

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

Appeal of Christina and Mark Parascandola

Appeal No. 18716

DCRA'S PRE-HEARING STATEMENT

Appellants allege that the Zoning Administrator erred in allowing a Certificate of Occupancy to be issued for a restaurant at 1501 U St NW (also known as 2000 15th St NW). Because a virtually identical Certificate of Occupancy was issued over a year before this appeal was filed, the challenge is untimely and the appeal should be dismissed.

FACTS

Appellants have resided at 2002 15th St NW for approximately 10 years. The first floor of the building next door, which will hereinafter be referred to as "the premises," appears to have two addresses. It has been known as both 2000 15th St NW and 1501 U St NW.¹

Over the years, the premises have been used for a number of different purposes. In 1949, the premises were used as a ladies wearing apparel shop. DCRA Exhibit 1, C of Os from 1949 through 2008. A few years later, in 1955, the use was converted to a beauty shop. *Id.* It appears that this use continued for

¹ Appellants' own documents bear this out as their Form 125 Appeal refers to the property by both addresses stating that the affected property is 2000 15th St NW but giving the address of the Mediterranean Spot as 1501 U St NW.

nearly 50 years until 2003 when the Love Cafe opened up at the premises. *Id.* In 2012 the Love Cafe went out of business and shortly thereafter a new restaurant, Pal the Mediterranean Spot, hereinafter referred to as “the Mediterranean Spot”, moved in.

On August 13, 2012, the Mediterranean Spot obtained a Certificate of Occupancy to operate a 32 seat restaurant at the premises. DCRA Exhibit 2, 8/13/12 C of O. Over a year later, on October 10, 2013, another virtually identical Certificate of Occupancy was issued to the Mediterranean Spot. Like the 8/13/12 Certificate of Occupancy, the 10/10/13 Certificate allowed the Mediterranean Spot to operate a 32 seat restaurant on the premises. DCRA Exhibit 3, 10/10/13 C of O. Appellants filed this appeal on December 9, 2013 challenging the October 10, 2013 Certificate of Occupancy. They allege that the Certificate should not have been issued because the zoning does not allow for restaurants on the premises.

ARGUMENT

1. Appellants' appeal is untimely so the Board has no jurisdiction to consider it.

There is no need for the Board to consider the merits of this case. The reason being that the appeal is untimely and the Board has no jurisdiction to consider untimely appeals. See *Waste Management of Maryland v. D.C. Bd. of Zoning Adjustment*, 775 A.2d 1117, 1121-1122 (D.C. 2001).

The general rule is that an appeal of a decision of the Zoning Administrator is timely if filed within 60 days of the decision. 11 D.C.M.R. § 3112.2(a). Here, the Appellants seem to allege that the appeal is timely because it

was filed exactly 60 days after the October 10, 2013 Certificate of Occupancy was issued. However, not every issuance of a Certificate of Occupancy is an appealable decision. As the DC Court of Appeals has stated, "a certificate of occupancy is separately appealable [only] where it provides the first notice from which an aggrieved person knew or 'reasonably should have ... know[n],' of the resolution or decision that the certificate represents..... A certificate of occupancy does not, however, start another sixty-day appeal period as to any and all DCRA zoning decisions affecting a project that preceded issuance of the certificate." *Basken v. DCBZA*, 946 A.2d 356, 367 (D.C. 2008); see also *Appeal No. 18239 of ANC 6A* (2012)(citing *Appeal No. 16982 of J. Brendan Herron, Jr. and ANC 3F*, 52 DCR 3904 (2005) and *Appeal No. 17411 of Paul A. Basken and Joshua S. Meyer*, 53 DCR 2495 (2006))("the Board wishes to note its past precedent that 'once a building permit is issued, no subsequent communication from DCRA may be appealed unless it contains a new decision.'")

What that means for this case is that the October 10, 2013 Certificate of Occupancy is appealable only if its issuance was the first notice that the Zoning Administrator would allow a restaurant to be operated at the premises. That is clearly not the case as a Certificate of Occupancy was issued on August 13, 2012, over a year before this appeal was filed, which allowed the Mediterranean Spot to operate a restaurant on the premises. In light of these facts, Appellants knew or should have known that a restaurant had been allowed to operate on the premises more than 60 days before Appellants' filed this appeal. Therefore, this appeal is untimely.

In many ways, this case is indistinguishable from the Board's prior decision in *Appeal No. 17830 of L. Napoleon Cooper* (2009).² In that case, the Appellant also attempted to appeal a Certificate of Occupancy. The Certificate authorized the property owner to use the premises as a grocery store with a prepared food shop and off premises alcohol sales. However, the Board decided that the Appellant could not challenge these uses by appealing the Certificate because a building permit had been issued a year and a half earlier which had allowed the building to be used for the challenged purposes. The Board stated that "[b]oth the decisions being questioned on appeal - the size of the store and its ability to sell alcoholic beverages - were decided at the building permit stage, or at the latest, in the Board's March 4, 2008 decision in Appeal No. 17677. The C of O for the grocery store contained no new information and did not constitute the 'first notice' of these decisions to the Appellant; therefore it is not separately appealable."

This case is like *Appeal No. 17830* in that in both cases the Appellants attempted to challenge uses that had been specifically authorized by prior actions. In *Appeal No. 17830*, the Board decided that the Certificate of Occupancy authorizing the challenged uses was not separately appealable because all it did was confirm an earlier building permit. The same should be true here. Appellants should not be allowed to challenge the use of the premises as a restaurant because such use had been explicitly authorized by a Certificate of

² Attached as DCRA Exhibit 4.

Occupancy issued in August 2012, over a year before this appeal was filed. So the appeal is untimely and the Board had no jurisdiction to consider it.³

CONCLUSION

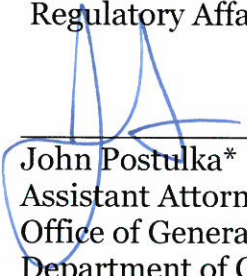
For the reasons stated above, the Board should dismiss the appeal.

Respectfully Submitted,

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³ It is worth pointing out that it appears that between the date the Mediterranean Spot leased the premises and the date Appellants filed this appeal, a considerable amount of money was spent converting the premises from the Love Café to the Mediterranean Spot. DCRA Exhibit 5, Excerpt from ABRA hearing. The fact that money was being spent while Appellants were sitting on their claim cuts against the claim being timely filed.

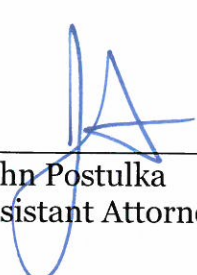
CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of February 2014, a copy of the foregoing Brief was served via e-mail to:

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2/20/14



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