

The Stadium Group, LLC

2127 Queens Chapel Road, N.W.
WASHINGTON, D.C. 20017

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October 19, 2010

VIA HAND DELIVERY

District of Columbia Board of Zoning Adjustment
441 4th Street, N.W.
Suite 200
Washington, D.C. 20001

Re: BZA Appeal No. 18114

Dear Members of the Board:

Pursuant to 11 DCMR §3106.2, The Stadium Group, LLC hereby requests that it be granted the right to appear and participate as an opponent party in the above referenced appeal.

The name and address of the party is:

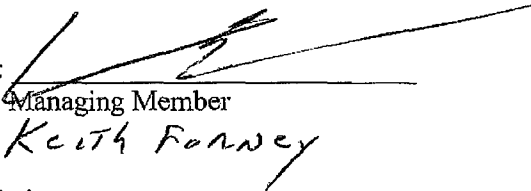
The Stadium Group, LLC
c/o Stephen J. O'Brien
Mallios & O'Brien
2600 Virginia Avenue, N.W.
Suite 1112
Washington, D.C. 20037
(202) 625-7700

Pursuant to 11 DCMR §3106(2)(e)(1), The Stadium Group, LLC states hereby that is the lessee of the subject real property and the holder of the Certificate of Occupancy, the issuance of which is challenged in this appeal. Reversal of the decision of the Zoning Administrator to grant the subject Certificate of Occupancy would result in termination of The Stadium Club, LLC's business. See 11 DCMR §3106.2(e)(5).

We hereby designate Stephen J. O'Brien, of Mallios & O'Brien as our counsel in this matter with full authority to bind The Stadium Group, LLC.

Very truly yours,

THE STADIUM CLUB, LLC

By: 

Managing Member

Keith Farney

copy (via hand delivery): Don Padou, President
Ward 5 Improvement Association
1335 Lawrence Street, N.E.
Washington, D.C.

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18114

EXHIBIT NO. 21

Board of Zoning Adjustment
District of Columbia
CASE NO. 18114
EXHIBIT NO. 21

LAW OFFICES
MALLIOS & O'BRIEN
Suite 1112
2600 VIRGINIA AVENUE, N.W.
WASHINGTON, D.C. 20037

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DIMITRI P. MALLIOS (1932-2009)
STEPHEN J. O'BRIEN*
STUART J. LONG
MICHAEL D. FONSECA

FACSIMILE
(202) 625-7706

**Also Admitted in Virginia*

October 19, 2010

VIA HAND DELIVERY

District of Columbia Board of Zoning Adjustment
441 4th Street, N.W.
Suite 200S
Washington, D.C. 20001

Re: BZA Appeal No. 18114

Dear Members of the Board:

Attached please find The Stadium Group, LLC's request to appear in this matter and its designation of the undersigned as its counsel.

Also, enclosed are The Stadium Club, LLC's Motion to Dismiss Appeal and Motion in Limine.

Thank you for your attention to these submissions.

Very truly yours,



Stephen J. O'Brien

copy (via hand delivery): Ward 5 Improvement Association
c/o Don Padou
1335 Lawrence Street, NE
Washington, D.C. 20017

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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APPEAL OF WARD 5 : No. 18114
IMPROVEMENT ASSOCIATION :

MOTION TO DISMISS APPEAL

The Stadium Group, LLC, through undersigned counsel, respectfully moves the Board to dismiss this appeal on the ground that it was filed by a non-existent entity.

The instant appeal was lodged in the name of “Ward 5 Improvement Association.” In its memorandum accompanying its notice of appeal, the appellant entity represented that it “is a non-profit association formed pursuant to DC Code 29-971.”

But as evidenced by the attached October 18, 2010 Certificate of the District’s Superintendent of Corporations, an entity named “Ward 5 Improvement Association ‘is not of record’ in the District.”¹ Thus, this appeal was filed in the name of a non-existent entity and, consequently, is a nullity. See Accurate Const. Co. v. Washington, 378 A.2d 681, 684 (D.C. 1977) (revoked corporation lacked capacity to contract and purported acts were void).

Assuming that the attached Certificate is correct, the designation of a non-existent entity by its purported President, Mr. Padou, appears to have been an effort to “end around” Mr. Padou’s inability to claim standing as an “aggrieved party.” Mr. Padou’s residence at 1335 Lawrence Street, N.E., is approximately one and one-half miles from the subject premises.²

Accordingly, Mr. Padou’s personal objections to nude dancing are not “significantly, distinctively or uniquely affected in character or kind...than those of other persons in the

¹ A search using variations of the appellant’s name, such as “Five” instead of “5,” produced identical “no records” results.

