

Subj: [Fwd: [ANC3C] Digest Number 160]
Date: Tuesday, March 12, 2002 11:35:05 AM
From: johnl@erols.com
To: zartmanbj@aol.com, ahhjlhdc@worldnet.att.net,
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----- Original Message -----

Subject: [ANC3C] Digest Number 160
Date: 12 Mar 2002 10:36:15 -0000
From: ANC3C@yahoogroups.com
Reply-To: ANC3C-owner@yahoogroups.com
To: ANC3C@yahoogroups.com

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Message: 2

Date: Mon, 11 Mar 2002 06:16:42 -0800 (PST)
From: "Richard C. Bartel" <rcbartel@yahoo.com>
Subject: Re: Text Comments on Zoning Admin Proposal on CP Commrcial
Overlays

BEFORE THE DEPARTMENT OF CONSUMER AND REGULATORY
AFFAIRS, And THE DC ZONING ADMINISTRATOR

COMMENTS ON PROPOSED ADOPTION
OF "STANDARD OPERATING PROCEDURES"

FOR IMPLEMENTING TITLE 11 DCMR CHAPTER 13
"NEIGHBORHOOD COMMERCIAL OVERLAY DISTRICT"
LIMITATION FOR EATING OR DRINKING ESTABLISHMENTS

March 10, 2002

The undersigned resident of the Cleveland Park neighborhood hereby comments on the proposed "Standard Operating Procedures":

First, the existing Regulations are not ambiguous and are certain as to the exact area involved and limited frontage for Eating or Drinking establishments;

Second, the necessary measures of lot frontage are known and easily ascertainable from filed surveyed public documents (D.C. Surveyor's Office: City and County of Washington official Records; Recorder of Deeds) (i.e. Baist maps, etc.)), and further from a property owner's own records and deed(s);

Third, the existing list and history of issued Certificate(s) of Occupancy for Eating and/or Drinking Establishments are known and are easily ascertainable from filed issuances at the Department of Consumer and Regulatory Affairs (DCRA , BLR, etc.), and further can be observed as displayed at each property (as required by further law and/or Regulation).

Fourth, the Zoning Administrator and / or DCRA have gone beyond their legal authority by attempting to perform a legislative and/or Zoning Commission function, beyond simple interpretation of existing Regulations (beyond even that which might be opined by the DC Corporation Council and/or Mayor or Mayor's Agent, if any applicable), by attempting to classify invalid existing or proposed uses as "non-conforming"

in a Zoning context, and by attempting, by admission, to "...balance the interests of residents of the neighborhood and others who would like to establish an Eating or Drinking Establishment in the neighborhood." (DC Reg. 2/8/2002, pp. 1121-1126, 1125.).

The existing and past Certificate of Occupancy holders, land owners, and present and prospective business owners, and the public, are legally charged with knowledge of the existing Regulations, knowledge of the Public official records at the D.C. Surveyor's Office (and those applicable at the DC Recorder of Deeds) (lot frontage and property lines, and roadways), and are charged with the knowledge of the permits and licenses issued to any particular address or property, and knowledge of the aggregate sum of the relevant frontage from such records.

Thus, there is no legal necessity for measurements to be taken, or governmental pronouncements or publication to be made, to ascertain the state of compliance with existing Regulations at any point in time.

It is thus no legal defense for any property owner, business owner, or prospective business or property owner, to claim that the state of compliance with existing Regulations is not ascertainable at any point in time or that some governmental calculation need be made or announced, before that person or party is charged with knowledge of the state of compliance or the validity of the issuance of any Certificate of Occupancy or related building or other permit(s), regardless of whether or not a government Agency may have issued a permit "in error." The DCMR states that the policies in support of Residential Neighborhood Objectives include : "Conserve and maintain the District's sound, established neighborhoods through

the strict application and enforcement of housing, building, and zoning codes" (1104.1 (b), read in conjunction with 1108).

Such "erroneous" permits or certificates issued in violation of the existing Overlay restrictions are thus Void ab initio or at least voidable, without governmental liability, even under any "taking" theory if revoked or rescinded.

Because all data is legally charged to the public's knowledge from official public records, which are of course available to government agencies and employees (who also have access to further supporting materials), it follows that the specific government employee(s) who may have issued such void or voidable permits are thus acting beyond the scope of their authority and thus were acting with personal liability.

Therefore, the proposal of the DCRA / Zoning Administrator is superfluous, goes beyond legal authority, and is a veiled attempt to validate unlawful existing void or voidable issuances or use(s), at the expense of the neighborhood's residents.

The undersigned is making these comments in his personal capacity, and has voted against any comment to the contrary which may have been passed for submission by Resolution of the DC Advisory Neighborhood Commission 3C (ANC 3C), of which the undersigned is an elected Commissioner (3C-04, and Vice-Chairman), and this document shall also constitute a protest at the ANC's records.

Lastly, the DCRA and Zoning Administrator, on several occasions in public, and on the ANC's official

recorded record and minutes, has affirmed that the Eating and Drinking limitations in the Cleveland Park Overlay district, have long exceeded the Regulatory limit (no matter which prior measurement method had been used or attempted).

Supplementary: The undersigned believes that Certificates of Occupancy should be issued to the building in rem (i.e. the building itself through ownership / running with Title to the building), for a term associated with the underlying occupancy requirements (fire, health, safety, structure, etc.), subject to the more restrictive Overlay(s) in Zoning, for public uses. There should be no "grand-fathering", or continuation, of uses which exceed the Overlay restrictions at any time (i.e. void or voidable certificates). There should be no inferred entitlement to a Certificate of Occupancy for any particular use(s), whether or not a building or other permit is issued with reference to any proposed use(s) (i.e. Application for Permit or Permit language or Notes itself).

March 10, 2002
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