

BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

2012 JAN -3 AM 9:47

APPEAL OF)
ADVISORY NEIGHBORHOOD COMMISSION 1C)
FROM A DETERMINATION OF THE)
ZONING ADMINISTRATOR PERTAINING TO)
MEI QU ZHENG T/A PEKING GARDEN CARRYOUT)
2008 18TH STREET, NW, WASHINGTON, DC 20009)
CERTIFICATE OF OCCUPANCY #CO 54337)
SQUARE 2555, LOT 0047 (C-2-A))

BZA Appeal No. 18256
ANC 1C

PREHEARING STATEMENT OF
APPELLANT ADVISORY NEIGHBORHOOD COMMISSION 1C

Pursuant to section 3112.10 of the Zoning Regulations, Advisory Neighborhood Commission 1C (ANC 1C) presents this prehearing statement in its appeal (Exhibit 1) from the Zoning Administrator's determination, rendered via e-mail on May 13, 2011, that "the fast food establishment use at Peking Garden, at 2008 18th St NW, which was authorized by the issuance of Certificate of Occupancy CO54337, is a lawful use under the zoning regulations." Based on that determination, the Zoning Administrator refused to revoke the C of O in question or to impose monetary penalties on the establishment. On June 6, 2011, within 30 days of that determination, ANC 1C filed this appeal pursuant to sections 3100 and 3200 of the Zoning Regulations, based on a June 1, 2011 roll call vote of 5-0 at a regularly scheduled and duly noticed public ANC meeting, a quorum being present.

STATEMENT OF FACTS

On November 9, 1979, Mr. James M. Washington -- at that time the sole owner of the premises at issue in this case¹ -- was issued Certificate of Occupancy No. B117084 (Exhibit 2)

¹ At some time subsequent to 1979, Mr. Washington appears to have deeded a co-ownership interest in the property to his son Barry Washington.

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Board of Zoning Adjustment
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business, “Peking Garden Carryout,” with a use description of “Carryout No Seating” (Exhibit 5).

The Peking Garden C of O is curious, however, because it states that it was issued pursuant to a “Change of Ownership,” even though Mr. Mei did not check the “Ownership Change” box on his application form. In fact, *there was no change of ownership* – in either the property itself, or in Mr. Washington’s previous and long-discontinued business, the Fish Hut Deli. Mr. Mei applied for the C of O in his own name and indicated that his business was to be a sole proprietorship trading as Peking Garden Carryout, not as Fish Hut Deli. When providing the required information about his proposed occupancy, and perhaps based on the substantial renovations and heavy-duty cooking installations that were required to open and operate his business, Mr. Mei checked the “New Bldg” box on the application form. There is no indication in the record that Mr. Washington transferred his long-abandoned delicatessen/carry-out business to Mr. Mei. On the contrary, the line on the application form seeking information about the “Prior Use of Premises” states “N/A Empty” – providing further evidence of Mr. Washington’s discontinuance of his prior business operation. To this day, Mr. Washington still owns the property, together with his son Barry Washington; they are parties to this appeal based on their status as Mr. Mei’s landlords, not because they sold either their building or the Fish Hut Deli business to Mr. Mei.

This history came to light when, in late 2010 and early 2011, the undersigned counsel for the ANC in this appeal – a neighboring resident and former ANC 1C Commissioner and Chairperson – began investigating the details of Peking Garden’s occupancy and its relationship

scooter to its delivery fleet, parking the scooter on the sidewalk day and night and then storing it inside the front window overnight. (Exhibits 23-25.)

After failing to persuade Mr. Mei, his wife, and their delivery drivers to cease and desist voluntarily from these unlawful activities, the undersigned – on behalf of himself, his partner Mr. Michael Rodgers, and other concerned neighbors – sought to put an end to these abuses through the administrative process. Because the premises in question are located in a C-2-A District (Exhibit 26), the complaints focused initially on the fact that a “fast food restaurant” or a “food delivery service” may not operate lawfully there without a special exception from the BZA. The Zoning Administrator was asked to abate these alleged violations, but declined to do so. (His rationales for this refusal, and the ANC’s responses, are discussed in further detail in the next section of this Prehearing Statement.)

After a series of e-mail exchanges with the Zoning Administrator failed to elicit a satisfactory response, the undersigned sought the involvement and assistance of his ANC Commissioner, Stacey Moye, representing Single Member District 1C01, and of the entire ANC. Following a May 2, 2011 meeting of the ANC’s Planning, Zoning, and Transportation (PZT) Committee at which this matter was discussed at length, ANC 1C Chairperson Wilson Reynolds sought a further response from the Zoning Administrator and other DCRA officials to the various questions being raised about this establishment. On May 13, 2011, the Zoning Administrator responded to Chairperson Reynolds, Commissioner Moye, the other Commissioners on the PZT Committee, and the undersigned, rejecting certain of the arguments being proffered for zoning enforcement, failing to respond to others (or to questions about others), and stating as follows:

734.8 of the Zoning Regulations, approval of a special exception for both these uses in a C-2-A District requires “sufficient off-street parking . . . to accommodate the needs of patrons and employees” and “no dangerous or other objectionable traffic conditions.” In the case of a “food delivery service,” sections 734.7 and 2101.1 require at least one parking space for a special exception in a C-2-A District.

Despite these requirements, the Zoning Administrator rejected the request for zoning enforcement on several grounds. First, although the use categories of “carryout” and “delicatessen” were eliminated from the Zoning Regulations in 1985, the Zoning Administrator ignored the latter (and primary use) listed in Mr. Washington’s 1979 C of O, and then conflated his former (and secondary) “carryout” use with the “fast food restaurant” use category adopted in 1985. On that basis, he held that “Peking Garden *assumed the rights to operate the fast food establishment use* with the issuance of C of O #54337 on May 13, 2003. The use, therefore, is grandfathered and is allowed to continue.” (Emphasis added.)

Second, in response to the argument that section 2005.1 of the Zoning Regulations provides that discontinuance of a nonconforming use for more than three years “shall be construed as prima facie evidence of no intention to resume active operation of a nonconforming use” and that “[a]ny subsequent use shall conform to the regulations of the district in which the use is located,” the Zoning Administrator held that Peking Garden “is not a non-conforming use.” He relied for that conclusion on the definition of “nonconforming use” in section 199.1 of the Zoning Regulations, placing particular emphasis on this sentence: “A use lawfully in existence at the time of adoption or amendment of this title that would thereafter require special

May 31, 2011 (which, in a later e-mail, he amended to June 9th). If such an investigation was ever conducted or concluded, no such report has ever been shared with ANC 1C.

LEGAL ANALYSIS

The Zoning Administrator's May 13, 2011 determination was erroneous in several respects. For any or all of the five reasons set forth below, the Zoning Administrator should have revoked the Peking Garden C of O and/or imposed monetary penalties on the establishment.

1) There Was No Actual Change of Ownership to Support Issuance of a "Change of Ownership" C of O

12A DCMR § 110.1.2 provides the authority for issuance of a "change in ownership" C of O.⁶ That provision states:

"For changes in ownership of structures, land, or parts with an existing valid Certificate of Occupancy, a new Certificate of Occupancy shall be issued in the name of the new owner (without re-inspection), provided there is no proposed change in use, floor layout or occupancy load."

In this case, however, as noted in the factual recitation above, there was no change of ownership – of the structure, the land, or any part thereof, nor of the business being operated on the premises, the latter having been discontinued at least six years prior to the 2003 Peking Garden application. Thus, the "change of ownership" C of O granted to Peking Garden is invalid on its face.

⁶ The ANC's original appeal document erroneously cited the source of this authority as section 1402.3 of the Zoning Regulations. The proper citation is stated in the text above. The incorrect citation in the original appeal document was the result of the ANC's hurried filing of this appeal after its June 1, 2011 vote. However, the language quoted above, found in Title 12A DCMR, the Building Code Supplement, closely tracks the language in the originally cited provision. The ANC respectfully requests the BZA to excuse this technical error.

The Board of Zoning Adjustment encountered a similar set of facts in *Appeal No. 17589 of Salvatore Gorgone* (May 1, 2007), *affirmed sub nom. Gorgone v. District of Columbia Bd. Of Zoning Adjustment*, 973 A.2d 692 (D.C. 2009). That case turned in large measure on the very different natures of a delicatessen and a Chinese carry-out. The Zoning Administrator there revoked the C of O of a Chinese carry-out that was authorized to use the premises there as a “Delicatessen (No Seats)” – much as Mr. Washington’s 1979 C of O contemplated – and the BZA upheld that revocation, writing:

Neither “delicatessen” nor “Chinese carry-out” was defined in the Zoning Regulations in effect at the time of the appeal, but it is clear to the Board that they are not the same thing. Both may cater to “take-out” customers and off-premises consumption, but delicatessens do not usually provide food that is cooked on the premise. Delicatessens also usually offer a substantial array of pre-packaged foods, such as snack items, which would not be offered by a Chinese carry-out. In contrast, a Chinese carry-out cooks foods to order on the premise. Such cooking results in a Chinese carry-out being a much more intense use than a delicatessen, with greater impacts on the surrounding neighborhood in the way of odors, trash, and vermin. The less-intense nature of a delicatessen is borne out by its definition in Webster’s Dictionary, set forth in Finding of Fact No. 10, which mentions only the same of “ready-to-eat food products,” and does not mention any cooking at all.

While the word “delicatessen” was not defined in the Zoning Regulations back in 1979, nor is it defined there today,⁸ the Court of Appeals in *Gorgone* explicitly upheld that BZA conclusion, *id.* at 695 n.2, and went on to note that the Chinese carry-out “had a much greater impact on the neighborhood than the food establishments that had operated out of [Gorgone’s] basement for the forty years before Zhang [the carry-out operator there] moved in.” *Id.* at 696.

In the Peking Garden case, the Zoning Administrator should have come to a similar conclusion and – whether due to no actual change in ownership or due to a change in use or floor

⁸ The *Webster’s Unabridged Dictionary* definition of “delicatessen” is attached hereto as Exhibit 28.

designate the approved use of Peking Garden's premises as a "carryout."¹¹ And if Mr. Mei had more appropriately sought to amend the use to designate Peking Garden as a "fast food restaurant," that amendment would no longer comply with Title 11 because in May 2003 it was no longer a matter of right use in a C-2-A District. Rather, such an amendment would have required a special exception. That result would also have been consistent with section 2000.2 of the Zoning Regulations, which reads:

"Within the districts established by this title, or in amendments that may later be adopted, there exist structures, uses of land, and uses of structures that were lawful before this title was adopted or amended, but that would be prohibited, regulated, or restricted under the terms of this title or future amendments to this title. *It is the intent of this title that nonconformities may not be enlarged upon, expanded, or extended, nor may they be used as a basis for adding other structures or uses prohibited elsewhere in the same district.*" (Emphasis added.)

Had the Zoning Administrator paid heed to the explicit conditions in section 3203.8, as well as to the language and intent guiding the treatment of nonconformities as described in section 2000.2, he would have revoked the improperly issued Peking Garden C of O.

One argument the Zoning Administrator used in this case to decline enforcement of the Zoning Regulations, albeit in the context of a different provision of the Zoning Regulations, was that based on the *current* definition of "nonconforming use" in section 199.1, the issuance to Mr. Washington of what allegedly was a "conforming" carryout C of O in 1979 means that Peking Garden's current "fast food" operation "cannot be classified as a non-conforming use, in accordance with the above definition." That is because the current definition states that "[a] use

¹¹ In *Kuri Brothers v. District of Columbia Bd. Of Zoning Adjustment*, 891 A.2d 241 (D.C. 2006), the court indicated that the petitioner's C of O in that case was for an "automobile service center," even though that term was not defined in the Zoning Regulations. *Id.* at 247. While the holding in *Kuri Brothers* – affirmation of the BZA's decision to uphold revocation of the petitioner's C of O – did not turn on that particular point, the court noted nonetheless that "[p]etitioner's C of O thus did not comply with the requirement that '[t]he use shall be designated on the certificate of occupancy in terms of a use classification that is established by this title [i.e., Title 11]....' 11 DCMR § 3203.8(a)." *Id.* at 247 n.5.

nor the Zoning Administrator had any reason to expect or believe that a 1979 C of O for a use category that no longer existed could be “continued” in 2003 in a zone district for which neither that use nor the alleged successor use of “fast food restaurant” was still a matter of right. On the contrary, as provided in section 3203.8(a), and considering the explicit restriction on transfer of the 1979 C of O quoted on page 2 above, DCRA would have been required to reject Mr. Mei’s application for a continuation of the obsolete “carryout” use and instead required him to seek an *amended* C of O stating the use as “fast food restaurant” – whereupon, under section 3203.8(c), that amendment would have required special exception relief.

3) Mr. Washington’s 1979 C of O Lapsed Long Before 2003, Meaning That It Could Not Be Renewed for Peking Garden

If section 3203.8 (or a forerunner of it) formed the basis for establishment of the 1979 delicatessen/carryout use and for the continuation of a carryout use in the 2003 C of O, section 3203.10 goes on to provide that a C of O “shall not be renewable if permitted to lapse unless processed in accordance with all provisions of this title.” The term “lapse” is not defined in the Zoning Regulations, leaving us under section 199.2(g) to consult *Webster’s Unabridged Dictionary* (Exhibit 31). Among the word’s many definitions, those that most closely fit this context are:

“**lapse** . . . *n[oun]* . . . **3 a** (1) : the termination or failure of a right or privilege through neglect to exercise it within some limit of time or through failure of some contingency **b** : an interruption or discontinuance
“**lapse** . . . *v[er]b* . . . *v[erb] i[n]finitive* . . . **2** : to go out of existence : fall into decay or disuse : DISAPPEAR, TERMINATE **3** : to fall or pass from one proprietor to another or from the original destination by the omission, negligence, or failure of some one (as a patron or legatee)”

current regulations, together with a new “discontinuance” provision that has since been recodified as section 2005.1 discussed below. That 1983 Zoning Commission Notice of Final Rulemaking is attached as Exhibit 30.

considered a conforming use, *subject to the further provisions of §§ 3104.2 and 3104.3.*”

(Emphasis added.) Those sections state:

“3104.2 - In the case of a use that was originally permitted and lawfully established as a matter of right and for which the Zoning Regulations now require special exception approval from the Board of Zoning Adjustment, *any extension or enlargement of that use shall require special exception approval from the Board.*

“3104.3 - In determining whether to approve any extension or enlargement under §3104.2, the Board shall apply the standards and criteria of the Zoning Regulations to the entire use, rather than to just the proposed extension or enlargement.” (Emphasis added.)

