

DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT

2010 OCT 12 PM 12:38

Re: Appeal of Certificate of Occupancy Nos. 1001838 and 1002471 issued to Stadium Group LLC for 2127 Queens Chapel Road NE.

BZA APPEAL #18114

**APPELLANT'S BRIEF FOR THE APPEAL OF THE ISSUANCE OF
CERTIFICATES OF OCCUPANCY**

The Department of Consumer and Regulatory Affairs ("DCRA") erred in issuing Certificate of Occupancy Nos. CO1001838 and CO1002471 to the Stadium Group LLC for 2127 Queens Chapel Road NE because the Certificates of Occupancy are 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 and definition of sexually oriented businesses.

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 BRIEF**

I. FACTUAL AND PROCEDURAL BACKGROUND

On April 2, 2010, the District of Columbia Department of Consumer and Regulatory Affairs (DCRA) issued a temporary conditional Certificate of Occupancy ("Certificate") for a "Nightclub and Restaurant . . . Not a Sexually Oriented Business Establishment" to the Stadium Group LLC (Stadium) for 2127 Queens Chapel Road NE. The Certificate expired on May 3, 2010. One of the conditions of the Certificate was that the establishment could not serve or keep alcohol on the premises. Attachment A: Temporary Conditional Certificate of Occupancy #CO1001525.

On April 21, 2010 DCRA issued a new temporary conditional Certificate of Occupancy for a "Restaurant with Nightclub . . . Not a Sexually Oriented Business Establishment" to Stadium for 2127 Queens Chapel Road NE. The Certificate expired on May 21, 2010. The Certificate was issued on a temporary basis pending consolidation of the lots covered by the Certificate and had no other conditions. Attachment B: Temporary Conditional Certificate of Occupancy #CO1001838.

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 18114
EXHIBIT NO. 20

Board of Zoning Adjustment
District of Columbia
CASE NO. 18114
EXHIBIT NO. 20

On May 21, 2010, the Zoning Administrator extended the temporary Certificate #CO1001838 by one month to June 21, 2010. Attachment C: Certificate extension letter from Zoning Administrator Matthew LeGrant.

On June 22, 2010, Matthew LeGrant, Zoning Administrator, issued a permanent Certificate of Occupancy to Stadium Group LLC. Attachment D: Permanent Certificate of Occupancy #CO1002471.

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 reflecting the fact that Stadium Club, the business operated by Stadium Group LLC, is a sexually oriented business. Attachment E: Correspondence from Don Padou.

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. Attachment F: Email from Nicholas Majett to Don Padou.

Stadium offers nude dancing at 2127 Queens Chapel Road NE. Attachment G: Stadium Club liquor license application in Alcoholic Beverage Regulation Administration ("ABRA") license file #82005. Attachment H: Article in the *Washington Post*: "Southeast Strip Club Moving to Northeast." Attachment I: Article in *Urban Daddy*: "Pole Position." Attachment J: Article in Washington City Paper: "Stadium Club Combines Steaks, Strippers." Attachment K: Affidavits of Benjamin Petok and Marshall Chriswell. See also Stadium Club website at www.stadium-club-dc.com.

On April 21, 2010, the Alcoholic Beverage Control Board ("ABC Board") issued a temporary liquor license to Stadium Group for a night club with nude dancing. Attachment L: Temporary liquor license issued to Stadium Group LLC on April 21, 2010, located in ABRA license file #82005.

The Alcoholic Beverage Control Board extended the temporary license for one month on May 21, 2010. Attachment M: Temporary liquor license issued by ABRA to Stadium Group LLC on May 21, 2010, located in ABRA license file #82005.

On June 22, 2010, the Alcoholic Beverage Control Board ("ABC Board") issued a permanent liquor license to Stadium Group for a night club with nude dancing. Attachment N: Permanent liquor license issued by ABRA to Stadium Group LLC, located in ABRA license file #82005.

2127 Queens Chapel Road NE is zoned CM2. Attachments A, B and D: DCRA Certificates of Occupancy for 2127 Queens Chapel Road NE.

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 5 residents and business owners. Attachment O: 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); DC Code § 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 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. Attachment P: *Upper Georgia Ave. Planning Cmte v. Alcoholic Beverage Control Bd*, 500 A.2d 987 (D.C. 1985); Attachment Q: *President and Directors of Georgetown College for Georgetown Univ. v. Diavatis*, 470 A.2d 1248 (D.C. 1983); Attachment R: *In re California Steak House*, Board of Zoning Adjustment Appeal No. 13967, slip op. (Nov., 22, 1983); and Attachment S: *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 Road 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. Attachments A, B and D: DCRA Certificates of Occupancy.

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 an inapposite liquor license provision.

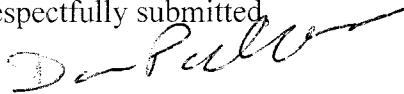
The Zoning Administrator relied on a provision governing nude dancing performances to find that the Stadium Club is not a sexually oriented business. In a June 7, 2010 email to Don Padou, the Zoning Administrator said (through DCRA employee Nicholas Majett) that the Stadium is not a sexually oriented business because “its performers are at least 18 inches off the floor [and] at least three feet from and not touching the customers.” This is error: DC Code § 25-372 requires that strippers perform on a stage that is at least 18” high and at least 3 feet from customers, but it does not provide a definition of sexually oriented business establishments.

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. 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,



10/12/10

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

Date

ATTACHMENT A

Department of Consumer and Regulatory Affairs

Permit Operations Division

1100 4th Street SW

Washington DC 20024

Tel. (202) 442 - 4589

Fax (202) 442 - 4862



CERTIFICATE OF OCCUPANCY

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

PERMIT NO. CO1001525

Date: 04/02/2010

Address of Use: 2127 QUEENS CHAPEL RD NE		Zone: C-M-2	Ward: 5	Square: 4258	Suffix:	Lot: 0034
Description of Occupancy: Temporary Conditional Certificate: Nightclub and Restaurant with accessory parking [Not a Sexually Oriented Business Establishment] Maximum Occupancy Load 203; Subject to the following conditions: 1. No alcohol shall be served at any time (or kept on premises). 2. The lighting levels shall be maintained at a level sufficient to maintain safe egress, not to be less than a 10 foot-candles. 3. The fire main service vault shall be inspected and approved by DCRA. 4. The sprinkler system shall be inspected and approved by DCRA. 5. An executed covenant shall be recorded or a lot consolidation subdivision encompassing the two subject lots shall be applied for. 6. A Fire Watch Plan that is either approved by the Fire Marshal or the Chief Building Inspector shall be implemented during all times the building is occupied. 7. Unless revised or reissued this Certificate shall expire on May 3, 2010.						
Permission Is Hereby Granted To:		Trading As:		Floor(s) Occupied 1	PERMIT FEE: \$111.00	
Property Owner: Wfj Lic		Previous Use(s): Retail or Wholesale Store - M		Occupant Load: 203	BZA Number:	
Type of Application: Use Change	Occupied Sq. Footage: 13900	Approved Use(1): Night Club - A-2				
Conditions/ Restrictions: Temporary Conditional Certificate Nightclub and Restaurant [Not a Sexually Oriented Business Establishment] Maximum Occupancy Load 203; Subject to the following conditions: 1. No alcohol shall be served at any time (or kept on premises). 2. The lighting levels shall be maintained at a level sufficient to maintain safe egress, not to be less than a 10 foot-candles. 3. The fire main service vault shall be inspected and approved by DCRA. 4. The sprinkler system shall be inspected and approved by DCRA. 5. An executed covenant shall be recorded or a lot consolidation subdivision encompassing the two subject lots shall be applied for. 6. A Fire Watch Plan that is either approved by the Fire Marshal or the Chief Building Inspector shall be implemented during all times the building is occupied. 7. Unless revised or reissued this Certificate shall expire on May 3, 2010. As a condition precedent to the issuance of this Certificate, the owner agrees to conform with all conditions set forth herein, and to maintain the use authorized hereby in accordance with the approved application and plans on file with the District Government and in accordance with all applicable laws and regulations of the District of Columbia. The District of Columbia has the right to enter upon the property and to inspect all spaces whose use is authorized by this Certificate and to require any changes which may be necessary to ensure compliance with all the applicable regulations of the District of Columbia.						
Director: Linda K. Argo		Permit Clerk Erika King		Expiration Date: 5/3/2010		
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 B

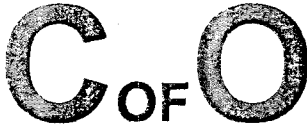
Department of Consumer and Regulatory Affairs

Permit Operations Division

1100 4th Street SW

Washington DC 20024

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

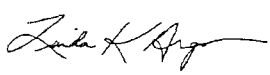


CERTIFICATE OF OCCUPANCY

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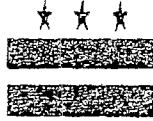
PERMIT NO. CO1001838

Date: 04/21/2010

Address of Use: 2127 QUEENS CHAPEL RD NE		Zone: C-M-2	Ward: 5	Square: 4258	Suffix:	Lot: 0034
Description of Occupancy: Temporary Conditional Certificate: Restaurant with Nightclub with accessory parking [Not a Sexually Oriented Business Establishment] Maximum Occupancy Load 396; with 349 seats Subject to the following conditions: 1. An executed covenant shall be recorded or a lot consolidation subdivision encompassing the two subject lots shall be applied for. 2. Unless revised or reissued this Certificate shall expire on May 21, 2010.						
Permission Is Hereby Granted To:	Trading As: NIGHT CLUB	Floor(s) Occupied 1ST FLOOR	PERMIT FEE: \$78.00			
Property Owner: Wij Lic	Previous Use(s): Night Club - A-2	Occupant Load: 396	BZA Number:			
Type of Application: Load Change	Occupied Sq. Footage: 14000	Approved Use(1): Night Club - A-2				
Conditions/ Restrictions: As a condition precedent to the issuance of this Certificate, the owner agrees to conform with all conditions set forth herein, and to maintain the use authorized hereby in accordance with the approved application and plans on file with the District Government and in accordance with all applicable laws and regulations of the District of Columbia. The District of Columbia has the right to enter upon the property and to inspect all spaces whose use is authorized by this Certificate and to require any changes which may be necessary to ensure compliance with all the applicable regulations of the District of Columbia.						
Director: Linda K. Argo			Permit Clerk Stacie Williams		Expiration Date:	
TO REPORT WASTE, FRAUD OR ABUSE BY ANY DC GOVERNMENT OFFICIAL, CALL THE DC INSPECTOR GENERAL AT 1-800-521-1639 FOR CONSTRUCTION INSPECTION INQUIRIES CALL (202) 442-9557 TO SCHEDULE INSPECTIONS PLEASE CALL (202) 442-9557.						

ATTACHMENT C

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



May 21, 2010

Re: Extension of Certificate of Occupancy # CO1001838 – 2127 Queens Chapel Rd NE
Stadium Group LLC

To Whom it May Concern:

This letter documents my approval of a time extension of Certificate of Occupancy
CO1001838, which was originally set to expire today, until June 21, 2010.

Sincerely,

A handwritten signature in cursive script that reads "Matthew Le Grant".

Matthew Le Grant
Zoning Administrator

File: 2127 Queens Chapel Rd NE – COO Extension

ATTACHMENT D

Department of Consumer and Regulatory Affairs

Permit Operations Division

1100 4th Street SW

Washington DC 20024

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

TO SCHEDULE INSPECTIONS PLEASE CALL (202) 442 9557

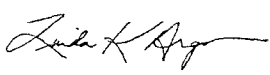


CERTIFICATE OF OCCUPANCY

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

PERMIT NO. CO1002471

Date: 06/22/2010

Address of Use: 2127 QUEENS CHAPEL RD NE		Zone: C-M-2	Ward: 5	Square: 4258	Suffix:	Lot: 0034
Description of Occupancy: Restaurant with Nightclub with accessory parking [Not a Sexually Oriented Business Establishment] Maximum Occupancy Load 396; with 349 seats.						
Permission Is Hereby Granted To: The Stadium Group, Llc.		Trading As: STADIUM CLUB		Floor(s) Occupied First		PERMIT FEE: \$122.10
Property Owner: Wij Llc		Previous Use(s): Restaurants - A-2		Occupant Load: 396		BZA Number:
Type of Application: Ownership Change		Occupied Sq. Footage: 14000		Approved Use(1): Restaurants - A-2		
Conditions/ Restrictions: Subject to easement for access over the property line As a condition precedent to the issuance of this Certificate, the owner agrees to conform with all conditions set forth herein, and to maintain the use authorized hereby in accordance with the approved application and plans on file with the District Government and in accordance with all applicable laws and regulations of the District of Columbia. The District of Columbia has the right to enter upon the property and to inspect all spaces whose use is authorized by this Certificate and to require any changes which may be necessary to ensure compliance with all the applicable regulations of the District of Columbia.						
Director: Linda K. Argo 		Permit Clerk Doris Minor		Expiration Date:		
TO REPORT WASTE, FRAUD OR ABUSE BY ANY DC GOVERNMENT OFFICIAL, CALL THE DC INSPECTOR GENERAL AT 1-800-521-1639 FOR CONSTRUCTION INSPECTION INQUIRIES CALL (202) 442-9557 TO SCHEDULE INSPECTIONS PLEASE CALL (202) 442-9557.						

ATTACHMENT E

Don Padou
1335 Lawrence Street NE
Washington, DC 20017
(202) 832-4038 Don.Padou@yahoo.com

May 10, 2010

Department of Consumer and Regulatory Affairs
Mr. Nicholas Majett
1100 4th Street SW
Washington, DC 20024
Sent via email:

Re: Certificate of Occupancy No. CO1001838, issued 4/21/10

Dear Mr. Majett:

I am writing regarding the temporary certificate of occupancy DCRA recently granted to the Stadium Group LLC for 2127 Queens Chapel Road NE. There has been an error.

The Certificate is for a "Restaurant ... [Not a Sexually Oriented Business Establishment.]" The Stadium Group LLC is operating a night club with nude dancing and has been issued a liquor license for a night club with nude dancing from ABRA (ABRA license #82005). The Stadium Group advertises the nude dancing on its web site, www.StadiumClubDC.com¹. There have been newspaper stories about Stadium Club opening as a strip club. I have attached a copy of one story from the Washington Post.

The hours of the Stadium Club are:
Weekdays: 4:00 PM to 2:00 AM.
Weekends: 6:00 PM to 3:00 AM

I believe that there is nude dancing every night, but certainly on Fridays and Saturdays.

As I am sure you are aware, DCRA and the DC Court of Appeals have consistently found that nude dancing is a 'sexually oriented business' under 11 DCMR § 199. See, e.g. Upper Georgia Ave. Planning Cmte v. Alcoholic Beverage Control Bd, 500 A.2d 987

¹ Text from the website: "When you think of the best strip club cities you think of Vegas, Atlanta, Orlando, Tampa, LA, or New York. Now that is all about to change. Stadium Club is the new standard in Adult Entertainment and Fine Dining. Stadium Club is centered on providing the highest quality in talent, five-star food and the ultimate Gentlemen's Club experience, starting with providing the best in national and international feature talent as well as premiere local talent never before seen in the region."

(D.C. 1985), President and Directors of Georgetown College for Georgetown Univ. v. Diavatis, 470 A.2d 1248 (D.C. 1983).

I would like DCRA to revoke the temporary Certificate of Occupancy granted to the Stadium Group LLC because the Stadium Group is using 2127 Queens Chapel Road NE for a purpose other than one listed on the Certificate. I would like DCRA not to grant a permanent Certificate of Occupancy to the Stadium Group LLC unless the conduct of the Stadium Club conforms with the use listed on the Certificate.

Please do not hesitate to contact me if you have any questions. If you have the time to let me know the outcome of any investigation and the action DCRA decides to take I would appreciate it.

Thank you for your help.

Sincerely,

A handwritten signature in black ink, appearing to read "Don Fader", written in a cursive style.

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Southeast strip club moving to Northeast

The Stadium Club is believed to be opening its doors this month in the 2100 Queens Chapel Road NE, next to club DC Star.

The new club's owners paid \$1.15 million to buy the nude dance license from the manager of Nexus Gold, a strip club that was at First and I streets SE, according to records filed with the D.C. liquor board. Nexus Gold shut down a few years ago when the owner of the land where the club sat sold out to make way for the development of new apartments and office buildings around the Nationals Park.

It is tough to figure out all the details of the new Stadium Club. The phone number listed on a Web site is disconnected. James T. "Tru" Redding, who is listed on the club's Web site as the new owner and the owner of a commercial and residential construction company -- didn't return a phone call and e-mail last week seeking comment.

The club's Web site - stadiumclubdc.com - promises "special VIP rooms for private dance experiences with stadium girls," and "up front table dances" for \$20 a song, plus valet parking for up to 75 cars next door.

William Shelton, an advisory neighborhood commissioner in Ward 5, said the area feels "like it has taken its brunt" with having nightclubs, noting there are five clubs near the Stadium Club.

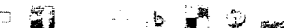
"We're worried about the parking impact, how it will use up police resources, and that people will be lurking around the neighborhood when they leave the club," he said. He said he and other neighborhood leaders met with Redding who assured them that he was bringing in a manager who had family ties to Ward 5.

In 2007, residents in Ward 5 successfully fought against a plan to create strip bar zone in the community for clubs displaced by the new baseball stadium. Under a law, only two of the six displaced clubs can move to any one ward.

-- Dana Hedgpeth

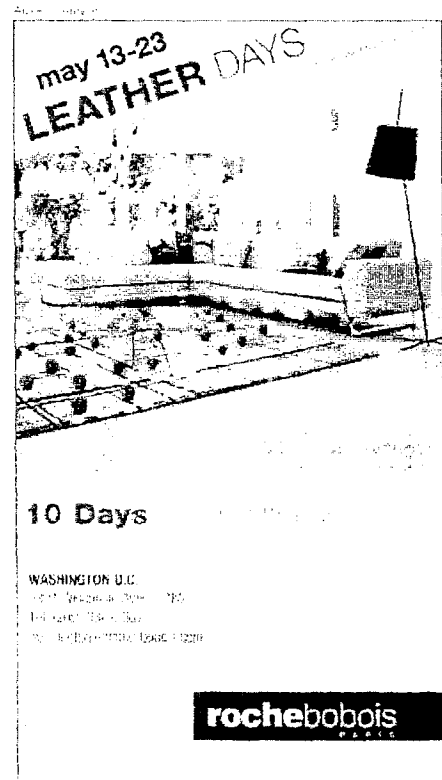
By Monica Norton | March 22, 2010, 9:45 AM ET
Categories: City Life, Crime and Public Safety

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Stadium Group certificate of occupancy

Thursday, May 20, 2010 9:41 AM

From: "Don Padou" <don.padou@yahoo.com>

To: nicholas.majett@dc.gov

Dear Mr. Majett:

I am writing to follow up on our conversation last week and my subsequent letter regarding the Certificate of Occupancy for the Stadium Group LLC at 2127 Queens Chapel Road NE. Has DCRA had a chance to look into the matter? If so, can you share the results with me.

