

**BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA**

**Appeal by Station Townhouses LLC of
Department of Consumer and Regulatory
Affairs June 21, 2018 Notice to Revoke
Certificate of Occupancy #CO1503518
Issued to 701 2nd Street, N.E., d/b/a Station House**

**BZA Appeal No. _____
ANC 6C**

STATEMENT OF APPEAL

Appellant, Station Townhouses LLC (“**Appellant**” or “**Station Townhouses**”), respectfully submits this Appeal to the Board of Zoning Adjustment (the “**Board**” or “**BZA**”) of a Notice, dated June 21, 2018, from the Zoning Administrator, Department of Consumer and Regulatory Affairs (“**DCRA**”), proposing to revoke Certificate of Occupancy No. CO1503518 for the building located at 701 2nd Street, N.E. (Square 0752, Lot 0049) (the “**Property**”). Copies of the Certificate of Occupancy and the Notice to Revoke Certificate of Occupancy (the “**CO Revocation Notice**”) are attached hereto as Exhibits 1 and 2, respectively.¹

For the reasons discussed below, the DCRA’s decision is erroneous, and should be reversed.

I. JURISDICTION

The Board has jurisdiction to hear the Appeal pursuant to D.C. Code §§ 6-641.07(f) and (g)(1), 11-Y DCMR §§ 100.4 and 302.1, and 12-A DCMR §§ 110.5.8.1(b) and 110.6.

The Appeal is timely filed. The Notice is dated June 21, 2018, and was sent to Appellant via regular, first-class mail. Appellant first learned of the decision when Roseland Management Company, LLC, the Property’s management agent (the “**Management Agent**”), received the CO

¹ Although the CO Revocation Notice was addressed to Station Holdings LLC and Roseland Residential Trust, Station Townhouses LLC is the owner of the Property and holder of the relevant Certificate of Occupancy. See Exhibit 1 (Certificate of Occupancy); 12-A DCMR § 110.1 (“The person or entity to which a certificate of occupancy is issued is referred to herein as the ‘certificate holder.’”).

Revocation Notice through the mail on or about June 26, 2018. Accordingly, the Appeal is timely, pursuant to 11-Y DCMR §§ 302.2 and 302.4, having been filed within sixty (60) days of both the date of the CO Revocation Notice (*i.e.*, June 21, 2018) and the date Appellant knew or should have known of the decision (*i.e.*, June 26, 2018).

II. APPELLANT’S STANDING

Station Townhouses is the owner of the Property and the holder of the Certificate of Occupancy. The decision to revoke the Certificate of Occupancy directly and uniquely harms Station Townhouses. Accordingly, Station Townhouses is an aggrieved person, and has standing to bring this Appeal pursuant to D.C. Code § 6-641.07(f), 11-Y DCMR § 302.1, and 12-A DCMR § 110.6.

III. BACKGROUND

A. Subject Property

The Property that is the subject of this Appeal is the residential apartment building, commonly known as “Station House,” located at 701 2nd Street, N.E., Washington, D.C. 20002, on Lot 0049 in Square 0752; prior to approval of the Planned Unit Development (“**PUD**”),² the Property was in the C-2-A, C-2-B, and C-3-C zone districts.

The Appellant, Station Townhouses, is the owner of the Property and the holder of the Certificate of Occupancy for the building on the Property. As noted, Roseland Management Company, LLC is the Management Agent for the Property.

² The PUD is discussed in greater detail in Section III.B, *infra*.

B. Certificate of Occupancy No. CO1503518 and Zoning Commission Order No. ZC-05-37

Certificate of Occupancy No. CO1503518, attached as Exhibit 1, was issued for the Property on October 13, 2015. The Certificate of Occupancy describes the occupancy as “MIXED USE BUILDING (RETAIL/APARTMENT).” Ex. 1.

As previously noted, the Property is also subject to a PUD, which was approved, pursuant to Z.C. Order No. 05-37, for residential and retail use. A copy of the recorded 2008 PUD Covenant, along with its exhibits, including Z.C. Order No. 05-037, is attached hereto as Exhibit 3.³ The PUD, as subsequently modified, authorizes up to 378 residential apartment units. *See* DCRA Letter re: Zoning Commission Case No. 05-37/05-37B-701 2nd Street, N.E. (Lot 49, Square 752) Modification Per § 2409.6(b), dated September 26, 2013 (attached as Exhibit 5). In addition, the PUD devotes approximately 20,570 square feet of gross floor area to affordable housing units. *See* Ex. 3, Z.C. Order No. 05-37, at 16 ¶ 77(a), 27 ¶ 5; Ex. 4, Z.C. Order No. 05-37B, at 4 ¶ 20, 8 ¶ 5. As a result, twenty-eight (28) Station House apartment units are currently reserved for households making no more than 80% of the area’s median income. *See* <http://stationhousedc.com/station-house/>.