Peking Garden’s increasing provision of free food deliveries in 2010 and early 2011 had the effect of significantly extending and/or enlarging its permitted use beyond the “Carryout No Seating” originally approved in its “change of ownership” C of O. The Zoning Administrator intimated that only by reaching so far beyond its “carryout” C of O and, in effect, “morphing” into the entirely different use category of “food delivery service”¹⁵ could Peking Garden be fined or have its C of O revoked, but that is not in fact what section 3104.2 requires. Whether this extensive and intrusive expansion of delivery service rose to the level of actually converting Peking Garden’s use from a “fast food restaurant” to a “food delivery service” as defined in the regulations is not the test here. If it were, then there would be no need for section 3104.2 to refer merely to “any extension or enlargement” of a grandfathered use; the regulations instead would

¹⁵ Section 199.1 defines “food delivery service” as:

“a restaurant, prepared food shop, or fast food establishment, in which the principal use is production of prepared food for delivery to customers located off the business premises. Seating and tables for customers may or may not be provided for on-premises consumption, but if present are clearly subordinate to the principal use of preparing food for delivery to off-site customers. Any establishment that derives more than seventy-five percent (75%) of its sales from delivery orders will be considered a food delivery service in all cases. This definition does not include catering establishments.”

form over substance, ignores other relevant provisions of the Zoning Regulations, and is inconsistent with the treatment given to similar situations by the BZA and the Court of Appeals.

At a minimum, analysis of section 2005.1 requires a recognition that while section 199.1 deems certain prior nonconforming uses to be “conforming,” the concept of nonconformity is used differently in other parts of the Zoning Regulations and, specifically, even within chapter 20, which pertains to “Nonconforming Uses and Structures.” Indeed, immediately following the first section of that chapter, section 2000.1, which provides that “[t]he provisions of this title shall establish separate districts, each of which is an appropriate area for the location of uses and structures permitted in that district,” the very next provision, section 2000.2, states:

“Within the districts established by this title, or in amendments that may later be adopted, there exist structures, uses of land, and uses of structures that were lawful before this title was adopted or amended, but that would be prohibited, regulated, or restricted under the terms of this title or future amendments to this title. *It is the intent of this title that nonconformities may not be enlarged upon, expanded, or extended, nor may they be used as a basis for adding other structures or uses prohibited elsewhere in the same district.*” (Emphasis added.)

Certainly in that context, the word “nonconformities” and the very spirit and intent of the provision itself are at odds with the Zoning Administrator’s cramped and ill-fitting application of the discontinuance provision in that same chapter at section 2005.1.¹⁷

Moreover, this does not appear to be the way in which the BZA and previous Zoning Administrators have read and applied section 2005.1 in numerous other cases. In the *Gorgone* case described above, for example, that premises’ use as a delicatessen was allowed to continue for another 40 years past the 1958 enactment of the Zoning Regulations, even though those

¹⁷ Similarly, section 2000.4 in chapter 20 deals with “[a]ny nonconforming use . . . lawfully existing on May 12, 1958” – but if we applied the Zoning Administrator’s hypertechnical reading of the definition in section 199.1, the meaning of § 2000.4 would soon become circular and make little sense.

error due to the fact that the nonconforming use as a laundry had been discontinued for over three years and no non-matter-of-right use had ever been approved by the BZA.” Citing 11 DCMR § 2000.4, the BZA stated that “a use lawfully established as of May 12, 1958 may be continued, but is considered ‘nonconforming.’ . . . The right to continue a nonconforming use, however, is limited. Section 2005.1 of the Zoning Regulations limits the right to continue a nonconforming use by creating a rebuttable presumption that if a nonconforming use has not operated for at least three years, it has been permanently abandoned.” The BZA upheld the Zoning Administrator’s revocation.

It is of no consequence in the context of the Peking Garden case that in both *Gorgone* and *Roots*, the original C of Os were issued prior to 1958. The salient point is that in 2007, nearly 24 years after the definition of “nonconforming use” was changed in section 199.1 to deem prior nonconforming uses as “conforming” even after the adoption or amendment of Title 11 DCMR, the BZA did not rely on or even cite that definition as the basis for its decision. Instead, it recognized that the discontinuance provision of section 2005.1 had to be read commonsensically, rather than in a manner that would significantly impair its usefulness.¹⁸ And as noted earlier, to the extent that Mr. Washington or Mr. Mei have a right to rely on any definition of “nonconforming use,” the relevant definition *in this case* was the one in effect when Mr. Washington received his C of O in 1979 – where no such “deeming” provision can be found.

ANC 1C has been able to find only a single BZA case in which an arguably contrary conclusion was reached – *Appeal No. 17591 of MLW, LLC* (May 1, 2007) – but that decision was

¹⁸ To similar effect, see *Appeal No. 15588 of the Brookland Civic Association and Advisory Neighborhood Commission (ANC) 5A* (Jan. 8, 1992) and *Application No. 15343 of Joanna Tyler* (Nov. 7, 1990).

eliminating a nonconformance. But the rationale of and distinctions drawn in *MLW* support ANC 1C's contention here that in the case of Peking Garden, the Zoning Administrator's refusal to interpret the discontinuance provision of section 2005.1 in a manner consistent with the intent and other provisions of chapter 20 was erroneous. Following the lead of prior Zoning Administrators and other pertinent BZA cases, DCRA should not have issued the Peking Garden C of O in 2003 – but the Zoning Administrator should certainly have revoked it in 2011.

CONCLUSION

For all these reasons, the May 13, 2011 determination of the Zoning Administrator was erroneous in this case. The appeal of ANC 1C should accordingly be granted, the Zoning Administrator's determination should be overturned, and Peking Garden's C of O, No. CO54337, should be revoked pursuant to section 1406.1, which states that any C of O may be revoked "if the actual occupancy does not conform with that permitted or because of any misrepresentation in the application having a substantial bearing on the safety of the occupancy, or if due to any material circumstances, it is found to have been issued in error."

Respectfully submitted,

ADVISORY NEIGHBORHOOD COMMISSION 1C



Alan J. Roth, Esquire
Duly Authorized Representative for
Advisory Neighborhood Commission 1C

Date: January 3, 2012

WITNESSES FOR THE APPELLANT

ANC Commissioner Stacey A. Moyer
Michael A. Rodgers (neighboring resident)
Alan J. Roth (neighboring resident and counsel for ANC 1C)
Chris Harrington (neighboring resident)

EXHIBITS

Appellant ANC 1C respectfully requests that the following exhibits be made a part of the Record in this Appeal:

- | | |
|------------|--|
| Exhibit 1 | Form 125 – Appeal of ANC 1C (filed June 6, 2011) |
| Exhibit 2 | Certificate of Occupancy (CO) No. B117084, issued November 9, 1979 |
| Exhibit 3 | Application for CO, dated October 15, 1979, by James M. Washington |
| Exhibit 4 | Application for CO, dated May 13, 2003, by Mei Qu Zheng |
| Exhibit 5 | CO No. 54337, issued May 13, 2003 |
| Exhibit 6 | Photo - Alley View from Across 18 th Street |
| Exhibit 7 | Photo - Red Delivery Car Blocking Alley |
| Exhibit 8 | Photo - Red Delivery Car Blocking Alley (2) |
| Exhibit 9 | Photo - Red Delivery Car Parked at Willie Hargrove Residence |
| Exhibit 10 | Photo - Red Car (showing license plate) behind Willie Hargrove Residence |
| Exhibit 11 | Photo - Silver Delivery Car Parked at Willie Hargrove Residence |
| Exhibit 12 | Photo - Mrs. Mei Blocking 18 th Street Alley Curb Cut |
| Exhibit 13 | Photo - Mrs. Mei Blocking 18 th Street Alley Curb Cut (2) |
| Exhibit 14 | Photo - Illegal Parking by Red Delivery Car |
| Exhibit 15 | Photo - Illegal Parking by Grey Delivery Car |
| Exhibit 16 | Photo - Grey Delivery Car Blocking Other Vehicle |
| Exhibit 17 | Photo - Food Delivery Truck Blocking Neighbor |
| Exhibit 18 | Photo - Food Delivery Truck (2) |
| Exhibit 19 | Photo - Food Delivery Truck (3) |
| Exhibit 20 | Photo - Food Delivery Truck (4) |
| Exhibit 21 | Photo - Checking Food After Delivery |
| Exhibit 22 | Photo - Delivery Document in Front Window |
| Exhibit 23 | Photo - Delivery Moped Outside (Day) |
| Exhibit 24 | Photo - Delivery Moped Outside (Night) |
| Exhibit 25 | Photo - Delivery Moped Inside Front Window |
| Exhibit 26 | Zoning Map Showing C-2-A Premises and Adjacent R-5-B Area |
| Exhibit 27 | E-mail Exchanges with Zoning Administrator LeGrant and ZA Staff |
| Exhibit 28 | Webster's Unabridged Dictionary definition of "delicatessen" |
| Exhibit 29 | January 11, 1979 definition of "Nonconforming use" in 11 DCMR § 1201 (July 1982 Provisional Edition) |
| Exhibit 30 | Notice of Final Rulemaking in Zoning Commission Case No. 81-17, 30 DCR 3922 and 3928 (Aug. 5, 1983) |
| Exhibit 31 | Webster's Unabridged Dictionary definition of "lapse" |

CERTIFICATE OF SERVICE

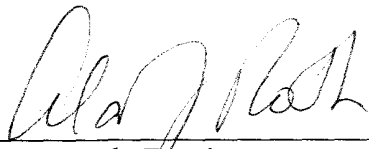
I hereby certify that, in accordance with 11 DCMR § 3111.3, a copy of the foregoing Prehearing Statement, together with the witness and exhibit lists on the preceding page and all exhibits attached hereto, were deposited in the United States mail, first-class postage prepaid, and thereby served on the following persons, on this 3rd day of January, 2012:

Jay A. Surabian, Esquire
Assistant Attorney General
Office of the Attorney General of the District of Columbia
941 North Capitol Street, NE – Suite 9400
Washington, DC 20002

Mr. Mei Qu Zheng t/a Peking Garden Carryout
2008 18th Street, NW
Washington, DC 20009

Bradley A. Thomas, Esquire
4201 Connecticut Avenue, NW – Suite 400
Washington, DC 20008-1158

Messrs. James M. and Barry J. Washington
2900 Hatboro Place
Upper Marlboro, MD 20774



Alan J. Roth, Esquire

CERTIFICATE OF OCCUPANCY

No. **B117084**

Washington, D.C., Nov. 9, 1979

Permission is hereby granted to James H. Washington
to use the 1st floor floor(s) of the building located on Lot 47 Square 2555
known as premises 2003 18th St NW for the following
purpose(s): Retail Food ~~Store~~ Delicatessen; CarryOut (No Seating)

THIS CERTIFICATE SHALL BE POSTED CONSPICUOUSLY ON THE ABOVE PREMISES
AT ALL TIMES. IT IS VALID INDEFINITELY, unless an expiration date is stated,
ONLY for the premises, or part thereof, and for the purpose(s), indicated
above, and IS NOT TRANSFERABLE to another person or premises under ANY
conditions. ANY CHANGE in the type of business, ownership of business, or
part of premises used therefor, will render this Certificate VOID and a NEW
Certificate must be obtained.

DEPARTMENT OF LICENSES, INVESTIGATIONS AND INSPECTIONS, GOVT. OF DIST. OF COL.
OFFICE COPY.

ZONE

FEE \$ 20.00

[Signature]
Chief, Permit Branch
Permit Clerk

Permit No. 10-18-79
 Issued Nov 9, 1979
 APPL 3101
 Do NOT use this
 Boarding or Ten
 dental Use.

CALL 1-800-368-250

NOV 5 1979 / 3

COMMERCIAL
 NOV 10 1979

PERMIT BRANCH

partment, Rooming,
 loins, or Other Real.

THIS OCCUPANCY ENCUMBRANCE
 SQUARE FEET
 FEB 20-91 Eng. Initials MM

Date 11-15-79

TO THE DIRECTOR OF INSPECTION:

The applicant(s) request the issuance of a Certificate of Occupancy for the use of the premises described below, and agree to comply with all applicable laws and regulations of the District of Columbia, and any terms and conditions appearing on BOTH sides of this application and on any Certificate of Occupancy issued on the basis of this application.

Full Name of Owner(s) of Business JAMES M WASHINGTON
 (See instruction on reverse side) (PRINT) (FIRST) (MIDDLE) (LAST)

Trade Name of Business FISH HUT DELI
 (See instruction on reverse side) (PRINT) (This trade name must be identical with that shown in application for business license)

Description of Premises for which Certificate is Requested

Address 2008 18TH ST NW Lot 47 Square 2555
 (of building to be occupied)

Name and address of owner of building JAMES M WASHINGTON

To the best of your knowledge is the building now being condemned? NO

Material of building BRICK No. of Stories High 1 Basement? NO

Proposed use RETAIL FOOD DELICATESSEN CAFE
NO SEAT

Which Floor(s) will be occupied for above use 1ST

Previous use RESTAURANT & BEAUTY SALON

If previous use was residential, how many living unit are being abandoned? N/A

READ INSTRUCTIONS AND INFORMATION ON REVERSE SIDE OF THIS APPLICATION
 PENALTIES ARE PROVIDED FOR MISREPRESENTATION.

