



Advisory Neighborhood Commission 1C

PO Box 21009, NW, Washington, DC 20009
202-332-2630 • www.anc1c.org

Commissioners:

February 8, 2008

Chairperson
Bryan Weaver (1C03)

Vice Chairperson
M. Mindy Moretti (1C04)

Secretary
Katherine Boettrich (1C08)

Treasurer
Wilson Reynolds (1C07)

Barry Weise (1C01)

Emily Mechner (1C02)

J. Michael Logsdon (1C05)

Nancy Shia (1C06)

D.C. Board of Zoning Adjustment
One Judiciary Square, Suite 210-South
441 4th Street, NW
Washington, DC 20001

Re: Declining Participation in Case 17677

Honorable Members of the Board:

At the general session of Advisory Neighborhood Commission 1C held February 6, 2008 a motion to participate in the BZA proceedings on the above referenced case was moved, and failed.

The general session of ANC 1C was convened preceding due notice to the public, with all eight Commissioners present.

Therefore, ANC 1C will not act as Intervener in Case 17677, and restricts participation only to Case 17675. ANC 1C does request that testimony presented before the BZA on January 29, 2008 be included in the record of proceedings for Case 17675. Furthermore, ANC 1C requests that the attached Addendum to testimony present on January 29, 2008 be included in the record of Case 17675.

Thank you for your consideration of this action.

Sincerely, 

By hand and electronic transmission

Wilson Reynolds
Chairperson
Planning, Zoning, & Transportation (PZT) Committee
Advisory Neighborhood Commission 1C

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2008 FEB 11 PM 3:55

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 17677
EXHIBIT NO. 45

Board of Zoning Adjustment
District of Columbia
CASE NO. 17677
EXHIBIT NO. 45

**Addendum to Testimony Presented Before the Board of Zoning
Adjustment January 29, 2008**

**In Case 17675
Appeal of the Reed Cooke Neighborhood Association**

Submitted by ANC 1C, February 11, 2008

Following testimony presented before the BZA on Case 17675 by Advisory Neighborhood Commission 1C, as Intervener the following conclusion is submitted for consideration by the Board.

Presentations before the Board has raised the possibility of an ambiguity regarding the interpretation of Section 1401.1 as including, or not including accessory uses in the Reed Cooke Overlay District, Chapter 14, Title 11 DCMR.

The Importance of 1400.4

The attention of the Board is, again, drawn to Section 1400.4

“Where there are conflicts between this chapter and the underlying zone district, the more restrictive regulations shall govern.”

As the ambiguity raised to the Board involves the underlying zone district of C-2 as possibly providing accessory uses not specifically prevented in 1401 Use Provisions in the Reed Cooke Overlay, and as the more restrictive interpretation would prevent accessory uses, additional inclusion of preventing accessory uses is simply redundant, and not necessary when Section 1400.4 is applied.

Therefore, ANC 1C respectfully requests that the Board to acknowledge the restrictive interpretation of 1400.4 as proper and clear instruction in the Reed Cooke Overlay to deny accessory uses as part of the Use Provisions of Section 1401.

In closing, included with this Addendum is a Resolution passed by ANC 1C of February 6, 2008 authorizing participation in the Zoning Commission Case 07-33. The Resolution was passed following due public notice, with a quorum present.

The Resolution specifically addresses the ambiguity raised during the BZA proceedings. To remove the last doubt raised during the BZA proceedings, ANC 1C does recommend that language be included in the R-C Overlay to further dispel any doubt as follows:

“Be It Further Resolved; that ANC 1C does request the Zoning Commission to accept one, and only one amendment to the Reed-Cooke Overlay District, Chapter 14, Title 11 DCMR; Section 1401.1 to read (addition in quotations): The following "primary or accessory" uses shall be prohibited in the RC Overlay District; and”

The attention of the Board is directed to this portion of the Resolution to make clear that although ANC 1C believes that such a proposed addition to Section 1401.1 is indeed redundant when viewed through the prism of 1400.4, it is necessary to clearly establish this restriction to prevent the same issue being raised in the future.

The complete Resolution is reproduced below:

=====
Resolution to Participate in DC Zoning Commission Case. No. 07-33; In Support of the Authority and Validity of the DC Board of Zoning Adjustment, and its Legitimate Procedure for allowing Special Exceptions; and Defend the Reed-Cooke Overlay District.

