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MEMORANDUM

December 21, 2001

BY HAND

TO: Laurie Gilbert

FROM: Christopher H. Collins 

RE: Neighborhood Commercial Overlay Zones – Vesting of Use

Question Presented and Brief Answer

In our recent meetings, we have discussed the method by which the Office of the Zoning Administrator would determine whether and when an eating or drinking establishment use of a property may be continued when there is a change in ownership, or a temporary suspension in that use. The District has taken the position that when the 25% limit in an Overlay is exceeded, and an eating or drinking use is discontinued for a period of time for a renovation or change in ownership, the owner of the business or property may lose the right to continue an eating or drinking use if another owner files a building permit or certificate of occupancy application and obtains a permit for another eating or drinking use on another site within the Overlay.

As further set forth below, the applicable regulations and rulings indicate that:

1. Neither a change in ownership nor the manner of the ownership (individual or corporate) affects the right to continue the eating or drinking establishment use of a property permitted by a validly issued Certificate of Occupancy (C of O);

ZONING COMMISSION
District of Columbia

ZONING COMMISSION
District of Columbia
Case **02-06**
CASE NO. 02-06
EXHIBIT NO. 4

4326

2. When an eating or drinking establishment use of a property is discontinued, then absent abandonment of the use, an eating or drinking establishment use may be reestablished in the property;
3. Abandonment of an eating or drinking establishment use in a property requires an intent to abandon, plus an overt act or failure to act which demonstrates the intent to abandon; and
4. The only other way for the District to force the abandonment of a valid use and the termination of the right to continue the permitted eating or drinking use of the property, would be to revoke the C of O for cause, and to establish a valid reason for the revocation within the confines of the Regulations.

Discussion

1. The Regulations Support These Conclusions.

The issuance and revocation of C of O's are governed by 11 DCMR Section 3203 (the Zoning Regulations) and 12A DCMR Section 118.0 (the Building Code). Section 3203.1 of the Zoning Regulations states that structures and land may not be used for any purpose (other than a one-family dwelling) until a C of O has been issued to that person. Section 3203.8 of the Zoning Regulations states that "any use which is authorized by a [C of O] may be established and continued pursuant to the terms of the Certificate and the provisions of this Title in effect on the date that the Certificate is issued . . ." (Emphasis added).

There is nothing in Section 3203 of the Zoning Regulations which provides for or otherwise governs the termination of the right of a C of O holder to continue a lawful use specified on a C of O. Section 3203.10 states that, in certain instances, C of O's "shall not be renewable if permitted to lapse . . ." The only provision in Section 3203 which spells out a scenario where a C of O could lapse is Section 3203.8(b). In that section, a C of O will lapse if the use is not established within 6 months of the date of issuance of the C of O. There is no parallel provision anywhere in Section 3203 providing for lapse for the discontinuance of a use. Nor are C of O's generally issued with expiration dates.

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The D. C. Building Code also governs C of O's. Section 118.1.2 of the Building Code indicates that when there is a change in ownership, "a new Certificate of Occupancy shall be issued in the name of the new owner (without reinspection), provided there is no proposed change in use or increase in occupancy load therein". The circumstances under which one applies for a new C of O are listed on the application form:

- Ownership change
- Partial occupancy
- New building
- Use change
- Load change
- BZA number

The only possible applicability to a new eating/drinking use taking over the same space in an existing building as a previous eating/drinking use is an ownership change. It is our understanding that, in issuing a new certificate of occupancy under a name change, the DCRA does not inquire as to whether a property is vacant and if so, for how long. If an applicant identifies the proposed use as the same as the previous use, then the new C of O is routinely and properly issued without question.

Section 118.4 of the Building Code sets forth a procedure for revocation of a C of O, including a list of reasons for revocation, the procedures to be followed for a revocation, and the right of appeal a revocation. The reasons listed for revocation of a C of O in the Building Code do not include the discontinuance of a permitted use.

It is appropriate to examine the law and rulings on non-conforming uses in this inquiry. Indeed, the plain language of Section 2000.2 of the Zoning Regulations indicates that the subject matter of this inquiry is closely aligned, if not identical, with the intent of the non-conforming use regulations. Section 2000.2 states as follows:

"Within the districts established by this title, or in amendments that may later be adopted, there exists structures, uses of land, and uses of structures that were lawful before this title was adopted or amended, but that would be prohibited, regulated, or restricted under

the terms of this title or future amendments to this title. It shall be the intent of this title that non-conformities shall not be enlarged upon, expanded, or extended, nor shall they be used as a basis for adding other structures or uses prohibited elsewhere in the said district." (Emphasis added).

It is widely recognized under general concepts of land use law, in all the major land use treatises, that "conforming uses" are favored, and that "non-conforming" uses are disfavored. Accordingly, non-conforming uses cannot be treated more favorably than conforming uses. See Section 2000.3 of the Zoning Regulations. Even though non-conforming uses are disfavored in zoning, they are protected under D.C. law to the extent that they may be continued even after a lengthy vacancy. If non-conforming uses contain these protections, it is axiomatic that conforming uses must be afforded at least the same protection.

2. Case Law Supports These Conclusions.

Section 2000.5 of the Zoning Regulations governs the discontinuance of a non-conforming use. That section states that discontinuance of a non-conforming use for any reason "for a period of more than three years, shall be construed as prima facie evidence of no intention to resume active operation as a non-conforming use." The D.C. Court of Appeals has held, in the seminal case of George Washington University v. D.C. Board of Zoning Adjustment, 429 A.2d 1342, 1345 (D.C. 1981), that "to establish abandonment, one must demonstrate '(1) the intent to abandon and (2) some overt act or failure to act which carries the implication of abandonment' ". In that case, the petitioner asserted that the abandonment of the use was evidenced by the property owner's voluntary change from one non-conforming use to another; the related physical changes in the building; and a delay of thirteen months in filing a BZA application. As to the delay in filing the new application, the Court stated that "In the District, unlike some other jurisdictions, the mere lapse of time without active pursuit of a non-conforming use does not deprive the owner of that right." Id. at 1347.

3. Rulings of the BZA and DCRA Support These Conclusions.

In Application No. 12787 of Norvirens, Inc., the Board determined that, even after a 20-year vacancy, a property retained its non-conforming rights, and that the owner of the building could reconstruct the property for the prior use (i.e., the use authorized by the last proper Certificate of Occupancy). A copy of that

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Order is attached as Exhibit A. That case involved a property in the R-4 zone on Capitol Hill which had been occupied as a delicatessen. The building owner obtained BZA approval to change the use from a deli to professional offices, secured a building permit, and renovated the interior and exterior of the property. No C of O was ever issued for the office use, and the BZA approval lapsed. The building then sat vacant for 20 years. The owner then reapplied for BZA approval for professional office use of the property.

The ANC and the Capitol Hill Restoration Society both opposed the office use on the basis that the 20-year vacancy indicated a termination, abandonment and lapse of the prior use. The BZA disagreed, finding that "the non-conforming use has not been abandoned, and the applicant would have the option of reconstructing the premises to a delicatessen use, the last use for which a proper Certificate of Occupancy existed, and the last use to which the property has been put." Finding 19A. The BZA further found that in this case it "cannot force termination of a valid nonconforming use." Finding 19C. The BZA concluded that "the subject property is still vested with non-conforming rights under the Zoning Regulations, in that the property had a valid Certificate of Occupancy for a delicatessen, and that no other use has been made of the premises since that time. The Board concludes that the non-conforming use has been terminated but not abandoned . . ."

The records of DCRA reflect a number of similar conclusions. For instance, two R-5-C properties at 1842 and 1627 – 16th Street, N. W. were occupied as daily transient uses dating back to the 1920's, and were owned by the same family. In approximately 1963, the inns were closed due to the illness of two of the owners. Although the buildings were closed, the owners never intended to terminate or abandon the active operation of the buildings for daily transient occupancy. Rather, it was their intention to resume the use once the two owners recovered from their illnesses. This was evidenced by the physical appearance of the structures, including the retention of the furniture, linens and towels, which remained in the building unchanged for 22 years.

In July of 1985, 22 years later, the properties were sold to a new owner, which renovated the buildings and opened them for daily transient occupancy use as inns pursuant to validly issued permits. The properties were zoned R-5-C at the time, and transient use was no longer permitted in that zone.

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The above matter is the subject of BZA Appeal Nos. 14865 and 14866. Both appeals were dismissed on procedural grounds, but the ruling of the Zoning Administrator approving the continuation of the transient use after a 22-year termination in that case is a matter of public record in those appeals. Copies of the letter to the Zoning Administrator, a notice of his ruling, and the issued C of O's are attached as Exhibit B.

A similar ruling was made by the Zoning Administrator for the property at 1706 New Hampshire Avenue, N. W. The records of DCRA indicate that, from 1956 to 1964, the property was occupied as the offices of the German Military Mission as a matter-of-right, without the need for Board of Zoning Adjustment approval. In 1958, the property was rezoned to R-5-C. The property was vacated in 1964. After a 10-year vacancy, BZA Application No. 11654 was filed in 1974 to change the non-conforming use of the property from chancery to offices of a non-profit organization. That Application was denied, and the property remained vacant. In 1980, 16 years after the property was vacated, a Certificate of Opportunity Application was filed for law office use. The Application contains a notation that the law office use was permitted as a matter-of-right, without the need for BZA approval, because of the prior matter-of-right office use by the German Military Mission. The law office use was approved for zoning purposes, and Certificate of Occupancy No. 122328 was issued on September 21, 1981. Copies of those documents are also attached as Exhibit C.