To Be Filled in by Clerk
 "se District C-2-A
 Height District 10-18-79
 Area District 2
 Transcript of No. 2
 E. D. No. 2
 B. Z. A. No. 2
 Bldg Permit No. 2
 Previous use RESTAURANT & BEAUTY SALON
1st FLOOR
3-25-69 No 9-50-92
 Name of Clerk 2

IF OWNER OF BUSINESS SIGNS:
 Signature of Owner James M. Washington
 (in ink)
 Home Address 3927-14th St Tel. No. 882-5741

IF AUTHORIZED AGENT FOR OWNER OF BUSINESS SIGNS:
 Name of Agent James M. Washington
 Address of Agent 3927-14th St
 Name of Owner(s) of Business James M. Washington
 (as shown above)
 Signature of Agent James M. Washington
 (in ink)

APPROVED:

RESERVED FOR APPROVALS

FS James M. Washington
 Bldg James M. Washington
 Plbg James M. Washington
 Elec James M. Washington
 DES James M. Washington

Date 11/5/79
 Date 11/7/79
 Date 11/9/79
 Date 11-9-79

APPROVED FOR ISSUANCE OF PERMIT

NOTICE TO PROSPECTIVE PURCHASER:
 Your application will not be approved and Certificate issued until all inspections have been made and inspection agencies have certified compliance.

Exh. 3

0013361

7734

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS BUILDING AND LAND REGULATION ADMINISTRATION APPLICATION FOR CERTIFICATE OF OCCUPANCY	
Date: <u>5/13/03</u>	Receipt No. _____ Cashier's No. _____
Application Fee \$33.00 Non Refundable Certificate Fee 1.5 Based on square footage.	
INFORMATION ON PROPOSED BUSINESS	1. Premise Address <u>2008 18TH ST NW WASH. DC 20009</u> Suite/Room No. <u>N/A</u>
	2. Business Telephone No. <u>(202) 588-0088</u> Fax No. _____ Lot <u>47</u> Square <u>2555</u>
	3. Trade Name of Business <u>PEKING GARDEN CARRYOUT</u>
	4. Is Business Incorporated? Y/N <u>N</u> Partnership? Y/N <u>N</u> Sole Proprietor? Y/N <u>Y</u> New/Existing <u>NEW</u>
	5. Corporate Name <u>N/A</u>
	6. President <u>N/A</u> Vice President <u>N/A</u> Secretary <u>N/A</u>
	7. Sole Proprietor <u>MEI QI ZHENG</u>
	8. Business Owner's Mailing Address <u>2008 18TH ST NW WDC 20009</u> phone # (daytime) <u>(202) 588-0088</u>
INFORMATION ON OCCUPANCY	9. ☐ Ownership Change ☐ Partial Occupancy ☒ New Bldg ☐ Use change ☐ Load Change ☐ BZA No
	10. Proposed Use of Premises <u>CARRYOUT</u> <u>NO SEATING</u>
	11. Prior Use of Premises <u>N/A EMPTY</u>
	12. Proposed Occupancy Load <u>BO/A</u> Square Feet Occupied <u>745 #</u>
	13. Floors to be Occupied <u>1ST FLOOR</u> Basement? ☐ Yes ☒ No
	14. Is this Business Sexually Oriented according to the DC Zoning Regulations? ☐ Yes ☒ No
INFORMATION ON ENTIRE BUILDING	15. Building Owner <u>JAMES M. WASHINGTON</u> Telephone No. <u>(202) 409-1715</u>
	16. Building Owner's Address <u>2900 HATBORO PL. UPPER MARLBORO, MD 20774</u>
	17. Square feet <u>745 #</u> Numbers of floors <u>1</u> Basement <u>NONE</u>
ATTESTATION & SIGNATURE	I certify that all of the statements on this application are true to the best of my knowledge and belief. I agree to comply with all applicable laws and regulations of the District of Columbia.
	18. Owner of Business <u>Mei Qi Zheng</u> Date <u>MAY 13, 2003</u> Signature
	If Authorized Agent for owner of Business (Attach Authorization)
	19. Agent's Name _____ Date _____ Print Clearly Signature
20. Agent's Address _____	

Department of Consumer and Regulatory Affairs
 Building and Land Regulation Administration
 941 North Capitol Street, N.E. room 2100
 Washington D.C. 20002
 Tel: (202) 442-4470 Fax: (202) 442-4862

Government
 of the District
 of Columbia
 BLRA 94A

C of O

CERTIFICATE OF OCCUPANCY

PERMIT NO.

CO 54337

THIS PERMIT IS VALID ONLY FOR THE PREMISES
 OF THE PROJECT ADDRESS

DATE : 5/13/2003

ADDRESS 2008 18TH ST NW	FLOOR(S): 1ST FL	PRCLID : 2555 (square)	0000	0047 (lot)
		WARD : 1	ZONE : C2A	

PERMISSION IS HEREBY GRANTED TO: SOLE PROPRIETOR : MEI QU ZHENG	TRADING AS: PEKING GARDEN CARRYOUT
---	--

APPROVED USES OTHER - SEE DESCRIPTION	PREVIOUS USES OTHER - SEE DESCRIPTION
---	---

TYPE : CHANGE OF OWNERSHIP	BZA NO.	OCCUPIED SQ. FOOTAGE: 745	OCCUP. LOAD	EXPIRATION DATE: NONE
--------------------------------------	---------	-------------------------------------	-------------	---------------------------------

DESCRIPTION OF USE: CARRYOUT NO SEATING	FEE : \$75.00
---	-------------------------

THIS CERTIFICATE SHALL BE POSTED CONSPICUOUSLY ON THE ABOVE PREMISES AT ALL TIMES. IT IS VALID INDEFINITELY, unless an expiration date is stated, VALID ONLY for the premise at the above address or part thereof, and for the purpose(s) indicated above, and IS NOT TRANSFERABLE to another person or premises under ANY conditions. ANY CHANGE in the type of business, ownership of business, or part of premises used therefor, will render this Certificate VOID and a NEW Certificate must be obtained.

David A. Clark DIRECTOR	PERMIT CLERK: THINGOC MACXOAN
----------------------------	---

Exh. 5



Exh. 6
11/6/11 3:59pm

Exh. 7
11/3/11 9:30pm



JACK ROSI
DINING SALOON

BLADE CARD

Exh. 8
11/3/11 9:31pm





Exh. 9
11/10/11 5:34pm



Exh. 10
11/10/11 5:34pm



Exh. 11
12/18/11 3:22pm



Exh. 12
11/8/11 6:53pm



Exh. 13
11/8/11 6:52pm



Exh. 14
8/4/11 7:30pm



Exh. 15
7/28/11 7:19pm



Exh. 16
7/27/11 7:10pm



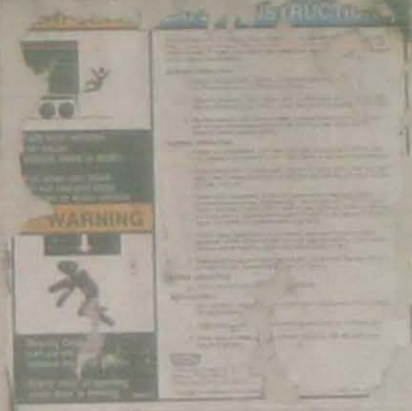
Exh. 17
12/24/11 11:10am



Exh. 18

12/24/11 11:11am

milea 
truck sales of Queens
MASPETH, NEW YORK
(718) 396-0800



Exh. 19
12/24/11 11:11am

STAR TRANSPORT LLC

**246 WERKS ST
PHILA PA 19122
US DOT 1869020
MC 678576**

Exh. 20

12/24/11 11:12am



Exh. 21
12/24/11 11:12am

永隆行食品批发

Pacific Food Service

246 W Berks St., Philadelphia PA 19122

TEL 215-291-9227

Fax 215-291-1811

75 北海 =0729

79 18th St NW

North Sea 金碗

Washington

(202)-332-7628

DC 20009-

(202)-725-2628 EXT

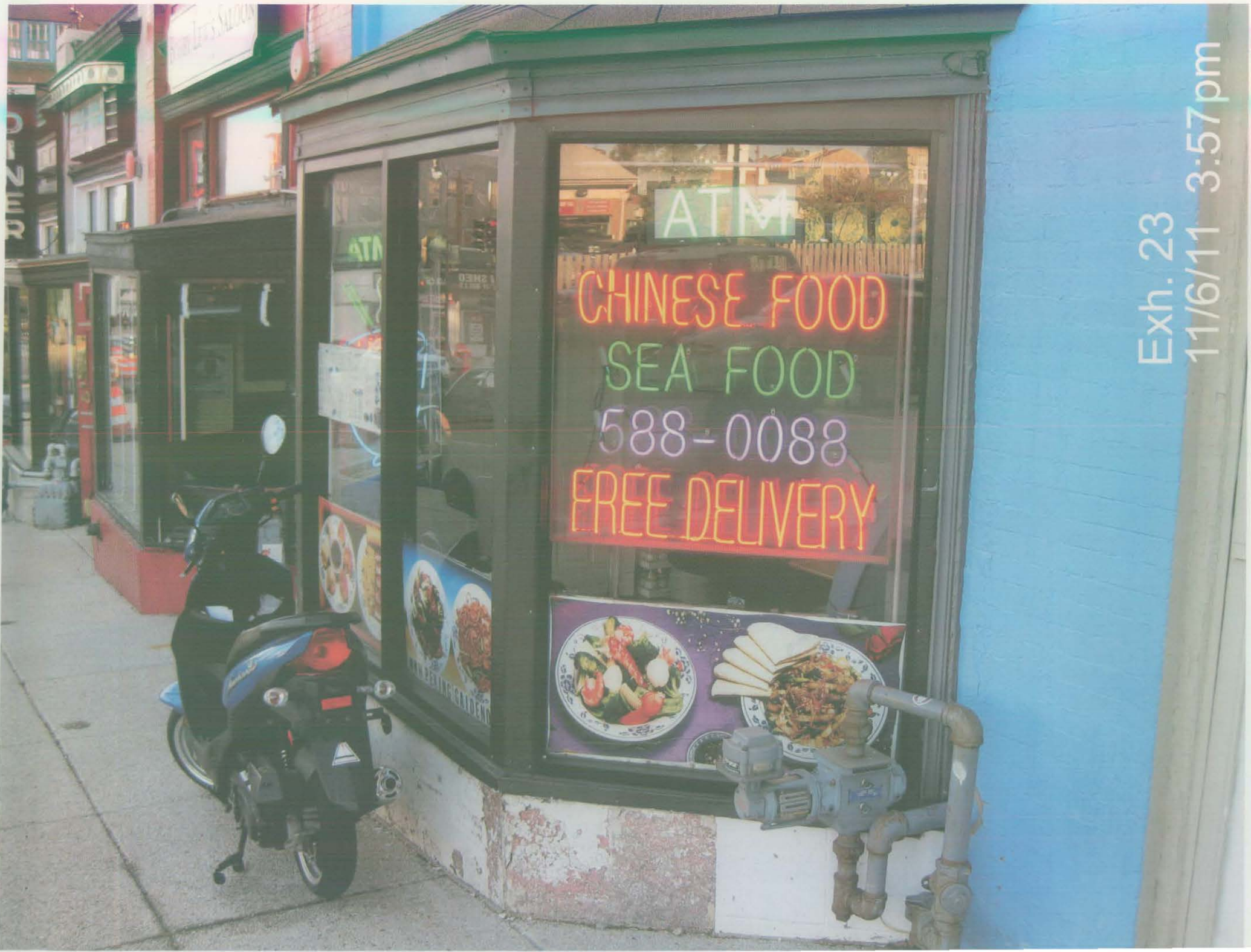
英文名稱

規格

箱數	英文名稱	規格	Unit
6箱	Legs-Perdue	1x40lbs	240.
6箱	Breast-Perdue	非固定	238.
10.60	40.00 38.50		
4箱	Canadian Pork Butt (8)	非固定	271.
67.60			
10箱	Flank Steak-Lp	非固定	500.
44.90	53.10 48.70 48.90 55.70		
40LB	W Egg Roll Mix-lb		
	shell shells		

Exh.22

12/24/11 11:13am



Exh. 23
11/6/11 3:57 pm



Exh. 24
11/8/11 7:09pm



Exh. 25

11/7/11 9:06am



District of Columbia Office of Zoning

EXTRACT OF THE DISTRICT OF COLUMBIA ZONING MAP

January 1, 2012



Zoning Layers

- | | | |
|--------------------|--------------|-----------------|
| Zone Districts | CEA | Pending PUDs |
| Historic Districts | Campus Plans | PUDs |
| Overlays Districts | TDRs | Air Rights Zone |

To certify zoning on any property in order to satisfy a legal requirement, contact the Office of Zoning at (202) 727-6311.

Roth, Alan

From: LeGrant, Matt (DCRA) <matthew.legrant@dc.gov>
Sent: Friday, May 27, 2011 4:02 PM
To: wreynoldsanc@aol.com; Roth, Alan; Moye, Stacey (ANC 1C01)
Cc: Majett, Nicholas (DCRA); Bellow, Justin (DCRA)
Subject: RE: Peking Garden, 2008 18th Street, NW

All:

I wanted to let everyone know that DCRA's continuing investigation of this matter is ongoing, and I apologize that it will not conclude by May 31st as I originally envisioned. I now expect to be able to report the investigation results by June 9th. I want to be able to have all the relevant information I need to be able to base a determination that accurately reflects the business operation that is occurring. I will continue to keep you posted.