The Stadium Group's temporary Certificate of Occupancy expires tomorrow, May 21st. Can you tell me the status of a permanent Certificate of Occupancy? In particular, will a permanent Certificate of Occupancy reflect that the Stadium Club is a sexually oriented business?

Thank you again for your help.

Sincerely,
Don Padou
(202) 832-4038



Stadium Group Certificate of Occupancy

Monday, June 7, 2010 9:19 AM

From: "Don Padou" <don.padou@yahoo.com>

To: linda.argo@dc.gov

Cc: nicholas.majett@dc.gov

Dear Ms. Argo,

I am writing to follow up on a complaint I filed a couple of weeks ago regarding the Stadium Club located at 2127 Queens Chapel Rd NE.

The club is currently operating under a temporary Certificate of Occupancy that expires on June 21, 2010. The Certificate is for a "restaurant, non-sexually oriented business."

As I explained in my complaint, the Stadium Club offers nude dancing and is, therefore, a sexually oriented business.

Can you tell me the status of DCRA's investigation?

Sincerely,

Don Padou

1335 Lawrence Street NE

Washington, DC 20017

202-832-4038

**RE: Stadium Group Certificate of Occupancy**

Thursday, June 10, 2010 5:00 PM

From: "Don Padou" <don.padou@yahoo.com>

To: "Nicholas (DCRA)Majett" <nicholas.majett@dc.gov>

Dear Mr. Majett

I was curious about the Zoning Administrator's reliance on a liquor license provision. So, I went to the law library at lunch time. I think you might find this interesting.

It turns out that the regulation the Zoning Administrator is relying on to determine that the Stadium Club is not a sexually oriented business was repealed several years ago. The repealed regulation was located at 23 DCMR 904.5 (1997).

Restaurants and nightclubs that offer nude dancing--such as the Stadium Club--have been found by every DC Court and Board that has considered the issue to be sexually oriented businesses.

I still think the Stadium Club is a sexually oriented business under the zoning regulations. I'd like to ensure that the Stadium Club abides by those regulations—including getting a certificate of occupancy that reflects that the establishment is a sexually oriented business.

Do you have any suggestions of where I should turn next? The only option I can think of is to file an appeal with BZA.

Thank you very much for your help.

Sincerely,

Don Padou

(202) 832-4038

--- On Mon, 6/7/10, Majett, Nicholas (DCRA) <nicholas.majett@dc.gov> wrote:

From: Majett, Nicholas (DCRA) <nicholas.majett@dc.gov>

Subject: RE: Stadium Group Certificate of Occupancy

To: "Don Padou" <don.padou@yahoo.com>

Date: Monday, June 7, 2010, 1:49 PM

According to our Zoning Administrator these are not zoning regulations. Rather, they are rules from the Alcohol Beverage Regulation Administration (ABRA).

Nicholas A. Majett

Deputy Director For

Communications & Customer Service

DCRA

1100 4th Street, S.W.

Washington, D.C. 20024

202-442-8937

nicholas.majett@dc.gov

From: Don Padou [mailto:don.padou@yahoo.com]
Sent: Monday, June 07, 2010 1:36 PM
To: Majett, Nicholas (DCRA)
Subject: RE: Stadium Group Certificate of Occupancy

Dear Mr. Majett,

Thank you very much for getting back to me so quickly.

Can you tell me where I can find the rules that define a sexually oriented business (e.g. the 18" and three foot rules). I looked in the DCMR, but could not locate them. Perhaps I am looking in the wrong title.

Sincerely,
Don Padou

--- On Mon, 6/7/10, Majett, Nicholas (DCRA) <nicholas.majett@dc.gov> wrote:

From: Majett, Nicholas (DCRA) <nicholas.majett@dc.gov>
Subject: RE: Stadium Group Certificate of Occupancy
To: "Don Padou" <don.padou@yahoo.com>
Cc: "Argo, Linda (DCRA)" <linda.argo@dc.gov>, "Byrd, Jill (DCRA)" <jill.byrd@dc.gov>
Date: Monday, June 7, 2010, 1:23 PM

I am responding on behalf of Director Argo to your inquiry regarding the Stadium club located at 2127 Queens Chapel Rd. N.E.

The Stadium Club is operating within the scope of its existing nightclub and restaurant certificate of occupancy and not considered "sexually oriented" so long as its performers are at least 18 inches off the floor, at least three feet from and not touching the customers.

Nicholas A. Majett
Deputy Director For
Communications & Customer Service
DCRA
1100 4th Street, S.W.
Washington , D.C. 20024
202-442-8937
nicholas.majett@dc.gov

Have you heard the knock at your door?
U.S. Census workers are here to assist you with filling out the 2010 Census Form.
www.census.dc.gov

From: Don Padou [mailto:don.padou@yahoo.com]
Sent: Monday, June 07, 2010 9:19 AM
To: Argo, Linda (DCRA)
Cc: Majett, Nicholas (DCRA)
Subject: Stadium Group Certificate of Occupancy

Dear Ms. Argo,

I am writing to follow up on a complaint I filed a couple of weeks ago regarding the Stadium Club located at 2127 Queens Chapel Rd NE.

The club is currently operating under a temporary Certificate of Occupancy that expires on June 21, 2010. The Certificate is for a "restaurant, non-sexually oriented business."

As I explained in my complaint, the Stadium Club offers nude dancing and is, therefore, a sexually oriented business.

Can you tell me the status of DCRA's investigation?

Sincerely,
Don Padou
1335 Lawrence Street NE
Washington , DC 20017
202-832-4038

DCRA has moved to a new location. Please visit us now at 1100 4th Street SW , Waterfront/SEU Metro Station.

ATTACHMENT F

**RE: Stadium Group Certificate of Occupancy**

Monday, June 7, 2010 1:23 PM

From: "Majett, Nicholas (DCRA)" <nicholas.majett@dc.gov>**To:** "'Don Padou'" <don.padou@yahoo.com>**Cc:** "Argo, Linda (DCRA)" <linda.argo@dc.gov>, "Byrd, Jill (DCRA)" <jill.byrd@dc.gov>

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Don Padou
1335 Lawrence Street NE
Washington , DC 20017
202-832-4038

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1100 4th Street SW, Waterfront/SEU Metro Station.



RE: Stadium Group Certificate of Occupancy

Monday, June 7, 2010 1:49 PM

From: "Majett, Nicholas (DCRA)" <nicholas.majett@dc.gov>

To: "'Don Padou'" <don.padou@yahoo.com>

According to our Zoning Administrator these are not zoning regulations. Rather, they are rules from the Alcohol Beverage Regulation Administration (ABRA).

Nicholas A. Majett
Deputy Director For
Communications & Customer Service
DCRA
1100 4th Street, S.W.
Washington , D.C. 20024
202-442-8937
nicholas.majett@dc.gov

From: Don Padou [mailto:don.padou@yahoo.com]

Sent: Monday, June 07, 2010 1:36 PM

To: Majett, Nicholas (DCRA)

Subject: RE: Stadium Group Certificate of Occupancy

Dear Mr. Majett,

Thank you very much for getting back to me so quickly.

Can you tell me where I can find the rules that define a sexually oriented business (e.g. the 18" and three foot rules). I looked in the DCMR, but could not locate them. Perhaps I am looking in the wrong title.

Sincerely,
Don Padou

--- On Mon, 6/7/10, Majett, Nicholas (DCRA) <nicholas.majett@dc.gov> wrote:

From: Majett, Nicholas (DCRA) <nicholas.majett@dc.gov>

Subject: RE: Stadium Group Certificate of Occupancy

To: "'Don Padou'" <don.padou@yahoo.com>

Cc: "Argo, Linda (DCRA)" <linda.argo@dc.gov>, "Byrd, Jill (DCRA)" <jill.byrd@dc.gov>

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nicholas.majett@dc.gov

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Sincerely,
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Washington , DC 20017
202-832-4038

DCRA has moved to a new location. Please visit us now at

ATTACHMENT G



GOVERNMENT OF THE DISTRICT OF COLUMBIA ABRA APPLICATION

OFFICIAL USE ONLY

License Number: <u>082005</u>	Date Accepted:	Accepted by: <u>D. Jackson</u>	Hearing Date:				
Fees Paid: \$ <u>300.00</u>	From	To	Issue Date:	From	To		
Date Approved by Board <u>5/20/09</u>	Initial: →	<u>MS</u>	<u>BT</u>	<u>MS</u>	<u>MS</u>		
Date Denied by Board <u>1/1</u>	Initial: →						
Ward/ANC:	☐ New	☐ Transfer (new location)	☒ Transfer With Sale	☐ 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
7. Number of Seating: <u>399</u>					8. Number of Hotel Rooms:
9. Applicant (Last Name, First Name, Middle Initial) or Entity The Stadium Group, LLC			10. Trade Name Stadium		
11. Business Address 2127 Queens Chapel Road, NE			12. Mailing Address if different from business c/o Mallios & O'Brien 2600 Virginia Avenue, NW, Suite 1112, Washington, DC 20037		
13. Business Telephone: () TBD			14. Fax Number: ()		
15. Email Address:					
16. Type of Applicant ☐ Sole Proprietor ☐ Corporation ☐ Partnership ☒ LLC ☐ Other (LLP or LP)					
17. List the name of Sole Proprietors and All Partners below.					

18. List all Corporate Officers, LLC Managing Members, General Partners by name and title who have an ownership interest:	Number of Shares	Percent of Interest
James Truit Redding, Managing Member		100%

19. List the total number of stocks and shares distributed by the Corporation: Authorized n/a Issued

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: **James Truit Redding**

Signature: [Signature] Subscribed and sworn to before me on this 20 day of MAR, 2009 Notary Public: [Signature] My commission expires on 11/30/12

Printed name: _____ 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 _____

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: 2127 Queens Chapel Road, NE			
2. Trade Name Stadium	3. Floor(s) for area of storage 1st	4. Floor(s) of licensed business 1st	
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 <u>11 am</u> To <u>2am</u>	From <u>11 am</u> To <u>2am</u>	From <u>11 am</u> To <u>2am</u>
Monday	From <u>11 am</u> To <u>2 am</u>	From <u>11 am</u> To <u>2 am</u>	From <u>11 am</u> To <u>2 am</u>
Tuesday	From <u>11 am</u> To <u>2 am</u>	From <u>11 am</u> To <u>2 am</u>	From <u>11 am</u> To <u>2 am</u>
Wednesday	From <u>11 am</u> To <u>2 am</u>	From <u>11 am</u> To <u>2 am</u>	From <u>11 am</u> To <u>2 am</u>
Thursday	From <u>11 am</u> To <u>2 am</u>	From <u>11 am</u> To <u>2 am</u>	From <u>11 am</u> To <u>2 am</u>
Friday	From <u>11 am</u> To <u>3 am</u>	From <u>11 am</u> To <u>3 am</u>	From <u>11 am</u> To <u>3 am</u>
Saturday	From <u>11 am</u> To <u>3 am</u>	From <u>11 am</u> To <u>3 am</u>	From <u>11 am</u> To <u>3 am</u>
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 _____

CN License

11. If you checked the box for tasting in question 5 in the ABRA Application, initial below that you understand that your tasting hours may not exceed your approved alcoholic beverage hours.			
12. Provide below the name, address and distance (in feet) of the following:			
	Name	Address	Distance
School	Washington Math Science Charter School	1920 Bladensburg Rd NE	1,200 ft
Public Library	Woodridge Branch Library	1801 Hamlin Street NE	3,200 ft
Day Care Center	none determined within		600 ft
Recreation Center	Arboretum Recreation Center	2412 Rand Place NE	1,950 ft
13. How were the above distances measured?			
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. n/a Retail CN applicant			
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).			
nightclub offering light fare and entertainment including nude performances			
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. n/a Retail Class CN applicant			
a. What are your projected gross annual receipts from food sales for the next twelve months (\$). How did you arrive at this amount?			
b. What are your projected gross annual receipts from alcoholic beverage sales for the next twelve months? (\$) How did you arrive at this amount?			
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. n/a			
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.			
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.			

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: James Truit Redding

[Signature]
Signature

Subscribed and sworn to before me
on this 20 day of 3, 2009

[Signature]
Notary Public

OLIVETTE D. GRAHAM
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires November 30, 2012
My commission expires on 11/30/12

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 _____

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ATTACHMENT H

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Southeast strip club moving to Northeast

The Stadium Club is believed to be opening its doors this month in the 2100 Queens Chapel Road NE, next to club DC Star.

The new club's owners paid \$1.15 million to buy the nude dance license from the manager of Nexus Gold, a strip club that was at First and I streets SE, according to records filed with the D.C. liquor board. Nexus Gold shut down a few years ago when the owner of the land where the club sat sold out to make way for the development of new apartments and office buildings around the Nationals Park.

It is tough to figure out all the details of the new Stadium Club. The phone number listed on a Web site is disconnected. James T. "Tru" Redding, who is listed on the club's Web site as the new owner and the owner of a commercial and residential construction company -- didn't return a phone call and e-mail last week seeking comment.

The club's Web site - stadiumclubdc.com - promises "special VIP rooms for private dance experiences with stadium girls," and "up front table dances" for \$20 a song, plus valet parking for up to 75 cars next door.

William Shelton, an advisory neighborhood commissioner in Ward 5, said the area feels "like it has taken its brunt" with having nightclubs, noting there are five clubs near the Stadium Club.

"We're worried about the parking impact, how it will use up police resources, and that people will be lurking around the neighborhood when they leave the club," he said. He said he and other neighborhood leaders met with Redding who assured them that he was bringing in a manager who had family ties to Ward 5.

In 2007, residents in Ward 5 successfully fought against a plan to create strip bar zone in the community for clubs displaced by the new baseball stadium. Under a law, only two of the six displaced clubs can move to any one ward.

-- Dana Hedgpeth

By Washington Post editors | March 22, 2010; 9:45 AM ET
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ATTACHMENT I

URBANDADDY

Published March 24, 2010

Pole Position The Site of Your Next PAC Fund-Raiser

Before we begin, let's get this out of the way: we're not suggesting we'd *ever* find you in a venue such as the one we're about to discuss.

But facts are facts: you're known to play concierge around this city, and the case does arise when your friends from the speedboat lobby suggest (*insist*, even) that you go to such a place.

And you would be remiss not to be a good host.

So say hello to *Stadium Club*, opening this Monday with a series of parties to serve all your entertaining needs.

You'll enter via a red carpet (naturally) and find yourself presented with the full Vegas—all manner of colored lights, short skirts and Kanye emanating from the DJ booth. Your troops will want to get right to it, but you'll make them wait, directing them into the leather-paneled dining room for a feast of lobster, lamb chops and trophy wines, and then repairing to the outdoor smoking deck for a round of Honduran coronas.

Only then will you usher them onto the "field" level, where you'll turn your attention to the three main stages, which are connected by bars that conveniently double as catwalks. (Somewhere, Frank Lloyd Wright is smiling.)

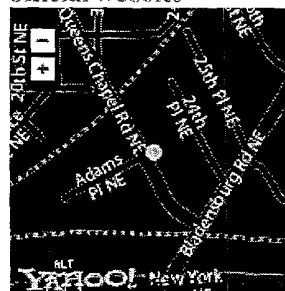
Of course, your esteemed lobbyists wouldn't want any unwanted press coverage, so to facilitate your discreet entrance and egress, the club is planning a sedan service, which you'll summon by calling the club and asking for "Elvis."

The King would be proud.



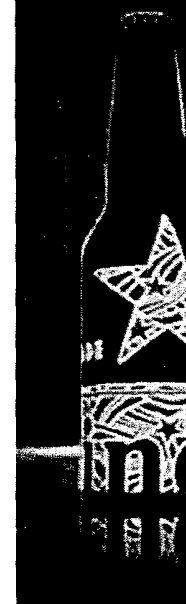
VITALS

Stadium Club
2127 Queens Chapel Rd NE
Washington, DC 20018
202-269-4477
official website



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12

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YOUNG & HUNGRY ::::::::::::::::::::::::::::::::::::::

Stadium Club Combines Steaks, Strippers Naked women and an affordable strip steak, together at last

By Tim Carman on July 30, 2010



Pole Position: Stadium Club raises the bar for strip-club food.

Photo by Darrow Montgomery

When the attendant in the black jacket told me that valet parking would be \$20 at the **Stadium Club**, I was quickly reminded about the strange, otherworldly inflation of strip clubs: The closer you are to naked bodies, the farther prices wander from the costs of things in the fully clothed world.

A colleague in Houston once gave me a lesson in strip club economics after I had the temerity to tease him (OK, *mock* him) for shelling out \$20 for a lap dance. You have to remember that, in the late 1980s, \$20 was not crumbled-up pocket change that you tossed to the Starbucks barista for a pair of venti caramel Frappuccinos with extra whip. It was serious drinking money. My buddy looked me dead in the eye, his anger barely contained, and said something to the effect of, "Listen, you can't go to the goddamn 7-Eleven for a lap dance, so I decide what its value is."

That had to be the most honest sentence ever uttered in a strip club, and I'll never forget it.

I suspect flesh parlors from here to Tokyo know only too well that they follow their own warped rules of supply and demand. The supply of nudity is a scare commodity—at least compared to, say, dry cleaning services—but the demand apparently remains high, even with one-click access to varieties of hardcore porn that makes pole dancing seem as harmless as a senior high gym class. Which no doubt explains why the Stadium Club demands a twenty just for the privilege of parking your car within its gated lot, safe from the rascals who may wander this industrial, semi-desolate section of Northeast off Bladensburg Road.

Stripper Related Inflation, no doubt, also explains why the Stadium Club wants \$15 a head just to walk into the club (\$20 on the weekends). And why the champagne list starts at \$175 a bottle, for a Moët & Chandon Brut Imperial, and maxes out at \$1,700 for a Perrier-Jouët Fleur de Champagne rosé. And it surely explains why so many patrons are inclined to nurse a single beer while saving their dollars for garter adornments.

But here's the interesting thing about the new 14,000-square-foot Stadium Club: Access to its 42-seat steakhouse is free. Even better, the restaurant's 18-ounce New York strip steak, a center cut piece of USDA prime, is a relative bargain at \$45. So is its 9-ounce center cut of filet mignon for \$40. Sure, no one will mistake these prices for those at Ray's the Steaks or Ray's the Classics, particularly since the Stadium Club offers no complimentary sides with its entrees. But, at least for now, Michael Landrum does not surround his wet-aged steaks with a wet-dream's worth of female flesh.

The truth is, the Stadium Club's prices are comparable to those at D.C.'s loftiest steakhouses, places where the only jiggling involves the flesh around one's own waistline. Perhaps this fact alone isn't enough to entice you to step foot into a gentlemen's club, especially if you find the idea of slicing into dead animals while objectifying dancing ones rather distasteful. Morality, however, is relative. Strip club food isn't: Most of it isn't good enough for a second-rate diner still working through last week's Sysco orders.

