

05/01/2017 11:34:43

ZONING COMMISSION
District of Columbia

Case 02-06
Exhibit 27

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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).

Thus, there is no legal necessity for physical survey 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.⁵

Macomb, Newark, Ordway, or Porter Streets..". 1302.5 reads that uses are "**measured along the lots** that face designated roadways in the particular district..". A use is thus imputed to the entire lot and its face(s), not discreet measurements of doorways, windows, signage, etc...of any particular business certificated within that lot.

⁵ 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. 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).

Therefore, the proposal of the DCRA / Zoning Administrator, and the proposed Text Amendments of the Zoning Commission which infer any “grandfathering” and any which rely on field survey measurements, are superfluous, and are a veiled attempt to validate unlawful existing void or voidable issuances or use(s), at the expense of the neighborhood’s residents.

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). I also object to further erroneous “re-calculations” of these percentages by the Zoning Administrator and/or DCRA (i.e. submission dated in August, 2002, and letter dated August 1, 2002 with attachments, address to the ANC 3C), due to blatant and obvious template errors and misstatement(s) regarding “old” and “new” procedure gross calculations (also see ANC 3C Resolution and attachment(s) in this Record).

The Zoning Commission should also make amendments to require that Certificates of Occupancy be issued to premises *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).

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 Zoning Commission should pass Text Amendments which simplify the means by which the Commercial Overlay calculations are made, by affirming that they can be made directly from public records of issued Certificates of Occupancy attributed to each Lot (numerator street frontage, already defined by Regulation) and the DC Surveyor's Lot surveys (denominator) of total street frontage of all related Squares. This method would allow the calculation to be real-time daily and automated.

Further, the Zoning Regulations should require that the DCRA and/or Zoning Administrator Notify the relevant Advisory Neighborhood Commission(s) (ANCs) of all applications for Certificates of Occupancy in their nearby Commercial Overlay Districts with at least a 45 day Notice.

August 20, 2002



Richard C. Bartel
3430 Conn Ave., NW
PO Box 11555
Washington, DC 20008
(202) 728-3841
rcbartel@iname.com