Best Regards,

Matthew Le Grant

Zoning Administrator
Dept of Consumer and Regulatory Affairs
Government of the District of Columbia
1100 4th St SW - Room 3100
Washington, DC 20024
Phone: 202 442-4652
FAX: 202 442-4871
Email: matt.legrant@dc.gov

From: wreynoldsanc@aol.com [mailto:wreynoldsanc@aol.com]
Sent: Monday, May 23, 2011 4:41 PM
To: aroth@ustelecom.org; LeGrant, Matt (DCRA); Moye, Stacey (ANC 1C01)
Cc: slanning@malaborers.org; Kathie.boettrich@gmail.com; Majett, Nicholas (DCRA); Bellow, Justin (DCRA)
Subject: Re: Peking Garden, 2008 18th Street, NW

Hello All,

Just checking in. We have not heard back in a while and were waiting for a report.

Has there been any progress?

Wilson Reynolds

-----Original Message-----

From: Roth, Alan <aroth@ustelecom.org>
To: LeGrant, Matt (DCRA) <matthew.legrant@dc.gov>; Moye, Stacey (ANC 1C01) <1C01@anc.dc.gov>
Cc: slanning@malaborers.org; Kathie.boettrich@gmail.com; Majett, Nicholas (DCRA) <nicholas.majett@dc.gov>; Bellow, Justin (DCRA) <justin.bellow@dc.gov>; wreynoldsanc@aol.com

Exh. 27

Sent: Fri, May 13, 2011 4:01 pm
Subject: RE: Peking Garden, 2008 18th Street, NW

Mr. LeGrant,

Thank you for this further response, which largely repeats what you have told us before. You have not, however, addressed:

- the questions I raised regarding sections 3104.2 and 3104.3 (pertaining to the "any extension or enlargement" of a use previously permitted as a matter of right that would now require a special exception), or
- the questions I raised concerning how a "change of ownership" C of O can be granted to someone for whom there has been no actual change of ownership and who did not request one in his application, or
- the question I raised near the foot of this e-mail chain and which I will repeat here for your convenience:

In my research down at DCRA last week, I asked for copies of any building or construction permits that were issued on these premises in the 2003-2004 time frame. I was told there were none. And yet the DCRA examiner who signed the application form – "R. Joseph" – appears to have signed off on the building, plumbing, electrical, and fire approvals on April 29th and May 13th, 2003. Either there were permits issued and they've been lost in DCRA's archives – or there never were any permits at all. But either way, it is clear that there was substantial work done on the premises before the current business opened its doors. It strikes me as very suspicious that the date on the C of O application is May 13, 2003, Mr. Zheng's signature is dated May 13, 2003, Mr. Joseph's inspection and signature are dated May 13, 2003, and the C of O itself is dated May 13, 2003. I wasn't aware that DCRA was really that efficient back in 2003, so that someone could fill out an application, and get an inspection, an approval, and an issuance all on the same day. Seems sort of miraculous, in fact. What's DCRA's explanation for that?

All of these questions bear directly on the legitimacy of this C of O, and on the validity of your determination, and would likewise bear on my decision whether to appeal to the BZA or to seek injunctive relief against this business and its landlords in Superior Court, another course potentially open to me under DC Code § 6-641.09(a), section 3201.2 of the Zoning Regulations, and the cases of *Lund v. Watergate Investors Limited Partnership*, 728 A.2d 77 (D.C. 1999) and *President & Dirs. of Georgetown College v. Diavatis*, 470 A.2d 1248 (D.C. 1983).

Once again, I ask, may we please have your answers to all those questions?

Thank you,
Alan

Alan J. Roth
Senior Executive Vice President
United States Telecom Association
607 14th Street, NW - Suite 400
Washington, DC 20005
(202) 326-7300 (main)
(202) 326-7248 (direct dial)

From: LeGrant, Matt (DCRA) [<mailto:matthew.legrant@dc.gov>]
Sent: Friday, May 13, 2011 3:36 PM
To: Roth, Alan; Moye, Stacey (ANC 1C01)
Cc: slanning@malaborers.org; Kathie.boettrich@gmail.com; Majett, Nicholas (DCRA); Bellow, Justin (DCRA); wreynoldsanc@aol.com
Subject: RE: Peking Garden, 2008 18th Street, NW

Stacey Moye and Alan Roth:

In recent communications I was asked to review the use at 2008 18th St NW as to its compliance with the District's zoning regulations. Specifically, I was asked whether Peking Garden should be treated as a non-conforming use and what effect a lapse in the operation of the business would have on the validity of the Certificate of Occupancy.

The carry-out or fast-food establishment use at was established in 1979, by the issuance of Certificate of Occupancy B117084, which was prior to the 1986 amendment to the Zoning regulations that required fast-food establishments in C-2-A districts to secure a special exception relief from the BZA. Peking Garden assumed the rights to operate the fast food establishment use with the issuance of C of O #54337 on May 13, 2003. The use, therefore, is grandfathered and is allowed to continue.

The definition of nonconforming use, which is set forth in the Zoning Regulations, under 11 DCMR 199.1 states:

Nonconforming use - any use of land or of a structure, or of a structure and land in combination, lawfully in existence at the time this title or any amendment to this title became effective, that does not conform to the use provisions for the district in which the use is located. *A use lawfully in existence at the time of adoption or amendment of this title that would thereafter require special exception approval from the Board of Zoning Adjustment shall not be deemed a nonconforming use.* That nonconforming use shall be considered a conforming use, subject to the further provisions of §§ 3104.2 and 3104.3. [Emphasis added in *italics*.]

Since the use was established in 1979, prior to the 1986 amendment to the Zoning regulations that required fast-food establishments in C-2-A districts to secure a special exception, the use cannot be classified as a non-conforming use, in accordance with the above definition. Therefore, since the discontinuance regulations cited in 11 DCMR 2005.1 apply to non-conforming uses only, they do not apply to Peking Garden because it is not a non-conforming use.

Even though the business may not have been in operation continuously since the fast food establishment was originally established in 1979, the use has not lapsed. Based on past rulings by the Board of Zoning Adjustments, established Certificates of Occupancy and their approved uses are continuously recognized even during periods of vacancy, unless a building permit or Certificate of Occupancy was issued denoting a change in use, or if the building was razed. Neither of these occurred in this case.

Mr. Roth also raised questions about the nature of the business, asserting that the business might be improperly classified as a fast food establishment and that the amount of delivery that the business does, may instead qualify it as a food delivery service. DCRA has initiated an investigation of this aspect, and I expect the results by the end of this month, which I will report to you.

Except for the investigation of the possible food delivery service use, I have determined that the fast food establishment use at Peking Garden, at 2008 18th St NW, which was authorized by the issuance of Certificate of Occupancy CO54337, is a lawful use under the zoning regulations. Appeals of my determination may be made to the Board of Zoning Adjustments, in accordance with the requirements in Chapter 31 of Title 11.

Best Regards,

Matthew Le Grant
Zoning Administrator
Dept of Consumer and Regulatory Affairs
Government of the District of Columbia
1100 4th St SW - Room 3100
Washington, DC 20024
Phone: 202 442-4652
FAX: 202 442-4871
Email: matt.legrant@dc.gov

From: Roth, Alan [<mailto:aroth@ustelecom.org>]
Sent: Thursday, May 05, 2011 6:52 PM
To: wreynoldsanc@aol.com; Bellow, Justin (DCRA)
Cc: Moye, Stacey (ANC 1C01); slanning@malaborers.org; Kathie.boettrich@gmail.com; Majett, Nicholas (DCRA); LeGrant, Matt (DCRA)
Subject: RE: Peking Garden, 2008 18th Street, NW

Friends,

Further to our discussion online and offline yesterday....

I had the opportunity this evening to examine more closely the definition of "nonconforming use" in section 199.1, to which Mr. Bellow referred in his e-mail to me yesterday (see below). Interestingly, Mr. Bellow's quotation of the definition omits the last sentence, which reads as follows:

"That nonconforming use shall be considered a conforming use, **subject to the further provisions of [sections] 3104.2 and 3104.3.**" (Emphasis added.)

Those two sections of the Zoning Regulations provide as follows:

"3104.2

In the case of a use that was originally permitted and lawfully established as a matter of right and for which the Zoning Regulations now require special exception approval from the Board of Zoning Adjustment, any extension or enlargement of that use shall require special exception approval from the Board."

"3104.3

In determining whether to approve any extension or enlargement under [section] 3104.2, the Board shall apply the standards and criteria of the Zoning Regulations to the entire use, rather than to just the proposed extension or enlargement."

Since Mr. LeGrant promised me on the phone yesterday that he would take another and closer look at his office's earlier interpretation of the regs as they apply to this situation, I have a few additional questions it would be helpful to have answers to:

- 1) How has the term "extension" been interpreted and applied by the ZA, the BZA, and the courts? Wouldn't that term on its face apply when a use under a previously approved C of O has clearly been long abandoned and someone else comes along and, through the device of a so-called "change of ownership" C of O (even though no change of ownership has actually occurred), tries to extend that use at a time subsequent to the promulgation of the current regs?
- 2) How has the term "enlargement" been interpreted and applied by the ZA, the BZA, and the courts? Wouldn't the addition of food delivery to what had previously been just a carry-out/deli constitute an "enlargement" of the previous use?
- 3) Why did Mr. Bellow's e-mail yesterday omit that last sentence of the definition of "nonconforming use"?

I am hopeful that Mr. LeGrant will answer these questions along with the others posed on my behalf by Chairman Reynolds.

Also, at least insofar as I can tell, no representative of the Zoning Administrator's office or DCRA has responded affirmatively to Chairman Reynolds' suggestion for a meeting, either with or without the landlord and/or tenant. Should we interpret that to be a rejection of Chairman Reynolds' suggestion, or just a failure to communicate?

Looking forward to hearing back from DCRA on all these points.

Best,
Alan

Alan J. Roth
Senior Executive Vice President
United States Telecom Association
607 14th Street, NW - Suite 400
Washington, DC 20005
(202) 326-7300 (main)
(202) 326-7248 (direct dial)

From: wreynoldsanc@aol.com [<mailto:wreynoldsanc@aol.com>]

Sent: Wednesday, May 04, 2011 4:17 PM

To: Roth, Alan; justin.bellow@dc.gov

Cc: 1C01@anc.dc.gov; slanning@malaborers.org; Kathie.boettrich@gmail.com; nicholas.majett@dc.gov; matthew.legrant@dc.gov

Subject: Re: Peking Garden, 2008 18th Street, NW

Hello,

Thank you, happy to try and contribute.

I would be happy to invite the landlord and the tenant if there is agreement.

Cheers.

Wilson

-----Original Message-----

From: Roth, Alan <aroth@ustelecom.org>

To: wreynoldsanc@aol.com; justin.bellow@dc.gov

Cc: 1C01@anc.dc.gov; slanning@malaborers.org; Kathie.boettrich@gmail.com; nicholas.majett@dc.gov; matthew.legrant@dc.gov

Sent: Wed, May 4, 2011 3:28 pm

Subject: RE: Peking Garden, 2008 18th Street, NW

Wilson,

Thanks. You've proposed an excellent next step. And if you and the other participants think it's a good idea, I would be happy to have the landlord and the tenant participate in the same meeting. If you think it would be better for us to meet separately before including them, I'm okay with that too.

But this problem has to be addressed effectively, and – as I told Mr. LeGrant on the phone a few minutes ago – it's difficult for me to escape the feeling that he and DCRA are spending their time figuring out how to protect and defend a scofflaw, rather than working to protect the law-abiding residents of our neighborhood from that scofflaw. If your suggestion will put us on a faster path to a better endpoint, I'm all for it.

Thanks again for your constructive involvement here.

Best,
Alan

*Alan J. Roth
Senior Executive Vice President
United States Telecom Association
607 14th Street, NW - Suite 400
Washington, DC 20005
(202) 326-7300 (main)
(202) 326-7248 (direct dial)*

From: wreynoldsanc@aol.com [<mailto:wreynoldsanc@aol.com>]

Sent: Wednesday, May 04, 2011 3:14 PM

To: Roth, Alan; justin.bellow@dc.gov

Cc: 1C01@anc.dc.gov; slanning@malaborers.org; Kathie.boettrich@gmail.com; nicholas.majett@dc.gov; matthew.legrant@dc.gov

Subject: Re: Peking Garden, 2008 18th Street, NW

Kind Readers,

May we pause please? Clearly there are legal arguments and interpretations here that would fuel a good attorney's retirement plan.

As I wrote this inquiry let me take another run at this. And let me get it out front, I am not an attorney.

Here it is. There is a problem with this establishment. As presented to me the operator of this business is deriving income from a delivery service, and that activity is creating a nuisance in the neighborhood. This is supposed to be a carry out, not a carry out and delivery food establishment.

We could spend a lot of time on this but before we invoke ANC actions and kill of more perfectly good trees and bandwidth, lets try another approach.

As this is on the ANC radar now I am asking for a meeting. I am happy to come down to 4th St., or host at the Wilson building, but let's get DCRA, Office of the Zoning Administrator, the ANC Commissioner representing this district, the constituent and myself into one room to work this out.

Please.

Thank you.

Wilson

-----Original Message-----

From: Roth, Alan <aroth@ustelecom.org>

To: Bellow, Justin (DCRA) <justin.bellow@dc.gov>

Cc: Moye, Stacey (ANC 1C01) <1C01@anc.dc.gov>; slanning@malaborers.org; Kathie.boettrich@gmail.com;

wreynoldsanc@aol.com; Majett, Nicholas (DCRA) <nicholas.majett@dc.gov>; LeGrant, Matt (DCRA) <matthew.legrant@dc.gov>

Sent: Wed, May 4, 2011 1:52 pm

Subject: RE: Peking Garden, 2008 18th Street, NW

Justin,

First, if you were intending to respond to Chairman Reynolds' e-mail yesterday, my personal view is that you should have directed your response primarily to him, not to me. I can only assume you were responding to me because you know that a response of this nature to any ANC Chairman would not be very well-received.

