business owner of Ward 5 upon a majority vote by existing members.
4. Income and Dues: None.
5. Mailing address: 1335 Lawrence St NE, Washington DC 20017.
6. Meetings: Meetings of the association shall be governed by Roberts Rules of Order (10th Edition).
7. These articles may be amended upon majority vote of existing members.

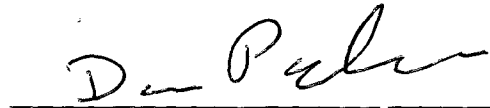
Member 1:

 6/11/10

Abigail Padou
1335 Lawrence St NE
Washington DC 20017
(202) 832-4038

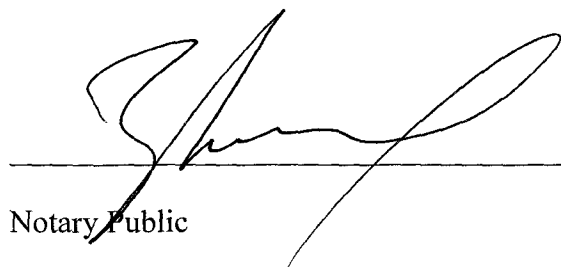
Date

Member 2:

 6/11/10

Don Padou
1335 Lawrence St NE
Washington DC 20017
(202) 832-4038

Date

 06/11/10

Notary Public

Date

JUDE U. NKPADO
NOTARY PUBLIC
DISTRICT OF COLUMBIA
MY COMMISSION EXPIRES
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WARD 5 IMPROVEMENT ASSOCIATION

June 11, 2010

To Whom It May Concern:

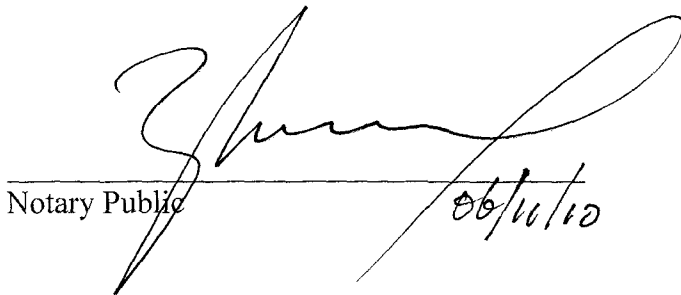
On June 11, 2010 the membership of the Ward 5 Improvement Association unanimously voted to authorize Don Padou to appeal to the Board of Zoning Adjustment the issuance of a Certificate of Occupancy (CO#1001838) issued to the Stadium Group LLC for 2127 Queens Chapel Road NE.



Don Padou
President, Ward 5 Improvement Association
1335 Lawrence Street NE
Washington, DC 20017



Abigail Padou
Secretary, Ward 5 Improvement Association
1335 Lawrence Street NE
Washington, DC 20017


Notary Public 06/16/10

JUDE U. NKPADO
NOTARY PUBLIC
DISTRICT OF COLUMBIA
MY COMMISSION EXPIRES
JULY 31, 2010

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