C. The Station House Leases and the Churchill Tenants

Out of all the Property’s more than 300 residential lessees, only one tenant is of particular relevance for purposes of this Appeal — Churchill Corporate Services, Inc. and/or its affiliates

³ Order No. 05-37 indicates that the PUD is a “residential project” with additional designated square footage devoted to “ground floor retail and second floor professional office space.” Z.C. Order No. 05-37 at 27, ¶ 2. Though the PUD was subsequently modified in 2012, the project continued to be “a residential development with ground floor retail.” 2012 Notice of Modification, Z.C. Order No. 05-37B (attached to 2012 Notice of Modification) at 3, ¶ 15. The 2012 Notice of Modification is attached as Exhibit 4.

(collectively, “**Churchill**”).⁴ At the time the CO Revocation Notice was issued, Churchill leased twenty-six (26) of Station House’s three hundred seventy-eight (378) apartment units from Appellant (collectively, the “**Leases**” or “**Churchill Leases**”). Since the issuance of the CO Revocation Notice and following actions to enforce its Leases by Station Townhouses, described below, Churchill has vacated nine (9) of its leased units (as of August 17, 2018), and volunteered to vacate an additional seven (7) units by October 3, 2018, and therefore will be in possession of ten (10) units as of that date. A sample copy of the Churchill Leases is attached as Exhibit 6.⁵

Each of Churchill’s original twenty-six (26) Leases from Station Townhouses is for a multi-month tenancy, ranging from a minimum term of six (6) months to a maximum of twenty-seven (27) months. Consistent with the terms of the Certificate of Occupancy and PUD, the Station Townhouses leases to Churchill unconditionally ban any of the leased apartment units from being used for short-term or transient occupancy, and explicitly prohibit the tenants from advertising occupancy for a short term basis on various websites. Section 36(a) or 37(a)⁶ states:

a) PROHIBITION OF SHORT-TERM RENTALS / SUBLETTING / ASSIGNMENTS: *Under no circumstances are you permitted to rent, sublet, assign, transfer, or permit space in the Premises to occupants on a short-term or transient basis, or for any short-term occupancy that may be governed by or prohibited by state or local laws, including, but not limited to, those applicable to transient housing, code violations or hotel taxes. You are specifically prohibited from advertising the Premises for rental by short-term or transient occupants on websites such as Airbnb, craigslist, Expedia, Hotels.com or any other similar locator sites. Any violation of these short-term stay provisions, or any loss we incur as a result thereof, shall be a material breach of your lease.*

Ex. 6 (emphasis added). In addition, Section 36 or 37 of the Churchill Leases prohibits any

⁴ Churchill’s address is: Churchill Corporate Services, Corporate Headquarters, 56 Utter Avenue, Hawthorne, NJ 07506.

⁵ Station Townhouses, through its Management Agent, uses two forms of leases that are substantially identical.

⁶ In one of the form leases this language is in Section 36(a); in the other form it is in Section 37(a).

subletting of any nature without landlord's approval. That provision states:

Tenant is prohibited from subletting, assigning or attempting to replace Tenant.... Assignment of the Lease or subletting of the Leased Premises without our prior written consent is a material breach of this Lease and any such attempted assignment [or] sublease shall be void.

Ex. 6.

As discussed more fully below, Churchill has flagrantly violated each of these Lease provisions, which has placed the Certificate of Occupancy at risk of being revoked.

D. DCRA Issues CO Revocation Notice Due to Churchill's Unauthorized Advertising for and Allowing Short-term Occupancies of Station House Apartment Units in Violation of the Leases

DCRA's CO Revocation Notice states that it has been issued as a result of Churchill's actions in violation of the Leases from Station Townhouses. The CO Revocation Notice alleges that "[a] recent DCRA investigation determined that the Property is being used for temporary/short-term lodging through a partnership with short term rental housing company Churchill Living." Ex. 2 (CO Revocation Notice). The CO Revocation Notice states that the Certificate of Occupancy will be revoked "unless the Property comes into compliance with the applicable regulations," by, *inter alia*, "discontinuing the unauthorized temporary/short term lodging." *Id.* DCRA's CO Revocation Notice is incorrect: there is no partnership between Appellant and Churchill, and Appellant has played no role in Churchill's unauthorized short-term lodging operations.

Appellant is not Churchill's partner, and has no ownership or other economic interest in Churchill's business. In fact, Station Townhouses has no relationship with Churchill other than a customary, contractual landlord-tenant relationship. Moreover, Appellant's Leases with Churchill provide for compliant six-month or greater residential occupancies and specifically forbid the short-term occupancies Churchill is providing.