Second, your e-mail has the tone of a certain frustration or anger with me for taking this issue to my ANC. If I'm wrong about that, I apologize for reading it that way. If I'm right, then here's my response to you: You left me no choice. Your repetition of the same answers I got prior to my conversation with Director Majett and my follow-on e-mail to you on April 14th, your continued failure to address the discontinuance issue in 11 DCMR 2005, your failure to provide me with any real indication of when I might get actual answers to the questions I'm posing, and your inability to tell me when your so-called "investigation" might begin, much less when it would get done, weren't very good ways to make progress with me here.

So let me repeat: I'm still waiting for your or Mr. LeGrant's response to the points in my April 14th e-mail, and now to the questions Chairman Reynolds has posed on my behalf based on the paperwork I obtained from DCRA last week. These questions and issues center primarily on 11 DCMR 2005, which reads as follows:

DISCONTINUANCE

2005.1 Discontinuance **for any reason** of a nonconforming use of a structure or of land, except where governmental action impedes access to the premises, **for any period of more than three (3) years**, shall be construed as prima facie evidence of no intention to resume active operation as a nonconforming use. **Any subsequent use shall conform to the regulations of the district in which the use is located.**

2005.2 This presumption **may only be rebutted by objective proof of a continuing use or of affirmative steps taken to resume the use during the period of time identified by the Zoning Administrator when revoking an existing certificate of occupancy or denying an application for a replacement certificate of occupancy.**

The bottom line here is that the prior non-conforming use was DISCONTINUED long before 2003 – meaning that "Any subsequent use shall conform to the regulations in which the use is located". Likewise, THERE WAS NO CHANGE OF OWNERSHIP that would warrant granting a "change of ownership" C of O, as acknowledged in Mr. Zheng's own application. And, if all that isn't enough, the documentation – and absence of documentation – I found at DCRA last week makes this whole thing smell to high heaven in a variety of ways.

If you and Mr. LeGrant choose to continue being completely unresponsive to the questions and issues I've raised, and that Chairman Reynolds has now raised on my behalf, by just repeating to us what I was told before Director Majett and others brought section 2005 and the Gorgone and Rooths cases to my attention, the only thing you're succeeding in doing is making me even angrier with DCRA than I already am. If you disagree that the agency's issuance of the 2003 C of O was improper, then answer directly the questions that Chairman Reynolds and I have posed to you, instead of just repeating the same basic answers I was given prior to April 14th. To the extent that you believe you've answered those questions, your suggestion that there's no "expiration" of a C of O until a new one is issued is ludicrous on its face when read in conjunction with section 2005 and the obvious policy that section 2005 is intended to advance.

You – implicitly – and Director Majett fairly explicitly have pretty much let me know that I'll be a very old man by the time your so-called "investigation" is completed. I don't plan to wait that long to have this addressed. Obviously, it would be easier and a lot less expensive for me to have it addressed properly by the agency that issued an improper C of O in the first place. In that spirit, I formally asked in my April 14th e-mail for reconsideration by the Zoning Administrator of his prior determination, based on section 2005 and the cases cited above.

If he's not going to grant that reconsideration, I would like him to tell all of us that. If your e-mail today is supposed to be construed as a rejection of my request, I would like you or him to tell all of us all that. But if you're not going to do anything about the situation, and if you're not going to answer the questions you've been asked, just tell us that too, so we can all move on to whatever comes next. At least then we would know clearly where we stand vis-à-vis our remedies and amount of time we have to pursue this in another forum. And I would have the satisfaction of knowing DCRA can't or doesn't want to answer the questions – and by that I mean ALL the questions, not just the ones you choose to answer.

Thank you again for your continued consideration.

Best,
Alan Roth

Alan J. Roth
Senior Executive Vice President
United States Telecom Association
607 14th Street, NW - Suite 400
Washington, DC 20005
(202) 326-7300 (main)
(202) 326-7248 (direct dial)

From: Bellow, Justin (DCRA) [<mailto:justin.bellow@dc.gov>]
Sent: Wednesday, May 04, 2011 12:51 PM
To: Roth, Alan
Cc: Moye, Stacey (ANC 1C01); slanning@malaborers.org; Kathie.boettrich@gmail.com; wreynoldsanc@aol.com; Majett, Nicholas (DCRA); LeGrant, Matt (DCRA)
Subject: RE: Peking Garden, 2008 18th Street, NW

Mr. Roth:

You contend that Peking Garden's current Certificate of Occupancy, issued in 2003, was erroneously issued because the business had ceased to exist years prior to the issuance of this most recent Certificate of Occupancy and therefore believe that it should be classified as a carryout/fast food use that is non conforming use in a C-2-A zone. You further contend that, under 11 DCMR 2005.1, the use is discontinued.

However, 11 DCMR 199.1 states in the definition of non-conforming use:

A use lawfully in existence at the time of adoption or amendment of this title that would therefore require special exception approval from the Board of Zoning Adjustment ***shall not be deemed a non-conforming use.***

Certificate of Occupancy B117084, issued on November 9, 1979 established the carryout/fast food establishment use prior to the 1986 amendment requiring fast food establishments in a C-2-A zone to secure a special exception from the Board of Zoning Adjustments. As previously noted to you, the Zoning Administrator has deemed that the use therefore may be continued.

Further, although a business may cease to operate for an extended period of time, the Certificate of Occupancy and corresponding designated use does not expire without the issuance of a new Certificate of Occupancy designating a different use.

The change of ownership Certificate of Occupancy for carryout use issued on May 5, 2003 was issued properly because the carryout/fast food use was previously established in the 1979 Certificate of Occupancy.

DCRA is investigating your allegation that the business is improperly classified as a carryout/fast food establishment and will update you in the results of the investigation when they are available.

Best regards,

Justin Bellow
Government of the District of Columbia
Office of the Zoning Administrator | Department of Consumer and Regulatory Affairs
1100 4th St SW, 3rd Floor | Washington, DC 20024
W 202.442.4576 | F 202.442.4871 | justin.bellow@dc.gov

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From: Roth, Alan [<mailto:aroth@ustelecom.org>]
Sent: Tuesday, May 03, 2011 6:24 PM
To: wreynoldsanc@aol.com; Majett, Nicholas (DCRA); LeGrant, Matt (DCRA); Bellow, Justin (DCRA)
Cc: Moye, Stacey (ANC 1C01); slanning@malaborers.org; Kathie.boettrich@gmail.com
Subject: RE: Peking Garden, 2008 18th Street, NW

Wilson,

Thanks very much again for your assistance and your follow-up. I'm hoping your involvement, and the ANC's, will produce better answers and faster action than I've been able to get thus far from the Zoning Administrator and DCRA.

All the best,
Alan

*Alan J. Roth
Senior Executive Vice President
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607 14th Street, NW - Suite 400
Washington, DC 20005
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(202) 326-7248 (direct dial)*

From: wreynoldsanc@aol.com [<mailto:wreynoldsanc@aol.com>]
Sent: Tuesday, May 03, 2011 5:51 PM
To: Roth, Alan; Nicholas.Majett@dc.gov; Matthew.LeGrant@dc.gov; justin.bellow@dc.gov
Cc: 1C01@anc.dc.gov; slanning@malaborers.org; Kathie.boettrich@gmail.com
Subject: Re: Peking Garden, 2008 18th Street, NW

Hello Alan,

Thank you for joining us at the Planning, Zoning & Transportation Committee meeting of the ANC last night, and also for sharing this material. I was also able to find the correspondence from Justin Bellow, Director Majett and Matt LeGrant you sent Sunday

I appreciate the amount of detail you have provided. From what I can tell from the review there are problems with the application of the change of operators, and the use has undergone change.

As the PZT Committee is now aware of this case, I am sharing this with Mr. Majett, Mr. LeGrant and Mr. Bellow asking for a response to your questions. Reproduced here below. Let us see what we can be done.

Thank you.

Wilson

+++++

How is it that a so-called "change of ownership" C of O could be issued to a business for which there was no actual change of ownership? The building was and still is owned by the same landlord that owned it back in the 70s and 80s, so no real estate changed ownership. And the C of O for Peking Garden, as well as the application for the C of O, lists the business as "Sole Proprietorship: Mei Qu Zheng ... trading as Peking Garden Carryout" – not the Fish Hut Dely [sic?], which was the business operated by the landlord until he closed it down and emptied the premises many years before Mr. Zheng came onto the scene. There doesn't appear to have been any bona fide "change of ownership" of the business or the real estate.

How is it that a "change of ownership" C of O could be issued to an applicant, Mr. Zheng, who didn't check the "Ownership Change" box on his own C of O application? In point of fact, the box he did check – "New Bldg" – was itself an error, because the building had existed long before he got there. But clearly neither he nor whomever handled this application for him believed there was any "change of ownership" back in 2003.

As you heard last night from me, and from Stacey who lives around the corner as well, this premises was vacant since at least 1997, when each of us moved into our current residences – and, according to Stacey, empty for many years before that as well based on her observations as a neighborhood resident as far back as 1992. The discontinuance provision referenced below in my April 14th e-mail to Mr. LeGrant and Justin Bellow – 11 DCMR 2005 – would seem on its face to eliminate the ability of Mr. Zheng to have gotten a C of O for a carry-out at this location, even if through some miracle of legal drafting Zheng and Washington entered into some kind of contract ostensibly "transferring" ownership of the long-closed Fish Hut Dely to Zheng. Why was the long-term discontinuance of the prior non-conforming use ignored back in 2003?

In my research down at DCRA last week, I asked for copies of any building or construction permits that were issued on these premises in the 2003-2004 time frame. I was told there were none. And yet the DCRA examiner who signed the application form – "R. Joseph" – appears to have signed off on the building, plumbing, electrical, and fire approvals on April 29th and May 13th, 2003. Either there were permits issued and they've been lost in DCRA's archives – or there never were any permits at all. But either way, it is clear that there was substantial work done on the premises before the current business opened its doors. It strikes me as very suspicious that the date on the C of O application is May 13, 2003, Mr. Zheng's signature is dated May 13, 2003, Mr. Joseph's inspection and signature are dated May 13, 2003, and the C of O itself is dated May 13, 2003. I wasn't aware that DCRA was really that efficient back in 2003, so that someone could fill out an application, and get an inspection, an approval, and an issuance all on the same day. Seems sort of miraculous, in fact. What's DCRA's explanation for that?

Finally, while a carry-out (now known in the zoning regs as a "fast food establishment") is a different use than a "food delivery service," it seems to me that when a situation like this arises and it seems obvious that what might once have been a "carry-out" has morphed into a "food delivery service", DCRA and the Zoning Administrator owe it to the community to jump on the matter immediately. In fact, the neon sign in the window touts delivery service. But I have the impression that DCRA will get around to investigating this whenever it gets around to investigating. Mr. Bellow could give me no indication whatsoever of when that investigation would occur, and I got the impression from Director Majett at the DC Bar lunch where we met that DCRA's resources were not adequate to rely on this as a real remedy. If Director Majett or Mr. LeGrant have real and persuasive answers to questions 1 through 4 above, could I least get a commitment for priority attention to this last issue, since running a food delivery service would seem to be outside the scope of Mr. Zheng's C of O?

++++++

-----Original Message-----

From: Roth, Alan <aroth@ustelecom.org>

To: Reynolds, Wilson (Council) <wreynolds@DCCOUNCIL.US>

Cc: wreynoldsanc@aol.com; Moye, Stacey (ANC 1C01) <1C01@anc.dc.gov>; slanning@malaborers.org;

Kathie.boettrich@gmail.com

Sent: Tue, May 3, 2011 11:24 am

Subject: FW: Peking Garden, 2008 18th Street, NW

Wilson, Stacey, and Steve,

Thanks again for your kind and patient discussion with me last night about strategies for ending the abuse by Peking Garden of the alley between the 1800 blocks of Vernon and California Streets.

Wilson, it looks like I did forward you my e-mail exchange with the Zoning Administrator's office – on Sunday afternoon, with the whole chain dating back to February – but I did it from home, using my "GoToMyPC" account connected to my office computer, so it's possible that if I closed out of the program and shut it down too quickly after I hit send, maybe it never got to you.

So, here it all is again – starting below with my Sunday e-mail to you. I've also copied Stacey, Steve, and Kathie here so that they'll all have the same info.

If you're asking Director Majett or Zoning Administrator LeGrant for explanations, here are a few of the questions that come immediately to mind:

How is it that a so-called "change of ownership" C of O could be issued to a business for which there was no actual change of ownership? The building was and still is owned by the same landlord that owned it back in the 70s and 80s, so no real estate changed ownership. And the C of O for Peking Garden, as well as the application for the C of O, lists the business as "Sole Proprietorship: Mei Qu Zheng ... trading as Peking Garden Carryout" – not the Fish Hut Dely [sic?], which was the business operated by the landlord until he closed it down and emptied the premises many years before Mr. Zheng came onto the scene. There doesn't appear to have been any bona fide "change of ownership" of the business or the real estate.

How is it that a "change of ownership" C of O could be issued to an applicant, Mr. Zheng, who didn't check the "Ownership Change" box on his own C of O application? In point of fact, the box he did check – "New Bldg" – was itself an error, because the building had existed long before he got there. But clearly neither he nor whomever handled this application for him believed there was any "change of ownership" back in 2003.

As you heard last night from me, and from Stacey who lives around the corner as well, this premises was vacant since at least 1997, when each of us moved into our current residences – and, according to Stacey, empty for many years before that as well based on her observations as a neighborhood resident as far back as 1992. The discontinuance provision referenced below in my April 14th e-mail to Mr. LeGrant and Justin Bellow – 11 DCMR 2005 – would seem on its face to eliminate the ability of Mr. Zheng to have gotten a C of O for a carry-out at this location, even if through some miracle of legal drafting Zheng and Washington entered into some kind of contract ostensibly "transferring" ownership of the long-closed Fish Hut Dely to Zheng. Why was the long-term discontinuance of the prior non-conforming use ignored back in 2003?