² See attached GoogleMaps printout.

general public.” 11 DCMR 3106.2 (e)(5). Compare Appeal No. 16849 of Robert Lehrman (May 8, 2003), (appellant deemed to have standing because trees to be removed could be seen from his property).

WHEREFORE, The Stadium Group, LLC respectfully moves the Board to dismiss this appeal.

Respectfully submitted,



Stephen J. O'Brien
Mallios & O'Brien
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Suite 1112
Washington, DC 20037
(202) 675-7700
sobrien@malliosobrien.com

Attorney for the Stadium Group, LLC

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion has been hand delivered to:

Ward 5 Department Association
c/o Don Padou
1335 Lawrence Street, NE
Washington, DC 20017

this 19th day of October, 2010.



Stephen J. O'Brien

GOVERNMENT OF THE DISTRICT OF COLUMBIA

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS



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C E R T I F I C A T E

THIS IS TO CERTIFY that a search of record of the Department of Consumer and Regulatory Affairs, Corporations Division, reveals that

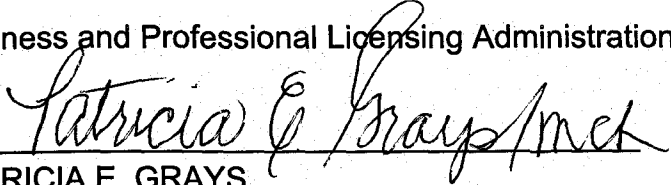
WARD 5 IMPROVEMENT ASSOCIATION

IS NOT OF RECORD as either a domestic entity organized in the District of Columbia or a foreign entity registered to transact business as of the date hereinafter mentioned.

IN TESTIMONY WHEREOF I have hereunto set my hand and caused the seal of this office to be affixed this **18th** day of **October**, **2010**.

