

November 6, 2007

Board of Zoning Adjustment
441 4th Street, NW
Suite 210S
Washington, DC 20002

**Testimony Before the Board Of Zoning Adjustment in the Matter of Appeal
Number 17675**

My name is Peter Lyden I am a resident of the Reed-Cooke neighborhood , and I am a member of the executive board of the Reed-Cooke Neighborhood Association (RCNA). BZA Appeal No. 17675 concerns a March 21, 2007 letter written on letter head stationary of the Government of the District of Columbia, by a senior official of the Dept. of Consumer and Regulatory Affairs, Mr. Bill Crews. This letter gives the appearance of authenticity, that states that a grocery store at 1631 Kalorama Road NW, can as a matter of right under the DC Zoning Regulations sell alcoholic beverages.

The statements made in the letter are not true; are false and misleading to the un-knowledgeable reader. The appearance of authenticity was used to mislead the Alcoholic Beverage Control Board (ABCB) to believe that all zoning issues had been cleared, and they were free to proceed to process and grant an Alcoholic Beverage Control (ABC) license for Case Number 61034-05/062P at 1631 Kalorama Road NW.

History

In November 2006 the issue of the prohibition of "off premises alcohol sales" was made to the ABCB and detailed the pertinent elements of the Reed-Cooke Zoning Overlay District (RCOD). This resulted in an afternoon session devoted to questioning RCNA by the ABCB. At the end of the afternoon the ABCB said they would take our presentation under advisement. We heard nothing from the ABCB, until after the publication of the Zoning Administrator's letter to Holland & Knight. The following week the ABCB met and Chairman Burger said, we have our direction to proceed. You might disagree with the letter and you may not like what the letter says, but we have our authority

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to move forward.

On April 14, 2007 RCNA sent a letter to the Zoning Administrator's pointing out the errors in his letter, and requested that he rescind the letter (attachment 1). There was no response.

In late March Mayor Fenty had been a guest speaker at a special Reed-Cooke Neighborhood Association meeting. There was an overflowing crowd making it a very successful event. A thank you letter was sent to Mayor Fenty for his attendance, and a request for help to rescind the Zoning Administrator's letter was included. That request for help, resulted in his June 19, 2007 letter (attachment 2) that stated that the Office of Zoning Administration had no jurisdiction over the issue. It was just after we received Mayor Fenty's letter, that Mr. Crews was removed as Zoning Administrator.

In the mean time RCNA filed this appeal to the BZA, resulting in Appeal No. 17675. The Zoning Administrator's letter was used at the ABCB as proof positive that when you build a grocery store, you have a matter of right to get an ABC license. The Pesky RCOD does not exist for this ABC case. And the ABCB has pressed on with hearings to reach a final decision to grant or not the requested license. With the March 21, 2007 Zoning Administrators letter they think they have clear sailing to grant the license.

Argument to nullify the March 21, 2007 DCRA, Zoning Administrator Letter, and direct the property owner to seek a special Exception as detailed in Title 11, Zoning, Chapter 14.

The District Of Columbia Municipal Regulations are very specific on the latitude given the Zoning Administrator, and limits the Zoning Administrator's ruling authority to minor deviations as stated in paragraph 2522 as follows:

2522 MINOR FLEXIBILITY BY ZONING ADMINISTRATOR'S RULING

2522.1 The Zoning Administrator is authorized to permit the following deviations, if the Zoning Administrator determines that the deviation or deviations will not impair the purpose of the otherwise applicable regulations:

- (a) Deviations not to exceed two percent (2 %) of the area requirements governing minimum lot area, percentage of lot occupancy, and areas of courts and roof structures;

(b) Deviations not to exceed the greater of two percent (2 %) or twelve (12) inches of the linear requirements governing minimum lot width; and

(c) Deviations not to exceed the greater of ten percent (10%) or twelve (12) inches of the linear requirements governing rear yard, side yard, and minimum dimensions of the court and court niche and roof structure setback requirements, provided that all deviations of roof structure setback requirements comply with the Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452, as amended; D.C. Official Code ~ 6-601.01 to 6-601.09 (2001) (formerly codified at D.C. Code ~ 5-401 to 5-409 (1994 Repl. & Supp. 1999))).

No where in the regulations is the Zoning Administrator given the authority to interpret the zoning regulations in the manner, or to the degree he did in his letter to Holland & Knight LLP. This alone, is sufficient reason for you, the BZA, to nullify, void, or rescind the Zoning Administrators letter.