The issue of continuation of a use after an extended vacancy would not normally arise in a matter-of-right conforming use situation. Therefore, it is appropriate to examine case law and administrative rulings on non-conforming uses for guidance in this matter. The court, the BZA, and the Zoning Administrator have all recognized the fact that when a property is vacant, it is necessary to look to the most recent Certificate of Occupancy for that space to determine what is the permitted use. Similarly, in the Neighborhood Commercial Overlay Zones, the Zoning Administrator should rely on the most recent Certificate of Occupancy for a space to determine whether it was an eating or drinking establishment use. If so, an eating or drinking establishment use may continue in the property, regardless of whether the new applicant is an individual or a corporation, or whether another owner has applied for eating or drinking establishment use for another property in the meantime.

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Conclusion

Based upon the above, including the Regulations, the interpretations and the case law, the discontinuance of an eating or drinking establishment use which was permitted with a validly-issued Certificate of Occupancy, absent (1) an intention to abandon, and (2) some overt act or failure to act which indicates an intent to abandon, does not deprive the business owner or the property owner from continuing an eating or drinking establishment use, even after an extended period of discontinuance.

CHC/skp

cc: Marie Sansone, Esquire
Toye Bello
Constance Collins Davis, Esquire
Robert Wennett

WAS1 #1043053 v1

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 12787, of Norvirens, Inc., pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Sub-section 7104.2 and 7105.2 to enlarge a non-conforming use from a delicatessen (first floor) to a professional office and to extend the non-conforming use of a professional office to the second floor, in an R-4 District at the premises 232 East Capitol Street, N. E., (Square 759, Lot 800).

HEARING DATE: October 25, 1978

DECISION DATE: November 1, 1978

FINDINGS OF FACT:

1. The subject property is located in an R-4 zone district at the northwest corner of East Capitol and 3rd Street, N. E., known as 232 East Capitol Street, N. E.

2. The subject property has been vacant for approximately 20 years. The last use of the property was as a delicatessen, first floor, pursuant to Certificate of Occupancy No. 91121.

3. The applicant proposes to use the subject premises as professional offices.

4. Research of records indicates that a public hearing for a change from a delicatessen to professional office use for the first floor of the building was held on November 29, 1956. The Board granted that application with the understanding that the premises would be used for an architect's office, with a staff of no more than seven persons, and that the building be remodeled to remove any appearance of a commercial character.

5. Further research indicates that a building permit was issued, and certain interior and exterior work was done on the property to change it from a delicatessen use to an office use. No Certificate of Occupancy was ever issued for an office, and the approval of the Board related to office use thus lapsed. The property has been vacant since the renovation was accomplished in 1958.

6. The building has been altered on the outside in that the entrance from East Capitol Street has been closed to

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JAN 26 1979

accommodate a display window occupying the entire width of the structure. The only entrance to the building is now available at the rear of the building from 3rd Street.

7. The East Capitol Street frontage of the subject square is developed with row houses including a Lutheran Church. There are some offices in the row house structures. Directly across East Capitol Street, the entire frontage of the block is occupied by the Folger Shakespeare Library. There are other non-residential uses on property owned by the Folger diagonally across from the site and other non-residential uses, primarily churches, in the area.

8. The subject lot is approximately fourteen feet wide and 75 feet deep. The building covers almost the total area of the lot, and contains approximately 2000 square feet.

9. The existing use of a delicatessen is first permitted as a matter-of-right in a C-1 District. Professional offices are also permitted as a matter-of-right in the C-1 District.

10. The Zoning Regulations do not require any parking to be provided for the proposed use.

11. The change of use from a delicatessen to offices is to a less intense use, which is likely to generate less traffic, both vehicular and pedestrian, than the previous use.

12. The Board notes that there is an existing office use in the block which has operated without apparent external adverse effects for some time.

13. The Municipal Planning Office by report dated October 20, 1978, recommended denial of the application on the grounds that:

- a. The first floor of the building which was used as a delicatessen until 1956, has been unused for commercial purposes and vacant for approximately twenty years.
- b. The existing layout of the first floor has been changed in a manner that with minor modifications could easily lend itself to residential use which would be a conforming use in the R-4 District.
- c. The building in its present form is not suitable for use as a delicatessen.

The Board addresses these issues in response to the ANC and other persons opposed to the application, below.

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14. The Stanton Park Neighborhood Association, by letter dated October 25, 1978, stated that residential use of the property was preferable to commercial use, but that if office use was the only possible use, the association would not oppose such use if adequate parking spaces were provided.

15. Advisory Neighborhood Commission 6-B by testimony at the hearing confirmed by written report dated November 2, 1978, opposed the application on the grounds that the building has been unoccupied and unused for over twenty years and the non-conforming use as a delicatessen has been abandoned and therefore terminated. The ANC further requested a continuance, if the Board decided the use was not abandoned, because it was not given an opportunity to consider a residential use option for the property.

16. The Capitol Hill Restoration Society, by testimony dated October 23, 1978, opposed the application on the grounds that the property has been vacant and unused for over twenty years, and the non-conforming rights have thus lapsed. The Society also stated its constant opposition to extension of non-conforming uses, and found that the proposed use would be objectionable because it is not a neighborhood facility which would introduce an incompatible use into the residential unit block of 3rd Street and would provide no parking.

17. Both the Advisory Neighborhood Commission and the Capitol Hill Restoration Society cited the case of Silverstone et. al. v. BZA as evidence regarding the abandonment of a non-conforming use. The Board finds that the Silverstone case, wherein the Board denied an application for a variance to permit a flat use which was previously a permitted use, can be distinguished from the present case. In the Silverstone case, the use which was non-conforming had been terminated and had been replaced by a conforming use. In the present case, the non-conforming use had been terminated, but no other use had been substituted. The Board finds that renovations had been made pursuant to a previous order of the Board to use the building for offices but that no Certificate of Occupancy had been issued. The Board thus believes that the non-conforming rights associated with this property, whether for office or delicatessen use, still exist.

18. There was opposition from surrounding and neighboring properties to the use of this property for anything other than residential use. The abutting property owner to the west appeared and testified in support of the application, stating that she did not anticipate any objectionable effects from the proposed use, and that the use would improve the present building.

19. As to the issues and concerns of the ANC, the Restoration Society and other persons in opposition, the Board finds the following:

BZA Application No. 12787

- A. The non-conforming use has not been abandoned, and the applicant would have the option of reconstructing the premises to a delicatessen use, the last use for which a proper Certificate of Occupancy existed, and the last use to which the property has been put. The owner of the property has not made any deliberate or physical changes to the building to prevent its use for commercial purposes. In fact, the property is better suited at present for office use than delicatessen use.
- B. It could be argued that offices for lobbyists located within two blocks of the U. S. Capitol would be a neighborhood facility. However, the Board notes that under Paragraph 7109.11, the Board may approve a change of non-conforming use if the proposed use will be "the type of use which although not a neighborhood facility will not be objectionable."
- C. The Board cannot force termination of a valid nonconforming use. The Board is not required, as in a variance case, to find that the property cannot be used for residential purposes, or that residential use is more desirable than the proposed non-conforming use.
- D. Given the findings already made, the ANC had sufficient time to consider the alternative possibilities for use of this property.
- E. The application does represents an extension of a non-conforming use, to the second floor. However, given the small size of the building and the location of the access to the upper floors it is not reasonable to expect that the upper floors could be used for residential purposes.
- F. The property is located at the northwest corner of the intersection of 3rd and East Capitol Streets, N. E. The property faces East Capitol Street, even though the entrance is on 3rd Street. As has been previously set out, there are many non-residential uses in the immediate block, including the entire south side of East Capitol Street, and several lots on the north side as well.
- G. The Board is concerned about the absence of parking. The Board notes however, that no parking is required by the Zoning Regulations. The Board notes the existence of good public transit facilities, in the area, including both bus and subway. The Board notes the proximity to the Capitol and the likelihood

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that much of the traffic to and from the building will be by foot. The Board however is sufficiently concerned about potential impact that it will limit the grant of this application for a specific period of time, in order to evaluate the real impact of the proposed use.

CONCLUSION OF LAW AND OPINION:

The Board concludes that the subject property is still vested with non-conforming rights under the Zoning Regulations, in that the property had a valid Certificate of Occupancy for a delicatessen, and that no other use has been made of the premises since that time. The Board concludes that the non-conforming use has been terminated but not abandoned, and that in fact, the last physical alterations to the building were done to enable its use as an office, the same use herein requested

The Board concludes that the requested change of use can be granted, in that the proposed use is permitted in the most restrictive district in which the previous use is permitted. The Board concludes that while the proposed use is not directly a neighborhood facility, it will not likely have objectionable effects, similar to other office uses in the area, and will not be out of character with the area. The Board is concerned however, that the lack of parking spaces may prove to be a problem. In order to carefully monitor the potential effects of the changes, and consistent with the authority set forth in Paragraph 7109.13, the Board has therefore determined to grant the application for a limited period of time.

