

**BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA**

RECEIVED
D.C. OFFICE OF ZONING
2012 JAN 11 PM 2: 10

APPEAL OF)
ADVISORY NEIGHBORHOOD COMMISSION 1C)
FROM A DETERMINATION OF THE)
ZONING ADMINISTRATOR PERTAINING TO) **APPEAL NO. 18256**
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))

**APPELLANT ADVISORY NEIGHBORHOOD COMMISSION 1C'S
MOTION TO AMEND ITS APPEAL**

Appellant Advisory Neighborhood Commission 1C (ANC 1C) respectfully submits this Motion to Amend its Appeal in order to clarify ANC 1C's prayer for relief. Specifically, on page 7 of its Appeal filed June 6, 2011, ANC 1C proposes to delete the paragraph that begins with the phrase, "For all these reasons," and to replace that paragraph with the following sentence:

"For all these reasons, the determination of the Zoning Administrator and his refusal to take enforcement action was erroneous and should be reversed, with such relief to be granted as the Board shall deem appropriate."

This Motion to Amend is being filed because it is evident from the Motion to Dismiss filed January 5, 2012 by appellee Department of Consumer and Regulatory Affairs (DCRA) that DCRA misperceives or has misconstrued the precise relief ANC 1C seeks in this case.

Specifically, the relief sought by ANC 1C from the Board of Zoning Adjustment ("Board" or "BZA") is a reversal of the Zoning Administrator's May 13th determination and of his consequent refusal to take enforcement action against the establishment at issue here.

Although, as the ANC acknowledges in its Opposition to the Motion to Dismiss, much of its

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 18256
EXHIBIT NO. 21

Board of Zoning Adjustment
District of Columbia
CASE NO. 18256
EXHIBIT NO. 21

appealed that decision to the D.C. Court of Appeals. *Id.* at 433. However, after upholding the BZA's reversal of DCRA, the court went on to consider the BZA's failure to prescribe a specific remedy:

“The relief originally requested, as discussed above [citation omitted], was never discussed in the BZA's order granting the appeal. . . . Further action is required following this opinion, to be sure: Because we agree that the DCRA erred in issuing the permit, the Economides' structure currently violates the Zoning Regulations, and correction should occur in the manner prescribed by the District's Building Code. *See* 12A DCMR § 113A (2007). The DCRA must inform the Economides of the fact that their property is no longer in line with the law, and they must cure the violation or face legal action from the Office of the Attorney General. *See* D.C. Code §§ 6-1405.01, -1407 (Supp. 2008). But it was not the BZA's charge to order the relief, and the Economides' rights have already been affected following the BZA's decision that the permit is effectively invalid because it was wrongly issued. We agree with the BZA, and its decision is *Affirmed*.

Id. at 445-46.

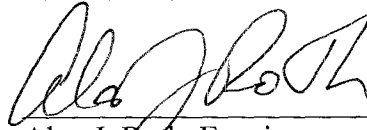
Likewise in the instant case, the ANC seeks to have the Zoning Administrator's determination and refusal to enforce the Zoning Regulations overturned – but if the Board concludes it is unprepared to order a specific remedy to abate Peking Garden's violations, the ANC will rely in good faith on DCRA and the Zoning Administrator taking the same kind of “further action” that the *Economides* court contemplated.

“The Board has broad discretion to allow amendments to appeals, derived from its power to control its docket.” *Appeal No. 17109 of Kalorama Citizens Association* (Feb. 1, 2005), at p. 6, *aff'd in part, remanded in part on other grounds, Kalorama Citizens Ass'n v. District of Columbia Bd. of Zoning Adjustment*, 934 A.2d 393 (D.C.2007). And the Board has granted such motion to amend when “the zoning error alleged is the same as that alleged in the initial appeal.”

Appeal No. 17310 of Deidre O. Stancioff (Nov. 8, 2005), at 6; see *Kalorama Citizens, supra*, at 6 (to the same effect).

In this case, ANC 1C's proposed amendment effects no change whatsoever in the initial claims of zoning error, and does not seek to add any new or additional claims of zoning error. Its case continues to rely on the provisions of the Zoning Regulations set forth on page 5 of its Opposition to the Motion to Dismiss and elsewhere in its original Appeal filing. And much as occurred in the *Economides* case, the Board's reversal of the Zoning Administrator here will provide the basis on which DCRA or the Zoning Administrator are required to correct the violations at issue through enforcement of the applicable provisions of District law and regulations.

Respectfully submitted,
ADVISORY NEIGHBORHOOD COMMISSION 1C



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

Date: January 11, 2012

CERTIFICATE OF SERVICE

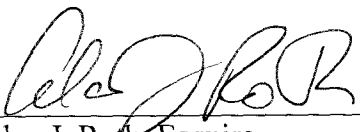
I hereby certify that, in accordance with 11 DCMR § 3111.3, a copy of the foregoing Motion to Amend was sent by electronic mail and/or deposited in the United States mail, first class postage prepaid, and thereby served on the following persons, on this 11th day of January, 2012:

Jay A. Surabian, Esquire
Assistant Attorney General
DCRA – Office of the General Counsel
1100 4th Street, SW – 5th Floor
Washington, DC 20024
Jay.Surabian@dc.gov

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
batlaw@bradleythomaslaw.com

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



Alan J. Roth, Esquire