Whereas, on December 5, 2007, ANC 1C passed the following Motion:

ANC 1C Participation Before Board of Zoning Adjustment Proceedings.

ANC 1C does support participation in Board of Zoning Adjustment Case 17675 as an Intervener to proceedings of appeal filed by the Reed Cooke Neighborhood Association regarding the Reed Cooke Overlay District being in conflict with proposed off-premise sales of alcohol by Harris Teeter.

Furthermore, that ANC 1C does charge the Chairperson of ANC 1C Planning, Zoning, and Transportation Committee to represent ANC 1C in these proceedings.

Finally, that ANC 1C does endorse the validity of the Reed Cooke Overlay District, Chapter 14, Title 11 DC Municipal Regulations, and specifically Section 1401.1, and Section 1400.4 of Chapter 14 as clear and irrefutable justification by the Board of Zoning Adjustment to instruct the applicant, Harris Teeter, Inc. to seek permission to sell alcoholic beverages by seeking a Special Exception, as stated in Section 1403 of Chapter 14 of said DCMR Title 11.

And Whereas, on December 10th the DC Zoning Commission did set down Case #07-33 based on the Petition by the DC Office of Planning to amend the Reed-Cooke Overlay District, Chapter 14, Title 11 District of Columbia Municipal Regulations, Section 1401.1 (b) to prohibit in the RC Overlay District off-premises alcoholic beverage sales;

And Whereas, a suitable, and reasonable mechanism does exist in the RC Overlay District to seek an exception from the requirement of Section 1401.1(b) by seeking a Special Exception (or Variance) before the DC Board of Zoning Adjustment as outlined in Section 1403; Special Exceptions;

And, Whereas in RC Overlay District, Section 1403.1 clearly states that: " An exception from the requirements of this chapter shall be permitted only if granted by the Board of Zoning Adjustment"

And, Whereas in a Memorandum dated November 30, 2007 from the Office of Planning to the Zoning Commission makes clear that the proposed text amendment to the RC Overlay District, Section 1401.1 (b) is being requested primarily for the benefit of a grocery store being constructed in the Citadel building located at 1631 Kalorama Road, the new Harris Teeter grocery store;

And, Whereas the same Memorandum states (bottom of page 2) that the applicant, during proceedings before the Board of Zoning Adjustment, resulting in BZA Order 17395, adopted June 12, 2006, did not request permission for the sale of off premises alcohol:

"The order granting the requested zoning relief did not also grant a variance from the prohibition against off-premises alcoholic beverage sales set forth in § 1401.1 (b), as no such relief was sought by the

applicant or considered by the Board."

Now, Therefore Be It Resolved; ANC 1C does desire to participate in Zoning Commission Case No. 07-33; and

Be It Further Resolved; that ANC 1C does request the Zoning Commission to accept one, and only one amendment to the Reed-Cooke Overlay District, Chapter 14, Title 11 DCMR;

Section 1401.1 to read (addition in quotations):

The following "primary or accessory" uses shall be prohibited in the RC Overlay District; and

Be It Further Resolved; ANC 1C does support the authority of the Board of Zoning Adjustment, and the process to seek Special Exceptions as reasonable, appropriate, and legitimate avenue for the applicant to seek relief for the sales of off premises alcoholic beverages;

And, Be It Further Resolved to, again, support the resolution of December 5, 2007, specifically as it relates to Case No. 07-33:

"ANC 1C does endorse the validity of the Reed Cooke Overlay District, Chapter 14, Title 11 DC Municipal Regulations, and specifically Section 1401.1, and Section 1400.4 of Chapter 14 as clear and irrefutable justification by the Board of Zoning Adjustment to instruct the applicant, Harris Teeter, Inc. to seek permission to sell alcoholic beverages by seeking a Special Exception, as stated in Section 1403 of Chapter 14 of said DCMR Title 11."