Indeed, Station Townhouses was very distressed to receive the CO Revocation Notice and to learn of Churchill's unauthorized actions, all of which flagrantly violate the express terms of the Leases in at least two distinct ways. First, as previously noted, Section 36(a) or 37(a) of the Leases makes clear that "[u]nder no circumstances [is Churchill] permitted to rent, sublet, assign, transfer, or permit space in the Premises to occupants on a short-term or transient basis" and "specifically prohibit[s] [Churchill] from advertising the Premises for rental by short-term or transient occupants on websites." Second, Section 36 or 37 of the Leases broadly prohibit subletting of any nature without landlord's approval. No subletting has been approved and no occupant of any of Churchill's units has been submitted to Appellant for approval for subletting *on a long-term, short-term, or transient-basis, or otherwise*. Instead, Churchill is simply in direct violation of Station Townhouse's relevant lease provisions and is in breach of its Leases.

E. Station Townhouses Takes Immediate Remedial Action

Upon receipt of the CO Revocation Notice, Station Townhouses immediately began taking steps to cause Churchill to discontinue these impermissible uses. First, on account of Churchill's defaults with respect to each and every one of its twenty-six (26) Leases, Station Townhouses and its Management Agent issued 30-Day Notices to Correct the Lease Violation to Churchill, pursuant to D.C. Code § 42-3505.01 ("Evictions"), dated July 9, 2018, demanding that Churchill cease its use of each of the leased units for short-term occupancies (the "**Notices to Quit**"). Copies of the Notices to Quit are attached hereto as Exhibit 7. The Notices to Quit were served on or around July 13, 2018, and matured on or around August 13, 2018.

Second, Appellant and its Management Agent immediately pursued negotiations with Churchill to obtain an agreed termination of its Leases. Appellant's efforts have been successful: to date, Churchill has vacated and terminated its Leases for nine (9) units and Appellant believes that an additional seven (7) units will be vacated, and those Leases terminated, by early October;

only ten (10) of its twenty-six (26) original Leases will remain. And as to those ten (10) units, Churchill has confirmed that occupancies of those units will only occur for periods of thirty (30) days or longer. Churchill has represented that with respect to the seventeen (17) units still in Churchill's possession, it has discontinued any short-term booking options effective August 31, 2018, and has canceled or moved to other locations any previously made short-term reservations at Station House for the period after August 31, 2018. Thus, as of August 31, 2018, Station Townhouses expects that there will be no continuing short-term uses by Churchill. Appellant and its Management Agent are currently negotiating with Churchill to formalize these understandings.

To the extent that Churchill fails to accept a formal agreement as to the occupancy of the remaining units or otherwise fails to cure its impermissible and illegal behavior in its remaining units, the Notices to Quit that Appellant issued to Churchill are mature, and Appellant is prepared to file Complaints for Possession in the Landlord & Tenant Branch of the Superior Court of the District of Columbia (the "**Eviction Actions**"). Appellant will continue its informal efforts with Churchill to achieve a consensual resolution, and, if that is not successful, will file and vigorously and diligently prosecute the Eviction Actions to terminate the remaining Leases through the judicial process in the event Churchill refuses to vacate the remaining units voluntarily.

In short, upon receipt of the CO Revocation Notice, Appellant took swift and efficient action to enforce the Leases and terminate the impermissible short-term uses in Churchill's remaining units. Appellant continues to do so.

IV. THE CO REVOCATION NOTICE WAS ISSUED IN ERROR

A. Station Townhouses Has Not Violated Section 110.5.1

The CO Revocation Notice rests on a fundamentally flawed premise: that the “Property is being used for temporary/short term lodging through a partnership with” Churchill, which use exceeds the scope of the Certificate of Occupancy in violation of Section 110.5.1. But no such “partnership” with Churchill exists. Appellant is strictly and only Churchill’s landlord.

Appellant — as the Property’s owner, Certificate of Occupancy holder, and landlord — has never used, nor entered into any written agreement permitting the use of, any of the units on the Property for short-term or transient occupancy. The CO Revocation Notice was therefore issued in error. The DCRA’s decision should be reversed.

Appellant has not conducted or directed Churchill’s short-term occupancies, and Appellant has no relationship with Churchill other than as landlord under the Leases. And in its capacity as landlord, Appellant has done, and continues to do, everything within its power to ensure that the use and occupancy of Station House conform with the Certificate of Occupancy and applicable Zoning Regulations since being made aware of Churchill’s lease violations. As noted, each of Appellant’s Leases with Churchill are for a continuous tenancy for a minimum term of six (6) months. Appellant’s Leases for each unit also forbid short-term rentals and sublets, and even go so far as to prohibit Station House tenants from “advertising the [leased] Premises for rental by short-term or transient occupants on websites such as Airbnb, craigslist, Expedia, Hotels.com or any other similar locator sites.” Ex. 6, Sections 37 and 37(a).