In the Zoning Administrator letter of March 21, 2007, he stated:

“.....a grocery store is a use permitted as a matter-of-right in a C-1 District under 701.4(1) and is therefore permitted as a matter of right by carry-over in the C-2 Districts. Accessory uses customarily incidental and subordinate to the uses permitted in a C-2 District are also permitted (see 722.3)”.

However, “off-premises alcohol beverage sales” is a use that is specifically prohibited in the Reed-Cooke Overlay District, by 11 DCMR §1401.1 (b). This is where the subject property is located. Moreover, 11 DCMR §1400.4 states:

“Where there are conflicts between this chapter [Chapter 14] and the underlying zoning district, the more restrictive regulations shall govern”.

In this case Chapter 14, The Reed-Cooke Overlay District, is the more restrictive and prevails. Thus paragraph ~~1401.1(b)~~^{1400.4} that prohibits off premises alcohol sales in the Reed-Cooke Overlay District overrides any matter of right for off premises alcohol sales uses, accessory or otherwise contained else where in Title 11, Zoning . This clarification was put into the Chapter 14, specifically to prevent any confusion about orders of precedents, with other parts of zoning regulations.

However, the property owner is not with out relief. Paragraph 1403 - Special Exceptions in its subordinate paragraph 1403.1 states:

“An exception from the requirements of this chapter shall be permitted only if granted by the Board of Zoning Adjustment as a Special Exception pursuant to paragraph 3104 after a public hearing, and subject to the following criteria:....”

Thus the property owner has clear direction on how to proceed if a prohibited use is so important to his business that he cannot operate without it. He may seek an special exception through the Board of Zoning Adjustment process, as stipulated in Paragraph 1403 **Special Exceptions** , 1403.1, 1403.2 and 3104.1. In the case of 1631 Kalorama Road the owner has tried just about every way possible to get around the ‘prohibition of off premises alcoholic beverage sales’, except step up and ask for a Special Exception. Had this been done in the previous BZA case for variances, this would have been resolve one way or the other. And the owner could have known were he stood before he progressed beyond the variance point. What are they afraid of that they avoid taking the accepted legal route to offered to them?

The Zoning Administrator’s letter is clearly in error by not applying the elements of Paragraphs 1401.1(b) and 1400.4 to the request made by representatives of the property owner for a ruling to allow off premises alcoholic beverage sales. The Zoning Administrator did this even though he lacked the authority by regulation and law. In doing so, the Zoning Administrator has avoided addressing specific requirements of the Zoning

Regulations that are in force to protect the Reed-Cooke neighborhood. This is an area of the District of Columbia with very special and unique land use problems, so special and so unique, that special considerations were enacted and incorporated into the DC Municipal Zoning Regulations .

Accordingly we ask that the Board of Zoning Adjustment, as authorized by D.C. Official Code §6-641.07, 11 DCMR 3100.2 and .4, to reverse and nullify the incorrect determination of the Zoning Administrator that off-premises alcoholic beverage sales are permitted at this property, and direct the property owner to proceed in accordance with Chapter 14 if he so desires.

Respectfully Yours,

A handwritten signature in black ink, appearing to read "Peter Lyden". The signature is fluid and cursive, with the first name "Peter" being more prominent than the last name "Lyden".

Peter Lyden
1726 Euclid St. NW
Washington, DC 20009

Reed-Cooke Neighborhood Association

P.O. Box 21700 • Washington, DC 20009 • (202) 387-1196 • rcna@reedcooke.org

April 14, 2007

Mr. Bill Crews
Zoning Administrator
941 North Capitol St NE, Suite 2000
Washington DC 20002

Hand Delivered
4/17/07

Reference A: Zoning Administrator Letter March 21, 2007, Subject Harris Teeter Grocery Store at the Citadel

Dear Mr. Crew,

I am writing you on behalf of the Reed-Cooke Neighborhood Association. The Referenced letter you provided to Holland and Knight to allow off premises alcohol sales at the Citadel Center is a use that is specifically not allowed without a special exception according to Title 11, Chapter 14 The Reed-Cooke Overlay District. We ask that you rescind your letter of March 21, 2007, and direct them to seek a special exception for Off Premises Alcohol Beverage Sales as detailed in Paragraph 1403 of Title 11.

