

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Appeal No. 14287 of LCP, Inc., pursuant to Sections 8102 and 8206 of the Zoning Regulations, from the decision of the Acting Administrator of the Building and Land Regulations Administration, dated February 14, 1985, proposing to revoke Certificate of Occupancy No. B190996 for the use of the premises as a restaurant in a C-2-A District at the premises 4926 Wisconsin Avenue, N.W., (Square 1671, Lot 20).

HEARING DATE: May 15, 1985

DECISION DATE: June 6, 1985

FINDINGS OF FACT:

1. The appellant LCP, Inc, is the lessee of the subject premises. Appellant is appealing the decision of the building and Land Regulations Administration proposing to revoke its Certificate of Occupancy to use the subject premises as a restaurant.

2. The subject site is located on the west side of Wisconsin Avenue between Fessenden Street to the north and Willicott Street to the south and is known as premises 4926 Wisconsin Avenue, N.W. The site is located in a C-2-A District.

3. The site is improved with a two story structure housing a restaurant business. The first floor is operated under the tradename "Patton's; the second floor is operated under the tradename "Friendship Station." On each floor, 199 patron seats are provided in fixed fashion. There is a separate entrance to each floor.

4. The first floor operates Monday through Sunday. The second floor is open only when live entertainment is featured. Entertainment occurs between three and four times a week. The second floor is also open for private parties.

5. The entertainment is advertised in the Washington Post and the Weekender every Friday. In other promotional material, such as match covers, Friendship Station has advertised itself as a "dancing saloon" The first floor provides entertainment through record playing. Both levels provide dancing and food and drinks.

6. All admission charges are collected at the front door of each floor before admittance. On crowded nights where there is usually a waiting time to gain entrance admission charges varying from \$1.00 to \$2.00 are collected on the first floor from 9:00 P.M. and cease about one hour prior to closing. The admission fee offsets the revenue that was received from the sale of food and liquor. After 10:00 P.M. 90% of the patrons were coming to drink. On the second floor admission charges are collected before admission and are continued until closing time. The admission charge for the second floor varies from \$1.00 to \$8.00 depending upon the renown of the entertainment and its cost to book at Friendship Station. Representations were made at the Public Hearing that the subject facility ceased collecting all admission charges as of March 3, 1985. On Friday and Saturday nights the facility stops admitting patrons at 2:30 A.M. for both floors. On weekdays admission ceases at 1:30 A.M. for both floors.

7. As a patron enters the first floor there is a small bar on the right with ten to twelve stools. On the left is an elevated area with approximately forty seats, tables and chair seats. There is a larger bar farther back and another elevated area with forty to forty-five seats. The upstairs is a room approximately thirty feet by ninety feet with a stage on the far end, bathrooms and a bar at the end. It's an open area so patrons can view the entertainment.

8. On June 15, 1982 the appellant filed an application for a certificate of occupancy to use the subject premises as a restaurant. Appellant was issued a Certificate of Occupancy No. B130996, dated December 17, 1982, to use the subject premises as a restaurant seating 199 persons on the first floor, 199 persons on the second floor and basement for storage.

9. On June 1, 1983 a public hall license was issued to the appellant. Upon a complaint received on August 19, 1983 the Zoning Administrator determined that the issuance of the public hall license was in error. The certificate of occupancy in existence then was for a restaurant. There was no certificate of occupancy for a public hall. On October 14, 1983 the appellant was notified by certified mail that the said license was issued in error and that a prerequisite for zoning approval for use of the premises as a public hall was compliance with the off-street parking requirements. The appellant was advised of the parking requirements. The Zoning Administrator requested a surveyor's plat and floor plans so that computations could be made to determine the exact number of parking spaces required for use of the premises as a public hall.

10. On December 27, 1983 the appellant was again notified by mail of his right to petition the Board of Zoning Adjustment (BZA) and request a variance from the parking requirements. On January 18, 1984 the appellant responded to the two aforementioned letters indicating that the BZA had approved accessory parking immediately to the rear of the subject premises and that should resolve the concerns of the Zoning Administrator. On February 13, 1984 the Zoning Administrator advised appellant that the aforementioned relief granted by the BZA did not inure to the patrons of the subject establishment. That relief was limited to the employees of Friendship Station. Appellant was also advised that the continued use of the premises as a public hall was in violation of the Zoning Regulations.

