

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

**Appeal of Advisory Neighborhood Commission 2A
Regarding 924 25th Street NW**

STATEMENT OF APPEAL

The Appellant, Advisory Neighborhood Commission 2A, by and through its undersigned counsel, respectfully submits this Statement of Appeal of the decision of Matthew LeGrant, Zoning Administrator, dated November 24, 2014 (the “Determination”), which authorized the construction of a sidewalk café expanding the existing hotel at 924 25th Street NW (the “Property”). The Determination erroneously permits the expansion of an existing hotel in the R-5-B Zone District in violation of 11 DCMR § 350.4(e). Therefore, for the reasons set forth above, the Determination should be REVOKED.

I. JURISDICTION

The Board of Zoning Adjustment is authorized to hear this appeal pursuant to The Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended, D.C. Official Code §§ 6-641.01 to 6-641.15 (formerly codified at D.C. Code §§ 5-413 to 5-432 (1994 Repl. & 1999 Supp.))) (the “Zoning Act”) and 11 DCMR § 3100.2.

II. STATEMENT OF FACTS.

The River Inn is a hotel located in the R-5-B Zone District at 924 25th Street N.W. Hotels are strictly regulated in Residence Zones, being only permitted if the hotel was first established prior to May 16, 1980 with a valid certificate of occupancy, and restricted only to the gross floor area approved as of such date. Additionally, “the total area within the hotel devoted to function rooms, exhibit space, and commercial adjuncts may not be increased.” 11 DCMR § 350.4(e).

In 2002, the owners of the Property sought to establish a sidewalk café in the public space adjacent to the hotel building. At that time, Zoning Administrator determined that a sidewalk café was not permitted because the establishment of such a commercial adjunct outside the boundaries of the existing hotel was an impermissible expansion of commercial adjuncts under 11 DCMR § 350.4(e). To our knowledge, and according to the publicly available records of the Board of Zoning Adjustment, the May 16, 2002 letter from Zoning Administrator Derrell Noble was not appealed.

On February 13, 2015, Advisory Neighborhood Commission 2A became aware of the Determination, issued by Zoning Administrator Matthew LeGrant, which determined, without any apparent change in circumstance of the Property or Property owner, that the establishment of a sidewalk café was permitted under the very same provision of the Zoning Regulations. The Determination, although issued in November 2014, was not published to the District of Columbia Department of Consumer and Regulatory Affairs Zoning Determination Letter Archive or otherwise publicly available until on or about February 13, 2015. Upon knowledge of the Determination, the Appellant immediately began investigating the decision and preparing to bring this appeal.

III. ALLEGED ERRORS

The Determination overruled a decision of a previous Zoning Administrator, dated May 16th 2002, but does not appear to be based on any change in fact or circumstance. Zoning Administrator Determination letters have the force of law, represent appealable decisions, and are relied upon by ANC's and community organizations for planning purposes. The owner of the River Inn did not appeal the 2002 determination letter. Absent a change in fact, circumstance, or the law being applied, the decision should stand. The appeal process exists to allow property owners to

allege error in such decisions; failure of the property owner to appeal should end the inquiry. It is important for the community to be able to rely on the decisions of the Zoning Administrator, in an administrative capacity, and the Board of Zoning Adjustment, as a quasi-judicial body interpreting those decisions.

Faced with two contradictory letters from two different Zoning Administrators with no change in fact or circumstance, the ANC consulted first with the Zoning Administrator, and then with outside counsel to determine whether the second letter was an attempt to correct a clear cut mistake in the first. The Appellant has come to the conclusion that the two letters were based on a fundamentally different interpretation of the law and the Zoning Administrator's role as it relates to interpreting 11 DCMR, Chapter 3 governing the expansion of activities by Commercial Adjuncts to hotels, specifically, the expansion of activities into public spaces. The Appellant submits that this issue has the potential for wide-ranging community impact and determined that it was in the community interest to establish both clarity of procedure and clarity of law in this case.

The language of 11 DCMR § 350.4(e) is clear; there are three restrictions on hotels located in the Residence zones. First, only grandfathered hotels are permitted – the hotel must have been in existence as of May 16, 1980 in order to be permitted. Second, the *gross floor area* of the hotel may not be increased. And third, the *total area within the hotel* devoted to function rooms, exhibit space, and commercial adjuncts may not be increased. The establishment of a sidewalk café is an expansion of the existing dining facility, which is in fact a restaurant open to the public, and therefore a commercial adjunct. A sidewalk café does not impact the gross floor area of the hotel, but it is an expansion of the existing commercial adjunct and will remain under the operation and

control of the hotel; therefore, it is an impermissible expansion of the total area within the hotel devoted to a commercial adjunct, and violates 11 DCMR § 350.4(e).

IV. EXHIBITS

Exhibit A Determination

Exhibit B May 16, 2002

V. CONCLUSION

For the foregoing reasons, and for reasons that will be set forth in the Appellant's Prehearing Statement and at the hearing in this appeal, the Appellant urges the Board to grant the appeal and revoke the Determination.

Respectfully submitted,

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