



Government of the District of Columbia

Advisory Neighborhood Commission 6C

February 24, 2012

Ms. Meredith Moldenhauer, Chairperson
D.C. Office of Zoning
Board of Zoning Adjustments
441 Fourth Street N.W. Suite 200 S
Washington, D.C. 20024

Re: Request to appeal certificate of occupancy for the Crucible, 16 M Street NE

Dear Ms. Moldenhauer:

ANC 6C is appealing the decision of DCRA to issue Certificate of Occupancy CO1200641 for a Private Club at 16 M Street NE. This building, a one-story warehouse, is on Lot 0839 of Square 0672 in the NoMa neighborhood within ANC 6C. At a regularly scheduled, properly noticed meeting on February 8, 2012, ANC 6C, with a quorum of eight (of nine) Commissioners present, voted 8-0-0 to appeal this Certificate of Occupancy. The C of O was issued on 12/29/2011, which is less than 60 days from the date of this letter.

The use of the building, as determined by DCRA, is as a private club. ANC 6C believes that this establishment, which is called "The Crucible," should have been classified as a Sexually-Oriented Business Establishment ("SOBE") under DC Zoning Code 11-199.

The Crucible claims that it is classified by the IRS as a 501(c)(7) non-profit organization. The Zoning Administrator has stated that this establishment therefore cannot be a SOBE because it is not a business. However, there is no definition of "business" in the Zoning code that would preclude a non-profit organization from being classified as a business, and the definition of a SOBE requires that this definition hold precedence over other classifications.

A Sexually-Oriented Business Establishment is allowed only as a special exception in the C-3-C zone. Further, a business may only apply for a special exception if it is not within 600 feet of a residential district, playground or school. 16 M Street NE is less than 600 feet from a residential zone. Specifically, there is an area zoned R-5-D directly across North Capitol Street that is less than 600 feet from 16 M Street NE (Squares 0619 & 0620). The parcels in this zone are currently improved with apartment buildings, as well as a playground on the Northwest corner of the intersection of North Capitol and M Streets, NW.

According to the below excerpt from an email from the Zoning Administrator on December 9th, 2011 (attached):

Board of Zoning Adjustment
District of Columbia
CASE NO.18367
EXHIBIT NO.3

After completing my review I have determined that the proposed establishment is classified as a Private Club. As such, it is not a Sexually Oriented Business Establishment. In order to distinguish the Private Club use from a Sexually Oriented Business Establishment use, I found that The Crucible meets the requirements of the Zoning Regulations' definition of being a "Club, Private."

The Zoning Regulations, Section 11-199, define Sexually-oriented business establishment:

***Sexually-oriented business establishment** - an establishment having as a substantial or significant portion of its stock in trade, books, magazines, and other periodicals, films, materials, and articles, or an establishment that presents as a substantial or significant portion of its activity, live performances, films, or other materials, that are distinguished or characterized by their emphasis on matters depicting, describing, or related to specified sexual activities and specified anatomical areas.*

These establishments may include, but are not limited to, bookstores, newsstands, theaters, and amusement enterprises. If an establishment is a sexually-oriented business establishment as defined here, it shall not be deemed to constitute any other use permitted under the authority of this title. (24 DCR 5144)

ANC 6C contends that the Zoning Administrator erred in applying the definition of "Private Club" in preference to "Sexually-Oriented Business Establishment." If an establishment *can* be classified as an SOBE, then that classification must take precedence over any other potential classification.

In the case of The Crucible, this establishment meets the definition of an SOBE because the predominant activities include sexual acts between patrons, as well as sexual acts and nudity on display as parts of shows. In addition, many of their events include alcohol and dancing, as well as a cover charge. Typical hours extend until 2 AM. A flier from one of their recent events (Code XXX) follows this letter as Attachment B, and photographs from The Crucible's web page of events at their previous location (1816 Half Street SW) are attached follow as Attachment C.

Further, there is no definition in the Zoning Regulations for the words "business," "establishment," or "non-profit" which would preclude an organization listed for tax purposes as a non-profit from also being classified as a business for the purposes of zoning.

For additional context, there are two establishments which have similar hours in this same Square 672 - nightclubs known as Fur and Ibiza. While there are often conflicts between these establishments and the nearby residences, both operate under CN licenses, and thus have strict operating standards enforced by ABRA and subject to oversight by the ANC. For The Crucible, the ANC has not been allowed any opportunity to negotiate or discuss this new establishment's operating procedures, including parking, noise, hours, alcohol sales, security, or other concerns which affect the safety and well-being of the

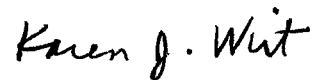
numerous adjacent residents and businesses.

If the ruling of the Zoning Administrator is upheld, it would set a dangerous precedent because any establishment, by gaining non-profit status for tax purposes, would be able to skirt zoning regulations as well.

Please reverse the decision to grant Certificate of Occupancy CO1200641 for 16 M Street NE.

Thank you.

On behalf of ANC 6C,

A handwritten signature in black ink that reads "Karen J. Wirt". The signature is written in a cursive, flowing style.

Karen Wirt, ANC 6C chair

List of Attachments:

- A. Email from Matthew LeGrant, Zoning Administrator, dated 12/9/2011
- B. Flier for Code XXX, an example of a recent event held at The Crucible
- C. Photographs from The Crucible's web page of events at their previous location at 1816 Half Street SW