The Board concludes that it has accorded to the Advisory Neighborhood Commission the "great weight" to which it is entitled, and for the reasons stated herein, is compelled to take a different position on the application than that advocated by the ANC.

The Board concludes that an applicant who demonstrates that he has complied with all of the conditions which are required for the granting of a special exception is entitled by law to that special exception. The Board concludes that the granting of this application will be in harmony with the general purpose and intent of the Zoning Regulations and Maps, will allow a less intense use of the property and will not tend to affect adversely the use of neighboring property. It is therefore ordered that the application is granted subject to the following conditions:

1. Approval shall be for a period of FIVE YEARS.
2. Use of the premises as office space shall be limited to an architect, dentist, doctor, engineer,

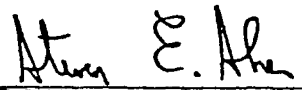
BZA Application No. 12787

lawyer or similar professional person.

VOTE: 3-1 (Chloethiel Woodard Smith, Ruby B. McZier and Charles R. Norris to grant, William F. McIntosh to deny; Leonard L. McCants not present, not voting).

BY ORDER OF THE D. C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 17 JAN 1979

THAT THE ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS ONLY UNLESS APPLICATION FOR A BUILDING AND/OR OCCUPANCY PERMIT IS FILED WITH THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT WITHIN A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER.

WILKES, ARTIS, HEDRICK & LANE

CHARTERED

ATTORNEYS AT LAW

1666 K STREET, N. W.

WASHINGTON, D. C. 20006

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TER'S DIRECT DIAL

31 MONROE STREET
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4080 UNIVERSITY DRIVE
FAIRFAX, VIRGINIA 22030

July 25, 1985

BY HAND

James J. Fahey
Zoning Administrator
Room 333
614 H Street, N.W.
Washington, D.C. 20001

Re: Hotel Embassy and Hotel Windsor

Dear Mr. Fahey:

In response to your request made at our July 16, 1985 meeting concerning 1627 16th Street, N.W. and 1842 16th Street, N.W., we have prepared the following analysis and respectfully request that you approve the use of the two structures as "inns." Prior to the adoption of the definition of "inn," the buildings were used exclusively for transient guests who rented rooms or suites on a daily basis.

I. Site Descriptions.

A. 1627 16th Street, N.W. - Hotel Embassy.

The Hotel Embassy is located at 1627 16th Street, N.W. (Lot 148, Square 193) in an R-5-C District. The site is improved with a 4 story stucco building constructed in 1911. The site is located in the Sixteenth Street Historic District. The most recent Certificate of Occupancy (A-11961) permitted the site to be used as a "lodging house." The building has approximately 24 units. There are approximately 6 bathrooms and 2 kitchens per floor. There is no central dining facility.

B. 1842 16th Street, N.W. - Hotel Windsor.

The Hotel Windsor is located at 1842 16th Street, N.W. (Lot 126, Square 177) in an R-5-C District. The site is improved with a 4 story brick structure constructed in 1914. The site is located in the Sixteenth Street Historic District. The most recent Certificate of Occupancy (A-10751), dated

EXHIBIT B

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July 16, 1951, permitted the site to be used as a "lodging house." The building has approximately 30 units. There are approximately 4 bathrooms and 2 kitchens per floor. The first floor has a central dining facility but it was closed during World War II due to food rationing.

II. Background.

Both the Hotel Embassy and the Hotel Windsor were owned, operated and controlled by the Dadian family from approximately 1940 to July, 1985. Both structures originally had Certificates of Occupancy as hotels. Permit No. 74678 was issued for the Hotel Embassy on May 27, 1942 and Permit No. 74078 was issued for the Hotel Windsor on March 25, 1942. The Certificates were changed in 1951 to permit the buildings to be used as "lodging houses" due to a change in definition of "hotel" in the Zoning Regulations. Central dining facilities were required for hotels. The Dadians were assured, however, that the actual use for daily transient guests could continue with a "lodging house" occupancy permit.

The Dadians operated both structures under their exclusive control. Linens and towels were provided. Guests were either referred from other hotels in the city or they made prior reservations. Typically, the two operations accommodated military servicemen and school groups visiting the City. Rooms and suites were rented strictly on a daily basis. There was no weekly or monthly occupancy rate.

In approximately 1963, the Dadians could no longer operate the two buildings and they were closed. Two of the owners who managed the hotels were hospitalized with serious illnesses and both eventually died of these illnesses. The third owner practiced law and could not devote his time to the structures. Although the buildings were closed, the Dadians never intended to terminate or abandon the active operation of the two buildings for daily transient occupancy. Rather, it was their intention to resume the use once the two sisters recovered from their illnesses. This is evidenced by the physical appearance of the structures including the retention of the furniture, linens and towels. It was not until July, 1985 that Arthur Dadian finally sold the two buildings to the Roundel Corporation.

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III. Proposed Use.

The new owner of the Hotel Embassy and the Hotel Windsor intends to continue the daily transient occupancy use in accordance with the requirements for an "inn." Specifically, the use will be limited to "... habitable rooms or suites reserved exclusively for transient guests who rent such rooms or suites on a daily basis." Section 1202 of the Zoning Regulations. There will not be a central dining area in either facility although continental breakfasts for the guests may be served. Also, there will not be any commercial adjuncts, function rooms or exhibit space.

IV. Discussion.

The issue presented is whether a "lodging house" that provided daily, transient occupancy qualifies under the current definition of "inn" since the term "lodging house" was removed from the Zoning Regulations in 1958. At the outset, it should be noted that zoning regulations are in derogation of a property owner's common law right to use his property for any purpose, and consequently, those regulations must be strictly applied in favor of the interests of the property owner. 1 Rathkopf, Law of Zoning and Planning, 9-1 (4th ed. 1984).

As stated previously, the existing Certificates of Occupancy for the two buildings permit them to be used as "lodging houses." At the time these permits were issued in 1951, a "lodging house" was defined in conjunction with rooming house as "A dwelling providing for compensation lodging for 3 or more roomers." A hotel, at that time, was defined as "Every place where food and lodging are provided for 10 or more transient guests, provided, however, that this definition shall not be interpreted to include private clubs." D.C. Zoning Regulations, 1951 edition. The Zoning Regulations were amended in 1958 and the term "lodging house" was deleted. No explanation for this was given in the legislative history of the 1958 amendments.

The current Zoning Regulations also do not include the term "lodging house." The term that best describes the prior use of the two structures is "inn." An "inn" is defined in Section 1202 as follows:

A building or part thereof wherein habitable rooms or suites are reserved exclusively for transient guests who rent such rooms or suites

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on a daily basis. Guest rooms or suites may include kitchens, but central dining other than continental breakfast for guests is not allowed. Commercial adjuncts, function rooms, and exhibit space as permitted in hotels are not allowed. The term inn shall not be interpreted to include motel, hotel, private club or apartment house. (Emphasis deleted).

Both the Hotel Embassy and the Hotel Windsor were operated so that habitable rooms or suites were rented to transient guests on a daily basis. There were no central dining facilities in either building at the time of their closing.

The Zoning Commission recognized that certain uses could be classified as an "inn" when it created the term in 1980 in Case No. 79-1 (Treatment of Hotels). In the Statement of Reasons regarding the treatment of inns, the Commission stated:

... that there are a number of existing facilities in the city which are residential type hotels. Such facilities are generally not obtrusive in their neighborhoods because they have no function rooms, exhibit space or commercial adjuncts. Such facilities also do not meet the literal definition of a hotel because they have no central dining facility. The Commission therefore determined to permit such uses and to allow them in the same zones and in the same manner that hotels are permitted. Such facilities could presently exist in any of those zones as either a rooming house, apartment house or similar residential use.

Both the prior use as a "lodging house" and the proposed use for daily transient occupancy meet the requirements for an "inn."

V. Conclusion.

Based upon the above, the current owner of the Hotel Embassy and the Hotel Windsor respectfully request a ruling from you to permit the two structures to be used as "inns."

WILKES, ARTIS, HEDRICK & LANE
CHARTERED

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The owner intends to renovate the buildings but will keep their operation the same as the prior use. Would you please acknowledge your approval of the proposed use in the space provided below.

Respectfully submitted,

WILKES, ARTIS, HEDRICK & LANE,
CHARTERED

By Whayne S. Quin
Whayne S. Quin *WH*

David S. Houston
David S. Houston

Based upon the proposed use outlined above, the two structures may be used as "inns" in accordance with all applicable Zoning Regulations.

James J. Fahey
Zoning Administrator

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WILKES, ARTIS, HEDRICK & LANE

ABLE ADDRESS WILAN
LECOPIER 202-457-7814

CHARTERED
ATTORNEYS AT LAW
1866 K STREET, N. W.
WASHINGTON, D. C. 20006
(202) 457-7800

51 MONROE STREET
ROCKVILLE, MARYLAND 20850
4020 UNIVERSITY DRIVE
FAIRFAX, VIRGINIA 22030

WITER'S DIRECT DIAL
57-7825

September 5, 1985

David H. Hampson
Roundel Corporation
P.O. Box 9071
McLean, VA 22102

Re: Hotel Embassy And Hotel Windsor

Dear Mr. Hampson:

In response to our July 25, 1985 request for a ruling, the Zoning Administrator has determined that he will permit 1627 16th Street, N.W. and 1842 16th Street, N.W. to be operated as inns. Accordingly, the use stated on your building permit applications recently filed for the properties will be processed and approved as inns. The buildings will still have to meet all other zoning requirements. Please do not hesitate to contact me if you have any questions concerning this matter.

