

TESTIMONY OF PATRICK KENNEDY, CHAIR, ANC 2A
APPEAL OF ANC 2A, BZA CASE NO. 19023
SEPTEMBER 15, 2015

1. INTRODUCTION

My name is Patrick Kennedy, and I am the Chairman of ANC 2A. I have been an ANC Commissioner since 2013, and I've been involved in a number of appeals on behalf of ANC 2A. I'm going to testify briefly about the chronology of the request in question in this appeal, and when the ANC came to learn about the Determination Letter.

2. CHRONOLOGY

- a. Summer 2014 – River Inn sought a substantial change to its liquor license, including a sidewalk café. ANC Commissioner Asher Corson, who previously represented the district in which the River Inn sits, had in his files a Zoning Determination letter dated 2002 from Zoning Administrator Nobel to Maria Tyler, explaining to the owner of the River Inn that an expansion of the commercial adjunct was impermissible from a zoning standpoint. We provided a copy of that determination to Mr. Cafritz, and discussed it with him at length. Mr. Cafritz and the River Inn withdrew their application for a change to its liquor license at this time, on the basis of the letter.

In January 2015, Mr. Cafritz approached Commissioner William Smith, who was sworn in that same month and who does not represent the district in which the River Inn is located. It is my understanding that there was no substantive conversation or correspondence between Mr. Smith and Mr. Cafritz regarding the River Inn and these issues. In his correspondence with Mr. Smith, who was a brand new commissioner and had no knowledge of the 2014 request to amend the liquor license nor the 2002 Determination letter, Mr. Cafritz notes that "there were issues with the Zoning Administrator but those have been resolved." Mr. Cafritz is apparently trying to claim that these conversations constituted notice to the ANC in January of 2015, therefore our appeal should have been filed in March to have been considered timely. But we in fact had no knowledge of the existence of any Zoning Determination letter allowing a sidewalk café, the decision which is under appeal in this case, until February.

- b. February 12, 2015 – I attended a Constituent Services Fundraiser for Jack Evans and talked briefly to Mr. Cafritz at the event.
- c. February 13, 2015 – River Inn posts ABRA notice on its front window noting an intention to request permission to install a Sidewalk Café.

This was a surprise to the community members because of the prior Zoning Determination ruling an outdoor café was an impermissible use of public space because it was an impermissible expansion of a nonconforming use in the R-5 District.

Upon seeing the ABRA notice posted, the Commissioners were trying to figure out the situation. I contacted Durrell Mack in the Zoning Administrator's office at DCRA, who informed him the Zoning Administrator had issued a letter on November 24, 2014. In all of Commission Smith's communications with Conrad regarding the Inn, Conrad never mentioned a NEW Zoning Determination Letter. Mr. Mack forwarded via email a copy of that letter on February 18, 2015

Upon receiving the New Zoning Administrator Determination Letter, we checked the online repository of Determination Letters at dcra.dc.gov and did not see anything relating to the River Inn.

I went back and forth with my fellow commissioners and even took screen shots of my computer showing them that the New Determination Letter was not posted on the website.

d. February 18, 2015

i. E-mail correspondence with fellow ANC Commissioners

I explained that I had called DCRA and obtained a copy of a determination dated 11/24/2014, but on that date, there is no such letter on the DCRA Zoning Determination Letter repository.

I noticed this item on our regular agenda for the meeting to occur later that evening, and invited Mr. Cafritz to attend.

ii. Regular ANC Meeting at which Conrad Cafritz was present.

Mr. Cafritz appeared and explained his desire to have a sidewalk café. We reviewed the 2002 determination, discussed the timing of the posting of the ABRA notice (without the courtesy of returning to the ANC to let us know such permission was sought – after the withdrawal in 2014). At the discussion, we noted our desire to retain counsel and appeal the 2015 Determination during which Mr. Cafritz was present.

- e. March 8, 2015 – we reached out to counsel and began to research the legality of a complete 180 in terms of the two zoning determinations, the lack of notice from Mr. Cafritz, and to see whether the 2002 Determination had ever been appealed. It had not been.
- f. On April 9, 2015, we noted our appeal to the Board of Zoning Adjustment. As we were preparing the appeal, we were simultaneously talking with Mr. Cafritz about the liquor license, zoning, etc. and we are a volunteer organization, so we needed a full 30 days to organize, formally retain counsel, and then to prepare and file the appeal. At all times

Mr. Cafritz was aware of ANC's intent to appeal and arguments in opposition of the New Zoning Determination Letter.

- g. On May 7, 2015, I personally met with Mr. Cafritz, our attorney, and Mr. Cafritz's attorney, Ms. Shiker, in the offices of Holland & Knight. Mr. Cafritz was fully aware of the appeal noted in April, and the details of our legal arguments were discussed by counsel in Mr. Cafritz's presence. There was full and actual knowledge of the pendency of the appeal at that time and has no claim for prejudice.

III. There is simply no way that this appeal was untimely. The ANC was not formally notified, nor provided a copy of the Determination at issue in this case, despite the fact that we provided Mr. Cafritz with our understanding of the state of affairs in the Summer of 2014 when we produced a copy of the 2002 Determination finding that a sidewalk café was impermissible. We are an extremely active ANC, we follow decisions that are applicable to this ANC, but we did not see any determination posted by the Zoning Administrator relating to this property, and in fact, there was none posted until February of 2015. We acted as quickly as possible, gave notice to both Mr. Cafritz and his counsel on the date on which the ANC first considered this matter, and met personally with Mr. Cafritz after noting our appeal. There is no prejudice to Mr. Cafritz – he knew the ANC's position in 2014 and that has not mitigated. The ANC has a vested interest in relying on Zoning Determination letters and in participating in the process when a property owner seeks to change the game by obtaining a new determination. Not only was our appeal timely, 55 days from the date on which we first learned that there might be an approval allowing a sidewalk café, it was just 50 days from the date on which we first obtained a copy of that determination.