Accordingly, Appellant’s actions are consistent with the Property’s permitted use and occupancy as a “residential” building under both the Certificate of Occupancy and PUD. *See* 11-B DCMR § 200.2(bb) (defining “residential” use category for purpose of Zoning Regulations as, *inter alia*, “[a] use offering habitation on a continuous basis of at least thirty (30) days. The continuous

basis is established by tenancy with a minimum term of one (1) month or property ownership[.]”).

By contrast, Churchill has sublet or licensed its apartments, and advertised for and allowed short-term occupancies of its units in flagrant violation of its Leases and applicable law. To ensure the Property remains compliant with the Certificate of Occupancy and PUD, Appellant quickly moved to enforce the Leases by issuing Notices to Quit to Churchill, and thereafter successfully negotiated a termination of a substantial number of the Leases. Appellant continues to negotiate with Churchill to bring the remaining units into compliance with the Leases, but Appellant will promptly file the Eviction Actions to recover them if a satisfactory agreement with Churchill cannot be reached. Accordingly, there is simply no basis, in law or fact, to support the DCRA’s conclusion that the Property is being used for temporary/short term lodging through a “partnership” with Churchill.

For these reasons, the Board should reverse the DCRA’s decision.

B. The Property’s Use Is Consistent with the Certificate of Occupancy

In addition, and in the alternative, even assuming that Churchill’s improper conduct can somehow be imputed to Appellant — and it cannot and should not be — the actual occupancy of “the Property” still conforms with the residential use restrictions in the Certificate of Occupancy and PUD. Churchill’s unauthorized operations in a small minority of the Property’s apartments do not convert the use and occupancy of the entire Property into a non-residential dwelling.

Churchill is only one out of over 300 other tenants of the Property. Its presence is equal to no more than approximately 0.33% of the Property’s residential tenant population. And Churchill’s unauthorized short-term rental lodging operation occupied, at most, twenty-six (26) out of the Property’s three hundred seventy-eight (378) apartment units, or no more than 6.88% of the Property’s total units; *over 93% of the Property is not occupied by Churchill’s violative*

short-term lodging operation. The actual occupancy of the Property continues to be used overwhelmingly for residential purposes, as was and is intended. The use of less than 7% of the Property's apartment units for short-term/transient lodging offered by a single tenant — comprising no more than 0.33% of the tenant base — cannot and should not, as a matter of law or equity, constitute a violation of the Property's residential use restriction.

Because the actual occupancy of the Property does not exceed the scope of the issued Certificate of Occupancy, there can be no violation of 12-A DCMR § 110.5.1. The DCRA's decision should be reversed for this reason, too.

V. PROOF

At the public hearing in this Appeal, Appellant intends to present argument of counsel and to offer into evidence all statements and exhibits attached hereto. Appellant reserves the right to amend and/or to supplement this Statement of Appeal and to present or offer additional arguments, information, data, documents and/or exhibits not included herewith at the public hearing in this matter.

In addition, Appellant intends to offer the testimony of the following witness at the public hearing in this matter:

Salil S. Sheth
Senior Vice President, Residential
Roseland, A Mack-Cali Company

Mr. Sheth may testify regarding the Leases with Churchill, and Churchill's breaches thereof.

Mr. Sheth may also testify about Appellant's and the Management Agent's remedial actions taken against Churchill to date on account of Churchill's Lease violations, including but not limited to, issuing Notices to Quit to Churchill and the filing of the Eviction Actions.

Appellant reserves the right to amend and/or supplement its witness list, to identify additional witnesses at a later time, and/or to call as a witness at the public hearing in this Appeal

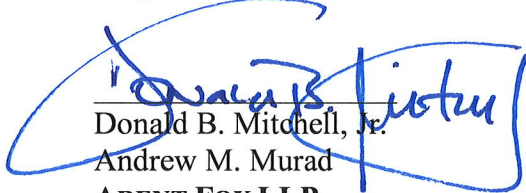
any and all witnesses identified by other parties to this action. Appellant further reserves the right to call any rebuttal witnesses that are appropriate.

VI. CONCLUSION

For all the foregoing reasons, and any arguments, exhibits, and/or testimony to be presented at the hearing in this matter, Station Townhouses requests that the BZA grant its appeal and reverse the DCRA's June 21, 2018 Notice to Revoke Certificate of Occupancy #CO1503518 Issued to 701 2nd Street, N.E., d/b/a Station House.

Dated: August 20, 2018

Respectfully submitted,



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