Sincerely,



David S. Houston

tls

CERTIFICATE OF OCCUPANCY

No. B146005

Washington, D.C., July 3, 1986

Permission is hereby granted to Winden Associates
to use the basement, 1st-3rd floor(s) of the building located on Lot 126 Square 177
known as premises 1842 16th St. N.W. for the following
purpose(s): Trm - 38 Rooms

(not sexually oriented.)
THIS CERTIFICATE SHALL BE POSTED CONSPICUOUSLY ON THE ABOVE PREMISES
AT ALL TIMES. IT IS VALID INDEFINITELY, unless an expiration date is stated,
ONLY for the premises, or part thereof, and for the purpose(s), indicated
above, and IS NOT TRANSFERABLE to another person or premises under ANY
conditions. ANY CHANGE in the type of business, ownership of business, or
part of premises used therefor, will render this Certificate VOID and a NEW
Certificate must be obtained.

ZONE

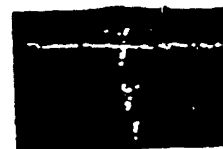
R-5-C

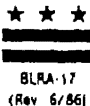
FEE \$ 64.60

DEPARTMENT OF LICENSES, INVESTIGATIONS AND INSPECTIONS GOVT. OF DIST. OF COL.

OFFICE COPY

By [Signature] Chief, Permit Branch
Permit Clerk





District of Columbia Government
Department of Consumer and Regulatory Affairs
Building and Land Regulation Administration Zoning Division
P.O. BOX 37200 — Washington, D.C. 20013-7200

No. B 15027.

CERTIFICATE OF OCCUPANCY

June 26, 1987
(date)

Permission is hereby granted to JERRY S. GOREN
to use suite(s) N/A on the 1st, 2nd, 3rd & 4th floor
of the building located on lot(s) 148 square 193
known as premises 1627 16th Street, Northwest for the following
purpose(s) Inn-- 40 rooms
Not sexually oriented.

BZA #: _____ EXPIRATION DATE: _____

THIS CERTIFICATE SHALL BE POSTED CONSPICUOUSLY ON THE ABOVE PREMISES
AT ALL TIMES. IT IS VALID INDEFINITELY, unless an expiration date is stated, ONLY
for the premises, or part thereof, and for the purpose(s), indicated above, and IS NOT
TRANSFERABLE to another person or premises under ANY conditions. ANY CHANGE
in the type of business, ownership of business, or part of premises used therefor, will
render this Certificate VOID and a NEW Certificate must be obtained.

ZONE R-5-C FEE \$ 59.00

Donald G. Murray, Acting Director

By *Gabriel Chetani*
Designee

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF LICENSES, INVESTIGATIONS, AND INSPECTIONS
OFFICE OF LICENSES AND PERMITS
PROPERTY PERMIT BRANCH

COPY FOR YOUR
INFORMATION

NO HOLD NOTICE AGAINST

W. M. APPLICATION FOR CERTIFICATE OF OCCUPANCY—COMMERCIAL
(WRITE WITH TYPEWRITER OR INK)

Do NOT use this form if Certificate is to be issued for Hotel, Flat or Apartment, Rooming, Boarding or Tenement House, Day Nursery, Private Club, Convalescent Home, or Other Residential Use.

THIS OCCUPANCY ENCOMPASSES

8200

SQUARE FEET

Date

9-15-80

FEE 39.80

Eng. Initials

Date

9-15-80

To THE DIRECTOR OF INSPECTION:

APPROVED

I, G. WILLIAMS, request the issuance of a Certificate of Occupancy for the use of the premises described below, and agree to comply with all applicable laws and regulations of the District of Columbia, and any terms and conditions appearing on BOTH sides of this application and on Certificate of Occupancy issued on the basis of this application.

Full Name of Owner(s) of Business R. SCOTT FALEY, ESQUIRE

Trade Name of Business R. SCOTT FALEY, ESQUIRE

(See instruction on reverse side) (PRINT) (This trade name must be identical with that shown in application for business license)

Description of Premises for which Certificate is Requested 1706 NEW HAMPSHIRE AVE, N.W. Lot 74 Square 153

Address 1706 NEW HAMPSHIRE AVE, N.W. Lot 74 Square 153

Name and address of owner of building R. SCOTT FALEY - 2770 UNICOM LANE, N.W.

To the best of your knowledge is the building now being condemned? NO

Material of building MASONRY No. of Stories High 4 Basement? YES

Proposed use LAW OFFICES

Which Floor(s) will be occupied for above use ALL FLOORS AND BASEMENT

Previous use ADMINISTRATIVE OFFICES FOR THE GERMAN MILITARY ATTACHE, ETC

If previous use was residential, how many living unit are being abandoned? N/A

READ INSTRUCTIONS AND INFORMATION ON REVERSE SIDE OF THIS APPLICATION

PENALTIES ARE PROVIDED FOR MISREPRESENTATION.

To Be Filled in by Clerk

Use District 5-P1
Height District 10-1-80
Area District 4-1-80
Transcript of No. _____
E. D. No. _____
B. Z. A. No. _____
Bldg. Permit No. _____
Previous use as above
No. _____
Name of Clerk see sub

IF OWNER OF BUSINESS SIGNS:

Signature of Owner R. Scott Faley
(in ink) 2770 UNICOM LANE, N.W.
Home Address WASH., D.C. 20005 Tel. No. 966-8988

IF AUTHORIZED AGENT FOR OWNER OF BUSINESS SIGNS:

Name of Agent _____
Address of Agent _____
Name of Owner(s) of Business _____
(as shown above)
Signature of Agent _____
(in ink)

APPROVED:

F.S. _____

Bldg. _____

RESERVED FOR APPROVALS

Date EXHIBIT C APPROVED FOR ISSUANCE OF PERMIT

Date _____

NOTICE TO PROSPECTIVE PURCHASER:
Your application will not be approved and Certificate issued until all inspections have been made and inspection agencies have certified compliance

Ltr of 4-10-78 from Dept of State confirms that premises 1706 New Hampshire are not used as Chinese Embassy

Wd

Form LHP-501

CERTIFICATE OF OCCUPANCY

No. B122328

Washington, D.C. Sept. 24, 1960

Permission is hereby granted to Scott Valley, Esquire

to use the 1st floor of the building located on Lot 153 Square 153

known as premises 401 1/2 Ave. N.W. for the following

purpose(s) offices

SCANNED 8-27-90

THIS CERTIFICATE SHALL BE POSTED CONSPICUOUSLY ON THE ABOVE PREMISES AT ALL TIMES. IT IS VALID INDEFINITELY, unless an expiration date is stated. ONLY for the premises, or part thereof, and for the purpose(s) indicated above. THIS IS NOT TRANSFERABLE to another piece of premises under ANY conditions. ANY CHANGE in the type of business, or nature of business, or use of premises used therefor, will render this certificate VOID and a NEW Certificate must be obtained.

ZONE

FEE \$1.80

DEPARTMENT OF POLICE, INVESTIGATION AND INSPECTION, CITY OF DIST. OF COL.

OFFICE COPY

Chief Permit Branch

1320 18th Street, NW
Suite 800
Washington, DC 20036
202.478.4600
202.478.4638 fax
www.starwoodurban.com

STARWOOD URBAN
INVESTMENTS, LLC**VIA HAND DELIVERY**

December 22, 2000

Mr. Toye Bello
Office of the Zoning Administrator
941 N. Capitol Street, N.E.
Suite 2000
Washington, D.C. 20002

Re: Building Permit Application #847-D for 3500-3518 Conn. Avenue, N.W.

Dear Mr. Bello:

I am writing to you at the request of Michael Johnson to provide certain additional information concerning the above-referenced property.

In support of the Building Permit application for the renovation of the property, we have previously provided you with copies of the Certificates of Occupancy for the existing stores and restaurants (or in the case of vacant stores and restaurants, the most recent C of O) and a supporting survey with notations of the property addresses, Certificates of Occupancy numbers and their floor (copy enclosed).

Mr. Johnson has asked that we additionally provide you with the tabulation of the amount of ground level linear footage of the property that has eating or drinking establishments (or in the case of vacant stores and restaurants, the most recent use). The following table shows that the total linear frontage for the eating and drinking establishments at the property is 219 linear feet.