In my research down at DCRA last week, I asked for copies of any building or construction permits that were issued on these premises in the 2003-2004 time frame. I was told there were none. And yet the DCRA examiner who signed the application form – "R. Joseph" – appears to have signed off on the building, plumbing, electrical, and fire approvals on April 29th and May 13th, 2003. Either there were permits issued and they've been lost in DCRA's archives – or there never were any permits at all. But either way, it is clear that there was substantial work done on the premises before the current business opened its doors. It strikes me as very suspicious that the date on the C of O application is May 13, 2003, Mr. Zheng's signature is dated May 13, 2003, Mr. Joseph's inspection and signature are dated May 13, 2003, and the C of O itself is dated May 13, 2003. I wasn't aware that DCRA was really that efficient back in 2003, so that someone could fill out an application, and get an inspection, an approval, and an issuance all on the same day. Seems sort of miraculous, in fact. What's DCRA's explanation for that?

Finally, while a carry-out (now known in the zoning regs as a "fast food establishment") is a different use than a "food delivery service," it seems to me that when a situation like this arises and it seems obvious that what might once have been a "carry-out" has morphed into a "food delivery service", DCRA and the Zoning Administrator owe it to the community to jump on the matter immediately. In fact, the neon sign in the window touts delivery service. But I have the impression that DCRA will get around to investigating this whenever it gets around to investigating. Mr. Bellow could give me no indication whatsoever of when that investigation would occur, and I got the impression from Director Majett at the DC Bar lunch where we met that DCRA's resources were not adequate to rely on this as a real remedy. If Director Majett or Mr. LeGrant have real and persuasive answers to questions 1 through 4 above, could I least get a commitment for priority attention to this last issue, since running a food delivery service would seem to be outside the scope of Mr. Zheng's C of O?

Thanks again for your help, the PZT Committee's last night, and the ANC's as we move ahead to address this. I also look forward to hearing whether either Mr. Washington (the elder or younger) would be interested in having an on-site meeting to discuss these abuses.

Best,
Alan

Alan J. Roth
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From: Roth, Alan
Sent: Sunday, May 01, 2011 4:14 PM
To: 'wreynolds@dccouncil.us'
Cc: 'wreynoldsanc@aol.com'; '1c01@anc.dc.gov'
Subject: FW: Peking Garden, 2008 18th Street, NW

As I said, perhaps more than you ever wanted to know on the subject of C of Os – but on top of all this, the application for the Chinese carry-out specified “new use,” not “change of ownership,” and yet this guy was given a “change of ownership” C of O. There wasn’t any ownership that changed – the building is still owned by the same landlord, whose own deli/carry-out had been discontinued years and years before 2003. I moved to Vernon St. in 1997 and there was no deli or carry-out there then, so it was at least 6 years if not more that the premises were vacant. And so far as I can tell, there was no business entity that changed hands either – Peking Garden is listed on the application as a sole proprietorship, with no apparent connection to the Fish Hut Deli that the landlord might once have operated there.

BTW, the same owner also owns the place next door – at 2010 18th St. – and in spite of occasional fits and starts of renovation work there, that place has been empty all that time as well. Not particularly relevant to the situation at 2008, except to illustrate that this landlord doesn’t seem to mind leaving his storefronts unoccupied for many years at a time.

As for the status of this since my April 14th e-mail below – I spoke to Justin Bellow on Thursday. He basically could give me no further information about the status of my request for reconsideration of their earlier decision, except that they were “working on it.” He said they hoped to have an answer back to me within the next week or two but, I have to confess, he didn’t sound very convincing – and reading between the lines, it didn’t sound to me that they were going to change their minds.

Thanks again for any help you, Jim, or the ANC can provide.

Best,
Alan.

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From: Roth, Alan
Sent: Thursday, April 14, 2011 5:47 PM
To: 'Bellow, Justin (DCRA)'; 'LeGrant, Matt (DCRA)'
Cc: Nicholas.Majett@dc.gov; Helder Gil Esq. (helder.gil@dc.gov)
Subject: RE: Peking Garden, 2008 18th Street, NW

Justin and Mr. LeGrant,

I had the opportunity to discuss this situation with Director Majett and Helder Gil at today’s DC Bar brown-bag luncheon. Director Majett and several others in the room expressed great surprise at the initial conclusion you appear to have reached below, so I provided him before we broke with a copy of our e-mail exchange – highlighting for him the specific references in yellow below and discussing in particular the definition of the term “lapsed”.

Thanks to another attendee at the lunch, I’ve also been directed to the BZA decisions in the Gorgone and Rooths cases, and to the DC Court of Appeals decision upholding the BZA in Gorgone. I haven’t had a chance to read them all yet, but on first glance they appear very helpful to my position. I’ve also had the following provision of the Zoning Regs pointed out to me:

DISCONTINUANCE

- 2005.1 Discontinuance for any reason of a nonconforming use of a structure or of land, except where governmental action impedes access to the premises, for any period of more than three (3) years, shall be construed as prima facie evidence of no intention to resume active operation as a nonconforming use. Any subsequent use shall conform to the regulations of the district in which the use is located.
- 2005.2 This presumption may only be rebutted by objective proof of a continuing use or of affirmative steps taken to resume the use during the period of time identified by the Zoning Administrator when revoking an existing certificate of occupancy or denying an application for a replacement certificate of occupancy.

SOURCE: § 7107.1 of the Zoning Regulations, effective May 12, 1958; as amended by Final Rulemaking published at 30 DCR 3922, 3928 (August 5, 1983); as amended by Final Rulemaking published at 57 DCR 9492, 9493 (October 8, 2010).

In light of these additional authorities, I respectfully request that you reconsider your previous conclusions on this matter and revoke the improperly transferred C of O for this establishment.

I look forward to hearing back from you or from Director Majett or his office with a response to this request.

Thank you again,
Alan Roth

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From: Roth, Alan
Sent: Friday, April 08, 2011 5:34 PM
To: Bellow, Justin (DCRA)
Cc: LeGrant, Matt (DCRA)
Subject: RE: Peking Garden, 2008 18th Street, NW

Thank you again, Justin. Director Majett is scheduled to be the guest speaker at the DC Bar's brown-bag lunch series next Thursday, which I am planning to attend. If I haven't heard back from you by then, perhaps I can raise my issues with him directly and hopefully speed things along.

Good luck regarding the shutdown question.

Best,
Alan

Alan J. Roth
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From: Bellow, Justin (DCRA) [<mailto:justin.bellow@dc.gov>]
Sent: Friday, April 08, 2011 2:22 PM
To: Roth, Alan
Cc: LeGrant, Matt (DCRA)
Subject: RE: Peking Garden, 2008 18th Street, NW

Mr. Roth,

I can't provide an exact length of time on how long the investigation will take, as my office has no involvement in the process other than requesting the investigation. To the best of my knowledge, once the investigators have enough evidence to make a determination, they will submit a report to my office. The information in that report will determine whether or not DCRA can take enforcement action. The investigation was to start next week, but that may have to be delayed with the impending government shutdown. Once we return to the office permanently, I can provide you more information.

Best regards,
Justin Bellow
Government of the District of Columbia
Office of the Zoning Administrator | Department of Consumer and Regulatory Affairs
1100 4th St SW, 3rd Floor | Washington, DC 20024
W 202.442.4576 | F 202.442.4871 | justin.bellow@dc.gov

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From: Roth, Alan [<mailto:aroth@ustelecom.org>]
Sent: Thursday, April 07, 2011 3:44 PM
To: Bellow, Justin (DCRA)
Cc: LeGrant, Matt (DCRA)
Subject: RE: Peking Garden, 2008 18th Street, NW

Justin, can I have an indication of when that investigation will begin, and an estimate of how long it will take for me to hear back from you?

Thanks again,
Alan

Alan J. Roth
Senior Executive Vice President
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Washington, DC 20005
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(202) 326-7248 (direct dial)

From: Bellow, Justin (DCRA) [<mailto:justin.bellow@dc.gov>]
Sent: Thursday, April 07, 2011 3:40 PM
To: Roth, Alan
Cc: LeGrant, Matt (DCRA)
Subject: RE: Peking Garden, 2008 18th Street, NW

Mr. Roth,

DCRA's Investigate Service has been tasked with looking into the percentage of Peking Garden's business that comes from delivery. Once the investigation has concluded, they will report their findings to my office. Once I have the report, I will let you know the findings and the next step, if any, that DCRA will take.

Best regards,
Justin Bellow
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Office of the Zoning Administrator | Department of Consumer and Regulatory Affairs
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From: Roth, Alan [<mailto:aroth@ustelecom.org>]
Sent: Thursday, April 07, 2011 1:58 PM
To: Bellow, Justin (DCRA)

Cc: LeGrant, Matt (DCRA)
Subject: RE: Peking Garden, 2008 18th Street, NW

Justin and Mr. LeGrant,

Thank you for your responses to my questions. However, regarding your response to question #4 below, I would like to redirect your attention to the final line in my March 5th e-mail, which states: "[I]n terms of zoning enforcement, I feel at a minimum that an investigation of whether this "fast food/carryout" has morphed into a "food delivery service" is very much warranted and respectfully request that such an investigation be undertaken promptly."

What is your response to that request?

Given the length of time this discussion has been pending, I would appreciate a prompt reply.

Best,
Alan Roth

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(202) 326-7248 (direct dial)

From: Bellow, Justin (DCRA) [<mailto:justin.bellow@dc.gov>]
Sent: Thursday, April 07, 2011 11:15 AM
To: Roth, Alan
Cc: LeGrant, Matt (DCRA)
Subject: RE: Peking Garden, 2008 18th Street, NW

- 1) It isn't clear to me which subsection or other part of section 3203 authorizes such "change of ownership C of Os.". I would appreciate if you would point me to the provision of statute or regulation that allows such C of Os to be issued.

Section 32 does state that a Certificate of Occupancy is required for all uses excluding a single family home and that the Certificate of Occupancy must be in the current holder's name. However, Title 11 section 32 does not delve into the specifics about the process of issuing a Certificate of Occupancy.

- 2) If that provision is section 3203.8 -- saying that an authorized use may be "continued," that provision is subject to several conditions. One of those conditions is that it be "a use classification that is established by this title." While the 1979 C of O was issued for "retail food, delicatessen, carryout", I can find no reference to any of those three things being "a use classification that is established by this title."

See answer to Question 3

- 3) The closest thing I can find to that would be the references to "grocery store" and "carryout service" in the paragraph at the margin at the end of the definition of "fast food restaurant." But the parenthetical reference there to 54 DCR 9393 suggests this paragraph was added after the issuance of this 2003 "change of ownership C of O" - which would make it irrelevant for the time at which the 2003 decision was made.

The term "Fast food establishment" replaced "carry-out" in Title 11 in 2007. A fast food establishment is a category of eating establishment where food is cooked on premises and customers pay before eating and/or the food is served with disposable tableware.

- 4) Even if that paragraph had retroactive effect, and while the provision appears intended to protect fast food establishments generally from being classified as something else, there is an exception for carryouts -- meaning that a "use providing carryout service that is clearly subordinate to its principal use shall NOT be deemed a fast-food establishment." As I noted in my Feb. 25th e-mail, I believe there is a strong case to be made that any carryout service at this establishment has become subordinate to their "food delivery service." If that belief were to be borne out by appropriate investigation, then the

establishment would no longer be operating within the scope of its C of O, even if such a "change of ownership C of O" had been properly issued in 2003 based on whatever representations the former and new owners made at that time.

If a fast food establishment derives more than 75% of its sales from delivery orders, then the business would be classified as a "food delivery service" and may require a new Certificate of Occupancy.

5) Finally, section 3203.10 states that a C of O issued pursuant to 3203.8 "shall not be renewable if permitted to lapse unless processed in accordance with ALL provisions of this title" -- which in turn leads to several questions:

A) Wouldn't the issuance of a "change of ownership C of O" be based on section 3203.8's reference to a use being "continued" and thus, in effect, constitute a "renewal" of the 1979 C of O?

B) If so, and since the premises were long vacant between the time Mr. Washington discontinued his deli/carryout and the 2003 opening of Peking Garden, hadn't the 1979 "lapsed" prior to 2003, so that a renewal in the form of the "change of ownership C of O" should never have been issued?

C) What exactly is the meaning of "lapse" in this provision? It doesn't appear to be defined here or in the definitions in section 199.1. Where can I find the meaning of that term? If it is not defined in the regs, wouldn't section 199.2(g) mean the most applicable Webster's definitions apply -- in this case, "the termination of a right or privilege through neglect to exercise it within some period of time"; "interruption"; or "discontinuance"?

The Zoning Administrator has determined that the Certificate of Occupancy has not lapsed. Based on past rulings by the Board of Zoning Adjustments and the DCRA's General Counsel, established Certificates of Occupancy are continually recognized even during periods of vacancy, provided that no building permits have been issued that would denote a change in use.

In summary, the Zoning Administrator had determined that Peking Garden is a lawful Fast Food Establishment which has a valid Certificate of Occupancy. Any decision made by the Zoning Administrator may be appealed to the Board of Zoning Adjustments. You may contact the Office of Zoning at 727-6311 for more information.

Justin Bellow
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Office of the Zoning Administrator | Department of Consumer and Regulatory Affairs
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From: Roth, Alan [<mailto:aroth@ustelecom.org>]
Sent: Wednesday, April 06, 2011 6:02 PM
To: LeGrant, Matt (DCRA); Bellow, Justin (DCRA)
Subject: RE: Peking Garden, 2008 18th Street, NW

Thank you -- I look forward to hearing from him. I appreciate your reply.

