

**TESTIMONY OF CONSTANCE COLLINS-DAVIS
TO THE
ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**

CASE NO. 02-06

**TEXT AMENDMENT
TO
NEIGHBORHOOD COMMERCIAL OVERLAY DISTRICT -
LIMITATION FOR EATING OR DRINKING ESTABLISHMENTS**

Good evening. My name is Constance Collins-Davis, and I am Chief Operating and Financial Officer and General Counsel of Urban Investments Advisors, LLC, which is the investment advisor to and agent for Starwood Urban LLC and its subsidiaries. One of those subsidiaries, Starwood Urban Retail V, LLC, is the owner of the property at 3500-3518 Connecticut Avenue, N.W., known as Lot 92 in Square 2068. That property was purchased on November 19, 1999, and we have been working since that time on renovations to the property, in preparation for re-leasing the property to a combination of eating and drinking establishments and other permitted uses.

When we purchased the property, there were seven eating and drinking establishments in the property, with a combined total of 219 linear feet of ground floor street frontage, in addition to other non-eating or drinking uses. These eating or drinking uses predated the establishment of the Neighborhood Commercial Overlay Regulations, which became effective on November 3, 1989. Five of the

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seven eating/drinking uses with ground floor street frontage closed and vacated the premises on or about the following dates:

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| 1. | Wingmasters | 3512-14 Connecticut Avenue | 06/29/00 |
| 2. | Indian Kitchen Rest. | 3502 Connecticut Avenue | 05/15/00 |
| 3. | Thai Taste | 3506 Connecticut Avenue | 06/01/00 |
| 4. | Larry's Uptown Scoop | 3510 Connecticut Avenue | 04/14/00 |
| 5. | Bella Roma Restaurant | 3516-18 Connecticut Avenue | 09/18/00 |

Yanni's, with an address of 3500 Connecticut Avenue, has ground floor linear street frontage on both Ordway and Connecticut, and is open and operating. Alero, with ground floor street frontage only on Ordway Street, has an address of 3500-02 Connecticut Avenue, and is also still open and operating.

We are currently in the process of building out the former Wingmasters space for an Indian restaurant named Bombay Bistro, and we are also in the process of renovating and leasing the remainder of the qualifying vacant ground floor linear frontage for other eating or drinking uses, with the remainder of the building to be devoted to other permitted uses.

We understand the concerns of the community that the limitations set forth in the 1989 Overlay Regulations for eating and drinking establishments have apparently been exceeded. We also understand that, because the eating and

drinking uses in our property pre-dated the enactment of the Overlay, our eating and drinking uses are grandfathered under the Zoning Regulations. However, we have several concerns with the new proposed regulations. These are detailed in our written submission, but I would like to share some of those issues with you at this time.

1. Proposed Section 1302.5(c) states that “The total linear frontage for eating or drinking establishments shall be based on the existing records of Certificates of Occupancy for such uses by address verified through field observations; . . .” We think this language needs to be broader. Several of the eating/drinking uses in our property have conflicting or inconsistent address information. These inconsistencies existed when we bought the property in 1999. Our recent experience with the City regarding our building permit for renovation work in the former Wingmasters space is a case in point.

Wingmasters occupied both of the ground floor retail bays of former Lot 90, which comprised the addresses 3512 and 3514 Connecticut Avenue, N. W. Even though it occupied both retail bays, Wingmasters used the 3514 address for its business, because that is where the front door of the restaurant was located. A community member recently challenged the issuance of our building permit for the Bombay Bistro buildout, claiming that we had no right to the permit because the last Certificate of Occupancy for use of the ground floor of 3512 Connecticut Avenue

was for a laundromat, and not an eating or drinking use. There is in fact a Certificate of Occupancy on record for a laundromat at 3512 Connecticut, but that Certificate of Occupancy was issued in 1967. It is well known in the community that the laundromat vacated that space long ago, and that Wingmasters occupied both ground floor retail bays of former Lot 90 (3512 and 3514 Connecticut) since before the enactment of the Overlay Regulations.