Address	Ground Level Linear Footage	Establishment	Ground Level Linear Footage	Ground Level Linear Footage
Ordway St. Frontage	88	Alero	54.9	
3500	88	Yann's	34	
3502	88	Indian Kitchen	18.5	
3504	70	Cleaners		18.5
3506	816	Thai	18.5	
3508	816	Shoe		18.5
3510	67	Scoop	18.5	
3512-14	90	Wings	37	
3516-18	89	Bella Roma	37.6	
TOTALS			219	37

Mr. Toye Bello
December 22, 2000
Page 2

As you are aware, the above-referenced property is zoned "C-2-A" and is located within the Cleveland Park Overlay District ("CP"). The Zoning Administrator (Mr. Johnson) has previously announced several rulings and determinations regarding eating and drinking establishments in the CP Zone. In particular:

- YES
1. If an eating or drinking establishment vacates a property, then a new eating or drinking establishment may utilize the previous ground level linear street frontage, even if the current 25% limitation in 1305.5(a) has been exceeded in that Overlay District; and
 - YES 2. If an eating or drinking establishment occupied a portion of a property and then vacated that portion, a new eating or drinking establishment could relocate in that property, even if it is not in the same space, as long as the total ground level linear street frontage for the property of eating or drinking establishments does not increase and no other use occupied in an intervening period. This is notwithstanding whether the 25% limitation in 1305.5(a) is exceeded as noted above.

We have proceeded with the purchase and renovation of the property based on these rulings. Our tenants or we will be applying in the future consistent with the established rulings. However, at this time, the locations of the eating and drinking establishments' ground level linear street frontage in the property have not yet been finalized. The Building Permit application #847-D does not contain any specific improvements for an eating and drinking establishments nor are we at this time seeking a Certificate of Occupancy for an eating and drinking establishment. We applied for the Building Permit before October 27, 2000, and do not understand the reasons for the delayed approval.

I trust the information provided here will suffice for your review of the Building Permit application and that the approval will be granted without further delay. Please call me if you have any questions.

Very truly yours,

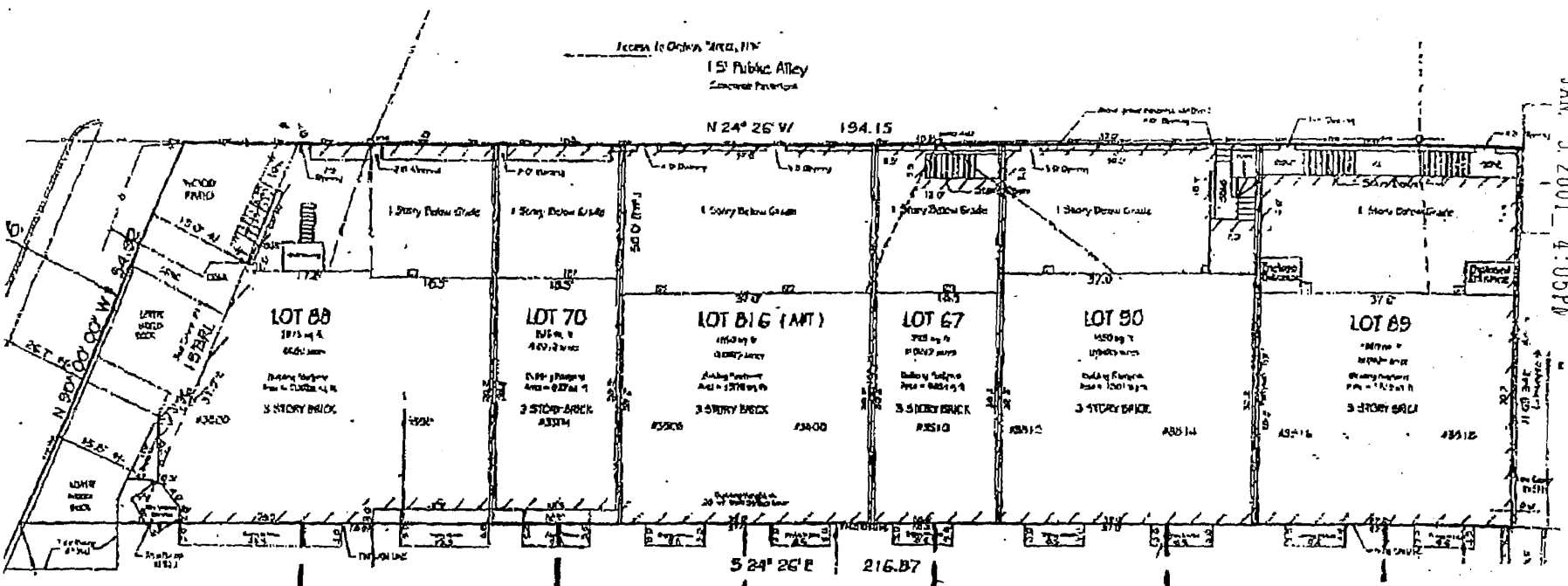
John H. Richman
CEO

Attachment

cc: Andrew Altman, DC Office of Planning
Chris Collins, Wilkes Artis
Michael Johnson, Zoning Administrator
Robert Wennett, Starwood Urban Investments

01/09/01 14:58 FAX 202-27 5776
 JAN 5 2001 4:05PM

OED



3504	Ground Floor	B 160706
3504	Upper Floors	B 139333

3510	Ground Floor	B 174437
3510	Upper Floors	B 147331

3516-18	Gr/Upper	B 177532
3518	Upper Floors	B 00180738

3500	Ground Floor	B 166347
3502	Ground Floor	B 166696
3500	Upper Floors	1890222
3502	Upper Floors	B 162217

3506	Ground Floor	B 166295
3506	Upper Floors	B 166376

3514	Ground Floor	B 173475
3512	Upper Floors	B 168837
3514	Upper Floors	B 151929

NO. 9319 P. 5
 005

6/22/00

**Transcription from 6/22/00 – Voice mail message for Robert S. Wennett from
Eric Price, Deputy Mayor, Washington, DC:**

“I spoke the Director of the Agency today (Lloyd Jordan, Director, Dept Consumer and Regulatory Affairs, Washington, DC). He told me that the previous understandings that you pointed out are correct and he would take care of the matter, and there shouldn’t be any problem. If that is not the case - I just talked to him on the phone, as well - so if there are any other problems, just give me a call.”

CABLE ADDRESS: WILAN
FAX: 202-457-7814

CHRISTOPHER H. COLLINS
202-457-7841

WILKES, ARTIS, HEDRICK & LANE

CHARTERED

ATTORNEYS AT LAW

SUITE 1100

1866 K STREET, N. W.

WASHINGTON, D. C. 20006-2887

(202) 457-7800

ANNAPOLIS, MD
BETHESDA, MD
FAIRFAX, VA
GREENBELT, MD
WALDORF, MD

August 6, 1998

By Hand

Armando Lourenco, Administrator
Building and Land Regulation Administration
614 H Street, N.W., Room 312
Washington, D.C. 20001

Re: Woodley Park Overlay District

Dear Armando:

The purpose of this letter is to confirm the matters discussed in our meeting in your office on Friday, July 31, regarding the Woodley Park Overlay District (WPOD). The Zoning Regulations governing the WPOD are contained in 11 DCMR Chapter 13. A copy of the Zoning Map showing the WPOD, and copies of the Baist Atlas maps for the WPOD area, are attached.

The issues discussed, and your determinations on those issues, are as follows:

1. Designated use area: Section 1302.5(a) allows eating or drinking establishments to occupy no more than 25 percent of the linear street frontage within the WPOD, as measured along the lots that face designated roadways in that particular district. According to Section 1307.3, for purposes of determining compliance with Section 1302, the designated use area includes any lot within the WPOD that fronts on Connecticut Avenue, Calvert Street or 24th Street.

Lot 150 in Square 2204 fronts on both Connecticut Avenue and Woodley Road. Lot 826 in Square 2204 fronts on both Calvert Street and Woodley Place. In our meeting, you confirmed that the entire street frontages of those lots, including frontage on Woodley Road and Woodley Place, are to be used to calculate the linear street frontage within the WPOD, for purposes of determining compliance with Section 1302.5(a). You also confirmed that the 25 percent requirement in that section is based upon the entire WPOD as a whole, and not upon either a lot-by-lot or square-by-square basis.

/ /

WILKES, ARTIS, HEDRICK & LANE
CHARTERED

6, 1998

Through-Lot: Square 2203 has several through-lots with frontage on two or more streets. For purposes of determining "linear street frontage" in Section 1302.5(a), all portions of the lot fronting on a street shall be measured. For purposes of determining compliance with the 25 percent requirement of that section, if a use in a building fronts on more than one street, then all such frontages are counted toward the 25 percent limit. Conversely, if a use in a building on a through-lot only fronts on one street, the linear street frontage of the eating or drinking establishment use in a building only fronting on that one street shall be measured.

Multi-level mixed-use buildings: There are several buildings within the WPOI with more than one level and varying uses on levels other than the ground floor. You determined that, for purposes of measuring the 25 percent requirement of Section 1302.5(a), only those uses occupying the ground floor or portion of the ground floor of a building along the street in the WPOD will be counted.

Washington Park Gourmet: We have been told by DCRA officials that the most recent Certificate of Occupancy on file for 2331 Calvert Street, N.W., the location of the Washington Park Gourmet, is Certificate of Occupancy No. B120691, a copy of which is attached. That C of O permits "grocery store selling meat & sandwiches delicatessen." For purposes of determining the 25 percent requirement of Section 1302.5(a), you determined that this Certificate of Occupancy would govern, and that the principal use is a "grocery store," which is not an eating or drinking establishment under that section.

