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DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT
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APPEAL OF WARD 5 : No. 18114
IMPROVEMENT ASSOCIATION :

MOTION TO DISMISS APPEAL

Intervenor The Stadium Group, LLC, through undersigned counsel, respectfully moves the Board to dismiss this appeal on mootness grounds.

The instant appeal challenges the decision of the Zoning Administrator to issue a June, 22, 2010 “not sexually oriented” Certificate of Occupancy (No. CO1002471) to the intervenor restaurant/ nightclub.¹

But on June 24, 2011, a superseding Certificate of Occupancy, No. CO1101152 (copy attached) issued, and it is this new Certificate pursuant to which intervenor now occupies the subject premises. As the Certificate which is at issue in this appeal has been superseded and no longer is utilized, this appeal is moot. See Appeal No. 17980 of William J. Reaves (April 13, 2010) (appeal from issuance of building permit mooted by issuance of superseding building permit).

Our Court of Appeals has observed that “a case is moot when the legal issues presented are no longer live...” Cropp v. Williams, 841 A.2d 328, 330 (D.C. 2004). “[T]he BZA has the authority to dismiss an application on mootness grounds.” N Street Follies, L.P. v District of Columbia Board of Zoning Adjustment, 949 A.2d 584, 588 (D.C. 2008).

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¹ An earlier, temporary Certificate of Occupancy issued on April 21, 2010 and was extended to June 21, 2010. However, that first Certificate was replaced by the “permanent” June 22, 2010, Certificate, which Certificate was in use at the time of the October 26, 2010 hearing before the Board.

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In short, the Certificate of Occupancy which gave rise to this appeal having been superseded, no “live” controversy remains.²

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read "SOBrien", with a horizontal line extending from the end of the signature.

Stephen J. O'Brien (204511)
Mallios & O'Brien
2600 Virginia Avenue, NW
Suite 1112
Washington, DC 20037
(202) 675-7700
sobrien@malliosobrien.com

Attorney for The Stadium Group, LLC

² The new Certificate of Occupancy differs from the Certificate at issue in this appeal only in that the former adds “summer garden” authority for 15 seats.

Issuance of this new Certificate on a “not sexually oriented” basis necessarily encompassed a de novo determination by the Zoning Administrator that the subject business does not operate as a “sexually oriented business establishment,” as that term is defined in the Zoning Regulations.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Motion to Dismiss Appeal have been served electronically and by first class mail, postage prepaid, upon:

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

Jay A. Surabian
Assistant Attorney General
Department of Consumer and Regulatory Affairs
Office of the General Counsel
1100 4th Street, S.W., 5th Floor
Washington, DC 20024

this 29th day of June, 2011.



Stephen J. O'Brien

Government of the District of Columbia
Department of Consumer and Regulatory Affairs

1100 4th Street SW
Washington, DC 20024
(202) 442-4400
dcra.dc.gov

C O

CERTIFICATE OF OCCUPANCY

PERMIT NO. CO1101152

Issued Date: 06/24/2011

Address: 2127 QUEENS CHAPEL RD NE	Zone: C-M-2	Ward: 5	Square: 4258	Suffix:	Lot: 0034
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Description of Occupancy:

Restaurant with Nightclub with accessory parking [Not a Sexually Oriented Business Establishment]. Maximum Occupancy Load 396, with 349 interior seats and a summer garden with 16 seats.

Permission Is Hereby Granted To: The Stadium Group, LLC	Trading As: STADIUM CLUB	Floor(s) Occupied 1ST FLOOR	Occupant Load: 396
Property Owner: Rf Holdings, LLC	Address: 2127 QUEENS CHAPEL RD NE WASHINGTON, DC 20018-3605	BZA/PUD Number:	No. of Seats: 14200
Building Permit Number (if applicable):	Type of Application: Load Change	Approved Building Code Use: Restaurants - A-2	Occupied Sq. Footage: PERMIT FEE: \$122.98
		Approved Zoning Code Use: Restaurant	

Conditions/Restrictions:

THIS CERTIFICATE MUST ALWAYS BE CONSPICUOUSLY DISPLAYED AT THE ADDRESS MAIN ENTRANCE, EXCEPT PLACES OF RELIGIOUS ASSEMBLY. Use complies with DCMR Title 11 (Zoning) and Title 12 (Construction).

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 (Code Official): Nicholas A. Majett	Permit Clerk: Erika King	Expiration Date:
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