The Stadium Club wants to redefine strip club eating. To that end, the owner has hired a former regional chef for Ruth's Chris, Andre Miller, who has created a sort of a small-scale version of the popular steakhouse. Like Ruth's Chris, the Stadium Club doesn't use a grill; all its steaks are prepared on an imposing stainless steel Vulcan broiler, which generates the high heat of a grill, without either its messiness or its benefits.

My New York strip is a monstrous cut, nearly two inches thick. But it sports no char, no grill marks, no quadrillage—nothing that gives steaks added flavor and texture. The strip doesn't have much seasoning or caramelization, either, save for a few discreet patches of brown along the soft edges of the steak. Mostly, it's just a well-cooked, medium-rare piece of meat, spilling its red juices all over the white plate while relying on its size and USDA prime pedigree to justify its white-tablecloth treatment. The filet mignon at least has some taste buried within the tender muscle, a not-unpleasant liver flavor, but the cut is not seared or seasoned well, either.

When the restaurant manager approaches our table, inquiring about the steaks, I tell him the truth. He deserves the truth. He's a gracious man who broke open a bottle of Sterling Vintner's Collection when our waiter initially told us that the Stadium Club doesn't sell wine by the glass. (He poured me and my guest a glass of the silky merlot and charged us \$15 for each, a more than equitable price; a second visit revealed that the manager had turned this gesture into a formal practice.) I tell him that I prefer grilled over broiled steaks, just because I like my rib-eyes or strips blackened from the heat of searing hot grates. Next time, he informs me, just ask for extra char, which the chef can add to any steak.

A day later, I decide to stop at Ruth's Chris in Bethesda to better understand how the steakhouse handles its meat. I have to confess, I've never been to Ruth's Chris, and I find it somewhat hard to believe the chain could have survived all these years with an approach to steaks that totally discounts char. When I tell the bartender how I prefer my steaks, he informs me there is a way around the limitations of the broiler. He calls it "Pittsburgh rare," a piece of cooking nomenclature that I had not previously encountered. At Ruth's Chris, it means the cooks sear your steak in a pan before tossing it under a broiler to your desired temperature.

Pittsburgh rare, I'd later find out, is actually a more specific technique with its own colorful back story. The preparation calls for a cook to sear a steak over extremely high heat until it emerges with a blackened crust but remains almost cold and raw at the center. Depending on whose story you believe, the term "Pittsburgh rare" was born either from a kitchen mistake at an Iron City restaurant or from steelworkers who allegedly (and probably apocryphally) seared their steaks on blisteringly hot smelting furnaces. Whatever the tale, the technique works. My medium-rare rib-eye at Ruth's Chris arrives on a frighteningly hot plate, like a fajitas platter, which sizzles with juices and melted butter. The steak is deeply charred across its entire surface, almost au-poivre-like in crustiness. Its smell is intoxicating, the mix of butter and browned meat activating my saliva glands the moment the plate hits the bar. The rib-eye, in short, is delicious.

On my second trip to the Stadium Club, I order the 24-ounce bone-in rib-eye for \$48 and tell the waiter to prepare it Pittsburgh rare. He doesn't blink an eye at the request, nor ask for explanation, which fills me with hope. My optimism is not completely misplaced. The hulking piece of meat comes to the table freckled with blackened specks of seasoning. If it's not exactly char, it's close enough. The blackened spices add flavor, though not much texture, to the cut, which is rare and cool at its center. I'd say the chef understood at least half of the Pittsburgh rare request.

Even with the imperfect char, I'm pigging out on this cowboy cut, which is the closest thing to a perfect steak at the Stadium Club. I could see myself ordering it even at a place that doesn't provide a side order of legs with every entree. In fact, I'd dare say that ordering any cut "Pittsburgh rare" increases your likelihood of a quality steak experience. I'd definitely take my chances with the beef over some of the other options here, namely the mealy tuna tartar appetizer spiked with ginger in a vain effort to give it some flavor, or the fresh lobster tail blackened with spices and cooked to a rubbery texture. I might even order it over the decent deep-fried crab cakes with the delicate Old Bay perfume.

I single out the steaks because, at the Stadium Club restaurant, you must order an entrée. House rules dictate that you can't order, say, an \$11 wedge salad (a clean, crisp wedge salad with a light bleu cheese bite) and then expect to ogle the dancers the rest of the night. Not that there's much to ogle from the restaurant itself. The space is tucked into a corner of the building, glassed in and separate from the dark, strobe-lit club where the strippers do their thing. Unless someone's working the pole nearest to the restaurant—and there usually wasn't when I was there—you must find the exact right sight line to spot the stripper deeper within the club. The effect is like being at the zoo, tapping the glass to get the chimp to come out of hiding.

Once you're done with dinner, you can finish your wine in the club itself at no extra charge. If I were a stripper aficionado—I'm afraid I was more interested in the TV showing Strasburg's latest start—I'd approach the main club through the restaurant. Yes, the club offers a stripped-down bar menu so you can eat small bites right beside your favorite pole. But after watching a dancer strut down one of the bar tops, pausing to put her backfield in motion right in a patron's face, I think I'd prefer to eat my dinner in the hermetically sealed, crotch-free environment of Stadium Club's steakhouse.

Stadium Club, 2127 Queens Chapel Road NE, (202) 269-4477

Our Readers Say

1
Gene

ATTACHMENT K

AFFIDAVIT OF BENJAMIN PETOK

I, Benjamin Petok, swear that the following is true and accurate and based on my personal knowledge.

1. I am over 21 years old and am a resident of the District of Columbia.
2. On the evening of June 16, 2010, I visited Stadium Club, located at 2127 Queens Chapel Road, NE, Washington, DC. I arrived at the Stadium Club at approximately 9:00 p.m. and stayed until 1:00 a.m. Upon arriving, I was charged \$20.00 for valet parking, and a \$15.00 cover charge to enter the club.
3. Once inside, I was ushered into a lobby where at least three men in tuxedos greeted me. There was a woman behind a cash register who asked if I was there for dinner or to go to the bar. She indicated that the restaurant was to the left and the bar to the right. I indicated I didn't intend to eat dinner and was escorted by one of the men in tuxedos to a low lounge table with cushioned chairs in the bar area. My table was between the bar and three stages.
4. I observed that the main bar area had three stages, each equipped with a dancer's pole. The bar itself had approximately 20-30 barstools, and there were low lounge tables and cushioned lounge chairs throughout the room. There was a door next to one of the stages that led to an outside area. The area was partially enclosed and I went out there during the evening to smoke cigarettes. Alcoholic beverages were permitted in this area. There were dancers in the outdoor area each time I went. The dancers were wearing the same skimpy clothing in this partially enclosed outdoor area as they wore in the bar. They did not perform in the outdoor area. The outdoor lounge area was in view of the parking lot.
5. In the bar, two of the three stages were occupied by various dancers throughout the evening. Each of these dancers began her dance wearing a bikini or dress. The performances varied slightly with each dancer, but each one removed all of her clothing. One performer named, "Star" would crouch after removing her clothes, exposing her vagina. She would allow her fingers to touch the area around her vagina. She would only crouch and expose her vagina when a customer would come directly up to the stage (less than 2 feet) where she was dancing. After exposing her vagina to the customer, she would ask for a tip to be placed in her elastic garter belt.
6. Another dancer, "Cory" would also expose her vagina to customers by standing facing away from the customer and bending over, exposing her anus and vagina. Many of the performers, including "Cory," "Star," and "Sonny," fondled their naked breasts and genitalia in a sexual manner while on the stage. The dancers gyrated their hips in a sexual manner, fondled their exposed breasts and nipples and also their vaginas.
7. The stage on which the dancers performed was connected directly to the bar and at times throughout the evening, the dancers would be naked and standing on the bar where drinks were prepared and served. One of the dancer polls is situated no more than 5 feet from

the bar and a patron sitting at the bar would never have been more than 10 feet from a performing dancer.

8. Each dancer performed for approximately 10-15 minutes on stage. After one dancer finished her performance, she was greeted at the back of the stage by a man in a tuxedo who would hand her the panties and bra which she had removed while on stage. The dancers were not permitted to leave the stage until clothed. Once the dancer left the stage, another dance would begin to perform in her place. Many of the dancers performed many times throughout the night.
9. "Star" performed on stage at least three times and at one point mentioned to me that she was not pleased to have to go back on stage. "Cory" avoided going on stage by regularly being asked to "table dance." "Table dancing" was a performance by a dancer on an individual patron's or group of patrons' lounge table. During the table dance, "Cory" would remove all of her clothing and dance nude, rubbing her breasts and vagina and exposing her genitalia to her patrons. For this performance, "Cory" charged \$20.00 and tips were expected throughout the dance. "Sonny" also provided table dances where she encouraged patrons to touch her legs and arms while she danced in a sexual manner. She exposed and fondled her genitalia and breasts during the "table dance." "Sonny" also charged \$20.00 for the "table dance" and tips were encouraged and expected.
10. "Sonny" and "Cory" sat at my table for most of the evening. I purchased a couple of glasses of wine for "Cory" as we talked. She would sometimes go back to the changing room to put on a new outfit or go to another table to perform a "table dance." Early in the night I asked if I could get a private dance with her. "Cory" responded "no private dances." Other girls had offered private dances for \$100.
11. After an hour or two of chatting with "Cory," I asked again about the possibility of a private dance. She indicated that I could get a private dance in the "champagne room" and that the cost for a 10 minute dance was \$100.00 and a 20 minute dance was \$150.00. I agreed to go for a 20 minute dance and she took my hand and escorted me to a cash register up a couple of stairs and behind the stage where the dancers performed. There were two men in black tuxedos there and a red velvet rope which cordoned the area where I was standing from a long, dimly lit hallway. One of the men took my credit card and asked me to sign a form indicating that I was agreeing to the charge. I did.
12. "Cory" then took my hand and led me down a hallway, along with one of the men dressed in a tuxedo. There were many "rooms" which were really small alcoves with a velvet-like curtain. In each of the alcoves was a small table and two cushioned sofas against a wall. One wall of the alcove was one-way mirrored glass. Through the glass I could see both performance stages and the bar. Once the man in the tuxedo left, "Cory" took off all of her clothes and began to dance for me from atop the small table. She rubbed her naked breasts and nipples. She also exposed her vagina and anus to me repeatedly and rubbed her vagina. She whispered in my ear in a sexually suggestive manner and rubbed her hand on my chest and back.

13. After the 20 minutes was up, the man in the tuxedo re-appeared to let us know that the time had expired. "Cory" got dressed and we walked back out to the main area of the bar. I gave "Cory" a \$20 tip for the dance.
14. Around 12 midnight, I tried to leave the club. I paid my bill for the drinks which I had purchased for myself, my friends and some of the performers totaling about \$325.00 including gratuity. When I exited through the main entrance to the club, there were a number of DC Metro Police Department cruisers in and just outside the parking lot to the club. I asked one of the security guards outside what was going on. He said that somebody had approached a security guard and smashed a glass bottle on his head or on his face. The police were called and had yellow police tape blocking the exit for all cars. I was told I could not leave at that time. I went back into the club.
15. I went back to my table and ordered another drink which I then took outside to the partially enclosed area. I drank and smoked a cigarette there while talking with "Sonny" and at least one other dancer. "Sonny" was then called to the stage to perform. I went back inside and watched her performance. I stood close to the stage where she was dancing naked and in a sexually suggestive manner. She gyrated her hips, crouched to expose her vagina and fondled her breasts. Every minute or two she would come close to where I was standing and expose her vagina and anus to me. I would then place a \$1-bill in her elastic garter belt.
16. After her dance, I asked "Sonny" if she had time for a private dance. She indicated that she did and I asked for a 10 minute dance for \$100. She complied, though indicated she would prefer a 20 minute dance. As I was escorted to the private room by one of the men in a tuxedo, he told me that he was going to give "Sonny" some extra time to dance.
17. I was led into the same private room where "Cory" had danced for me earlier. "Sonny" removed her clothes and slapped her own buttocks. She asked me to do the same and I complied. She then danced with her back turned to me and moved her hips back and forth, bringing my face very close to her anus and buttocks. I asked what she would do back here and she responded, "It depends on how much encouragement I get." I understood this statement to mean that "Sonny" would be more sexually provocative if she received more tips. She also fondled her own breasts and complained that she didn't like her breasts because they were too hard to touch. She danced further by sitting in my lap and grinding her genitalia against my lap. At this point, my hands were allowed to touch her legs, back, buttocks and breasts. During this time I also placed a number of \$1 bills in her elastic garter and was permitted to run my hand up and down her leg when doing so. The dance ended after 15 minutes and "Sonny" mentioned that the man in the tuxedo gave us extra time and that I should "take care of him." I gave the man in the tuxedo a \$20 tip on my way out.
18. At this point, I went to the exit of the club again and the police were gone. The valet retrieved my car and I left the club.



Benjamin Petok
Affiant

7/2/2010

Date

District of Columbia : SS
Subscribed and Sworn to before me

this 12 day of JULY, 2010



Notary Public, D.C.

My commission expires _____

Jordana Arias
Notary Public, District of Columbia
My Commission Expires 10/14/2012

AFFIDAVIT OF MARSHALL CHRISWELL

I, Marshall Chriswell, swear that the following is true and accurate and based on my personal knowledge.

1. I am over 21 years old and am a resident of the District of Columbia.
 2. On the evening of June 16, 2010, I visited Stadium Club, located at 2127 Queens Chapel Road, NE, Washington, DC. I arrived at the location at approximately 9:00p.m. and stayed until 1:00a.m. Upon arriving, I was charged \$15.00 for valet parking, and another \$15.00 cover charge to enter the club.
 3. Once inside, I went into the main bar area and observed that there were three stages on the bar, each equipped with a dancer's pole. Each of the stages was a physical part of the main bar, and the performers were only a few feet from the area where the drinks were served. The bar itself had approximately 15-25 barstools, and there were tables and chairs throughout the room. To the left of the bar area was the entrance to the restaurant. Additionally, there was a doorway to a patio area where patrons and performers congregated to drink and smoke.
 4. On the bar, one woman performed at each stage area. The women's performances varied slightly with each performer, but each one removed most or all of her clothing. Many of the performers fondled their naked breasts and genitalia in a sexual manner.
 5. The performers on stage approached the patrons who were standing or sitting near the stage, often coming within inches of patrons. Occasionally, some of the performers reached down to the patrons standing or sitting near the stage, and touched the patrons on the face, arms, or chest. The performers climbed, swung, and slid on the dancer's pole during the course of their performance.
 6. Each woman performed for approximately 10-15 minutes. After one woman had finished her performance, another woman took her place. The performers rotated in groups of three (one at each stage) for the entire night, and many of the women performed multiple times throughout the evening.
 7. Within minutes of arriving at the club, I was approached by one of the performers. She was wearing a very short skirt and a revealing top; she sat next to me and engaged me in conversation. I was approached by several performers throughout the evening in this manner, most of whom accompanied me for 20 to 30 minutes. There were very few moments during the evening when I was not accompanied by one of the performers. Some of the performers asked me to buy them an alcoholic beverage while we were talking.
 8. During my conversations with the performers, the women invariably asked me if I would like a "table dance," which they described as a dance where the woman would take off all
-

of her clothes and dance on the table around which we were seated. I was informed that this "table dance" would cost \$25.00.

9. Many of the performers also asked if I would like to go to the "champagne room" which they indicated was on the other side of a mirrored wall behind the main bar area. The performers indicated that they performed more intimate dances in the champagne room than they could in the main bar area. They indicated that a visit to the champagne room would cost significantly more than for a table dance. When I asked about the nature of the dances in the champagne room, the performers indicated that they were willing to have physical contact with patrons in that private area of the club.
10. When I tried to leave the Stadium Club I was initially prevented from doing so by the police who said they were investigating a fight where a man had been hit in the face with a bottle in the parking lot.

MLC
Marshall Chriswell
Affiant

7-12-10
Date

District of Columbia : SS
Subscribed and Sworn to before me

this 12 day of July, 2010

Jordana Arias
Notary Public, D.C.
My commission expires _____

Jordana Arias
Notary Public, District of Columbia
My Commission Expires 10/14/2012

ATTACHMENT L



Stadium

The Stadium Group LLC

2127 QUEENS CHAPEL RD NE

License Number : ABRA-082005

License-Class: Nightclub C Capacity: 396



Hours of Operation

	Operation	Sales
Sunday:	11 am - 2 am	11 am - 2 am
Monday:	11 am - 2 am	11 am - 2 am
Tuesday:	11 am - 2 am	11 am - 2 am
Wednesday:	11 am - 2 am	11 am - 2 am
Thursday:	11 am - 2 am	11 am - 2 am
Friday:	11 am - 3 am	11 am - 3 am
Saturday:	11 am - 3 am	11 am - 3 am

Expiration Date: 05/21/2010

You will be billed annually for any balance due.

Director

THE LAW REQUIRES THIS LICENSE TO BE POSTED IN A CONSPICUOUS PLACE ON THE PREMISES

005286

VOID IF ALTERED

ATTACHMENT M



GOVERNMENT
OF THE
DISTRICT OF COLUMBIA

License ABRA-082005
ANC 5B09
Class Retailer CN03
Capacity 396

The Stadium Group LLC
t/a Stadium
2127 Queens Chapel Rd NE

	Hours of Operation	Hours of Sales
MON	11 am to 2 am	11 am to 2 am
TUE	11 am to 2 am	11 am to 2 am
WED	11 am to 2 am	11 am to 2 am
THU	11 am to 2 am	11 am to 2 am
FRI	11 am to 3 am	11 am to 3 am
SAT	11 am to 3 am	11 am to 3 am
SUN	11 am to 2 am	11 am to 2 am

COPY

LICENSE ISSUE DATE: 4/30/2010

VALID THROUGH: 6/21/2010

THE LAW REQUIRES THIS LICENSE TO BE POSTED IN A CONSPICUOUS PLACE ON THE PREMISES

ATTACHMENT N

Stadium
The Stadium Group LLC
2127 QUEENS CHAPEL RD NE
License Number : ABRA-082005
License Class: Nightclub C Capacity: 396

Hours of Operation

	Operation	Sales
Sunday:	11 am - 2 am	11 am -2 am
Monday:	11 am - 2 am	11 am - 2 am
Tuesday:	11 am - 2 am	11 am - 2 am
Wednesday:	11 am - 2 am	11 am - 2 am
Thursday:	11 am - 2 am	11 am - 2 am
Friday:	11 am - 3 am	11 am - 3 am
Saturday:	11 am - 3 am	11 am - 3 am

Expiration Date: 09/30/2010

You will be billed annually for any balance due.

ATTACHMENT O

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.