LINDA K. ARGO
Director

Business and Professional Licensing Administration


PATRICIA E. GRAYS

Superintendent of Corporations
Corporations Division

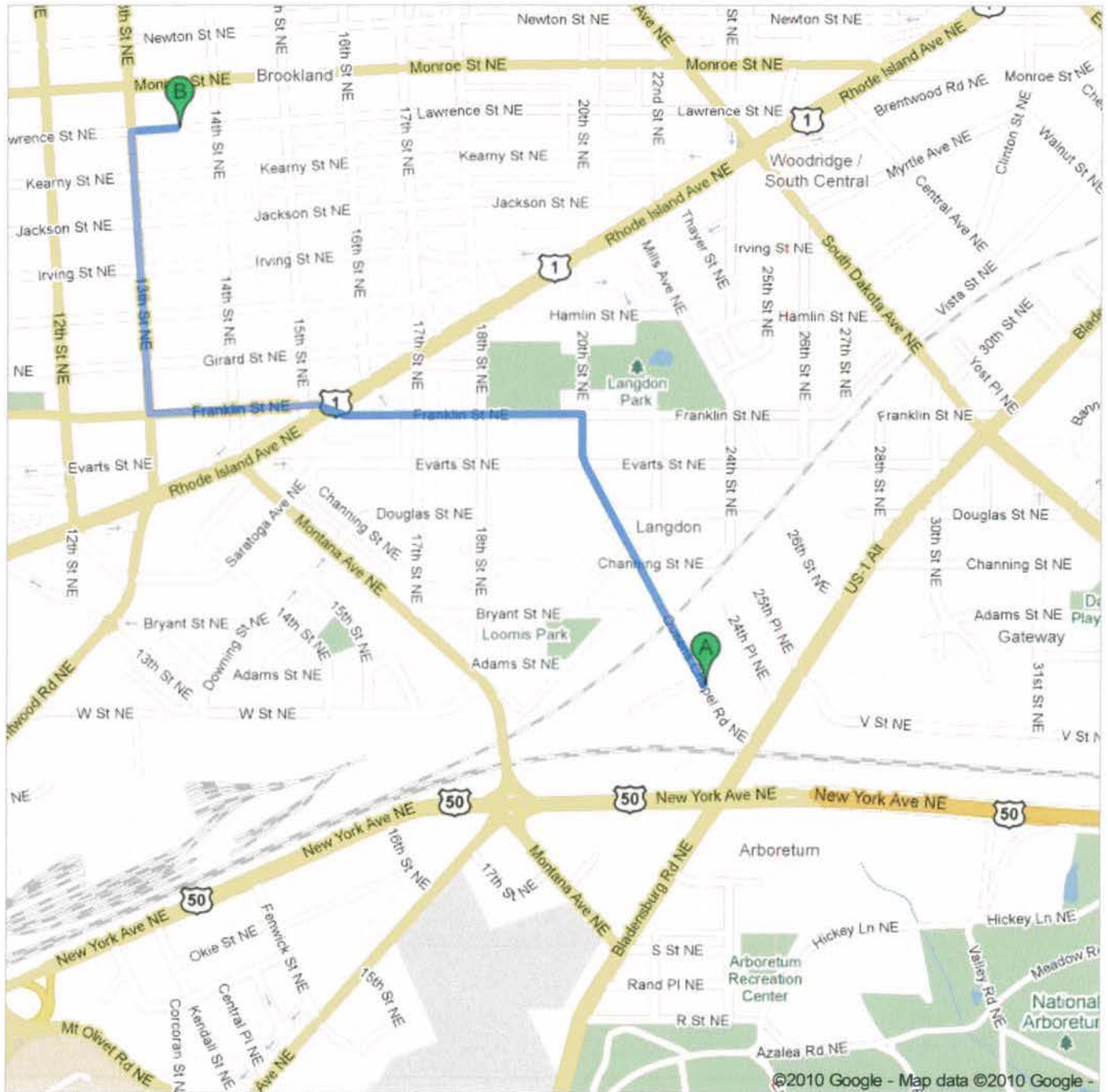
Adrian M. Fenty
Mayor



Directions to 1335 Lawrence St NE, Washington, DC 20017
1.6 mi – about 5 mins

Save trees. Go green!

Download Google Maps on your phone at google.com/gmm



DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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APPEAL OF WARD 5 :
IMPROVEMENT ASSOCIATION :

No. 18114 2010 OCT 19 PM 3:45

MOTION IN LIMINE

The Stadium Group, LLC, through undersigned counsel, respectfully moves the Board to limit the evidence to be adduced in this appeal to matters reviewed by and relied upon by the Zoning Administrator in approving the subject Certificate of Occupancy.

We emphasize that this is an appeal from the April 21, 2010 decision of the Zoning Administrator to issue the subject Certificate of Occupancy. Matters occurring subsequent to the Zoning Administrator's decision are "not germane" to the question whether that decision was in error. See Appeal No. 16404 of the Capitol Hill Restoration Society (March 8, 2000).

The Zoning Administrator first issued the subject Certificate of Occupancy on April 21, 2010. ¹ The instant appeal is dated June 11, 2010. Applicant has filed as Exhibits 13 and 14 herein affidavits purporting to describe events at the subject premises on June 16, 2010. Obviously, the Zoning Administrator did not have the information asserted in those affidavits before him when he approved use of the premises on a "not sexually-oriented" basis on April 21, 2010. Accordingly, such events are "not germane" to the instant appeal and are to be excluded. ²

¹ That Certificate carried an expiration date of May 21, 2010, which the Zoning Administrator subsequently extended to June 21, 2010. A superseding Certificate of Occupancy was issued on June 21, 2010. However, the Zoning Administrator's approval of the use of the premises was made on April 21, 2010, as the instant Notice of Appeal specifies.

² Lest the wrong impression be left: The Stadium Club, LLC vigorously disputes the allegations recited in Exhibits 13 and 14, and is prepared, if necessary, to refute the same. If appellant maintains that The Stadium Club is operating in contravention of its Certificate of Occupancy, appellant should seek enforcement action by the zoning authorities.

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WHEREFORE, The Stadium Club, LLC respectfully moves the Board to:

1. Grant this Motion in Limine and restrict evidence in this appeal to matters reviewed by and relied upon the Zoning Administrator when approving use of the premises on a "not sexually oriented" basis on April 21, 2010; and,
2. Strike the affidavits submitted by appellant as Exhibits 13 and 14 herein.

Respectfully submitted,



Stephen J. O'Brien
Mallios & O'Brien
2600 Virginia Avenue, NW
Suite 1112
Washington, DC 20037
(202) 675-7700
sobrien@malliosobrien.com

Attorney for the Stadium Group, LLC

CERTIFICATE OF SERVICE

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Ward 5 Department Association
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1335 Lawrence Street, NE
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this 19th day of October, 2010.



Stephen J. O'Brien