We documented and submitted to the Zoning Administrator in December of 2000 the eating/drinking establishments in our property, with an architectural drawing showing the ground floor locations and linear street frontages. Because, with two exceptions, the spaces are currently vacant, the addresses on the Certificates of Occupancy and current “field observations” alone would not have been sufficient to adequately address the issue. The Zoning Administrator should have available at his or her disposal all relevant records in order to make informed determinations. We suggest that the language of Section 1302.5(c) be amended to include the following: “. . . by address and lot and square, verified through other records of the District of Columbia and field observations”.

2. Section 1302.5(g)(1) states that when the existing linear street frontage devoted to eating/drinking uses exceeds the applicable percentage limitation, no new Certificate of Occupancy will be issued for a new eating/drinking use for “all or part of the ground floor level of a building, except those uses

intending to occupy the same space vacated by an eating or drinking establishment . . .”. The original Section 1302.5(a) of the Overlay Regulations is clearly written to govern the amount of ground floor linear street frontage for eating/drinking uses, and not “space”. If a part of the ground floor linear street frontage of a building was formerly occupied by an eating/drinking use, there should be flexibility to replace that use with another use in the building, so long as the ground floor linear street frontage of the prior eating/drinking use is not increased. This will provide flexibility when buildings are vacated and re-tenanted, and will honor both the letter and spirit of the original regulations. We understand that DCRA is documenting this ground floor linear street frontage, so this should not be a problem to enforce.

3. Section 1302.5(g)(1) also states that an eating/drinking use may move into a space formerly occupied by an eating/drinking use, provided that the space has remained vacant for a period of 3 years or less. I understand that this 3-year provision is intended to analogize these eating/drinking uses to non-conforming uses, which also have a discontinuance clause in the Zoning Regulations. As our written submission sets forth in greater detail, the existing 3-year zoning provision for non-conforming uses creates a presumption of discontinuance, if the use is not re-established within 3 years. That presumption can be rebutted by evidence of activities indicating that there is no intention to abandon the non-conforming use. The D.C. Court of Appeals has held that the abandonment of a non-conforming use

after 3 years must be demonstrated by both an intent to abandon, and some overt act to indicate abandonment. Leasing activities and renovation work have been held by the Court to be sufficient indicators of no intention to abandon.

Restaurants in the Overlay are conforming uses, and are *not* non-conforming uses. Therefore, they should have at least the same rights as non-conforming uses. If the 3-year abandonment rule for non-conforming uses creates a presumption which can be rebutted by evidence of no intent to abandon, then conforming restaurant uses in the Overlay should have at least the same right to demonstrate no intention to abandon.

In our particular case, the proposed 3-year rule poses a problem for us. As I stated earlier, five of the eating/drinking uses in our building were vacated in mid-2000. This means that the 3-year provision, if adopted in its current form, will expire in mid-2003. While we have been actively seeking to lease the spaces to eating/drinking uses, the activities of the community and DCRA surrounding this issue over the past several years have had a chilling effect on our ability to lease the property. We have lost several prospective tenants because of the perceived uncertainty surrounding the ability of eating/drinking uses to move into former eating/drinking locations in our building. We invested in this property in 1999 with the full intention to include the same amount of ground floor linear street frontage for restaurants and other similar uses as existed when we bought the property,

consistent with the law as it existed at that time. While it is our hope and intent to re-establish by next spring the same ground floor linear street frontage of eating/drinking uses as previously existed, I cannot be certain that this will be the case. Therefore, we need your consideration to amend the proposed regulations as I have stated.

We regret that there has been a great deal of mis-information spread about this project and our activities. We have sometimes been portrayed as a corporate monolith bent on ruining the character of Cleveland Park. Nothing could be further from the truth. UIA is a small company based in Dupont Circle, focusing on neighborhood retail revitalization projects in D.C. and other communities. The owners of the company live in the area and are sensitive to the needs of the community, because they are a part of it. We have invested a great deal of our personal resources in this project, restoring and upgrading the building, and attracting exciting new dining and shopping concepts and service amenities to the area. We are pleased and proud to be a part of the economic revitalization effort which is happening in our city, and we hope that you will come and visit us when our new tenants move in.

We applaud your involvement in helping to establish clear, unambiguous regulations so that everyone knows what the rules are and ask for your help in clarifying the issues I have mentioned earlier. We urge your expeditious action in

this matter as we have suffered tremendous damage due to delays in our leasing arising from the uncertainties in the rules and the permitting process. Thank you for the opportunity to appear before you. I would be happy to answer any questions you may have.

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