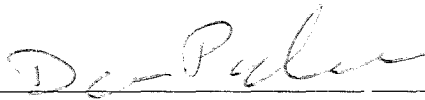
Member 1:

 6/11/10

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

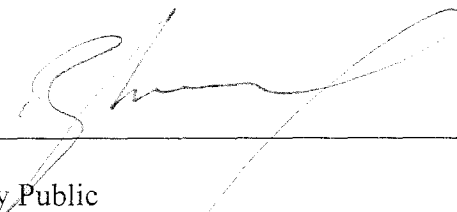
Date

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
JULY 31, 2010

ATTACHMENT P

District of Columbia Court of Appeals.
UPPER GEORGIA AVENUE PLANNING COMMITTEE, Petitioner,
v.
ALCOHOLIC BEVERAGE CONTROL BOARD, Respondent,
K.G.S., Inc., trading as Shepherd Park Restaurant, Intervenor.
No. 84-115.

Argued May 15, 1985.
Decided Nov. 15, 1985.

Group of local businessmen and residents sought review of an order of the Alcoholic Beverage Control Board, granting a renewed Class C liquor license for a restaurant. The Court of Appeals, Terry, J., held that: (1) Board, in renewing restaurant's liquor license, had to find that restaurant's "chief source of revenue" was sale of meals rather than alcoholic beverages; (2) finding that location of restaurant was "appropriate" was supported by substantial evidence; and (3) Board fulfilled its statutory duty to carefully consider recommendations of local Advisory Neighborhood Commission in renewing restaurant's liquor license.

Affirmed in part, reversed in part, and remanded.

*988 Gay Gellhorn, Washington, D.C., for petitioner. James Robertson, Washington, D.C., was on the brief, for petitioner.

*989 Karen J. Krueger, Asst. Corp. Counsel, with whom Inez Smith Reid, Corp. Counsel, John H. Suda, Principal Deputy Corp. Counsel, and Charles L. Reischel, Deputy Corp. Counsel, Washington, D.C., were on the brief, for respondent.

Robert R. Redmon, Washington, D.C., for intervenor. Stuart L. Bindeman and Douglas S. Stone, Washington, D.C., were on the brief, for intervenor.

Stephen J. O'Brien and Daniel Healey, Washington, D.C., filed a brief, for amicus curiae, Washington, D.C., Restaurant and Beverage Ass'n.

Before MACK, FERREN, and TERRY, Associate Judges.

TERRY, Associate Judge:

[1] Petitioner, the Upper Georgia Avenue Planning Committee (UGAPC), seeks review of an order of the District of Columbia Alcoholic Beverage Control Board (the Board), granting K.G.S., Inc., a renewed liquor license for its restaurant. Petitioner advances three arguments for reversal. First, it contends that the Board erred in ruling that it was not required under D.C. Code §§ 25-103(14) (1981) and 25-111(a)(7) (1985 Supp.) to make a finding that the sale of meals and not beverages was the restaurant's "chief source of revenue" before it could renew the restaurant's liquor license; second, it maintains that

the Board's finding that the location of the restaurant was appropriate was not supported by substantial evidence; third, it argues that the Board erred by failing to give great weight to the recommendation of the Advisory Neighborhood Commission. We disagree with the second and third contentions, but we agree with the first. Accordingly, we affirm the Board's order in part, reverse it in part, and remand the case for further proceedings, including a factual finding, with respect to the restaurant's chief source of revenue. FN1

FN1. Petitioner also contends that the restaurant does not qualify as a restaurant under D.C. Code § 25-103(14) (1981) because the exotic dancing which takes place there is a business that is not "incidental to a bona fide restaurant." This issue, however, was not raised before the Board. In fact, when petitioner quoted the statutory definition of a restaurant in its memorandum in support of its proposed findings before the Board, it excluded that portion of the definition relating to incidental businesses, apparently believing that it had no bearing on the case. We therefore decline to consider the issue now. *John D. Neumann Properties, Inc. v. District of Columbia Board of Appeals and Review*, 268 A.2d 605, 606 (D.C.1970); accord, *Smith v. Police and Firemen's Retirement and Relief Board*, 460 A.2d 997, 999 (D.C.1983).

I

In 1982 K.G.S., Inc., the intervenor, filed an application with the Board to renew the existing Class C liquor license for the Shepherd Park Restaurant, which features nude female "exotic" dancers for the entertainment of its patrons. The renewal was opposed by UGAPC, a group of local businessmen and residents which was organized to improve the neighborhood in which its members live and work.

A hearing on the renewal application was held on February 16, 1983, before a three-member panel of the Board. Testimony was presented by several witnesses, including one of the two stockholders of K.G.S., Inc., an investigator for the Board, a police officer who had conducted an investigation of the restaurant, four members of UGAPC, and representatives of other local citizens' groups. The principal objection of those who testified in opposition to the renewal was to the nudity of the dancers. They also cited incidents in which restaurant patrons had harassed neighborhood residents and had been seen urinating in public, as well as parking problems, as further grounds for denying renewal of the license. Testimony in support of the renewal focused primarily on recent improvements to the restaurant and on actions taken to resolve the problems cited by the opposing witnesses.

[2] In December 1983 the Board issued an order granting the application for renewal of the license. After various additional*990 proceedings, including a remand from this court to enable the Board to revise its findings, the case is now before us for a decision on the merits. FN2

FN2. UGAPC has filed protests in this case regarding the renewal of the license for both the 1982-1983 and the 1983-1984 licensing years, but it has not opposed

the renewal for 1984-1985. Nevertheless, the case is not moot, because our decision can have an impact on the restaurant's current status. If we conclude that the Board erred in granting the 1982-1983 renewal, the current license must be held void. See *Kopff v. District of Columbia Alcoholic Beverage Control Board*, 381 A.2d 1372, 1377-1378 (D.C.1977).

II

Petitioner's main argument in this court is that the Board erred in ruling that it may renew a Class C liquor license for a restaurant without making a finding that the restaurant's chief source of revenue is from the sale of meals and not beverages. We agree.

Under D.C. Code § 25-111(a)(7) (1985 Supp.), a Class C license “shall be issued only for a bona fide restaurant....” Although the Code does not define “bona fide restaurant,” it does define “restaurant” as follows:

The word “restaurant” means a suitable space in a suitable building, approved by the Board, including such suitable space outside of the building and adjoining it as may be approved by the Board, kept, used, maintained, advertised, or held out to the public to be a place where meals are served, such space being provided with such adequate kitchen and dining room equipment and capacity, and having employed therein such number and kinds of employees for preparing, cooking, and serving meals for its guests *as shall satisfy the Board that such space is intended for use primarily as a place for preparing, cooking, and serving meals, and that the chief source of revenue to be derived from the operation of such place shall be from the preparation, cooking, and serving of meals and not from the sale of beverages.* No such space shall be considered suitable if any business is conducted therein other than the preparation, cooking, and serving of meals, except such a business as is incidental to a bona fide restaurant.

D.C. Code § 25-103(14) (1981) (emphasis added).

[3] Although the syntax is awkward, the intent of the statute is plain. The Board may not find that a place is a restaurant (and thus it may not issue a license to an establishment claiming to be a restaurant) until it is “satisf[ied]” of two things: first, that the place is intended to be used primarily as a place for cooking and serving meals, and second, that the chief source of revenue is from the sale of meals, not beverages. In this case, however, the Board ruled that the Shepherd Park was a restaurant without ever making a finding on the second point. The Board explained:

The District of Columbia Corporation Counsel has stated that the majority of an alcoholic beverage control licensed restaurant's revenues need not be derived from the sale of food. In an opinion dated [January] 26, 1956, the Corporation Counsel ruled that the Board must [only] be satisfied that it is the intent of the Applicant to sell food and meals.

See Op. Corp. Counsel at 2 (January 26, 1956) (“the Board must be satisfied that the space is intended for use, broadly speaking, as a bona fide restaurant”). “[I]n the absence

of specific action by the [Mayor] or Council to the contrary, or until overruled by controlling court decision,” the Board was entitled to rely on that opinion as a “guiding statement of law....” Reorganization Order No. 50, D.C. Code Title 1 App. at 180 (1973). We now hold, however, that both the Corporation Counsel's opinion and the Board's ruling based upon it are erroneous because they are contrary to the plain meaning of the statute. See *Jordan v. District of Columbia*, 362 A.2d 114, 118 (D.C.1976). We must give effect to the legislative intent insofar *991 as we can discern it from the statutory language. See *Peoples Drug Stores, Inc. v. District of Columbia*, 470 A.2d 751, 753 (D.C.1983) (en banc); *Varela v. Hi-Lo Powered Stirrups, Inc.*, 424 A.2d 61, 64-65 (D.C.1980) (en banc) (citing cases).

[4] Because the legislative intent in this instance is clear, we hold that the Board must find that “the chief source of revenue” of any establishment claiming to be a restaurant “shall be from the preparation, cooking, and serving of meals and not from the sale of beverages.” D.C. Code § 25-103(14) (1981). We leave it to the Board, in the first instance, to determine whether “the chief source of revenue” means that a particular amount or percentage of revenue must be derived from the sale of food rather than beverages. We also leave it to the Board to determine, as a matter within its regulatory expertise, the period of time for which the chief-source-of-revenue calculation shall be made. FN3 Any such determination, of course, will be subject to review by this court, either in this case (if it comes back to us) or in some future case involving a different applicant.

FN3. We recognize that ascertaining what sums are attributable to the sale of food rather than beverages may present some difficult accounting problems. The business may yield different ratios from week to week or from season to season, and there may be occasional periods-major holidays, for example-when a restaurant attracts an abnormal number of drinkers rather than eaters. The Board will have discretion to decide what weight to give to such factors as these, so long as it makes the ultimate finding as to “the chief source of revenue.”

[5][6] Because the Board failed to make the necessary finding that the chief source of the Shepherd Park Restaurant's revenue is from the sale of food and not beverages, we must reverse the decision of the Board and remand for further proceedings on that issue, and for the entry of an appropriate finding. In addition to the factors listed in section 25-103(14) (adequate kitchen equipment, number and kinds of employees, etc.), the Board is free to consider any relevant evidence in determining the chief source of revenue, including such items as cash register tapes, canceled checks, and paid invoices. See generally *Letz v. Fama, Inc.*, 613 S.W.2d 190 (Mo.Ct.App.1981). Of course, the Board is not free to disregard the statutory criteria and base its finding on a mere promise by the applicant to make its chief source of revenue the sale of meals rather than beverages; hard evidence is required, not promises or good intentions. See *Washington Press Club v. District of Columbia Alcoholic Beverage Control Board*, 476 A.2d 1107, 1110 (D.C.1984).

III

Petitioner next contends that the Board's finding that the location of the Shepherd Park Restaurant was "appropriate" was not supported by substantial evidence. It cites the complaints about the nude dancers, the patrons' disorderly conduct, and the parking problems associated with the restaurant as evidence of the inappropriateness of its location. There is abundant evidence in the re-cord on both sides of the issue.

[7][8] Under D.C. Code § 25-115(a)(6) (1985 Supp.), before the Board may issue a license, it must satisfy itself "[t]hat the place for which the license is to be issued is an appropriate one considering the character of the premises, its surroundings, and the wishes of the persons residing or owning property in the neighborhood of the premises for which the license is desired." Its decision to grant or deny a license application must meet the three-part test which we have established for contested cases:

(1) [T]he decision must state findings of fact on each material, contested factual issue; (2) those findings must be based on substantial evidence; and (3) the conclusions of law must follow rationally from the findings.

Perkins v. District of Columbia Department of Employment Services, 482 A.2d 401, 402 (D.C.1984); accord, *Donnelly v. District of Columbia Alcoholic Beverage Control Board*, 452 A.2d 364, 366 (D.C.1982)*992 ; *Foggy Bottom Ass'n v. District of Columbia Alcoholic Beverage Control Board*, 445 A.2d 643, 645 (D.C.1982); *Citizens Ass'n of Georgetown v. District of Columbia Zoning Commission*, 402 A.2d 36, 42 (D.C.1979). We must uphold the Board's decision so long as it is supported by substantial evidence, even though there may also be substantial evidence to support a contrary decision, as there is in this case. See *Haight v. District of Columbia Alcoholic Beverage Control Board*, 439 A.2d 487, 495 (D.C.1981); *Spevak v. District of Columbia Alcoholic Beverage Control Board*, 407 A.2d 549, 554 (D.C.1979).

[9] Petitioner first argues that the restaurant's use of nude go-go dancers makes its location inappropriate to the "stable, traditional, family-oriented community" in which it is located. The Board found, however, that the dancing was not illegal under applicable zoning regulations, FN4 and therefore it could not be used as a basis for finding the location inappropriate. The Board's ruling was correct as a matter of law. *4934, Inc. v. Washington*, 375 A.2d 20 (D.C.1977); accord, *D.T. Corp. v. District of Columbia Alcoholic Beverage Control Board*, 407 A.2d 707, 708 (D.C.1979).

FN4. A 1977 amendment to the District of Columbia Zoning Regulations prohibited "sexually-oriented business establishments" from operating in areas zoned C-2-A, which is the restaurant's zoning classification. The restaurant apparently meets the definition of a "sexually-oriented business establishment." See 11 DCMR § 199.9 (1984). However, be-cause the restaurant has offered nude dancing since 1976, the 1977 amendment does not affect it; it was, as the Board found, "grandfathered in as a sexually-oriented business in a C-2-A zone."

[10] Second, petitioner maintains that the disorderly behavior of the restaurant patrons has made the location inappropriate. It cites testimony regarding several incidents in

which some patrons harassed neighborhood residents and were seen urinating in public. The Board found, however, that the owners of the restaurant have sought to alleviate these problems by hiring an off-duty police officer to patrol the outside of the premises. Moreover, the Board noted that its investigator did not find any evidence of such activity in his several visits to the restaurant. We rejected a similar argument, on a comparable record, in *Donnelly v. District of Columbia Alcoholic Beverage Control Board*, *supra*, 452 A.2d at 369. We hold that *Donnelly* is dispositive here. *See also Citizens Ass'n of Georgetown v. District of Columbia Alcoholic Beverage Control Board*, 410 A.2d 197, 200-201 (D.C.1979) (upholding Board's finding of appropriateness when the licensee had made efforts to eliminate kitchen odors, noise, trash, and parking problems).

[11][12] Finally, petitioner challenges the Board's ruling with respect to the parking problems allegedly caused by the restaurant's patrons. Petitioner argues that the restaurant's thirty parking spaces cannot be sufficient for its twenty-five employees and all of its patrons, since it has a seating capacity of approximately ninety-six persons. However, petitioner cites no evidence showing how many employees work at the same time, whether they drive their cars to work, or whether the restaurant has ever been filled to capacity. Moreover, the Board pointed out that on several occasions its investigator had checked the parking lots in the surrounding area and found a sufficient number of parking spaces. The investigator also spoke with the manager of a nearby restaurant, who stated that there were no parking problems. The Board noted in addition that the investigator had "made additional visits to the premises during different hours of the evenings and early mornings and found no violations outside of the premises in and around the parking lots." On this record we are satisfied that there was substantial evidence to support the Board's decision on the parking issue. *See Haight v. District of Columbia Alcoholic Beverage Control Board*, *supra*, 439 A.2d at 494-495 (upholding Board's finding of *993 appropriateness despite allegations of parking problems). FN5

FN5. Petitioner also contends that the Board erred in failing to consider adequately the views of neighborhood residents, particularly those who did not live in the immediate area of the restaurant. Although it could have disregarded entirely the views of such persons, *Donnelly*, *supra*, 452 A.2d at 367 n. 7, the record makes clear that it did not do so. In the same vein, petitioner argues that the Board's findings implied that the community was not predominantly opposed to the license renewal and that this was error because the Board refused to hear unduly repetitious testimony. We find no such implication in the Board's decision; on the contrary, the Board expressly noted that "many more persons were prepared to give repetitious evidence" and that petitions containing more than 900 signatures were submitted in opposition to the application.

IV

Petitioner's last claim of error is that the Board failed to accord "great weight," as it is required to do by statute, to the views expressed by the local Advisory Neighborhood Commission (ANC). We hold that the Board fully complied with the statute.

[13] Under D.C. Code § 1-261(a) (1981), each ANC is given the responsibility to advise the Mayor and agencies of the District of Columbia government with respect to a variety of issues that affect its area. Section 1-261(d) provides that “[t]he issues and concerns raised in the recommendation of the commission shall be given great weight during the deliberations by the governmental agency....” This means simply that the Board must carefully consider the ANC's recommendations. So long as the Board makes “explicit reference to each ANC issue and concern as such, as well as specific findings and conclusions with respect to each,” it meets the requirements of section 1-261(d); it is not obliged to follow the ANC's recommendations or adopt its views. *Kopff v. District of Columbia Alcoholic Beverage Control Board*, *supra* note 2, 381 A.2d at 1384 (emphasis in original); *accord*, *Gerber v. District of Columbia Alcoholic Beverage Control Board*, 499 A.2d 1193, 1197-1198 (D.C.1985); *Donnelly v. District of Columbia Alcoholic Beverage Control Board*, *supra*, 452 A.2d at 367; *Spevak v. District of Columbia Alcoholic Beverage Control Board*, *supra*, 407 A.2d at 555.

[14][15] In this case ANC 4-B at first took no position, but later it decided to oppose renewal of the license because of the nude dancing, the disorderly behavior of the patrons, and the parking problems. FN6 The Board expressly took note of these concerns and rejected them for reasons which it stated in its decision. This was all that section 1-261(d) required it to do. We hold, therefore, that the Board fulfilled its statutory duty in this respect. FN7

FN6. ANC 4-B represents the neighborhood in which the Shepherd Park Restaurant is located. Petitioner argues that the Board should also have given great weight to the views of ANC 4-A, which represented a nearby neighborhood. D.C. Code § 1-261(a) (1981) provides that each ANC may advise the Board on issues “which affect that commission area.” Petitioner reads this language broadly to give any ANC that may remotely be affected by action taken in an adjacent neighborhood the right to have its views taken into account. Although we are not persuaded that the statute should be so construed, we need not decide the point because we are satisfied that, if there was error, it was harmless. Since ANCs 4-A and 4-B both made the same objections to the renewal, the Board necessarily considered the views of ANC 4-A when it considered those of ANC 4-B.

FN7. Petitioner makes one additional argument which is entirely without merit. It contends that the Board's action in amending its findings was arbitrary and capricious, citing *Food Marketing Institute v. ICC*, 190 U.S.App.D.C. 388, 587 F.2d 1285 (1978). In that case the court held that it must apply “a somewhat greater degree of scrutiny than might otherwise be appropriate” to an agency order which “reaffirmed a decision that itself departed drastically from [an earlier order in the same case].” *Id.* at 392-393, 587 F.2d at 1289-1290. It was this departure from precedent that had led to a remand from the Court of Appeals for a fuller explanation of the agency's reasoning. But the court did not hold the post-remand order to be arbitrary and capricious; in fact, it found the order to be well reasoned and affirmed it. The *Food Marketing* case is sufficiently different from

the case at bar to be of no help to us here, and in any event there is nothing in it that would lead us to conclude that the Board erred in amending its findings.

