

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

RECEIVED
D.C. OFFICE OF ZONING
2011 JUL -8 PM 1:45

Appeal of Ward 5 Improvement Association

Appeal No. 18114

**DISTRICT OF COLUMBIA'S RESPONSE TO INTERVENOR'S MOTION TO DISMISS
AND APPELLANT'S MOTION TO AMEND APPEAL**

The Appellee, the District of Columbia Department of Consumer and Regulatory Affairs ("Appellee" or "DCRA"), by and through undersigned counsel, hereby responds to the Motion to Dismiss filed by Intervenor and the Motion to Amend Appeal filed by Appellant.

Both of these motions follow the issuance of Certificate of Occupancy ("CO") no. CO1101152 on June 24, 2011 to Stadium Group, LLC ("the June 24th CO"). The June 24th CO authorizes the same use ("restaurant with nightclub") as the CO1002471, but reflects a load change resulting from the addition of a summer garden to the Stadium Club. In reviewing the application for the June 24th CO, the Office of the Zoning Administrator conducted a thorough review of the application for compliance with the Zoning Regulations. This review included an investigation of the operations of the Stadium Club to determine whether the club was operating as a sexually oriented business establishment ("SOBE"). Only after the completion of this investigation, which included undercover inspection of the Stadium Club, and being satisfied that the club was not operating as a SOBE, did the Zoning Administrator ("ZA") authorize the issuance of the June 24th CO.

Accordingly, DCRA takes offense to Mr. Padou's statement that the issuance of the June 24th CO "amounts to collusion" between the ZA and the owners of the Stadium Club. There, of course, was nothing underhanded or improper with the issuance of the CO. Mr. Padou's suggestion otherwise, is unsubstantiated and self-serving. To make such an attack on the reputation of a respected public official is despicable and far beyond the accepted standard of decorum for parties appearing before this Board. As an aspiring member of the bar, Mr. Padou should familiarize himself with the ethical and professional obligations of attorneys with respect to candor and truthfulness.

Mootness

The issuance of June 24th CO does have the effect of, in part, rendering this case moot. At the hearing, the Chair raised an issue as to whether the ZA erred in not conducting a sufficient review of the club's operations before issuing CO1002471. *See Transcript of October 26, 2011*, p.161-2.¹ This issue is now moot. CO1002471 is no longer in effect and thus, the circumstances as to how it was issued, are no longer relevant. Further, the issuance of the June 24th CO occurred only after a new investigation of the Stadium Club's operations, which included additional information that was not before the ZA when he approved CO1002471 on June 22, 2010. Accordingly, the issue of whether the ZA did not conduct a sufficient investigation of the club prior to the issuance of CO1002471 is no longer a live issue.

¹ DCRA continues to maintain that the ZA did not err because 1) prior to issuing CO1002471, he received no complaints alleging the dancers at the club were engaging in any "specified sexual activities"; 2) the ZA's review of the application for CO1002471 did not violate any provision of the Zoning Regulations and in fact the application was subject to exceptional scrutiny; and 3) even if the ZA learned of an incident where a dancer at the Stadium Club had engaged in conduct in violation of the Zoning Regulations, such an incident would have to be investigated and pursued as an enforcement matter by DCRA, and would not necessarily serve as a basis to deny Stadium Club's application to operate a restaurant and nightclub.

The Motion to Amend must be denied

The Board must reject Appellant's attempt to amend this appeal to include the June 24th CO. This CO was issued long after the hearing and closing arguments were filed in this appeal and only after DCRA conducted a thorough review of the Stadium Club's application for compliance with the Construction Codes and Zoning Regulations. Therefore, DCRA's review and approval of the June 24th CO constitute a new zoning "decision" under 11 DCMR § 3100.2, which is not properly a part of this appeal.

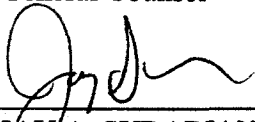
Accordingly, the Board must deny the Motion to Amend and dismiss as moot the issue of whether the ZA erred in not conducting a sufficient review of the club's operations before issuing CO1002471.

Respectfully Submitted,

IRVIN B. NATHAN
Attorney General for the District of Columbia

MELINDA M. BOLLING
General Counsel

July 8, 2011



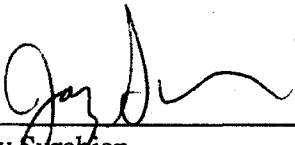
JAY A. SURABIAN (DC Bar # 977657)
Assistant Attorney General
Department Of Consumer And
Regulatory Affairs
Office of the General Counsel
1100 4th Street, SW, 5th Floor
Washington, DC 20024
(202) 442-8403 (office)
(202) 442-9447 (fax)
jay.surabian@dc.gov

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing filing was served by email, this 8th day of July 2011, to the following:

Stephen J. O'Brien, Esq.
Mallios & O'Brien
2600 Virginia Ave., NW, Suite 1112
Washington, DC 20037
sobrien@malliosobrien.com

Ward 5 Improvement Association
c/o Don Padou
1335 Lawrence St., NE
Washington, DC 20017
Don.padou@yahoo.com



Jay Surabian