Vesting of eating or drinking establishment use: Our client is the contract purchaser of a property in the WPOD which is not presently an eating or drinking establishment. However, they propose to convert all or part of the ground floor to such a use. You determined that the issuance of a building permit to convert a ground floor use from its current use to an eating or drinking establishment vests that use for purposes of the 25 percent requirement of Section 1302.5(a).

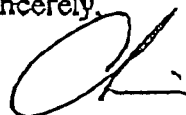
Vacancy: In our meeting, we discussed the issue of a vacancy in the ground floor of a building which was formerly occupied by an eating or drinking establishment. You did not make a ruling as to how that use would be counted for purposes of the 25 percent requirement, but indicated that you would need to examine further the issue of how to establish that the eating or drinking establishment use has been terminated. We would be pleased to meet with you further to discuss this issue if you so desire.

WILKES, ARTIS, HEDRICK & LANE
CHARTERED

August 6, 1998
Page 3

If this is your understanding of the matters discussed in our meeting, please so indicate by signing a copy of this letter in the space provided below and returning it to me. Thank you.

Sincerely,



Christopher H. Collins

CONFIRMED:

By: Armando Lourenco
Armando Lourenco

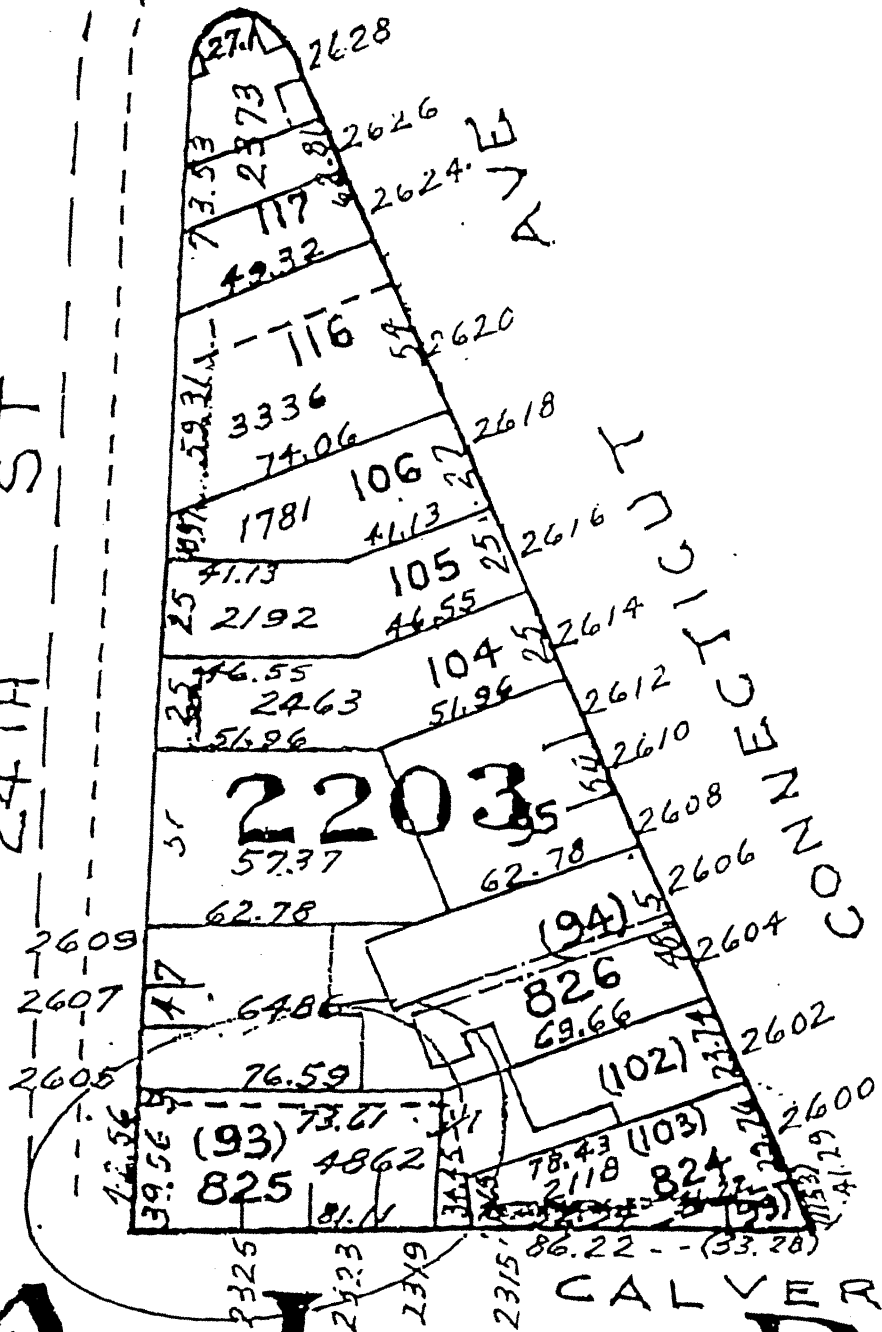
Date: 8/19/98

OED

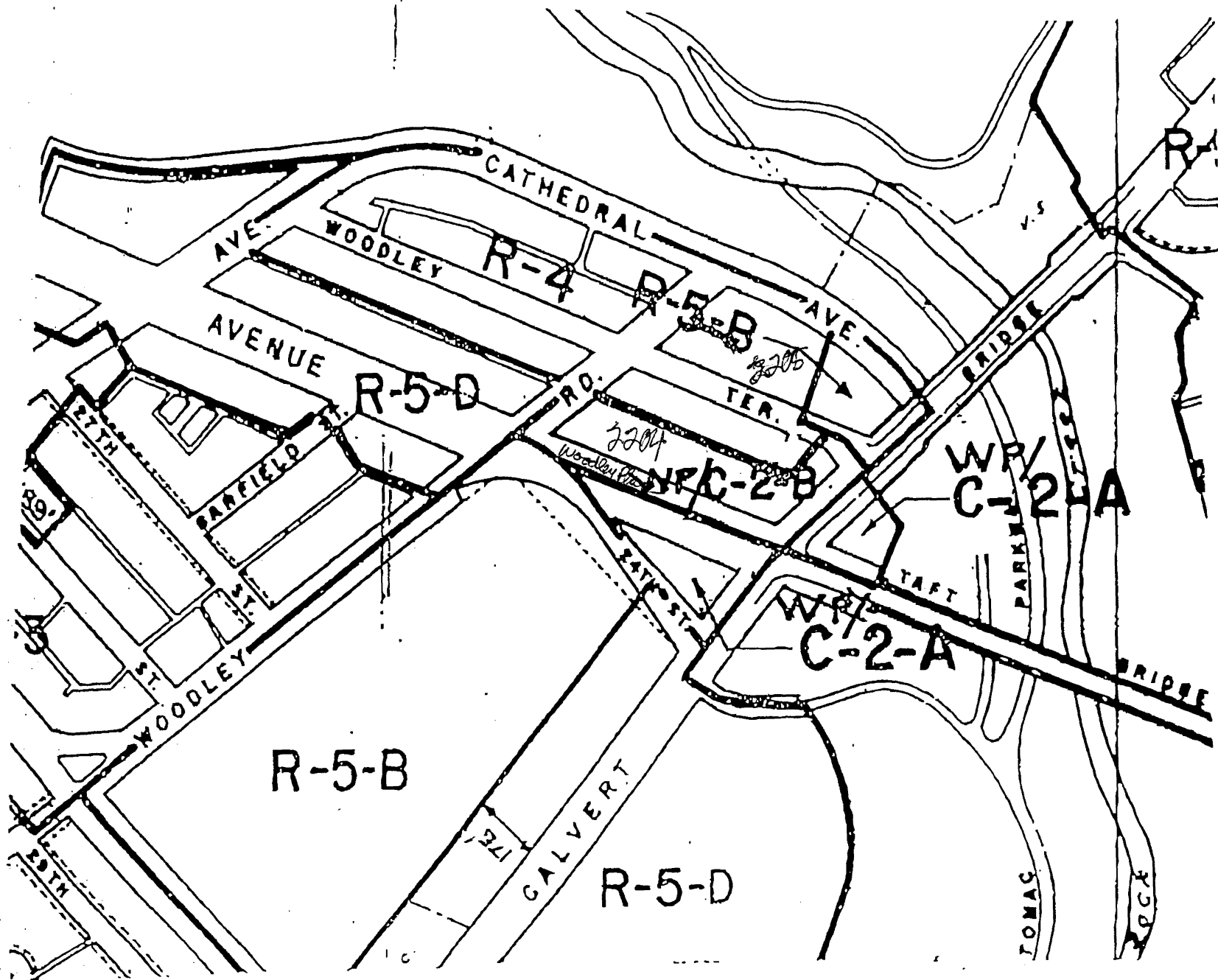
01/09/01 15:01 FAX 202 727 5776
JAN. 5. 2001 4:08PM

SUB
PLAN

24TH ST



I C A L P



CERTIFICATE OF OCCUPANCY

No. B-120691

Washington, D.C. 20004, 19 60

Permission is hereby granted to L.A. Inc.,

to use the Ground Floor (Level 0) of the building located on Lot B-15 Square 2463

known as premises for the following purpose(s):

FOR THE PURPOSE OF

OFFICE USE

THIS CERTIFICATE IS

ISSUED IN ACCORDANCE WITH THE

PROVISIONS OF THE DISTRICT OF COLUMBIA

UNIFORM BUILDING CODE

AND THE DISTRICT OF COLUMBIA

DEPARTMENT OF BUILDINGS

ON 01/09/01

BY THE DEPARTMENT OF BUILDINGS

OFFICIAL

DATE

01/09/01

01/09/01

01/09/01

01/09/01

01/09/01

01/09/01

01/09/01

01/09/01

01/09/01

01/09/01

JAN 5 2001 4:10PM

GOVERNMENT OF THE DISTRICT OF COLUMBIA

NO. 9319

P. 19

DEPT. OF LICENSES, INVESTIGATIONS, INSPECTIONS

INSPECTIONS

OFFICE OF LICENSES AND PERMITS

PERMIT BRANCH

APPLICATION FOR CERTIFICATE OF OCCUPANCY—COMMERCIAL

(WRITE WITH TYPE WRITER OR INK)

The NOTAR Public This form of Certificate is to be issued for Hotel, Flat or Apartment, Rooming, Boarding or Tourist House, Day Nursery, Private Club, Convalescent Home, or Other Residential Use.