*994 V

Because the Board failed to make a finding that the restaurant's "chief source of revenue" was the sale of meals rather than alcoholic beverages, we reverse the order granting the application for renewal of its license and remand the case for further proceedings with respect to that issue, and for the entry of a new final order. In all other respects we affirm the Board's findings and conclusions.

Affirmed in part, reversed in part, and remanded.

D.C., 1985.

Upper Georgia Ave. Planning Committee v. Alcoholic Beverage Control Bd.
500 A.2d 987

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ATTACHMENT Q

District of Columbia Court of Appeals.
PRESIDENT AND DIRECTORS OF GEORGETOWN COLLEGE FOR GEORGETOWN
UNIVERSITY, Appellants,
v.
Nicholas D. DIAVATIS, Appellee.
No. 83-220.

Argued Sept. 27, 1983.
Decided Dec. 20, 1983.

President and directors of university, as neighboring property owner to alleged violator of zoning regulation, appealed from an order of the Superior Court, District of Columbia, Truman A. Morrison, III, J., denying their motion for a preliminary injunction against alleged violation. The Court of Appeals, Terry, J., held that statute prescribing criminal penalties for failure to obtain building permit or certificate of occupancy when either is required, and authorizing corporation counsel or any neighboring property owner or occupant who would be specially damaged by such failure to institute action for injunction, does not require issuance of injunction on showing of special damage, but merely authorizes any neighboring property owner or occupant who can make such a showing to sue for injunction; while statute gives standing to such parties to bring suit, there is no right to relief without showing of irreparable harm.

Affirmed.

*1249 Louis P. Robbins, Washington, D.C., with whom David S. Houston and Norman M. Glasgow, Jr., Washington, D.C., were on the brief, for appellants.

Larry C. Williams, Washington, D.C., with whom Andrew J. Kline, Washington, D.C., was on the brief, for appellee.

Inez Smith Reid, Washington, D.C., Corporation Counsel, Charles L. Reischel, Deputy Corporation Counsel, and Richard B. Nettler, Washington, D.C., Asst. Corporation Counsel, filed a brief for the District of Columbia as amicus curiae, by invitation of the court.

Before KERN, NEBEKER and TERRY, Associate Judges.

TERRY, Associate Judge:

This is an appeal from an order denying appellants' motion for a preliminary injunction. Appellants contend that since they sought injunctive relief from an alleged zoning violation under D.C.Code § 5-426 (1981), they had to show only that they were "specially damaged" by appellee's conduct, and that the trial court therefore should not have employed the traditional equitable criteria applicable to injunctions ^{FN1} in ruling on their motion. We hold that the court committed no error and affirm its order.

FN1. In deciding whether to grant or deny a motion for a preliminary injunction, a trial

court must “consider whether the moving party has clearly demonstrated: (1) that there is a substantial likelihood he will prevail on the merits; (2) that he is in danger of suffering irreparable harm during the pendency of the action; (3) that more harm will result to him from the denial of the injunction than will result to the defendant from its grant; and, in appropriate cases, (4) that the public interest will not be disserved by the issuance of the requested order.” *Wieck v. Sterenbuch*, 350 A.2d 384, 387 (D.C.1976) (footnote omitted); accord, e.g., *Stamenich v. Markovic*, 462 A.2d 452, 457 (D.C.1983); *Don't Tear It Down, Inc. v. District of Columbia*, 395 A.2d 388, 390 (D.C.1978).

I

Appellee is the owner and operator of a restaurant known as The Chancery at 704 New Jersey Avenue N.W., across the street from the Georgetown University Law School. The university owns the entire block where The Chancery is situated except for the building occupied by the restaurant and the lot on which it sits. The area in which both the law school and the restaurant are located is in zoning classification C-3-C, which does not permit the establishment of sexually-oriented businesses unless they are first approved by the Board of Zoning Adjustment.

On February 1, 1983, appellee began to provide live female nude dancing entertainment for his restaurant's patrons. A representative of the law school immediately informed the Office of Building and Zoning Regulation that appellee's restaurant was being used as a sexually-oriented business establishment,^{FN2} and a field representative was sent to conduct an inspection. On February 3 the Zoning Administrator sent a “Violation Notice” to appellee which stated that an inspection of the premises and research of the records disclosed that The Chancery was “being operated as a sexually-oriented business establishment without a valid certificate of occupancy.” The Administrator went on to explain the procedures which appellee must follow to apply for a special exception or a zoning variance, and cautioned that if he continued to use the premises in violation of the zoning regulations, “[his] case [would] be referred for appropriate action without further notice”

FN2. The definition of a “sexually-oriented business establishment” in the zoning regulations includes

an establishment which presents as a substantial or significant portion of its activity, live performances, films, or other material which are distinguished or characterized by their emphasis on matters depicting [*sic*], describing or related to *specified sexually [sic] activities* and *specified anatomical areas*.

11 DCMR § 1201 (1982) (emphasis in original). The italicized terms are defined elsewhere in the same section.

On February 4 the university filed this suit in the Superior Court and moved for a temporary restraining order and a preliminary injunction to call a halt to the nude entertainment. The court entered a ten-day restraining order and later extended it for an additional ten days upon the joint request of the parties. The court then held a hearing on the motion for a preliminary injunction and,

finding no irreparable harm, denied the motion. The university appeals.

II

D.C.Code § 5-426 (1981) prescribes criminal penalties for failure to obtain a building permit or certificate of occupancy when either is required.^{FN3} In addition, the last sentence of section 5-426 provides:

FN3. Appellee holds a certificate of occupancy for a restaurant at 704 New Jersey Avenue. A new certificate would be required for a sexually-oriented business establishment. Failure to obtain one, in addition to being a criminal offense under section 5-426, would be a violation of the zoning regulations. 11 DCMR § 8104.1 (1982).

The Corporation Counsel of the District of Columbia or any neighboring property owner or occupant who would be specially damaged by any such violation [*viz.*, failure to obtain a building permit or certificate of occupancy] may, in addition to all other remedies provided by law, institute injunction, mandamus, or other appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use, or to correct or abate such violation or to prevent the occupancy of such building, structure, or land. This part of the statute identifies the parties who may seek relief from, and the remedies which may be sought for, violations of the zoning regulations relating to building permits and certificates of occupancy. Appellants contend, however, that the statute “implicitly divides the universe of those who can seek injunctive relief ... into three parts: the Corporation Counsel and neighboring property owners (or occupants) and everyone else,” and that “[o]nly the last category must meet common law equity criteria in order to prevail” (Appellants' Reply Brief at 5). Thus, in appellants' view, they need to show only that they have been “specially damaged” in order to be entitled to injunctive relief. We cannot accept appellants' interpretation of the statutory language.

[1] A common-sense reading of the statute shows that it sets up only a dual classification of parties who may bring suit to enjoin zoning violations: (1) the Corporation Counsel and (2) any neighboring property owner or occupant who would be specially damaged by a violation.^{FN4} Special damage is normally what a private litigant must show in order to acquire standing to bring an action to abate a public nuisance. *Arizona Copper Co. v. Gillespie*, 230 U.S. 46, 57, 33 S.Ct. 1004, 1006, 57 L.Ed. 1384 (1913); see *B & W Management, Inc. v. Tasea Investment Co.*, 451 A.2d 879, 882 (D.C.1982). We fail to see how the special damage language of the present statute could relate to anything other than the granting of standing to neighboring property owners or occupants to seek relief from zoning violations. The statute simply describes what neighboring property owners or occupants must demonstrate before they “may ... institute” suit. It does not require the issuance of an injunction on a showing of special damage, but merely authorizes “any neighboring property owner or occupant” who can make such a showing to sue for an injunction.

FN4. Appellants' third category, “everyone else,” has no right at all under the statute to seek injunctive relief.

*1251 What is now codified as D.C.Code § 5-426 (1981) was enacted as section 10 of the Act of June 20, 1938, ch. 534, 52 Stat. 800. The 1938 Act was in turn an amendment of the Act of March 1, 1920, ch. 92, 41 Stat. 500, which treated zoning violations as a common nuisance. Section 9 of the 1920 Act, which section 10 of the 1938 Act superseded, authorized the Corporation Counsel to “maintain an action ... in the name of the District of Columbia to abate and perpetually enjoin such nuisance.” Although the 1938 Act for the first time permitted specially damaged neighboring property owners to enforce the zoning regulations, the legislative history makes clear that the purpose of the new section 10 (now D.C.Code § 5-426) was “substantially the same as” that of section 9 of the 1920 Act. S.REP. No. 1962, 75th Cong., 3d Sess. 5 (1938). The initial legislative treatment of zoning violations as nuisances and the subsequent statutory change to allow certain private parties to bring suit if they can show special damage provide strong indication that this language was designed to confer standing and nothing else. In other words, the statute enables affected neighboring property owners (unlike other ordinary citizens) to enter the courthouse, but it does not guarantee them victory in the courtroom.

In *Browner Building, Inc. v. Shehyn*, 143 U.S.App.D.C. 125, 442 F.2d 847 (1971), the United States Court of Appeals reviewed the propriety of the granting of a permanent injunction under D.C.Code § 5-422 (1967), now D.C.Code § 5-426 (1981). It concluded that the trial court had erred in granting a permanent injunction, vacated it, and remanded the case for consideration of a preliminary injunction. The court closely analyzed the statute and discussed the availability of preliminary injunctive relief in terms of the traditional equitable criteria. Although the court did not address the specific question presented here, its holding necessarily implies that these criteria were applicable to suits brought by private parties under what is now section 5-426. Indeed, to the extent that the court recognized the special damages language, it appears to have done so in the context of giving the plaintiffs standing. *Id.* at 132, 442 F.2d at 854. *See also Goto v. District of Columbia Board of Zoning Adjustment*, 423 A.2d 917, 920-923 (D.C.1980) (interpreting the term “person aggrieved” in D.C.Code § 5-420 (1973), now D.C.Code § 5-424 (1981), as conferring standing to an adjoining property owner to appeal from a zoning decision without need to show special damage).

The District of Columbia as *amicus curiae*, citing cases from several state courts, argues rather persuasively that a showing that a zoning ordinance has been violated is sufficient as a matter of law to establish irreparable injury. We need not decide in this case whether it is or not, however, and we decline to do so for two reasons. First, this argument was not made in the trial court, and thus we do not have the benefit of the trial court's views on the matter. Indeed, the trial court never made a finding that a zoning violation had occurred (nor was it asked to do so, as far as we can discern from the record). It is a basic precept of appellate procedure that issues not raised in the trial court will not ordinarily be considered by an appellate court. *E.g., Miller v. Avirom*, 127 U.S.App.D.C. 367, 384 F.2d 319 (1967). We see no need to depart from this sound principle in this case. Second, appellants' suit for a permanent injunction is still pending before the trial court. The parties will therefore have an opportunity to litigate this issue fully,^{FN5} and any appeal thereafter will come before us with a properly developed record, a carefully considered decision by the trial judge, and full briefing by the parties.^{FN6}

FN5. The District of Columbia may wish to enter the proceedings on the application for a

permanent injunction as an intervenor or an *amicus*.

FN6. Appellants cite *Atchison, T. & S.F. Ry. v. Lennen*, 640 F.2d 255 (10th Cir.1981), in support of their argument that they need not demonstrate irreparable injury. In *Lennen* a group of railroads sued for injunctive relief from an alleged violation of the Interstate Commerce Act. After declaring that the trial court's discretion to grant or deny an injunction must be "exercised in light of the objectives of the Act," *id.* at 258, the court went on to say:

When the evidence shows that the defendants are engaged in, or about to be engaged in, the act or practices prohibited by a statute which provides for injunctive relief to prevent such violations, irreparable harm to the plaintiffs need not be shown.

Id. at 259. We have difficulty reconciling this statement with the seemingly contrary holding of the Supreme Court in *Rondeau v. Mosinee Paper Co.*, 422 U.S. 49, 64-65, 95 S.Ct. 2069, 2078-2079, 45 L.Ed.2d 12 (1975):

[T]he fact that [plaintiff] is pursuing a cause of action which has been generally recognized to serve the public interest provides no basis for concluding that it is relieved of showing irreparable harm and other usual prerequisites for injunctive relief.

It may be possible to resolve this apparent conflict by reading *Lennen* as saying that a showing of a statutory violation is the legal equivalent of a showing of irreparable harm, which is in substance the argument that the District of Columbia is making here. For the reasons we have stated, however, we need not enter this particular thicket to decide this case.

[2] Thus we hold, relying on both the statutory language and the legislative history,*¹²⁵² that the portion of D.C.Code § 5-426 which refers to neighboring property owners or occupants who may be "specially damaged" gives standing to such parties to bring suit, but no right to relief without a showing of irreparable harm. In this case, the trial court entertained appellants' motion for a preliminary injunction, which means it must have found that appellants were specially damaged and could therefore seek injunctive relief under the statute.^{FN7} The court then denied the motion, applying the traditional equitable criteria.^{FN8} We find no error in that decision.

FN7. It appears that the trial court simply assumed, without deciding, that there had in fact been a zoning violation. Appellee has asserted throughout these proceedings that the zoning regulations have not been violated. Since this is an issue of fact, it will be necessary for the trial court, in ruling on the request for a permanent injunction, to make a specific finding on the question of whether a violation has actually occurred or is likely to occur before it can decide whether to grant injunctive relief.

FN8. See note 1, *supra*.

Affirmed.

D.C.,1983.

President and Directors of Georgetown College for Georgetown University v. Diavatis
470 A.2d 1248

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ATTACHMENT R

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Appeal No. 13967, of the California Steak House, Inc., pursuant to Sections 8102 and 8206 of the Zoning Regulations, from the decision of the Administrator of Licenses and Permits of the Department of Licenses, Investigations and Inspections (now the Acting Administrator of the Building and Land Regulation Administration of the Department of Consumer and Regulatory Affairs), dated March 24, 1983, revoking Certificate of Occupancy No. B43557 in a C-4 District at premises 831 - 14th Street, N.W., (Square 250, Lots 810 and 811).

HEARING DATES: May 25 and June 16, 1983
DECISION DATE: July 7, 1983

FINDINGS OF FACT:

1. The appeal was first scheduled for the public hearing of May 25, 1983. Because of the lateness of the hour, the Chair continued the appeal to the public hearing of June 16, 1983.
2. The subject property is located on the east side of 14th Street between H and I Streets and is known as premises 831 14th Street, N.W. The site is located in a C-4 District.
3. The subject site is improved with a two story structure which houses an establishment known as the California Steak House.
4. Square 250 Associates is the owner of the subject premises, and is a party to the appeal pursuant to the Supplemental Rules of Practice and Procedure. The California Steak House, Inc. the appellant herein, is the lessee of the subject premises.
5. The appellant was issued a certificate of occupancy for the use of the subject premises as a restaurant on July 29, 1959. The certificate of occupancy was in effect and had never been revoked up until the time of the decision which is the subject of this appeal. The appellant currently operates with a Class "C" retailers license issued by the Alcoholic Beverage Control Board of the District of Columbia.

6. The Zoning Commission, by Order No. 188, dated December 16, 1977, amended the Zoning Regulations to define a "sexually oriented business establishment" and to regulate the location of such establishments.

7. The Regulations as amended prohibit sexually-oriented business establishments in any zoning district except C-3-B and C-4 and permit such establishments in those two districts only as a special exception with the approval of the Board of Zoning Adjustment subject to the conditions listed in Paragraph 5103.47 of the Zoning Regulations. By Order No. 308, dated May 8, 1980, all property then zoned C-3-B was redesignated C-3-C, and all existing references to C-3-B were changed to C-3-C.

8. On May 10, 1982, Stephen A. McCarthy, Acting Chief, Zoning Inspection Branch, Department of Housing and Community Development, sent a letter to Quy Huy Nguyen, c/o California Steak House, stating his conclusion that the subject premises was "being operated as a sexually-oriented business establishment without a proper certificate of occupancy." The letter further stated that "This is a violation of the D.C. Zoning Regulations." After advising as to how to file with the Board of Zoning Adjustment for permission to operate a sexually oriented business establishment, the letter stated: "You are further cautioned, that the filing of an appeal does not dismiss the technicality of the violation, therefore a reinspection of the violation will be made. If you are found to still be operating in violation of the D.C. Zoning Regulations, your case will be referred for appropriate action without further notice to you." The letter advised as to how to obtain further information or clarification.

9. On December 21, 1982, Stephen A. McCarthy, Chief of the Zoning Inspection Branch of the Department of Licenses, Investigations and Inspections, sent a letter to Abdolali Mehrnaz, President, California Steak House, Inc. That letter again concluded that the subject premises "is being used as a "sexually oriented business establishment" without a proper Certificate of Occupancy." In all other circumstances the letter was essentially the same as the letter of May 10, 1982, described in Finding of Fact No. 8.

10. On March 24, 1983, Donald Murray, Administrator, Office of Licenses and Permits, Department of Licenses, Investigations and Inspections, sent a letter to Abdolali Mehrnaz, President, California Steak House, Inc. as follows:

"In accordance with the provision of the D.C. Building Code, Title 5A-1, Section 110.6, 1972 Edition, published on September 21, 1977, and Rules of Procedure published in 29 DCR 4838 (October 29, 1982), Section VIII, the Department of Licenses, Investigations and

Inspections of the Government of the District of Columbia hereby gives you notice that the Department revokes your Certificate of Occupancy No. B43557 issued October 31, 1963, for the premise located at 831 14th Street, N.W."

11. The basis for the proposed action was set forth in the letter as follows:

"Charge 1. Violation of D.C. Zoning Regulations, May 12, 1958 Edition (containing amendments through January 1, 1979), Section 8104.1, Certificate of Occupancy which states that "no person shall use any structure, land or part thereof for any purpose, other than a one family dwelling, until a Certificate of Occupancy has been issued to such person stating that such use complies with these regulations and the building code".

Specification A. On April 28, 1982, Mr. Thomas Farah, Zoning Inspector, Office of Building and Zoning Regulations, D.C. Government conducted an inspection of the California Steak House, 831 14th Street, N.W., and revealed that a sexually oriented business was being operated (a girl was dancing nude on a stage at the location) without a valid Certificate of Occupancy.

Specification B. On November 19, 1982, Mr. Thomas Farah, Zoning Inspector, Office of Building and Zoning Regulations, D.C. Government conducted a second inspection of the California Steak House, 831 14th Street, N.W., and revealed that a sexually oriented business was being conducted (two females, one scantily clad and the other nude were dancing on stage at the location) without a valid Certificate of Occupancy.

Specification C. On November 30, 1982, Vacylla Williams, Investigator, Department of Licenses, Investigations and Inspections visited the California Steak House, 831 14th Street, N.W., and observed a sexually oriented business being operated (two females were dancing in the nude on stage at the premises) without a valid Certificate of Occupancy."