Your letter stated:

".....a grocery store is a use permitted as a matter-of-right in a C-1 District under 701.4(1) and is therefore permitted as a matter of right by carry-over in the C-2 Districts. Accessory uses customarily incidental and subordinate to the uses permitted in a C-2 District are also permitted (see722.3)".

This interpretation would stand, except for paragraph 1400.3 of Chapter 14 that states:

"Where there are conflicts between this chapter (Chapter 14) and the underlying zoning district, the more restrictive regulations shall govern".

In this case Chapter 14, the Reed-Cooke Overlay District, is the more restrictive and should prevail.

~~EX-107~~

RECEIVED
4/17/07

Attachment 1

We do not contest the grocery use, but do contest the off premises alcohol sales connected with it. Thus paragraph 1401.1(b) that prohibits off premises alcohol sales in the Reed-Cooke Overlay District overrides any matter of right for off premises alcohol sales uses. Accessory or other wise. Further, Paragraph 1403, Special Exceptions, provides an avenue of relief from the requirements of Chapter 14 through the Special Exception process for those that wish to apply it.

Mr. Glasgow and others employed by Holland and Knight are well aware of the elements of the Reed-Cooke Overlay District, and are knowledgeable that an exception from the requirements of Chapter 14 is permitted if granted by the Board of Zoning Adjustment. They had this opportunity during Board of Zoning Adjustment Case #17395 of Jemal's Citadel LLC. However, they have chosen not to apply the exception process to resolve their prohibited use problem. They now have a problem wholly of their own making.

We have not been silent on this matter. The off premises alcohol sales prohibition was raised on November 29, 2005 during the BZA hearing (Encl 1); in our Request of Reed-Cooke Neighborhood Association for Reopening of the Record and Further Hearing on Designated Issues, dated December 12, 2005(Encl 2); and Motion of Request of Reed-Cooke Neighborhood Association for Reconsideration of Order dated June 12, 2006, dated June 26, 2006 (Encl 3).

As you can see by the enclosures to this letter, we have taken a very active position and role in the development of this project, as it will have a profound effect on our neighborhood. But, we have endeavored without success to have The Office of Zoning take our arguments seriously. Our Association was founded on the work that created the Reed-Cooke Overlay District. The Reed-Cooke Overlay District has been enforced and has served our neighborhood well, guiding land use and developments over the last 16 years. However, in this and one other project Holland and Knight has taken the position that the Reed-Cooke Overlay District is a frivolous impediment to the desires of their clients. It is not a right to ignore the DC Municipal Regulations. We expect your office to enforce the District of Columbia Municipal Regulations in a fair and equitable manner, and we offer this opportunity for you to correct your oversight.

In closing, we request an expedited response to this request for action, as the Alcoholic Beverage Control Board has scheduled a hearing/trial for May 15, 2007 to hear arguments and rule on the Citadel/ Harris Teeter liquor license

application. The timely response by your office is critical to the enforcement of the prohibition of this use in the Reed-Cooke Overlay District until or if an exception is granted.

Sincerely Yours,

A handwritten signature in black ink, appearing to read 'Simi Batra', with a stylized flourish at the end.

Simi Batra
President
Reed-Cooke Neighborhood Association

P.S. We neglected to
provide a point
of contact. IT is
Peter Lyden, 202-
234-6526.

CC: Executive Office of the Mayor

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Executive Office of the Mayor



Adrian M. Fenty
Mayor

June 19, 2007

Simi Batra

Reed - Cooke Neighborhood Association
P.O. Box 21700
Washington DC 20009

Dear Simi:

I am writing to express my appreciation to you for taking the time to correspond with me. I apologize for the extreme delay in my response. I have been advised by my point-of-contact with the Department of Consumer and Regulatory Affairs about your letter. The following is DCRA's input on the matter:

After researching the issue, I found out that the Office of Zoning Administration at DCRA has no jurisdiction over this issue because it does not regulate the licensing of alcoholic beverages. Furthermore, I spoke with Matt LaGrant and he told me that the Reed-Cooke Neighborhood Association of Adams Morgan has submitted an appeal to the Zoning Commission for allowing this store for allowing this store to sell alcoholic beverages. This issue will be heard in October hearing.

For further assistance please contact Armando Mena. He can be reached on 202-442-8170 or you can e-mail him at Armando.Mena@dc.gov.

Regards,

A handwritten signature in black ink, appearing to read "Adrian M. Fenty".

Adrian M. Fenty
Mayor