And, Be It Further Resolved that ANC 1C instructs the Applicant, Harris Teeter, inc., to do what it should have done in 2004 and apply for a Special Exception, or Variance, as the case be justified, like all other individuals, and businesses in the District of Columbia that follow the rules, regulations, and procedure of the City; and

Be It Finally Resolved that ANC 1C:

-Having signed a Voluntary Agreement with Harris Teeter, Inc. supporting an off premises alcoholic beverage license;

-Having committed to the process of seeking a Special Exception before the Board of Zoning Adjustment as the proper avenue to seek relief for the sale of alcoholic beverages in the Reed Cooke Overlay District; and

- Seeking to avoid further expense and conflict to all parties;
- Does declare the support of ANC 1C on behalf of Harris Teeter, Inc. to receive a Special Exception under Section 1403; Special Exceptions of Chapter 14 Reed Cooke Overlay District, Title 11 DCMR, before the Board of Zoning Adjustment if Harris Teeter, Inc. does request such Special Exception before the Board of Zoning Adjustment.
- That this commitment of support from ANC 1C shall be in effect until Midnight, March 31, 2008.

Passed Feb. 6, 2008: Yeah 6; Nay 0; Abstain 2

=====

Therefore, ANC 1C does request that the appeal by the Reed-Cooke Neighborhood Association in Case 17675 be upheld.

Thank you.

Wilson Reynolds
Chairperson
Planning, Zoning, & Transportation (PZT) Committee
Advisory Neighborhood Commission 1C

Declaration of Letters of Service

The attached correspondence has been sent by US Postal Service on Monday, February 11 to the following individuals as notification in case No. 17677:

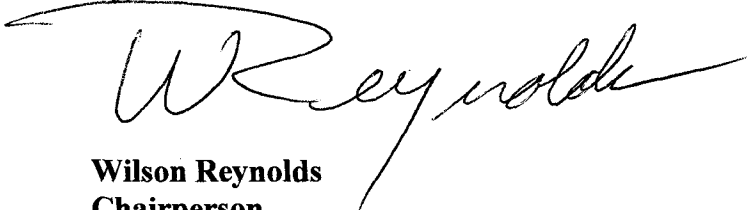
**Peter Lyden
Reed Cooke Neighborhood Association
PO Box 21700, NW
Washington, DC 20009**

**Melinda Bolling
Doris Parker-Woolrich
DC Dept. of Consumer & Regulatory Affairs
941 North Capitol St., NE
Washington, DC 20002**

**Norman Glasgow
c/o Holland & Knight
2099 Pennsylvania Ave., NW
Washington, DC 20001**

**Napoleon L. Cooper
1455 Pennsylvania Ave., NW
Suite 100
Washington, DC 20004**

By

A handwritten signature in black ink, appearing to read "W Reynolds", with a long horizontal flourish extending to the right.

**Wilson Reynolds
Chairperson
Planning, Zoning & Transportation (PZT) Committee
Advisory Neighborhood Commission 1C
PO Box 21009, NW
Washington, DC 20009**



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FAX

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Passed Feb. 6, 2008: Yeah 6; Nay 0; Abstain 2

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I thank you.

Wilson Reynolds
 Chairperson
 Planning, Zoning, & Transportation (PZT) Committee
 Advisory Neighborhood Commission 1C

KENNETH J. WATTER, CPA, PA
4332 MONTGOMERY AVENUE
BETHESDA, MARYLAND 20814
O (301) 652-0580
F (301) 656-4553

⋮

facsimile transmittal

To: Richard Nero **Fax:** 202-727-6072

From: Wilson Reynolds **Date:** 2/11/2008

Re: **Pages:** 6 Pages

CC:

Urgent For Review Please Comment Please lRepy Please Recycle

Notes:

Hi Rich:

Please see attached. Thank you.

Wilson Reynolds

U.S. Treasury Circular 230 notice: To comply with certain U.S. Treasury regulations, we inform you that, unless expressly stated otherwise, any U.S. federal tax advice contained in this communication, including attachments, was not intended or written to be used, and cannot be used, by any taxpayer for the purpose of avoiding any penalties that may be imposed on such taxpayer by the Internal Revenue Service. In addition, if any such tax advice is used or referred to by other parties in promoting, marketing or recommending any partnership or other entity, investment plan or arrangement, then (i) the advice should be construed as written in connection with the promotion or marketing by others of the transaction(s) or matter(s) addressed in this communication and (ii) the taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.

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