12. The letter requested Mr. Mehraz to surrender Certificate of Occupancy No. B43557 immediately. He was advised of his rights to appeal the action taken by the Department of Licenses, Investigations and Inspections by filing an appeal with the Board of Zoning Adjustment.

13. On March 31, 1983, the appellant filed an appeal with the BZA from the decision of the Administrator of the Office of Licenses and Permits revoking the appellant's certificate of occupancy.

14. On April 15, 1983, the Acting Administrator of the Building and Land Regulations Administration, Department of Consumer and Regulatory Affairs, sent a letter to Mr. Abdolali Mehrnaz. That letter referenced the March 24, 1983, letter of Mr. Murray as "the proposed action of this agency to revoke your Certificate of Occupancy No. B43557 for the premises located at 831 14th Street, N.W." The April 15, 1983, letter of Mr. Lee stated that it was a "final notice of revocation" of the certificate of occupancy, and ordered that the operation of a sexually oriented business at 831 14th Street, N.W. be ceased.

15. Section 1202 of the Zoning Regulations defines a "sexually-oriented business establishment" as:

"Sexually-oriented business establishment: An establishment having as a substantial or significant portion of its stock in trade, books, magazines, and other periodicals, films, materials and articles or an establishment which presents as a substantial or significant portion of its activity, live performances, films, or other material which are distinguished or characterized by their emphasis on matters depicting, describing or related to specified sexually activities and specified anatomical areas. Such establishments may include, but are not limited to, bookstores, newsstands, theaters and amusement enterprises. If an establishment is a sexually oriented business establishment, as defined herein, it shall not be deemed to constitute any other use permitted under the authority of these Regulations."

16. "Specified sexual activities" are defined in Section 1202 as follows:

"Specified sexual activities: Activities as follows:

1. Acts of human masturbation, sexual intercourse, sexual stimulation or arousal, sodomy or bestiality.
2. Fondling or other erotic touching of human genitals, pubic region, buttock or breast."

17. "Specified anatomical areas" are defined in Section 1202 as follows:

"Specified anatomical areas: Parts of the human body as follows:

1. Less than completely and opaquely covered human genitals, pubic region, buttock, and female breast below a point immediately above the top of the areola; and

2. Human genitals in a discernibly turgid state, even if completely and opaquely covered."

18. Prior to the public hearing, the property owner, Square 250 Associates, submitted to the Board a Motion to Dismiss the Appeal for Lack of Jurisdiction. The basis for the motion was that:

- (A) The appeal was not timely filed;
- (B) The appeal was barred by the doctrine of laches; and
- (C) The Board was without jurisdiction to decide upon the constitutionality of the provisions of the Zoning Regulations.

At the public hearing of June 16, 1983, the property owner moved that it be allowed to withdraw parts (A) and (B) of the Motion to Dismiss relating to timeliness and laches. The Board, by unanimous vote, granted the property owner's motion to withdraw. The Board did not specifically rule on the portion of property owner's motion concerning the jurisdiction of the Board to declare a Zoning Regulation unconstitutional, but recognized that it had no such jurisdiction.

19. The Board, sua sponte, then requested that the appellant address the issue of timeliness. As to the issue of timeliness the appellant argued that the appeal was filed seven days after the letter of revocation of the certificate of occupancy. The letter revoking the certificate of occupancy was dated March 24, 1983. The appeal was filed March 31, 1983. The appellant argued that at no time prior to the March 24, 1983, letter did any agency of the D.C. Government with the power to revoke the certificate of occupancy either revoke the certificate of occupancy or propose to revoke the certificate of occupancy. The previous notices of May 10, 1982, and December 21, 1982, were both from an inspector of the Zoning Inspection Branch. The inspector did not have the power to revoke the certificate of occupancy. In addition, the two notices did not provide any specifications as to what was found on the subject premises. There were only conclusions in both notices that a sexually oriented business establishment was found operating in the subject premises. Further, the appellant argued, the December 21, 1982, letter was ambiguous in that the second-to-last paragraph says "If you are found to be using the subject premises in violation of the D.C. Zoning Regulations, your case will be referred for appropriate action without further notice to you." The appellant submitted that the December 21, 1982, letter was not a clear statement that the appellant was even in violation. The first paragraph appeared to indicate that he

was in violation. The second-to-last paragraph references an "if" he was found to be in violation. In summary, the appellant contended that until the March 24, 1982, letter, there was no final appealable decision. The appellant contended that there was no aggrieved party and that the earlier notices of May 10, 1982, and December 21, 1982, were violation notices which did not have the effect of making the appellant an aggrieved party under the Rules of the BZA.

20. The Chair deferred a ruling on the question of timeliness until the merits of the appeal were heard, as to whether the Administrator of the Office of Licenses and Permits of the Department of Licenses, Investigations and Inspections was correct in revoking the appellant's certificate of occupancy because of his determination that the appellant was operating a sexually oriented business establishment.

21. The appellant presented no testimony, evidence or witnesses on its behalf.

22. The appellant stipulated to the specifications contained in the decision letter of March 24, 1983, and that the establishment presented live nude dancing as a substantial or significant portion of its activity.

23. The appellant argued that for an establishment featuring live nude entertainment to be classified as sexually-oriented, it must be shown that the nude entertainers engage in the specified sexual activities outlined in the Regulations and that the activities are presented as a substantial or significant portion of the activity in the establishment. The appellant further argued that the language "acts of ... sexual stimulation or arousal," contained in the definition of specified sexual activities, refers to some kind of touching or direct physical stimulation of a person by himself or herself or by another person.

24. It was the appellant's contention that "acts of sexual stimulation or arousal" was intended to include only direct physical stimulation of a human being by himself or herself or by another human being. While the language "fondling or other erotic touching of human genitals, public region, buttocks or breast" in part 2 of the definition of specified sexual activity unquestionably includes the sexual stimulation or arousal of those areas by hands, fingers, or other parts of the human body, it does not encompass acts of direct physical sexual stimulation or arousal by inanimate objects or devices. The language in part 1 of the definition of specified sexual activities was intended to cover such behavior.

25. The appellant concluded that there was no evidence in the record that entertainers on the appellant's premises engaged in acts of human masturbation, sexual intercourse, sodomy, bestiality, or fondling or other erotic touching of human genitals, pubic region, buttocks or breast. The appellant concluded that there is at most only minimal evidence of acts of sexual stimulation or arousal and that such evidence is insufficient to support a conclusion that any such behavior constituted a substantial or significant portion of the activity on the appellant's premises.

26. The Zoning Administrator testified that the decision to revoke the certificate of occupancy was made after procedures were established by the Department of Licenses, Investigation and Inspections, now the Department of Consumer and Regulatory Affairs, to govern such revocations. The Zoning Administrator argued that the inspections and investigations that his office made and that he and others in the Department relied upon confirmed that the business in operation at 831 14th Street, N.W. was a "sexually-oriented business establishment."

27. Thomas Farah, an Inspector with the Building and Land Regulation Administration, Department of Consumer and Regulatory Affairs, testified as the person who conducted the inspections referred to in Specifications A and B of the decision letter dated March 24, 1983. Mr. Farah testified orally, through gestures and with demonstrations that women, while nude, engaged in dancing and other bodily movements on tables in close proximity to customers. In the course of dancing, the women would lay on the tables with their legs spread apart. They would also lay with their legs extended upward in a kicking fashion. Customers would place money on the tables and the women would turn their backs to the customers, bend over in a manner exposing the anus and vagina to the customers and pick up the money. Also, while dancing, they would move their pelvic areas in the direction of the customers. In addition to the activities engaged in while dancing, each woman, while nude, would walk on the table in a gliding or "sashaying" fashion from customer to customer. Before each customer, she would lay down, rear back and pull her legs back causing the lips of her vagina to part, thereby exposing the inner vaginal area. While so positioned, she would dangle her ankle in the face of the customer. If the customer failed to place a tip in her garter, she moved on to the next customer. If a tip was placed in the garter, she stayed there and "gave him a longer look."

28. Vacylla Williams, the investigator who observed the subject establishment on November 30, 1982, as specified in the letter from Mr. Murray dated March 24, 1983, did not testify at the hearing.

29. Mr. Stephen A. McCarthy, Chief of the Zoning Inspection Branch within the Department of Consumer and Regulatory Affairs, visited the premises on May 3, 1983, after the decision revoking the appellant's certificate of occupancy had been rendered. The Board allowed Mr. McCarthy to testify, but ruled that his testimony would have limited value in the final decision and could only be used to corroborate Mr. Farah's testimony. Mr. McCarthy testified that he was in the appellant's establishment for approximately one and a quarter hours. He corroborated the testimony of Mr. Farah as set forth in Finding No. 27. Mr. McCarthy also testified that the woman moved their pelvic areas in the direction of the customers while the women were dancing. Mr. McCarthy further testified that his visit on May 3, 1983 was a routine matter in all investigations and that it was made to determine a continuing violation existed after the certificate of occupancy had been revoked.

30. The Zoning Administrator testified that the decision to revoke the certificate of occupancy was based on the inspections made on April 28 and November 19, 1982. The determination was not based on the November 30, 1982, and the May 3, 1983, inspections, since the Zoning Administrator did not have those reports before him when he made his decision. After the May 10, 1982, and December 21, 1982, notices were sent, the Zoning Administrator referred the case on January 7, 1983, to the Corporation Counsel for prosecution.

31. The Zoning Administrator further testified that final rulemaking on the rules pertaining to the revocation of certificates of occupancy was effective December 17, 1982. Those rules empowered the District of Columbia to not only seek prosecution through the office of the Corporation Counsel but to take steps to revoke the certificate of occupancy as another means of enforcement. The Zoning Administrator testified that both remedies were utilized in the instant matter.

32. At the time the May 10, 1982, letter was sent, the office of the Zoning Administrator, otherwise known as the Zoning Regulations Division of the Building and Zoning Regulations Administration, was a part of the Department of Housing and Community Development. On July 6, 1982, the entire BZRA was reorganized from the Department of Housing and Community Development into the Department of Licenses, Investigations and Inspections. The letter of December 21, 1982, was again issued from the Zoning Inspection Branch, then part of Department of Licenses, Investigations and Inspections. The Department of Licenses, Investigations and Inspections was reorganized into the Department of Consumer and Regulatory Affairs on March 31, 1983. The March 24, 1983, letter was from Department of Licenses, Investigations and Inspections. The April 15, 1983 letter was from the

Department of Consumer and Regulatory Affairs. The same enforcement process, with different agency names and individuals, was used throughout.

33. The intervenor property owner supported the position of the Zoning Administrator. The intervenor attempted to present testimony and evidence, in the form of reports and statements of private investigators, that purported to corroborate the existence of a "sexually oriented business establishment" at the subject premises. The subject reports were not relied upon by the Zoning Administrator when he made the decision that is challenged in this appeal, and are thus not relevant to the subject matter.

34. There were numerous letters submitted to the record in opposition to sexually oriented businesses, urging the Board to uphold the decision revoking the subject certificate of occupancy. These letters were from community groups, churches and individual citizens. The letters assumed that a restaurant was being operated as a sexually oriented business, before the appeal had been heard and determined by the Board. The Board finds that such letters do not go to the merits of the appeal. The letters do not address the issues presented at the public hearing. The Board, accordingly, can give no weight to the letters.

35. Advisory Neighborhood Commission 2C, within which the property is located, by letter dated May 18, 1983, supported the revocation of the certificate of occupancy. The ANC stated no reasons for its decision, nor did it indicate any issues or concerns for the Board to address. Advisory Neighborhood Commission 3E, by letter received May 20, 1983, and Advisory Neighborhood Commission 2B, by letter dated June 2, 1983, supported the revocation of the certificate of occupancy and indicated that they believed that nude dancing as carried out in this establishment included matters emphasizing both specified anatomical areas and specified sexual activities. That is the main issue of the appeal and is addressed in the conclusions of law. Advisory Neighborhood Commission 3A, by letter dated June 3, 1983, opposed the appeal and stated that it was concerned that granting of the appeal would allow "neighborhood strip joints as a matter of right under zoning." In this case, the Board is determining whether the revocation of the subject certificate of occupancy is proper. That issue is addressed in the conclusions of law.

36. On June 29, 1983, the owner of the subject property filed a motion requesting the Board to waive its Rules and reopen the record and require further hearing on designated issues. The Board, at its public meeting held on July 6, 1983, determined that there was no good cause demonstrated and declined to waive its rules to permit consideration of the motion.

CONCLUSIONS OF LAW AND OPINION:

Before addressing the merits of the appeal, the Board is faced with the jurisdictional question of whether the appeal was filed in a timely manner. The Supplemental Rules of Practice and Procedure before the Board do not set a specific time limit following a decision within which an appeal must be filed. Because appeals may be filed by persons who are aggrieved by a decision who are not applicants for permits or who are not directly notified of the decisions, it is possible that an appellant may not know of a decision until some other action has occurred, such as the beginning of construction or the opening of a use.

Although this Board has set no specific limit for the filing of appeals, it has held that appeals filed seven to nine months after the Zoning Administrator's action are untimely. See Orders of the Board in Appeal of Sheridan Kalorama Neighborhood Council, BZA Appeal No. 11872 February 14, 1975 (eight month delay); Appeal of Arthur H. Fawcett, Jr., BZA Appeal No. 11158 July 22, 1976 (seven month delay); and Appeal of Christian Embassy, Inc., BZA Appeal No. 12142 (June 18, 1976) (nine month delay). In the subject appeal, the appellant is appealing from an action of which it had direct knowledge. The appellant had knowledge since the first notice of May 10, 1982, of the determination of the Zoning Inspection Branch that the subject premises was being operated as a sexually-oriented business establishment without a proper certificate of occupancy. The second notice dated December 21, 1982, advised the appellant of the same determination. In both notices, the appellant was advised that if it wished to continue such use it must file an application with the BZA and seek the Board's approval. In both notices, the appellant was advised that it was in violation. In both notices, the appellant was advised that a reinspection would be made to determine if the violation was of a continuing nature. In both notices, the appellant was advised in the first paragraph of the notices that the determination was based on recent field inspections by representatives of the Zoning Inspection Branch. In both notices, the appellant was advised that if it wished to obtain further information, it could call specified telephone numbers during specified hours.

The appellant argued that it is appealing the decision revoking its certificate of occupancy, of which it first received notice by the March 24, 1983, letter, and that the two earlier letters do not constitute an appealable decision. The Board disagrees. The revocation of the certificate of occupancy relies on the same factual basis set forth in the first two letters; i.e., the appellant was operating a sexually oriented business establishment. While the Board is greatly disturbed that the appropriate enforcement agencies of the District of Columbia did not more

promptly and diligently follow-up the first notice of violation sent on May 10, 1982, the Board can reach no other conclusion than that the appellant, the California Steak House, Inc., knew from the letter of May 10, 1982, that the District of Columbia considered its use to be in violation. The letter is clear on its face to that effect.

The May 10, 1982, letter, as well as the December 21, 1982 letter, is further clear on its face that the District intended to follow-up on its initial actions, and to reinspect the premises to see if the violation continued. As testified to by the Chief of the Zoning Inspector Branch, that is standard operating procedure. The letters clearly advise the appellant that the District of Columbia would take further "appropriate action" if it found the violation to continue, without specifying what those actions might be. While the Board agrees that it is unclear what the Department might do, the Board concludes that a reasonable person receiving the letter should have reasonably understood that the Department had found the existing use to be in violation, and that some possible action to enforce the Regulations or impose a penalty might be taken.

In response to the May and December letters, the appellant did nothing. There was no attempt made to contact appropriate officials of the District of Columbia for information or an explanation. There was no appeal filed until March 31, 1983, approximately ten and one half months after the May 10, 1982, letter and more than three months after the December 21, 1982, letter. The speed with which the appellant filed after receiving the March 24, 1983, letter indicates that it could have acted promptly in regard to the earlier letters. It chose not to. The Board concludes that the appeal was not timely filed, and therefore that it should be dismissed on that grounds.

Even if the appeal could be considered as timely filed, because the merits of the case were thoroughly considered, the Board concludes that the decision to revoke the certificate of occupancy was properly made, and that the appeal should be denied on that basis as well. Before addressing the principal questions on the merits, the Board notes two issues that were raised:

1. The appellant argued that the March 24, 1983, letter revoking the certificate of occupancy was invalid because it did not give the appellant ten days notice of proposed action to revoke. That defect was cured by the April 15, 1983, letter from Douglas Lee. Additionally, the Board notes that the District of Columbia has not to this point acted to force the closing of the subject business. The appellant has been given all reasonable and required due process rights.

2. The appellant, in its statement in support of the appeal, argued that the Zoning Regulations as to sexually oriented business establishment were unconstitutional on several grounds. The Board is limited by statute to hearing appeals as to the administration and enforcement of the Zoning Regulations (D.C. Code, Section 5-424(g)1, 1981 Ed.). The Board is further precluded by statute from amending any regulations or map (D.C. Code, Section 5-424(e), 1981 Ed.). The Board does not have the authority to declare unconstitutional any provisions of the Zoning Regulations. That authority lies with the courts of the District of Columbia and the appellant must seek relief through the courts if it desires to pursue that avenue of attack.

In addressing the merits of the appeal, the Board must determine whether the officials of the District of Columbia who ruled on this matter properly interpreted and applied the provisions of the Zoning Regulations. If the subject business does fall within the definition of a "sexually oriented business establishment," then the District was correct in revoking the certificate of occupancy.

A "sexually oriented business establishment", according to Section 1202 of the Zoning Regulations, is one "which presents as a substantial or significant portion of its activity, live performances, ... which are distinguished or characterized by their emphasis on matters depicting, describing or related to specified sexual activities and specified anatomical areas." As related to this appeal, the critical issues were:

1. Whether the activities described constituted a "substantial or significant portion" of what occurs at the subject premises; and
2. Whether both "specified sexual activities" and "specified anatomical areas" had to occur, or whether areas alone was sufficient.

As noted in Finding of Fact No. 22, the appellant stipulated that live nude dancing constituted a substantial or significant portion of its activity. Whether that dancing also constitutes a specified sexual activity will be discussed in detail below.

As to the second issue, the Board concludes that the use of the conjunction "and" in the definition of "sexual oriented business establishment" requires that both specified activities and specified areas be found in order for an establishment to fall within the definition. The Zoning Administrator did not dispute this point, and presented his

occupancy was proper. Accordingly, the decision of the Administration of the Building and Land Regulation Administration of the Department of Consumer and Regulatory Affairs is UPHELD.

VOTE: 5-0 (Carrie Thornhill, Walter B. Lewis, William F. McIntosh, Douglas J. Patton and Charles R. Norris, to DISMISS as UNTIMELY filed and to DENY on the Merits).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: NOV 22 1983

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

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ATTACHMENT S

JAN 2 2005

**THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD**

In the Matter of)
)
)

Jefferson Grill, Inc.)
t/a Macombo Lounge)
Holder of a Retailer's License)
Class "CN" – at premises)
5335 Georgia Avenue, N.W.)
Washington, D.C.)