Alan

Alan J. Roth
Senior Executive Vice President
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From: LeGrant, Matt (DCRA) [<mailto:matthew.legrant@dc.gov>]
Sent: Wednesday, April 06, 2011 5:58 PM

To: Roth, Alan; Bellow, Justin (DCRA)
Subject: RE: Peking Garden, 2008 18th Street, NW
Importance: High

Alan Roth-

I also received your voicemail and I apologize for not responding in a timely manner. I have asked Justin Bellow to research the issues of your several questions, and I believe that we will have that response to you by cob tomorrow.

Best Regards,

Matthew Le Grant

Zoning Administrator
Dept of Consumer and Regulatory Affairs
Government of the District of Columbia
1100 4th St SW - Room 3100
Washington, DC 20024
Phone: 202 442-4652
FAX: 202 442-4871
Email: matt.legrant@dc.gov

From: Roth, Alan [<mailto:aroth@ustelecom.org>]
Sent: Tuesday, March 29, 2011 3:55 PM
To: Bellow, Justin (DCRA)
Cc: LeGrant, Matt (DCRA)
Subject: RE: Peking Garden, 2008 18th Street, NW

Gentlemen,

It's now been more than 3 weeks since I sent you the e-mail questions below. I did talk to Justin briefly last week, and he assured me that you were working on answers, but I've heard nothing further from you as this situation grows more and more intolerable.

DDOT has begun the Adams Morgan Streetscape Project down at the southern end of Adams Morgan, on 18th St. between Florida Ave. and California St., so the two northbound lanes and one of the southbound lanes on 18th St. have been inaccessible for the last two weeks, meaning that the one remaining southbound lane and what previously was a parking lane now have two way traffic running up and down the two lanes closest to the west curb of 18th Street.

The result is that our alley has now become Peking Garden's parking lot. Bad enough that before they would park illegally on 18th Street itself, blocking the alley by parking in the curb cut – now they just park in the alley itself.

If the owner of this establishment were a gentleman and made any effort whatsoever to accommodate his neighbors, it might be a different story. But he acts like a total jerk – believing (apparently with good reason) that no one can or will touch him. And the fact that he comes to work in DC with Maryland tags on his car doesn't make me feel any warmer towards him.

Same for his landlord, Mr. Washington, another Marylander, who upon further investigation might potentially be found to have committed or facilitated a fraud here with the transfer of a C of O for a business that had long stopped operating when Peking Garden built out and rented the premises.

I would like responses – good, solid responses – to my very reasonable questions below. And I would like enforcement. I've tried to be patient, but I'm running out of patience after 3 weeks of silence from you. I'm trying to handle this with you in a courteous and professional way – but I feel like I'm getting nowhere with that approach. Please prove me wrong by getting back to me promptly with a discussion of what you're going to do about the situation.

Thank you,
Alan Roth

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From: Roth, Alan
Sent: Thursday, March 10, 2011 11:07 AM
To: 'justin.bellow@dc.gov'
Cc: 'matthew.legrant@dc.gov'
Subject: RE: Peking Garden, 2008 18th Street, NW

Justin,

Was hoping for a response to my questions below. Just a reminder here – but would appreciate hearing back from you on this

Thanks,
Alan

Alan J. Roth
Senior Executive Vice President
United States Telecom Association
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Washington, DC 20005
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(202) 326-7248 (direct dial)

From: Roth, Alan
Sent: Saturday, March 05, 2011 5:28 PM
To: justin.bellow@dc.gov
Cc: matthew.legrant@dc.gov
Subject: Re: Peking Garden, 2008 18th Street, NW

Justin and Matt,

Thank you again for directing me to section 3203 of the Zoning Regs for more information about C of Os and how a 2003 "change of ownership C of O" might allow the Chinese carry-out establishment at the above-referenced address to operate legally in a C-2-A zone without a special exception based on a carry-out C of O issued prior to the 1985 regs.

I've now had a chance to read section 3203 carefully and have several follow-up questions that I'd appreciate your help in answering:

- 1) It isn't clear to me which subsection or other part of section 3203 authorizes such "change of ownership C of Os.". I would appreciate if you would point me to the provision of statute or regulation that allows such C of Os to be issued.
- 2) If that provision is section 3203.8 -- saying that an authorized use may be "continued," that provision is subject to several conditions. One of those conditions is that it be "a use classification that is established by this title." While the 1979 C of O was issued for "retail food, delicatessen, carryout", I can find no reference to any of those three things being "a use classification that is established by this title."
- 3) The closest thing I can find to that would be the references to "grocery store" and "carryout service" in the paragraph at the margin at the end of the definition of "fast food restaurant." But the parenthetical reference there to 54 DCR 9393 suggests this paragraph was added after the issuance of this 2003 "change of ownership C of O" - which would make it irrelevant for the time at which the 2003 decision was made.
- 4) Even if that paragraph had retroactive effect, and while the provision appears intended to protect fast food establishments generally from being classified as something else, there is an exception for carryouts -- meaning that a "use providing carryout service that is clearly subordinate to its principal use shall NOT be deemed a fast-food establishment." As I noted in my Feb. 25th

e-mail, I believe there is a strong case to be made that any carryout service at this establishment has become subordinate to their "food delivery service.". If that belief were to be borne out by appropriate investigation, then the establishment would no longer be operating within the scope of its C of O, even if such a "change of ownership C of O" had been properly issued in 2003 based on whatever representations the former and new owners made at that time.

5) Finally, section 3203.10 states that a C of O issued pursuant to 3203.8 "shall not be renewable if permitted to lapse unless processed in accordance with ALL provisions of this title" -- which in turn leads to several questions:

A) Wouldn't the issuance of a "change of ownership C of O" be based on section 3203.8's reference to a use being "continued" and thus, in effect, constitute a "renewal" of the 1979 C of O?

B) If so, and since the premises were long vacant between the time Mr. Washington discontinued his deli/carryout and the 2003 opening of Peking Garden, hadn't the 1979 "lapsed" prior to 2003, so that a renewal in the form of the "change of ownership C of O" should never have been issued?

C) What exactly is the meaning of "lapse" in this provision? It doesn't appear to be defined here or in the definitions in section 199.1. Where can I find the meaning of that term? If it is not defined in the regs, wouldn't section 199.2(g) mean the most applicable Webster's definitions apply -- in this case, "the termination of a right or privilege through neglect to exercise it within some period of time"; "interruption"; or "discontinuance"?

I would appreciate your answers, or Mr. LeGrant's, to the questions I've posed above. And in terms of zoning enforcement, I feel at a minimum that an investigation of whether this "fast food/carryout" has morphed into a "food delivery service" is very much warranted and respectfully request that such an investigation be undertaken promptly.

Thank you again for your attention and consideration.

Best,
Alan Roth
326-7248 (work)
669-1650 (cell)

From: Bellow, Justin (DCRA) <justin.bellow@dc.gov>
To: Roth, Alan
Cc: LeGrant, Matt (DCRA) <matthew.legrant@dc.gov>
Sent: Mon Feb 28 11:46:25 2011
Subject: RE: Peking Garden, 2008 18th Street, NW

Mr. Roth,

New fast-food establishments in C-2-A zones are, as you put forth in your email, not a matter of right use and would require a special exception from the Board of Zoning Adjustments. After our conversation on Friday, I had the opportunity to look at the C of O history for 2008 18th St NW. Based on your characterization of the business, I believe that they are properly permitted as a "carryout"/ "fast food establishment" because a valid C of O allowing a fast food establishment predated changes in the zoning regulations that disallowed these types of establishments in C-2-A zones.

The changes in the zoning regulations that disallowed fast food establishments in C-2-A went into effect in 1985. Any fast food establishment that was already in existence in a C-2-A zone was allowed to remain in operation. In 1979, a C of O was issued for 2008 18th St NW for "retail food, delicatessen, carryout" use. In 2003, a change of ownership C of O was issued for "carryout use.

Since the carryout or fast food establishment use was established prior to 1985, the business is exempt from the 1985 zoning code changes and is properly permitted.

If you have questions or would like to discuss this further, please contact me.

Best regards,
Justin Bellow
Government of the District of Columbia
Office of the Zoning Administrator | Department of Consumer and Regulatory Affairs
1100 4th St SW, 3rd Floor | Washington, DC 20024

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From: Roth, Alan [<mailto:aroth@ustelecom.org>]
Sent: Friday, February 25, 2011 4:25 PM
To: Bellow, Justin (DCRA)
Cc: LeGrant, Matt (DCRA)
Subject: FW: Peking Garden, 2008 18th Street, NW

Justin,

Thanks again for your call earlier this afternoon, and for letting me expand on my description of the situation I wrote to Mr. LeGrant about.

Just to clarify, and as we discussed, the reason I'm fairly certain that this use is illegal is because the establishment almost certainly fits the Zoning Regs' definition of "fast food restaurant" – "a place of business, other than a 'prepared food shop,' where food is prepared on the premises and sold to customers for consumption and at least one of the following conditions apply:

"(a)

"(b) Customers pay for the food before it is consumed. One characteristic that would satisfy this element would be building permit plans that depict a service counter without seating unless the applicant certifies that the intended principal use is for a restaurant or grocery and that the counter is part of a carry out service that is clearly subordinate to that principal use; or

"(c) Food is served on/in anything other than non-disposable tableware. Characteristics that would satisfy this element include, but are not limited to: the building permit plans do not depict a dishwasher or do depict trash receptacles in public areas."

It will be obvious to any inspector that approximately 80-90% of the GFA in this establishment consists of the kitchen and front counter, at which orders are taken and payment is made when food is delivered to walk-in customers, and where bags of prepared food are handed off to delivery drivers. In the small front area between the counter and the windows/door, there are a few chairs lined up along the window ledge with no tables – essentially, a waiting area – and one small table that could accommodate two people at most. I've never seen food there served in anything other than the usual paper, Styrofoam, and plastic containers used by a carry-out or delivery service.

Although I have no ability to determine what percentage of the establishment's receipts come from food deliveries, as opposed to carry-out service, they do a very brisk delivery business, especially in the evenings. As I read the definition in the regulations, obtaining 75% of receipts from deliveries makes the establishment a "food delivery service" *per se*; but even if the delivery percentage is less than 75%, the establishment is considered a "food delivery service" if "the principal use is production of prepared food for delivery to customers located off the business premises."

Whether this establishment is a "food delivery service" may need further investigation. But the case for labeling it a "fast food restaurant" is rock-solid. And in a C-2-A District like this one, especially one abutting a Residence District, either of those uses is not a matter of right. It is only available with a special exception, which I'm pretty sure this establishment never applied for or obtained.

I hope that helps your investigators focus attention on the key issues in this complaint. And once again, I appreciate your responsiveness and your consideration.

Please let me know if there's any other information you need, or anything else I can do to get this situation addressed.

Best wishes for a good weekend,
Alan Roth

Alan J. Roth
Senior Executive Vice President
United States Telecom Association
607 14th Street, NW - Suite 400
Washington, DC 20005
(202) 326-7300 (main)
(202) 326-7248 (direct dial)

From: Roth, Alan
Sent: Friday, February 25, 2011 10:22 AM
To: matt.legrant@dc.gov
Subject: FW: Peking Garden, 2008 18th Street, NW

Mr. LeGrant, sorry I missed your call-back this morning. I did e-mail you – sent the explanation below to you yesterday after leaving my voice mail message.

My cell # is 202-669-1650 in case you can't get me at my desk, but I'd value the opportunity to chat with you about this if there's anything about my e-mail explanation that's unclear. Alternatively, if you understand the situation I've described and would prefer to respond by e-mail, I'd just appreciate knowing what action you can take.

Thanks again,
Alan

Alan J. Roth
Senior Executive Vice President
United States Telecom Association
607 14th Street, NW - Suite 400
Washington, DC 20005
(202) 326-7300 (main)
(202) 326-7248 (direct dial)

From: Roth, Alan
Sent: Thursday, February 24, 2011 10:14 AM
To: matt.legrant@dc.gov
Cc: Michael Rodgers
Subject: Peking Garden, 2008 18th Street, NW

Dear Mr. LeGrant,

I just left you a voice mail in follow-up to a voice mail I left you last week but hadn't heard back from you on. As suggested on your outgoing message, I'm trying e-mail as well, although a conversation might be easier or more efficient.

Specifically, I'm writing to request zoning enforcement on the Chinese fast food/delivery establishment known as Peking Garden, located at 2008 18th St, NW, between Vernon and California Sts, NW, in Adams Morgan. The establishment is located in a C-2-A district, and the back of the property abuts an R-5-B district. I live around the corner at 1845 Vernon St, and have for quite some time tolerated the establishment's delivery vehicles blocking our alley entrance on 18th St, parking in the alley, and speeding through our alley. Then, one of their drivers speeding through the alley almost hit our dog while she was being walked by my partner (who is copied here), and when I later then had to go around the block to 19th Street to enter my own alley because one of their delivery drivers had left his car blocking the curb cut on 18th Street, I decided I had had enough.

I was a member of the Adams Morgan ANC for 6 years, from 2001 to 2006, and was Chairman for the last 4 of those years. This establishment was outfitted and opened during that time. I wasn't the kind of Commissioner who looked to make trouble for anybody and everybody, and so I didn't go out of my way at the time to make trouble for this gentleman (or for his landlord, who coincidentally I'm told has a stop-work order on the adjacent premises, 2010 18th St, because he allegedly installed an illegal

staircase and/or second floor) – but the owner of this take-out joint has been so combative, obnoxious, and dismissive of my complaints and concerns that I feel the time has come to seek enforcement action from your office.

In spite of several discussions with the owner, his wife, and several delivery drivers, and the fact that the owner could in all likelihood rent the use of a parking space right across the street, in the parking lot owned by Lauriol Plaza at the corner of 18th and California, and the fact that I recently brought to him a copy of the zoning map and all the pertinent zoning regulations demonstrating that he's in violation – because he doesn't have a matter of right use and doesn't (at least to the best of my knowledge doesn't have and couldn't qualify for a required special exception -- I think I'd have known about that as the ANC Commissioner if he'd applied for one at the time he opened) – he has basically dismissed me after telling me he consulted his lawyer who told him not to worry about it because I'm "not the police."