THIS OCCUPANCY ENCOMPASSES

4500 SQUARE FEET

FEE \$ Eng. Initials

Date 5-2-01

To the Director of Inspection:

The applicant(s) request the issuance of a Certificate of Occupancy for the use of the premises described below, and agree to comply with all applicable laws and regulations of the District of Columbia, and any terms and conditions appearing on BOTH sides of this application and on any Certificate of Occupancy issued on the basis of this application.

Full Name of Owner(s) of Business L. N. INC.

(PRINT) (FIRST) (MIDDLE) (LAST)

Trade Name of Business LEONARD'S MARKET

(PRINT) (This trade name must be identical with that shown in application for license license)

Description of Premises for which Certificate is Requested

Address 4331 Calvert St. N.W. Lot 101 Square 1017

Name and address of owner or agent RAYMOND P. RUPPERT, 224 N.W.

To the best of your knowledge building now being condemned? NO

Material of building Bricks No. of Stories High 2 Basement? YES

Proposed use Grocery store, selling meat & delicatessen

Which Floor(s) will be occupied for above use Ground fl. 1st floor

Previous use Grocery store, selling meat & delicatessen

If previous use was residential, how many living unit are being abandoned?

READ INSTRUCTIONS AND INFORMATION ON REVERSE SIDE OF THIS APPLICATION

PENALTIES ARE PROVIDED FOR MISREPRESENTATION.

To Be Filled in by Clerk

For District

Height District

Area District

Trade name of No.

E. D. No.

B. Z. A. No.

Bldg. Permit No.

Previous use

Trade name of No.

Name of Clerk

IF OWNER OF BUSINESS SIGN

Signature of owner

(in ink)

Home Address

IF AUTHORIZED AGENT FOR OWNER OF BUSINESS SIGN

Name of Agent

Address of Agent

Name of Owner(s)

of Business

Signature of Agent

(in ink)

APPROVED:

P.S.

Bldg.

Pibg.

Elec.

DES

RESERVED FOR APPROVALS

Date

Date

Date

Date

Approved for Issuance of Permit

Date

Date

Date

Date

NOTICE TO PROSPECTIVE PURCHASERS: This application will not be approved until all inspectors have been notified and inspection of the premises has been completed.

1320 19th Street, NW
Suite 800
Washington, DC 20036
202.478.1600
202.478.4639 fax
www.starwoodurban.com

VIA COURIER

STARWOOD **URBAN**
INVESTMENTS, LLC

June 21, 2000

Michael Johnson, Zoning Administrator
District of Columbia Dept. of Consumer and Regulatory Affairs
941 N. Capitol Street, NE
Room 2000
Washington, DC 20002

Re: Neighborhood Commercial Overlay Zones and the
25% Limitation on Eating and Drinking Establishments

Dear Mr. Johnson:

Starwood Urban Retail V, LLC, is the owner of 3500 through 3518 Connecticut Avenue, NW, in the Cleveland Park Overlay Zone and Starwood Urban Retail I, LLC, is the owner of 2600 and 2631 through 2641 Connecticut Avenue, NW, in the Woodley Park Overlay Zone. Other affiliated entities (collectively with Starwood Urban Retail I, LLC and Starwood Urban Retail V, LLC, the "Starwood" group) also own multiple properties in Dupont Circle and several other areas in Washington, DC. Starwood is extremely concerned about the unexpected potential change of positions that we understand were presented by the Zoning Administrator's office last week concerning the zoning status of eating and drinking establishments in the Neighborhood Commercial Overlay Zones when the 25% maximum has been exceeded.

We understand that at the June 12, Cleveland Park ANC meeting, it was stated that the new policy will be to bring the area into compliance with the 25% limitation as soon as possible. A document from your office was disseminated that evening which indicates that any existing food and beverage entity terminating its business, will not retain its "grandfathered" status until such time as the maximum percentage is reduced below 25%. The Starwood group has spent literally millions of dollars in reliance upon the previous positions regarding grandfathered uses taken by both you and your predecessor, and we urge you to uphold those determinations. These previous positions were also consistent with established analogous zoning interpretations and legal precedent concerning the right to continue nonconforming uses. (George Washington University v. DC Board of Zoning Adjustment, 429 A. 2d 1342, 1345 DC 1981).

Prior to investing substantial sums of money on Starwood's first acquisition in the Woodley Park area, we met with your predecessor, Acting Zoning Administrator Armando Lourenco, to discuss various aspects of the Neighborhood Commercial Overlay Zones and how the regulations would be applied in certain circumstances. Mr. Collins of Wilkes Artis attended that meeting with me, and he subsequently wrote a letter to Mr. Lourenco dated August 6, 1998, setting forth our understanding of those rulings. Mr. Lourenco confirmed our understanding by signing and returning that letter. Last month, Mr. Collins and I met with you to discuss further issues pertaining to the Cleveland Park Overlay Zone. Although you asked that we not submit a letter requesting your written confirmation, you did allow us to submit a letter setting forth what we

Michael Johnson
June 21, 2000
Page 2

understood to be your positions in that meeting. That letter to you from Wilkes Artis is dated May 16, 2000. The letter requested that you notify Mr. Collins if the information set forth in that letter was inconsistent with your understanding. No such response was received. I have attached both these letters for ease of reference.

In addition, there were two meetings (May 24 and June 7) hosted by Mr. Foster, of your office, to discuss these issues with representatives of the several neighborhood groups, plus other property owners and business owners in both Overlay Zones. I was not able to be in Washington on those days, but Mr. Collins attended on Starwood's behalf. Our understanding of the discussions that transpired at the meetings held by Mr. Foster was that there was general agreement that if an "eating or drinking establishment" tenant vacates a property, a new "eating or drinking" tenant in that property was vested and could obtain the necessary permits and occupy the space, irrespective of the percentage of the limitation. In fact, we understand that there was consensus at that meeting that this could occur with regards to a prospective tenant at the Park and Shop property who attended that meeting for that very purpose. We understand that it was generally agreed that the issuance of a permit or certificate of occupancy for a non-eating or drinking tenant would "break the chain", but until that happened, the vacant space formerly occupied by an eating or drinking establishment would continue to be counted as such for the Overlay Zone. These issues are also evidenced by a letter from Ruthanne Miller, ANC Commissioner 3C09 and Chair, ANC 3C, dated June 20, 2000, which reiterates events which occurred during the two meetings (copy attached).

This position is not only consistent with previous information received from your office; it is also fundamentally fair and reasonable. We understand that Mr. Foster pointed out at the May and June meetings that the Cleveland Park and Woodley Park Overlay Zones are over the 25% limitation because under the previous Administration, the District had no effective mechanism to enforce the regulations. We also understand that he made it clear to all in attendance that the District would not revoke or otherwise eliminate the rights of existing eating and drinking establishments which exceed the 25% limitation, if those permits were validly issued by the District, through no fault of the owner. In light of that statement, how can your office now take the position that if a landlord applied for and obtained permission for an eating or drinking establishment, and that permission exceeded the 25% limit, through no fault of the applicant, and the applicant spent substantial sums of money in good-faith reliance on that permission, the District can now tell that landlord that because the District made a mistake, the landlord's rights should disappear?

We understand that your position is that you want to get the limit down to 25% as soon as possible. Although Mr. Foster stated the District's reluctance to punish those property owners who unknowingly received DC approval after the 25% limit had been reached, this new policy is not only contrary to that position, and to prior positions of your office, but it would also punish those who established their rights without exceeding the 25% limit. We most strongly disagree with any effort which results in punishing property owners for the past errors and omissions of the District's enforcement policies.

Michael Johnson
June 21, 2000
Page 3

We respect your desire to enforce the regulations and to seek an equitable way to do so, given the unusual circumstances in this case. However, the method apparently chosen is far from equitable, runs counter to precedent, and would severely impact existing legitimate businesses in the Overlay areas. We suggest that you instead devise a system to register the existing eating and drinking establishments (including vacant spaces formerly occupied by eating and drinking establishments), and monitor them to see when future permit applications are submitted for non-eating and drinking establishments. When such permits are issued, the rights to a future eating or drinking establishment in that property would lapse, until such time as the total falls below 25%. Your office can also inspect existing businesses to see if they are properly permitted as eating or drinking establishments. You may find some operating as such, but without the proper permits. This is a fair and reasonable method of enforcement at this point.