Respondent)

Case No.: 8699-02/030C
Order No.: 2005-01

BEFORE:

Charles A. Burger, Chairperson¹
Vera M. Abbott, Member²
Audrey E. Thompson, Member
Judy A. Moy, Member
Peter B. Feather, Member²
Albert G. Lauber, Member²
Eartha Isaac, Member²

ALSO PRESENT:

Fred P. Moosally, III, General Counsel
Alcoholic Beverage Regulation Administration

William Bennett, Assistant Attorney General, on behalf of
the District of Columbia

Simon Osnos, Esquire, on behalf of the Respondent

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER**

On June 21, 2002, the Alcoholic Beverage Control Board ("Board"), pursuant to D.C. Official Code § 25-447(c) (2001) and Title 23 of the District of Columbia Municipal

¹ Current ABC Board Chairperson Charles A. Burger participated as a member of the ABC Board during both the November 13, 2002 and December 4, 2002 proceedings. Former ABC Board Chairperson Roderic L. Woodson, Esquire, who chaired both the November 13, 2002 and December 4, 2002 proceedings is no longer a member of the ABC Board.

² ABC Board member Vera M. Abbott did not participate in all of the proceedings. As a result, Ms. Abbott did not vote on this matter. ABC Board members Peter Feather, Albert Lauber, and Eartha Isaac were not members of the Board when these proceedings were initiated and did not participate or vote on this matter. Pursuant to D.C. Official Code § 25-431(b) (2001), three members of the Board constitute a quorum.

Regulations ("DCMR") § 1502.1 (1997)³, scheduled a show cause hearing on the Retailer's License Class "CN" held by Jefferson Grill, Inc., t/a Macombo Lounge ("Respondent"), at premises 5335 Georgia Avenue, N.W., Washington, D.C., based upon investigations conducted by Alcoholic Beverage Regulation Administration Auditor and Financial Investigator D'Maz Lumukanda and Department of Consumer and Regulatory Affairs Investigator Clement A. Stokes, III. The grounds for the show cause hearing were set forth in the Notice to Show Cause, dated June 21, 2002, which was served upon the Respondent.

The case came before the Board for show cause proceedings held on November 13, 2002 and December 4, 2002 based upon the charge set forth in the June 21, 2002 Notice to Show Cause, as described below. At the conclusion of the December 4, 2002 show cause hearing, the Board took its decision in this matter under advisement.

The Board considered in making its decision the evidence addressed at the hearings, the testimony of the witnesses, the arguments of counsel, exhibits admitted in the hearings, and the documents comprising the Board's official file in making the following:

FINDINGS OF FACT

1. The Respondent's establishment holds a Class "CN" Retailer's License and is located at 5335 Georgia Avenue, N.W., on the corner of Jefferson Street, N.W., and Georgia Avenue, N.W. (Tr. 11/13/02 at 11; Respondent's Exhibit No. 4.) The establishment's current approved hours of operation are Sundays from 6 p.m. to 2 a.m.; Monday through Thursday from 2 p.m. through 2 a.m.; and Friday and Saturday from 2 p.m. until 3 a.m. (Tr. 12/04/02 at 40; See Application File No. 8699.) The Respondent is permitted to operate a nightclub that offers nude performances, pursuant to D.C. Official Code § 25-371 (2001), as the Respondent regularly provided entertainment by nude dancers prior to December 15, 1993. (See Application File No. 8699.)
2. The Board issued the Notice to Show Cause, dated June 21, 2002, to the Respondent, based upon investigations conducted by Alcoholic Beverage Regulation Administration ("ABRA") Auditor and Financial Investigator D'Maz Lumukanda and Department of Consumer and Regulatory Affairs ("DCRA") Investigator Clement A. Stokes, III. (See Show Cause File No. 8699-02/030C.) The Notice to Show Cause, dated June 21, 2002, charges the Respondent with allowing entertainers, employees and customers to perform or simulate the performance of acts of oral, anal, or vaginal sexual intercourse, masturbation, flagellation, or bestiality, and to fondle in an erotic manner the breasts, buttocks, anus, or genitals of another person on the licensed premises, in violation of 23 DCMR § 904.3 (1997).⁴ (See Show Cause File No. 8699-02/030C.)

³ The ABC Board adopted a new version of Title 23 of the District of Columbia Municipal Regulations ("DCMR") as published in the D.C. Register at 51 DCR 4309 (April 30, 2004). The Board's show cause authority can now be found at 23 DCMR § 1604.1 (2004) as well as D.C. Official Code § 25-447 (2001).

⁴ It should be noted that 23 DCMR § 904.3 (1997) was not adopted as part of the current April 30, 2004 version of Title 23 of the DCMR. However, the Board's show cause hearing on this matter concluded prior to the adoption of the April 30, 2004 version of Title 23 of the DCMR, with only the Board's written decision left to be issued.

3. D'Maz Lumukanda is employed by ABRA as an Auditor and Financial Investigator. (Tr. 11/13/02 at 6-7, 61.) Investigator Lumukanda visited the Respondent's establishment as an undercover investigator on Friday, April 26, 2002. (Tr. 11/13/02 at 7; Government's Exhibit No. 2.) He entered the establishment at approximately 10:45 p.m. with a Metropolitan Police Department ("MPD") officer who was also undercover. (Tr. 11/13/02 at 7, 14.) Investigator Lumukanda was inside of the location for approximately one and a half hours. (Tr. 11/13/02 at 14, 22, 53.)

4. With respect to the operations of the establishment, Investigator Lumukanda observed a woman in her forties or fifties who appeared to be managing the establishment because she handled the money. (Tr. 11/13/02 at 33-36, 43-44, 59-60.) Investigator Lumukanda observed all of the Respondent's dancers wearing two-piece bikinis and noted that the establishment's waitresses were dressed differently than the dancers. (Tr. 11/13/02 at 42, 48, 55-59.) He noted that a security guard was located at the front door of the establishment and that the security guard conducted a weapons search and checked identification prior to admitting him into the establishment. (Tr. 11/13/02 at 43, 51.) Investigator Lumukanda found the establishment well lit, with the exception of the dancers' stage performances when the lights were dimmed. (Tr. 11/13/02 at 52.) Investigator Lumukanda observed the dancers perform on two (2) stages. (Tr. 11/13/02 at 52.) Investigator Lumukanda witnessed approximately six (6) dancers in bikinis performing and noted that the dancers would remove their bikinis during their performance. (Tr. 11/13/02 at 42, 47-48, 55-56; Government's Exhibit No. 1.) He noted that one dancer performed on the stage at a time and that during the dance the dancer was completely nude, but put her bikini back on at the conclusion of the performance. (Tr. 11/13/02 at 57.) Investigator Lumukanda did not observe dancers on stage being touched by patrons while performing. (Tr. 11/13/02 at 55.)

5. With respect to conduct occurring on the licensed premises, Investigator Lumukanda observed the dancers constantly walking around the premises in bathing suits "shaking hands and giving hugs" and "sitting on patron's laps and accepting tips." (Tr. 11/13/02 at 12, 17, 22, 58.) Investigator Lumukanda also witnessed the Respondent's patrons put money in the dancers' "leg belt" when the dancers were on stage. (Tr. 11/13/02 at 12.) Investigator Lumukanda also observed dancers seated with patrons in a booth where the dancers allowed patrons to "liberally touch their bodies," including their arms and legs. (Tr. 11/13/02 at 12, 30, 45-46.) Investigator Lumukanda also observed on several occasions -- while positioned approximately fifteen (15) feet away -- a dancer clothed in an "American print bikini" who would lead a patron into an enclosed area, located adjacent to the booth, for a private dance where the patron would "have his back against the wall" and she would dance in front of the patron and allow him to touch her arms, legs, buttocks, and breasts. (Tr. 11/13/02 at 13-14, 21-23, 27-32, 47-49, 54; Government's Exhibit Nos. 1 and 2.) Investigator Lumukanda observed the patrons fondle the dancer's breasts, buttocks, and genital area in an erotic manner and noted that they were "grinding and caressing" in a manner that exceeded a mere touch. (Tr. 11/13/02 at 54; Government's Exhibit No. 2.) Investigator Lumukanda found the dancer to be the Respondent's employee as she: (1) accepted money from patrons for her private

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dance; (2) was being provided change by the bartender just like the rest of the establishment's dancers; and (3) was dressed like the rest of the dancers as she was only wearing a bikini. (Tr. 11/13/02 at 13, 23-24.) This was the only dancer that Investigator Lumukanda observed giving a private dance. (Tr. 11/13/02 at 22.) Investigator Lumukanda also observed that the dancers were soliciting payments and tips from patrons and that the patrons were located less than three (3) feet from the stage on which the dancers completed their performance. (Tr. 11/13/03 at 39-40.)

6. Investigator Clement A. Stokes, III, is employed by DCRA, Office of Investigations, and visited the establishment on five (5) occasions with the establishment closed during two (2) of his visits. (Tr. 11/13/02 at 63-64, 113, 117.) The show cause hearing focused on Investigator Stokes' visits to the establishment on January 19, 2002, at approximately 8:00 p.m., on February 1, 2002, at approximately 7:30 p.m., and on May 31, 2002, at approximately 7:00 p.m. (Tr. 11/13/02 at 65-68, 77-80, 82, 84.)

7. With respect to the establishment's operations, Investigator Stokes observed a security guard positioned at the front door of the establishment and he was patted down prior to his entering the establishment. (Tr. 11/13/02 at 80.) Investigator Stokes was not charged a cover for admission. (Tr. 11/13/02 at 80.) He stated that the clientele was predominantly male and patrons appeared to be over the age of twenty one (21). (Tr. 11/13/02 at 124.) Investigator Stokes observed that security was located only at the front door and nowhere else on the premises. (Tr. 11/13/02 at 123.) Investigator Stokes noted that the establishment became crowded as the evening progressed during his visits. (Tr. 11/13/02 at 113.) With regard to who was managing the establishment, Investigator Stokes observed a female individual with a badge around her neck, which he assumed was an Alcoholic Beverage Control ("ABC") manager's license, was watching the bar, collecting money, and giving money to the dancers. (Tr. 11/13/02 at 114-116, 126-127.) He stated that neither the manager, security, or other employees of the establishment tried to prevent patrons from touching the dancers. (Tr. 11/13/02 at 102-103, 116.) He also never witnessed anyone from the establishment trying to discourage lap dancing from taking place, which appeared to be a regular way of doing business at the establishment. (Tr. 11/13/02 at 116-117, 121.)

8. With respect to the dancer's conduct, Investigator Stokes observed African-American female dancers on stage wearing bikinis. (Tr. 11/13/02 at 80-81.) Investigator Stokes noted that the dancers would perform on stage for approximately fifteen (15) minutes each and that seven (7) dancers were present during his February 1, 2002 visit and eight dancers present during his May 31, 2002 visit. (Tr. 11/13/02 at 82, 84, 92-93, 103-104.) Investigator Stokes stated that he observed dancers on stage dancing "in a sexual nature while removing their clothes until they were fully nude." (Tr. 11/13/02 at 81, 85.) Specifically, Investigator Stokes noted that during his January 19, 2002 visit, a dancer on stage was "fondling her breast nipples" on three (3) different occasions in an erotic manner during the dance. (Tr. 11/13/02 at 81, 91-92; Government's Exhibit No. 3.) Investigator Stokes observed on his February 1, 2002 visit that during the dance each performer would "lie on their back facing the audience with their legs wide open exposing their vagina." (Tr. 11/13/02 at 92-93.) Investigator Stokes observed that each

dancer would stimulate their vagina with their hand during the performance. (Tr. 11/13/02 at 82, 93.) On February 1, 2002, Investigator Stokes also observed one dancer, with the stage name "Silhouette", who was receiving tips from male patrons while she was on stage with her legs open and vagina exposed and that patrons would "rub between [the dancer's] legs" and touch her vagina as they put money into her garter belt. (Tr. 11/13/02 at 83-84, 99-104.) Investigator Stokes did not observe the performance or simulation of the performance of oral, anal, or vaginal sexual intercourse while on stage. (Tr. 11/13/02 at 92, 98-102.) During his May 31, 2002 visit, Investigator Stokes observed each dancer stimulating their breast nipples and vagina. (Tr. 11/13/02 at 86, 104; Government's Exhibit No. 5.) Investigator Stokes observed the dancers move from stage to stage and observed this activity conducted by eight (8) different female dancers over a period of four (4) hours between two (2) stages. (Tr. 11/13/02 at 107-108.)

9. With respect to illegal conduct, Investigator Stokes noted that a customer remarked during his February 1, 2002 visit that he wanted to have sex with one of the dancers, with the stage name "Silhouette". (Tr. 11/13/02 at 82-83, 95, 104; Government's Exhibit No. 4.) The patron later propositioned the dancer for sexual intercourse stating that he had "one thousand dollars, a Master Card, and Visa." (Tr. 11/13/02 at 82-83.) The patron told the dancer, "Silhouette", "he could pay her more money than she would make on stage" and he gave the dancer his telephone number and told her that "he wanted to meet her" and pulled out his wallet. (Tr. 11/13/02 at 82-83, 95-98, 104-105.) Investigator Stokes also questioned a male patron about whether he could "buy sex" from one of the dancers and that the patron responded affirmatively. (Tr. 11/13/02 at 88.) The patron identified two (2) dancers, with the stage names of "Dallas" and "Reds", employed by the Respondent and present during his May 31, 2002 visit, from whom he could "buy sex." (Tr. 11/13/02 at 88-89.) Investigator Stokes later propositioned one of the dancers, "Reds", by asking how much does she charge and by telling her that he wanted sexual intercourse. (Tr. 11/13/02 at 89-90, 110-111; Government's Exhibit No. 5.) He stated that the dancer, with the stage name "Reds", replied that she charges two hundred dollars (\$200.00) an hour. (Tr. 11/13/02 at 89-90, 110-111; Government's Exhibit No. 5.)

10. With respect to prohibited conduct on the licensed premises, Investigator Stokes observed a dancer with the stage name "Dallas" giving "lap dances" to patrons and "grinding" with patrons in an enclosed area. (Tr. 11/13/02 at 86-88, 91, 106-108, 121-122.) He stated that "Dallas" was "giving stand up lap dances using her buttocks grinding on the ... male patrons ... they [male patrons] were grinding back." (Tr. 11/13/02 at 86.) On May 31, 2002, Investigator Stokes also observed dancers with the stage names of "Reds" and "Shiver" performing a grinding motion using their buttocks on the patrons' crotch area seated around the stage while receiving a tip. (Government's Exhibit No. 5.) Investigator Stokes also noted that on May 31, 2002 he observed the dancer, with the stage name "Reds", take her breasts and rub them in the face of patrons, including in the enclosed area, while receiving tips. (Tr. 11/13/02 at 90-91, 105-106; Government's Exhibit No. 5.) Investigator Stokes observed "Reds" giving approximately four (4) or five (5) "lap dances" in an enclosed area to five (5) different patrons for approximately one (1) or two (2) minutes per session. (Tr. 11/13/02 at 108-109.) He noted that on several occasions a waitress would "[w]alk past the enclosed area where the

dancers were performing ... with [the patron's] genital area pressed against the buttocks of the dancer ... [with both] moving simultaneously in an erotic manner." (Tr. 11/13/02 at 109-110.) Investigator Stokes noted that money was exchanged after the "lap dance." (Tr. 11/13/02 at 120.) Investigator Stokes stated that a dancer, "Dallas", approached him and offered him a "lap dance," but he declined. (Tr. 11/13/02 at 119-120.)

11. James Adkins is the President of Jefferson Grill, Inc. (Tr. 11/13/02 at 3-4, 133.) He has a Bachelor of Science degree in Physics from the University of Missouri and a Master of Science/Technology Management degree from the University of Maryland. (Tr. 11/13/02 at 139-142.) Mr. Adkins retired from the United States Department of Defense after forty-one (41) years of service where he served as a Senior Scientist. (Tr. 11/13/02 at 135, 139-143.) He has owned the establishment since 1967. (Tr. 11/13/02 at 143-144.) The establishment was originally a "Gay Nineties Club" with a piano player and began with single dancers wearing bikinis, but later featured nude dancing. (Tr. 11/13/02 at 139-142.) Mr. Adkins has been involved with the management of the club since 1967 and is present there several times per week, when he is in town. (Tr. 11/13/02 at 144, 179.)

12. With respect to the establishment's operations, Mr. Adkins testified he manages the establishment and his sons, Gerard and James, also manage the establishment. (Tr. 11/13/02 at 144-145.) In January 2002 and part of February 2002, Mr. Adkins had an acting manager in her twenties named Shana Reynolds. (Tr. 11/13/03 at 159-162, 171.) Shana Reynolds was the establishment's manager during the January 19, 2002 and February 1, 2002 incidents. (Tr. 11/13/02 at 162.) Ms. Reynolds was terminated in February 2002 because "she was too chummy with the girls," did not enforce the rules, and did not always open the establishment on time. (Tr. 11/13/02 at 162-163, 170-171, 194-197.) Additionally, Shana Reynolds' mother tended bar at the establishment two (2) to three (3) times a week during January 2002 and February 2002. (Tr. 11/13/02 at 159-161.) Gerard Adkins took over for Shana Reynolds as manager and is now responsible for the establishment's day-to-day operations. (Tr. 11/13/02 at 162, 168, 203.) Gerard Adkins was the manager for the establishment on May 31, 2002. (Tr. 11/13/02 at 162.) The establishment's managers are tasked with ensuring that the dancers follow the rules, including not engaging in any physical touching contact with customers. (Tr. 11/12/02 at 161, 172.)

13. Mr. Adkins stated that the establishment has three (3) video cameras, with a video camera located by: (1) the front door; (2) the bottom right corner of the bar; and (3) the front stage, which are used to "observe patrons and dancers." (Tr. 11/13/02 at 146-147, 150-151, 172-173; Respondent's Exhibit No. 2.) The establishment contains two (2) stages -- a center or front stage, and a back stage. (Tr. 11/13/02 at 149-151; Respondent's Exhibit No. 2.) Mr. Adkins stated that he employs two (2) security persons who generally stay near the door but circulate around the establishment. (Tr. 11/13/02 at 163-166.) Mr. Adkins testified that the security must often tell people to "sit down from the stage" because patrons get around the stage to get close to see the dancers. (Tr. 11/13/02 at 163-167.) The establishment only has one (1) booth. (Tr. 11/13/02 at 151-152.)