I'd be pleased to discuss this in further detail with you or a member of your staff, but I fear the real issue will be that his drivers' violations are only evident in the evening hours, when you and/or your staff are off duty. Technically I don't think that should matter from the standpoint of enforcement, since the nature of his establishment on its face is a violation of the regs, but if evidence were needed (in the event a special exception were now to be sought) of the establishment creating "dangerous or other objectionable traffic conditions," (sections 733.9 and 734.8) or of there being "sufficient off-street parking . . . to accommodate the needs of patrons and employees" (sections 733.8 and 734.7), the evening hours would be the time to gather than evidence.

I respectfully request that you seek monetary penalties from this establishment and/or the landlord pursuant to section 3201.1, and that you request the OAG's office to pursue an abatement of this illegal use pursuant to section 3202.2.

Thank you for your consideration. My direct dial number at work and my cell phone number are both listed below.

Best,
Alan Roth

Alan J. Roth
Senior Executive Vice President
United States Telecom Association
607 14th Street, NW - Suite 400
Washington, DC 20005
(202) 326-7300 (main)
(202) 326-7248 (direct dial)
(202) 669-1650 (cell)

delicate

<one's spiritual concerns are rather ~ for a stranger to meddle with — Herman Melville> **syn** see CHOICE

2delicate \ˈdɛləˌkət/ *n* -s [ME *delicat*, fr. L *delicatus* voluptuary, fr. *delicatus*, adj.]: one that is delicate: as **a obs**: a luxurious or fastidious person **b obs**: a delight esp. of the senses: LUXURY **c archaic**: a table delicacy

del.i.cate.ly *adv* [ME *delicatlly*, fr. *delicat* + *-ly*]: in a delicate manner: with delicacy: as **a**: with fastidiousness <picking ~ at the morsels on her plate> **b**: with nice consideration <words ~ chosen to avoid further offense> **c**: gently and precisely <stepping ~ from hummock to hummock>

del.i.cate.ness *n* -ES: the quality or state of being delicate: PRECARIOUSNESS, FRAGILITY, REFINEMENT, DELICACY

del.i.ca.tesse \ˌdɛˈkɑːtəs/ *n* -s [F *délicatesse*, fr. MF *delicatesse*, prob. fr. OIt *delicatezza*, fr. *delicato* delicate, dainty, tasty (fr. L *delicatus* pleasing to the senses, voluptuous) + *-ezza* -ess — more at DELICATE]: DELICACY, TACT

del.i.ca.tes.sen \ˌdɛˈkɑːtəsən/ *n* *pl* [G *delikatessen* (formerly spelled *delicatessen*), *pl.* of *delikatesse* delicacy, fr. F *délicatesse*]

1: ready-to-eat food products (as cooked or processed meats, cheeses, prepared salads, canned foods, preserves, relishes)

2 *sing, pl* **delicatessens** [*delicatessen* (store)]: a store where *delicatessen* are sold either to be taken out or to be eaten on the premises (as in sandwiches)

de.lice \dɛˈlɪs/ *n* -s [ME, fr. OF, fr. L *delicium*, fr. *delicere* to allure — more at DELIGHT] *archaic*: something giving pleasure; *esp*: DELICACY

del.i.chon \ˈdɛləˌkən/ *n, cap* [NL, anagram of *Chelidon*]: a genus of swallows with feathered feet that includes the European martin (*D. urbica*)

1de.li.cious \dɛˈlɪʃəs, dɛˈ- / *adj* [ME, fr. OF, fr. LL *deliciosus*, fr. L *deliciae* delight (fr. *delicere* to allure) + *-osus* -ose — more at DELIGHT] **1 a**: affording great pleasure: DELIGHTFUL, ENCHANTING <a stroll through the ~ spring landscape> <a ~ breeze cooled our heated foreheads> **b**: appealing to one of the bodily senses: affording an enjoyable sensory reaction esp. involving the sense of taste or smell <a ~ dessert> <a ~ mouth-watering smell drifted from the kitchen> **c**: delightfully amusing <her ~ impudence and enchanting grace held them spellbound> **2 obs**: characterized by or addicted to self-indulgent or sensuous pleasure: seeking voluptuous enjoyment: LUXURIOUS **syn** see DELIGHTFUL

2delicious \ˈdɛləˌʃəs/ *also* **delicious apple** *n, pl* **deliciouses** or **delicious** *often cap*: a largely red apple of American origin and superior form, aroma, and flavor that is much grown in warmer apple-producing sections; *broadly*: any of several apples having qualities in common with the delicious and possibly derived from it — usu. used in combination <golden ~> <double-red ~>

de.li.cious.ly *adv* [ME, fr. *delicious* + *-ly*]: in a delicious manner <~ flavored sauce>: so as to produce delight <a ~ exciting situation>

de.li.cious.ness *n* -ES [ME *deliciousnesse*, fr. *delicious* + *-nesse* -ness]: the quality or state of being delicious: DELIGHT

de.lict \dɛˈlɪkt, dɛˈ- / *also* \ˈdɛ-, / *n* -s [L *delictum* fault, fr. neut. of *delictus*, past part. of *delinquere* to fail, offend — more at DELINQUENT]: a wrc

offense or transgression and Scots law to design to the torts of English

that is considered under the law of nations to be an offense or injury against another state — **de.lic.tu.al** \ˈlɪkchəwəl, (ˈ)dɛˈ- / *adj*

de.lic.tum \ˈlɪktəm/ *n, pl* **delic.ta** \-tə/ [L]: DELICT

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ZONING

(PROVISIONAL EDITION)



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Title 11 DCMR

352.0753
D6514

ZONING

(Provisional Edition)

This provisional edition of Title 11 DCMR consists of the former D.C. Zoning Regulations (DCRR) with all amendments through August, 1982, and relevant rules for the Zoning Regulations promulgated by the D.C. Zoning Commission. Although this publication contains the most current rules and regulations, it is designated a "provisional edition" because it has not been renumbered and restructured in accordance with the D.C. Office of Documents uniform format and style requirements, and does not contain the research aids required by D.C. Law 2-153, the "District of Columbia Documents Act."

Nonconforming use: Any use of a building, structure, or of land, lawfully existing at the time these regulations become effective, which does not conform to the use provisions of these regulations for the district in which such use is located.

Nonprofit organization: See organization, nonprofit.

One-family detached dwelling: See dwelling, one-family detached.

One-family semi-detached dwelling: See dwelling, one-family semi-detached.

ZONING COMMISSION OF THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
CASE NO. 81-17

The Zoning Commission of the District of Columbia, pursuant to the authority set forth in the Zoning Act (D.C. Code, Section 5-413, et seq.), having held a public hearing as required, hereby gives notice of the adoption of amendments to the Zoning Regulations of the District of Columbia. The amendments that were adopted regulate the treatment of non-conforming uses, structures, and land in the District of Columbia. Notice of proposed rulemaking was published in the D.C. Register on May 20, 1983 at 30 DCR 2377. These amendments were adopted by the Zoning Commission as a final action at its public meeting held on July 18, 1983. The specific amendments are as follows:

1. In Section 1202, delete the existing definition for "nonconforming use" and replace it with the following new definition:

Nonconforming use: Any use of land or of a structure or of a structure and land in combination, lawfully in existence at the time these regulations or any amendment thereto become effective, which does not conform to the use provisions for the district in which such use is located. A use lawfully in existence at the time of adoption or amendment of these regulations which would thereafter require special exception approval from the Board of Zoning Adjustment shall not be deemed a nonconforming use. Such a use shall be considered a conforming use, subject to the further provisions of Paragraph 8207.21.

2. In section 1202, delete the existing definition for "nonconforming structure" and replace it with the following new definition:

Nonconforming structure: A structure, lawfully existing at the time these regulations or any amendment thereto become effective, which does not conform to all provisions of these regulations or such amendment other than use, parking, loading and roof structure requirements. Regulatory standards which create nonconformity of structures include but are not limited to height of building, lot area, width of lot, floor area ratio, lot occupancy, yard, court and residential recreation space requirements.

3. Delete all of existing Article 71, regarding nonconforming uses and structures, and replace it with a new Article 71, as follows:

Exh. 30

the Historic Landmark and Historic District Protection Act.

SECTION 7107 - DISCONTINUANCE

7107.1 Discontinuance for any reason of a nonconforming use of a structure or of land, except where governmental action impedes access to the premises, for a period of more than three years, shall be construed as prima facie evidence of no intention to resume active operation as a nonconforming use. Any subsequent use shall conform to the regulations of the district in which the use is located.

4. Add a new Paragraph 8207.21, as follows:

8207.21 In the case of a use that was originally permitted and lawfully established as a matter-of-right and for which the regulations now require special exception approval from the Board of Zoning Adjustment, any extension or enlargement of such use shall require special exception approval from the Board of Zoning Adjustment. In determining whether to approve any extension or enlargement, the Board shall apply the standards and criteria of the Zoning Regulations to the entire use, rather than just the proposed extension or enlargement.

5. Delete from the SP District regulations all of existing Sub-section 4101.7 and all of existing Section 4307.
6. Delete from the W District regulations all of existing Sub-sections 4402.5 and 4402.6.
7. Delete from the CR District regulations all of existing Sub-sections 4502.5 and 4502.6.
8. Delete from the Commercial District regulations all of existing Article 54.

finalrulemaking81-17/BOOTH4

flower heads — see NIPPLEWORT

lap-sang sou-chong \ˈlɑp,sɑŋˈsuːtʃɒŋ, -ü,sh, -ü,j, |äŋ\ n, usu cap L : a fine grade of souchong with a characteristic smoky flavor

lapse \ˈlɑps\ n -s [L *lapsus* fault, error, fall, slide, fr. *lapsus*, past part. of *labi* to glide, slide — more at SLEEP] **1 a** : an accidental mistake in fact or departure from an accepted norm : trivial fault : SLIP, ERROR (<~ of memory> (<~ of taste> <the performances show this great pianist at the height of his powers, whatever rhythmical or technical ~s they may contain—Edward Sackville-West> **b** : a temporary deviation (<~ from consciousness> (<~ from respectability> <writes well, despite occasional ~s into polysyllabic humor—Geog. Jour.> **2 a** : FALL; *specif* : a decrease of temperature, pressure, or value of other meteorological element as the height increases — see LAPSE RATE **b** : LOSS, LOWERING, DECLINE, DROP (a sudden ~ of confidence —Josephine Johnson) (<~ in the supply of college graduates during the war years —M.L. Kastens> (<~ from grace> **3 a (1)** : the termination or failure of a right or privilege through neglect to exercise it within some limit of time or through failure of some contingency — compare EXPIRY (2) : *Eng eccl law* : the transfer of the right to present or collate a rector to a vacant benefice from one having the first right and neglecting to exercise it to one having a secondary right (3) : termination of coverage (as by life insurance) for nonpayment of premiums **b** : an interruption or discontinuance (<~ of a custom> <resumed dividends after a ~ during the depression —P.J. O'Brien> <masters narrative ~s with great skill —C.C.Rister> **4 a** : a yielding to temptation or inclination : transitory disregard of moral principles : FOLLY (<his laxity of conduct, his moral ~s —S.H.Adams> **b** : an abandonment of religious faith or principles : APOSTASY, BACKSLIDE (<prior to Adam's ~ —R.W.Murray> **5 a archaic** : a continuous flow or gentle downward glide (as of water) (<down comes the stream, a ~ of living amethyst —Thomas Aird> **b** : a continuous passage or an elapsed period of time : COURSE, INTERVAL (a transaction involving a considerable ~ of time because the shares could not be sold until the state debt was paid —W.P.Webb) (<except for a ~ of two years when he studied abroad, he has taught continuously since graduation> **syn** see ERROR

2 lapse \ˈ\ vb -ED/-ING/-S vi **1 a** : to fall into error or folly : depart from an accepted standard (<~s into addiction again at the first temptation —Time> <purchases ... where his discrimination *lapsed* —Basil Taylor> ; *specif* : BACKSLIDE (<in their view Constantinople had *lapsed* into heresy —R.M. French> **b** : to sink or slip involuntarily : SUBSIDE, RELAPSE (<murmurs good morning ... and ~s into silence —Gertrude Samuels> <some *lapsed* into reading and others into sleep —Earle Birney> <why does starry-eyed youth ~ into flabby middle-aged vacuity —Douglas Bush> <the moment his attention is relaxed ... he will ~ into bad Shakespearean verse —T.S.Eliot> **2** : to go out of existence : fall into decay or disuse : DISAPPEAR, TERMINATE (<the nest-building impulse ... ~s when the eggs are laid —E.A.Armstrong> <could think of no rejoinder ... and our conversation *lapsed* —Maurice Cranston> <a relationship may be allowed to ~, but it can never be dissolved —G.M.Foster> <this series of experiments seems to have *lapsed* around 1910 —Frank Denman> **3** : to fall or pass from one proprietor to another or from the original destination by the omission, negligence, or failure of some one (as a patron or legatee) (<a legacy ~s when it fails to vest> <an insurance policy ~s with forfeiture of value from nonpayment of a premium when due> **4 a of time** : to run its course : PASS (<the whole fund might be lost ... by the *lapsing* of the time allowed —A.D.White> **b** : to glide past (<saw the washed pavement *lapsing* beneath my feet —L.P.Smith> **c** : to glide gently along (<lolled with their lovers by *lapsing* brooks —W.H.Auden> <barges *lapsing* on its tranquil tide —C.C.Clarke> ~ vt **1 o** : ~ their right of presentation : NULLIFY (<*lapsed* his political rights> *lapsing* therapy —Jour. Am. Med. Ass.)

lap seam also **lapped seam** n : a seam in which the edges of two pieces of material are joined by extending one over the other

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