In conclusion, this issue is of great concern to the Starwood group, and we hereby request a meeting with you to further explain Starwood's position and clarify any facts for you, before you make a final decision. The Starwood group is also prepared to use all reasonable and equitable means to oppose a reversal of prior positions taken by your office, upon which we relied. We look forward to working with you in the spirit of cooperation. Please call me at 202.478.4620 or my associate, Maribeth Konz, at 202.478.4625. Thank you.

Sincerely,


JOHN RICHMAN
Chief Executive Officer

Attachments

cc: Lloyd Jordan, Director
DC Dept. of Consumer and Regulatory Affairs

Arrando Lourenco, Administrator
DC Building and Land Regulation Administration

Eric W. Price, Deputy Mayor
DC Office of Planning and Economic Development

Andrew Altman, Director
DC Office of Planning

Constance Collins Davis, Esq.
Starwood Urban Investments

Robert Wennett, President
Starwood Urban Investments

Christopher H. Collins
202.457.7841
ccollins@wilkesartis.com

Wilkes Artis

Chartered
Attorneys at Law

Suite 300, 1666 K Street, NW
Washington, DC 20006-2803
202.457.7800
Fax: 202.457.7814

May 16, 2000

By Hand

Michael Johnson
Zoning Administrator
D.C. Department of Consumer
and Regulatory Affairs
941 North Capitol Street, N.E.
Suite 2000
Washington, DC 20001

Re: Cleveland Park Overlay District

Dear Mr. Johnson:

The purpose of this letter is to review the items discussed in our meeting on May 9th regarding the applicability of the provisions of the Overlay District. The specific issues addressed below relate to section 1302.5(a) of the Zoning regulations, which limits "restaurants, fast food restaurants, delicatessens, carry-outs, and similar eating or drinking establishments" in the Neighborhood Commercial (N.C.) Overlay Districts to "25% of the linear street frontage within a particular N.C. Overlay District, as measured along the lots that face designated roadways in the particular district..."

1. Principal versus Accessory Use.

In prior correspondence dated August 6, 1998, Armando Lourenco, Administrator of BLRA, confirmed that the principal use of a property would govern whether it is considered an "eating or drinking establishment" in the N.C. Overlay. In paragraph number four on page two of that letter (copy attached), he confirmed that the principal use of an establishment which has a certificate of occupancy for "grocery store selling meat & sandwiches delicatessen" is a "grocery store". As a result, the principal use of the premises as "grocery store" was the use that was counted when determining whether the property fell within the 25% limitation of section 1302.5(a).

The Office of the Zoning Administrator has long held that an "accessory use" may constitute up to 20% of the total quantifiable principal use of a property, without itself becoming a second principal use. This determination has been upheld by the D.C. Court of Appeals, in Association for the Preservation of 1700 Block of N Street, NW

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and Vicinity v. DC Board of Zoning Adjustment, 384 A.2d 668, 673 (DC 1978).

Multiple Uses On A Lot

In our meeting, we discussed with you the fact that if there are multiple principal uses on a single lot, including one or more "eating or drinking establishments", then the correct method of determining the linear street frontage to be counted toward the 25% limitation is to calculate the percentage of the building that is devoted to the eating or drinking establishment use, and to include that same percentage of the linear street frontage toward the 25% limitation.

Vesting

We discussed the issue of how to count a vacant space in the Overlay District which was formerly occupied by an eating or drinking establishment. In paragraph five on page two of the attached letter, Mr. Lourenco confirmed that the issuance of a building permit to convert a use from a non-eating or drinking establishment to an eating or drinking establishment vests that use for purposes of the 25% requirement of Section 1302.5(a). Conversely then, a vacant site formerly occupied by an eating or drinking establishment will continue to be counted as such, unless and until a building permit or a certificate of occupancy is issued to change that use to a non-eating or drinking establishment.

Commercial retail uses are typically vacant from time to time, between the time that a tenant moves out and a new tenant moves in. During that period, leasing efforts are underway with a new user, and once a new tenant is secured, they would obtain a building permit (if necessary for the new improvements) and a new Certificate of Occupancy, before the new tenant actually occupies the property. If both the prior and the new use are eating or drinking establishments, then the new user would be entitled to continue that use on the site irrespective of whether or not the 25% limitation is exceeded.

An analogy to the nonconforming use regulations is instructive. Section 2005.1 of the Zoning Regulations governs the discontinuance of a nonconforming use of a structure or of land. That provision states that the discontinuance "for a period of more than three (3) years, shall be construed as prima facie evidence of no intention to resume active operation as a nonconforming use." The D.C. Court of Appeals has stated that to establish the abandonment of a nonconforming use, "one must demonstrate '(1) the intent to abandon and (2) some overt act or failure to act which carries the implication of abandonment.'" George Washington University v. DC Board of Zoning

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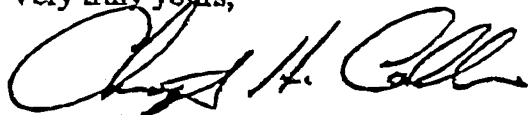
Adjustment, 429 A.2d 1342, 1345 (DC 1981). That case involved a change in nonconforming use of a property from a clothing store to a restaurant where the prior use vacated the property and the new lessee took possession, obtained building permits, gutted the building, and began reconstruction. The total period of time between the cessation of the prior clothing store use and the establishment of the new restaurant use was three years. In that case, the Court upheld the BZA's conclusion that the activity over the three-year period to establish the new nonconforming use indicated no intention to abandon the nonconforming use of the property.

4. Reallocation of uses within a lot

We discussed with you the scenario where a single lot is currently occupied by both an eating or drinking establishment and a non-eating or drinking establishment as principal uses. In our meeting, we discussed with you the fact that those uses within that lot could be reconfigured, as long as the total amount of eating or drinking establishment use would not cause the 25% limitation to be exceeded in the overlay. If the 25% limitation is already exceeded in the overlay, then the uses could be reallocated within the lot, as long as the total square footage of the existing eating or drinking establishment is not increased.

If any of the above is inconsistent with your understanding, please let me know.

Very truly yours,



Christopher H. Collins

Law Offices

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July 3, 2001

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BY HAND

Ms. Theresa D. Lewis
Acting Administrator
Building and Land Regulation Administration
D.C. Department of Consumer and Regulatory Affairs
941 North Capitol Street, N. E.
Suite 9500
Washington, D.C. 20002

Re: Neighborhood Commercial Overlay Zone Methodology

Dear Ms. Lewis:

Thank you for the opportunity to review and comment upon your draft Methodology to Determine the Percentage of Linear Frontage for Eating and Drinking Establishments in the Neighborhood Commercial Overlay Zones. I have enclosed for your review both a black-line version and clean version of the document.

These revisions noted are intended to make the draft consistent with the Zoning Regulations and previous interpretations of those Zoning Regulations. The principal changes to the document appear in paragraphs 4 through 7. Paragraph 4 has been amended to include an additional citation to support the fact that ground floor frontage is used in the 25% calculation. Paragraph 5 has been amended to make clear that eating and drinking establishments are not classified as non-conforming uses. Moreover, revisions were made to indicate that the linear frontage devoted to an eating or drinking use within a building or property may be relocated from one portion of a property to another portion of that same property, regardless of whether the 25% limitation is exceeded.

Ms. Theresa D. Lewis
July 3, 2001
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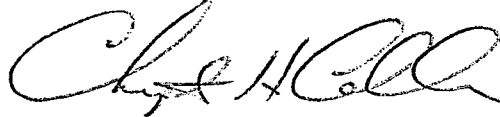
Conversely, the linear frontage of an eating or drinking use may be relocated from one building or property to another different building or property only when the 25% limitation has not been exceeded.

Further, the regulations clearly support the statement that linear frontage devoted to an eating or drinking use may continue to be devoted to that use until a permit is issued for a use other than an eating or drinking establishment. These rights do not cease by virtue of a temporary interruption. The use can be terminated by the issuance of a non-eating or drinking building permit or certificate of occupancy, or otherwise by an overt action or declared intention to terminate the eating or drinking use.

These modifications are more fully set forth in the draft document. If you have any questions regarding these matters, please call me at the above number.

Very truly yours,

HOLLAND & KNIGHT LLP

A handwritten signature in dark ink, appearing to read 'Chris H. Collins', written in a cursive style.

Christopher H. Collins

CHC/skp

cc: ✓Denzil Noble (by hand w/enclosures)
Michael Johnson (by hand w/enclosures)
Toye Bello (by hand w/enclosures)

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apples & orange

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→ timing b/c
→ vacant - how long
→ adv. effect
attraction

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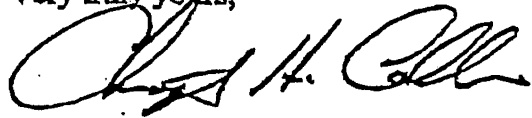
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