14. With respect to the dancer's conduct on the licensed premises, Mr. Adkins stated that the establishment has a notice titled "All Dancers Will Observe The Following:" that contains procedures that the dancers must follow, which were recently added within the last four (4) or five (5) months, that is posted on the stages and the dressing room. (Tr. 11/13/02 at 134, 152; Respondent's Exhibit No. 5.) Mr. Adkins also provides a document titled "Rules Concerning Dancer's Conduct" that is provided to the dancers and has been in place for about five (5) years. (Tr. 11/13/02 at 134, 164, 172; Respondent's Exhibit No. 6.) Mr. Adkins noted that these rules are posted in the dressing room and each dancer is provided with a copy. (Tr. 11/13/02 at 134, 152-153; Respondent's Exhibit No. 6.) He testified that he cautioned the dancers that patrons cannot "hug them" or otherwise touch them and that it is a violation of the establishment's rules of conduct. (Tr. 11/13/02 at 155.) Mr. Adkins noted that dancers have been terminated for breaking the rules, including touching customers. (Tr. 11/13/02 at 157.) He stated that the dancer, with the stage name, "Reds" was terminated in April 2002 or May 2002, for violating the establishment's rules and allowing customers to touch her genital area. (Tr. 11/13/02 at 156-157.) Mr. Adkins testified that he cautioned her "about lying on the floor." (Tr. 11/13/02 at 156-157.) He stated that his son, Gerard, reported to him on two (2) or three (3) occasions that "Reds" was a problem as she was not listening to him or following the rules. (Tr. 11/13/02 at 156-158.) Mr. Adkins testified that he was not aware of any rule violations by the dancer with the stage name of "Dallas". (Tr. 11/13/02 at 158.) Mr. Adkins collected several hundred dollars in fines from dancers violating the establishment's rules of conduct during the year. (Tr. 11/13/02 at 184.)

15. The establishment has a banner on the back stage that says "[d]o not touch the dancers." Tr. 11/13/02 at 148-149.) Mr. Adkins testified that if a patron improperly touches a dancer, the patron would be removed from the establishment. (Tr. 11/13/02 at 156-157.) He further stated that if his employee observes a patron improperly touching a dancer, the employee tells the patron, "no touching, please move back from the stage" or "tip and move; don't stand." (Tr. 11/13/02 at 166-167.) Mr. Adkins was not aware of any of the dancers being arrested for prostitution. (Tr. 11/13/02 at 164.) He testified that he did not learn about the incidents until a month later. (Tr. 11/13/02 at 170.)

16. Gerard Adkins has an ABC manager's license and is the General Manager of the establishment and son of James Adkins. (Tr. 12/4/02 at 3-5, 22.) He is forty-one (41) years old and graduated from Calvin Coolidge in 1979 and has been working at the establishment, on and off, for twenty (20) years. (Tr. 12/4/02 at 10-11.) Mr. Adkins is the establishment's primary full time manager now -- since starting back to work at the establishment on February 21, 2002 -- and works thirteen (13) hour shifts. (Tr. 12/4/02 at 11, 21-22.) His duties include set up, stocking liquor and beer, paying employees, and monitoring activity inside the establishment. (Tr. 12/4/02 at 12, 26.) Mr. Adkins is also responsible for hiring and firing the dancers. (Tr. 12/4/02 at 13.) Mr. Adkins' brother also has an ABC manager's license and works at the establishment approximately five (5) times a week. (Tr. 12/4/02 at 22, 25, 64.)

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17. With respect to the dancer's conduct, Mr. Adkins stated that each dancer is required to sign a contract to obey the establishment's rules and regulations, which are provided to each dancer. (Tr. 12/4/02 at 62-63.) He noted that under the establishment's rules, a dancer is only allowed to stand up and dance during the dancer's performance. (Tr. 12/4/02 at 31, 71.) Mr. Adkins testified that the dancers are not allowed to touch themselves in any sort of manner, they're not allowed to lay down on the stage or after they get off the stage, they're not allowed to get up and walk around and dance in front of the customers at any time. (Tr. 12/4/02 at 31, 71.) He noted that dancers are permitted "to walk around the club and shake patrons hands, but not to dance around the customers." (Tr. 12/4/02 at 16, 72.) The establishment's fine range is generally between fifteen (15) and thirty (30) dollars. (Tr. 12/4/02 at 17.) Mr. Adkins stated that he intended to change in writing the establishment's existing written fine policy. (Tr. 12/4/02 at 42-43, 53-54.) The dancers work on "tips only" and must pay the establishment a "dance fee", which is five dollars (\$5.00), at the end of their shift. (Tr. 12/4/02 at 48, 59-60, 71.)

18. With respect to prohibited conduct, Mr. Adkins stated that the dancer "Reds" was terminated in June 2002 and told not to return as she was always "trying to sneak around and do certain things" with patrons of the establishment. (Tr. 12/4/02 at 12-17.) He witnessed the dancer "Reds" take patrons into the enclosed vestibule area. (Tr. 12/4/02 at 14-16, 18.) Mr. Adkins testified that he did not see the dancer "Reds" engaging in lewd or sexual acts with customers, but that after she finished her dance on stage she was "dancing around the tables to collect more money" in violation of the establishment's rules and that she was "fined on several occasions and given warnings." (Tr. 12/4/02 at 15-17.) He testified that he was not aware that the dancer "Reds" allowed customers to touch and fondle her private parts. (Tr. 12/4/02 at 18.)

19. Mr. Adkins stated that the dancer named "Dallas" was fined for the same violations as the dancer "Reds" and left the establishment two (2) months ago. (Tr. 12/4/02 at 19-20.) Specifically, she was fined for dancing around the tables and trying to engage in lewd contact with patrons after she finished dancing. (Tr. 12/4/02 at 20-21.)

20. With respect to the establishment's operations, Mr. Adkins testified that subsequent to the November 13, 2002 hearing, the establishment installed a camera to view the vestibule area, which is turned on during business hours, near the stage to monitor dancer's conduct, specifically to ensure that dancers do not take customers to the vestibule area. (Tr. 12/4/02 at 18-19, 65-66.)

21. Mr. Gerard Adkins goes outside of the establishment approximately four (4) to five (5) times during his shift onto Georgia Avenue, N.W., to check "whether girls are in cars with customers", "throwing bottles on the neighbor's lawns", and for "drug selling." (Tr. 12/4/02 at 22-25, 32-33.) He noted that the establishment has a policy that after work the dancers are required to leave the vicinity of the establishment. (Tr. 12/4/02 at 23-24, 67-68.)

22. Mr. Adkins stated that he was on duty on May 31, 2002 but did not observe any violations. (Tr. 12/4/02 at 28.) He noted that when the establishment is busy it is difficult for him to watch what is occurring inside of the establishment. (Tr. 12/4/02 at 64.) Mr. Adkins was on duty on April 26, 2002 and several times dancers were fined for the evening, including a dancer named "Dynamite" who he caught with a patron in the vestibule area with a camera. (Tr. 12/4/02 at 29.) The dancer, "Dynamite", was terminated for the same violations as "Reds" and "Dallas", including going into the vestibule area with customers. (Tr. 12/4/02 at 30.) The establishment has one (1) doorman whose duties include checking identification, monitoring the establishment, and providing security. (Tr. 12/4/02 at 34-35, 37-38.)

23. Officer Edward A. Miller, MPD, is a Patrol Officer with the Fourth District. (Tr. 12/4/02 at 92-94.) The establishment is located in the Fourth District with the Fourth District MPD station located approximately seven (7) blocks away from the establishment. (Tr. 12/4/02 at 93-94, 100, 107.)

24. With respect to the establishment's operations, Officer Miller stated that he tries to stop by the establishment once a day after closing because "sometimes stuff gets out of hand." (Tr. 12/4/02 at 95.) Specifically, Officer Miller noted that robberies sometimes occur as people exit the establishment and that an MPD presence lowers the threat level. (Tr. 12/4/02 at 104.) Officer Miller stated that the establishment has a nice working relationship with MPD's Fourth District. (Tr. 12/4/02 at 97.) Officer Miller noted that police officers stop through the establishment from time to time. (Tr. 12/4/02 at 98-99.) Officer Miller testified that the level of security in the establishment is pretty sound and that they employ "enough people to handle situations." (Tr. 12/4/02 at 98.)

25. With respect to the dancer's conduct, Officer Miller has observed the dancers shaking hands with customers and observed patrons touching and tipping the dancers by placing money in their garter belt or throwing money on stage. (Tr. 12/4/02 at 112-114.) He stated that as to whether the dancers simulated sexual intercourse, it depended on the perspective of the observer whether the dancer's conduct constituted simulated sexual activity. (Tr. 12/4/02 at 114.)

26. With respect to criminal activity, Officer Miller has not observed prostitution or criminal activity at the establishment. (Tr. 12/4/02 at 99.) He testified that in his professional opinion the establishment is not a problem and that he is not aware of a pattern of criminal activity connected to the establishment. (Tr. 12/4/02 at 101-102.) Officer Miller noted that there is an "open air drug market" on Jefferson Street, near the establishment but that it was not related to the establishment. (Tr. 12/4/02 at 102.)

CONCLUSIONS OF LAW

27. The Board has the authority to suspend or revoke the license of a licensee who violates any provision(s) of Title 25 of the D.C. Official Code or Title 23 of the DCMR pursuant to D.C. Official Code § 25-823(1) (2001). In this instance, the Board finds that the Respondent's violation of 23 DCMR § 904.3 (1997) warrants a fifteen (15) day

suspension with seven (7) consecutive days to be served before February 15, 2005 and eight (8) days stayed for one (1) year from the date of this Order. The Board also finds that requiring the Respondent to provide the Board with a security plan will assist the establishment in preventing future ABC violations by its dancers and patrons from occurring. Specifically, the Board is requiring the Respondent to submit a security plan within thirty (30) days of the date of this Order that includes details regarding the following: (1) the maintenance and monitoring of a security camera in the establishment's enclosed vestibule area; (2) restricting patron access to the enclosed vestibule area; (3) the maintenance of a police log detailing all calls made to MPD reflecting the date, time, and nature of service requested; (4) the monitoring of the interior of the establishment for possible ABC violations by the establishment's dancers and patrons; and, (5) the maintenance of an incident log detailing violations committed by the establishment's dancers. Furthermore, the Board believes that not permitting patrons to have access to the establishment's enclosed vestibule area will significantly reduce or eliminate the illegal private dancing that was occurring in this area between the establishment's dancers and patrons. Additionally, the Board is requiring that the oral changes made by Mr. Gerard Adkins to the establishment's written rules concerning dancer conduct, including the establishment's revised fine policy for violations committed by dancers, be submitted to the Board within thirty (30) days of this Order. Finally, the Board finds that requiring the Respondent to post a legible sign or banner in a conspicuous area on each stage of the licensed premises that states: "Do not touch the dancers" on both stages can only help to prevent patrons from touching the establishment's dancers. The Board notes that it possesses the authority to place these conditions on the establishment pursuant to D.C. Official Code § 25-447(f) (2001).

28. With regard to Charge I, the Board must determine whether the Respondent allowed entertainers, employees or customers to perform or simulate the performance of acts of oral, anal, or vaginal sexual intercourse, masturbation, flagellation, or bestiality, or to fondle in an erotic manner the breasts, buttocks, anus, or genitals of another person on the licensed premises, in violation of 23 DCMR § 904.3 (1997). In this case, the testimony of Investigator Lumukanda and Investigator Stokes revealed that the Respondent did permit violations of 23 DCMR § 904.3 (1997) on February 1, 2002, April 26, 2002, and May 31, 2002, as described in the Notice to Show Cause, dated June 21, 2002, to occur on the licensed premises. Specifically, the testimony of Investigator Lumukanda revealed that on April 26, 2002, he observed on several occasions, a dancer clothed in an "American print bikini" who would lead a patron into an enclosed area for a private dance and allow him to fondle the dancer's breasts, buttocks, and genital area in an erotic manner and noted that they were "grinding and caressing" in a manner that exceeded a mere touch. In finding that the Respondent permitted this activity, the Board would note that: (1) the dancer in the "American print bikini" was provided change by the establishment's bartender -- just like the rest of the establishment's dancers after completing her private dances; and (2) the private dancing occurred on several occasions and was visible to Investigator Lumukanda from the first floor of the establishment. Additionally, the testimony of Investigator Stokes revealed that on February 1, 2002, he observed a dancer, with the stage name "Silhouette", who was receiving tips from male patrons while she was on stage with her legs open and vagina exposed and that patrons

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would "rub between [the dancer's] legs" and touch her vagina as they put money into her garter belt. Finally, the testimony of Investigator Stokes revealed that on May 31, 2002, he observed dancers with the stage names of "Reds" and "Shiver" performing a grinding motion using their buttocks on the patrons' crotch area seated around the stage while receiving a tip. Additionally, on May 31, 2002 he observed the dancer, with the stage name "Reds", take her breasts and rub them in the face of patrons, including in the enclosed area, while receiving tips. Furthermore, he observed "Reds" give four (4) or five (5) "lap dances" in the enclosed area with the patron's genital area pressed against the buttocks of the dancer, with both moving in an erotic manner. It is worth noting that the testimony of Investigator Stokes revealed that during his visits employees of the establishment did nothing to prevent patrons from touching the dancers and that lap dancing appeared to be a regular way of doing business at the establishment with waitresses walking by the enclosed area where dancers were performing. Additionally, the testimony of James and Gerard Adkins also revealed that violations of 23 DCMR § 904.3 (1997) had taken place between the establishment's dancers and patrons on the licensed premises. Based upon the above, the Board finds that the Respondent permitted violations of 23 DCMR § 904.3 (1997) to occur at the licensed premises on February 1, 2002, April 26, 2002, and May 31, 2002.

29. In finding violations of 23 DCMR § 904.3 (1997) to have occurred, including the "fondling in an erotic manner" of the breasts, buttocks, anus, or genitals on February 1, 2002, April 26, 2002, and May 31, 2002, between the establishment's dancers and patrons, based upon the testimony set forth above, it is worth noting that the enumerated prohibited activities set forth in 23 DCMR § 904.3 (1997) mirror the definition of "specified sexual activities" established in the District of Columbia Zoning Regulations, which characterize the activities of a sexually oriented business establishment. Specifically, Zoning regulation Title 11 DCMR § 199.1 defines specified sexual activities as "[a]cts of human masturbation, sexual intercourse, sexual stimulation or arousal, sodomy, or bestiality ... [f]ondling or other erotic touching of human genitals, pubic region, buttock, or breast." Given this statutory scheme, the Board of Zoning Adjustment's ("BZA") analysis of particular conduct, which rises to the level of "specified sexual activities," provides guidance for the Board in determining whether similar such conduct violates 23 DCMR § 904.3 (1997). As such, the BZA case In re California Steak House, BZA Appeal No. 13967, decided on November 22, 1983, provides the Board with guidance on the issue of whether the conduct at issue in this case violates 23 DCMR § 904.3 (1997). In California Steak House, the BZA held that the conduct of dancers involving "sexual stimulation or arousal" should be construed as "specified sexual activities" in that the activities "clearly go beyond dancing in the nude." Such activities were described as follows:

[W]omen [in the sexually oriented business establishment], while nude, engaged in dancing and other bodily movements on tables in close proximity to the customers. In the course of dancing, these women would lay on the tables with their legs spread apart ... Customers would place

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money on the tables and the women would turn their backs to the customers, bend over in a manner exposing the anus and vagina to the customers and pick up the money ... In addition to the activities engaged in while dancing, each woman, while nude, would walk on the table in a gliding or "sashaying" fashion from customer to customer. Id. at 7.

In this case, the incidents observed by Investigator Lumukanda on April 26, 2002 and by Investigator Stokes on February 1, 2002 and May 31, 2002, as described above, clearly consist of conduct that is more overtly sexual than the dancers' conduct in California Steak House. For example, the testimony of Investigators Lumukanda and Investigator Stokes revealed that the Respondent's dancers engaged in "lap dancing" and permitted patrons of the establishment to fondle the dancer's breasts, genital region, and buttocks while stimulating the patron's genitals with their buttocks. Additionally, the testimony of Investigator Stokes revealed that Respondent's dancers also permitted patrons of the establishment to fondle their breasts and buttocks while circulating among the patrons for the purpose of collecting tips. Furthermore, the testimony of Investigator Stokes revealed that on February 1, 2002, one of the Respondent's dancers would lay on their back on stage with their legs open such that their vagina was exposed, stimulate their own vagina in plain view, and permit male patrons to fondle their vagina. The Board finds that such conduct, as described above, is "specified sexual activity" that constitutes a violation of 23 DCMR § 904.3 (1997), including "fondling in an erotic manner", within the meaning of this provision.

30. In making its decision to suspend and place conditions on the Respondent's license, rather than revoke the Respondent's license, the Board took into account the efforts made by the Respondent, as described in the testimony of James Adkins and Gerard Adkins, to address ABC violations committed by its dancers and patrons. Specifically, the testimony of Gerard Adkins revealed that after the November 13, 2002 show cause hearing, the establishment installed a camera to view the vestibule area to help ensure that dancers do not take patrons to this area. Additionally, the testimony of James and Gerard Adkins revealed that the establishment does possess rules and regulations that dancers are required to sign a contract to obey and has fined several of its dancers for committing violations.

ORDER

THEREFORE, it is hereby **ORDERED** on this 5th day of January 2005, that the Retailer's Class "CN" license held by Jefferson Grill, Inc., t/a Macombo Lounge, 5335 Georgia Avenue, N.W., Washington, D.C., be **SUSPENDED** for a period of fifteen (15) days, with seven (7) consecutive days served before February 13, 2005 and eight (8) days stayed for one (1) year from the date of this Order.

It is **FURTHER ORDERED** that the Respondent shall operate its establishment with the following conditions imposed on its Retailer's Class "CN" license:

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1. Respondent must provide the Board with a security plan within thirty (30) days of the date of this Order that includes details regarding the following:
 - (a) The maintenance and monitoring of a security camera in the establishment's enclosed vestibule area;
 - (b) Restricting patron access to the enclosed vestibule area;
 - (c) The maintenance of a police log detailing all calls made to MPD reflecting the date, time, and nature of service requested;
 - (d) The monitoring of the interior of the establishment for possible ABC violations by the establishment's dancers and patrons; and
 - (e) The maintenance of an incident log detailing violations committed by the establishment's dancers;
2. Respondent must submit to the Board revised written rules concerning dancer conduct, which shall include the establishment's revised fine policy for violations committed by dancers, within thirty (30) days of this Order;
3. Respondent shall not permit patrons to have access to the establishment's enclosed vestibule area; and

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Jefferson Grill, Inc.
t/a Macombo Lounge
January 5, 2005

District of Columbia
Alcoholic Beverage Control Board

Charles A. Burger, Chairperson

Vera M. Abbott, Member

Audrey E. Thompson, Member

Judy A. Moy, Member

Peter B. Feather, Member

Albert G. Lauber, Member

Eartha Isaac, 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.

Also, pursuant to section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, D.C. Official Code § 2-510 (2001), and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of service of this Order, with the District of Columbia Court of Appeals, 500 Indiana Avenue, N.W., Washington, D.C. 20001. However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1719.1 (April 2004) stays the time for filing a petition for review in the District of Columbia Court of Appeals until the Board rules on the motion. See D.C. App. Rule 15(b).