11. All the Public Hearing of May 15, 1985 the appellant advised the Board that it could not apply for a Certificate of Occupancy for use of the subject premises as a public hall since it did not have the physical ability on the subject lot to satisfy the public hall requirements.

12. On June 18, 1984 the appellant was advised that an inspection revealed the use of the premises as a public hall was in violation. The Zoning Administrator then referred the matter for enforcement action.

13. By letter dated February 14, 1985 the appellant was advised by the Acting Administrator, of the Building and Land Registration Administration, of the Government of the District of Columbia, Department of Consumer and Regulatory Affairs, as follows:

"This is official notice to you that the undersigned hereby proposes to revoke Certificate of Occupancy Number B130996 issued for the premises of 4926 Wisconsin Avenue, N.W., Washington, D.C. The proposed action is taken pursuant to the Certificate of Occupancy Rules of Procedure (hereinafter "the Rules") published at 29 DCR 5571. Section VIII (a) of the rules provides in relevant part that: Any certificate of occupancy issued pursuant to these rules may be revoked by the Director, after notice if the actual occupancy does not conform with that permitted. . . .

The grounds for such action are that 1) you applied for and were issued a certificate of occupancy for a "Restaurant" at 4926 Wisconsin Avenue, N.W. and 2) the premises of 4926 Wisconsin Avenue, N.W. has been and continues to be operated as a public hall.

14. On March 1, 1985 appellant filed an appeal of the proposed revocation with the BZA. The appeal was scheduled for the public hearing of May 15, 1985.

15. On May 1, 1985 appellant filed a Motion for Stay of Hearing pending judicial procedures. On April 26, appellant was arraigned before the Superior Court of the District of Columbia on a criminal charge of operating a public hall without a Certificate of Occupancy (D.C. Superior Court Criminal Division No. D1428-85). A status hearing in the criminal matter was scheduled for May 17, 1985; trial was set for June 20, 1985.

16. The Board entertained the appellant's Motion for Stay as a preliminary matter at the public hearing on May 15, 1985. The Chair denied the Motion. It was the opinion of the Chair that in the first instance, the Zoning Administrator and the Board of Zoning Adjustment have the authority and expertise with respect to the construction and interpretation of the statute.

17. The appellant argued that resolution of this appeal requires definition of the term "public hall," as employed in the Zoning Regulations to describe a permitted use. It is undisputed that the Zoning Regulations do not define "public hall," or, for that matter, either of the two component words of the term. Section 199.8 of the Regulations provides that undefined terms shall have the meanings given in "Webster International Dictionary. A review of WEBSTERS Third New International Dictionary of the English Language, Unabridged (G. & C. Merriam Company), however, disclosed that "public hall" is not defined therein. The individual words "public" and "hall" are defined by Websters as:

Public-open to common or general use, participation, enjoyment, etc.

Hall - a large imposing building used for public or semi-public purposes; the assembly room of a hall; hence any large room for assembly; as a lecture hall; dance hall.

18. The Zoning Administrator's decision in the subject case was based not on a definition but on the Board's Order in BZA Order No. 10150, dated September 23, 1969, the Appeal of the Citizens Association of Georgetown. In that case the appellants appealed the decision of the Zoning Administrator in approving a certificate of occupancy for a proposed retail record shop-restaurant seating 183 persons as a restaurant. The appellant therein contended that the use of the premises was a public hall and restaurant and that the establishment was required to provide off-street parking spaces for such uses. In that case the Board found that the property was improved with a brick structure used as a retail record shop and restaurant seating 183 persons and that it had a Certificate of Occupancy for restaurant use. An admission charge of \$2.00 or \$3.00 was levied at the door and was credited against the cost of food or drink

obtained by patrons. Live music for dancing was also provided. The owner provided the live entertainment after 8:00 P.M. and charged a minimum at the door. The Board found that a license for a public hall cannot issue where the Certificate of Occupancy reads "restaurant". The Board concluded that a restaurant use existed. As music for dancing was provided, the seating capacity of 183 persons is in random fashion, and the reasons for persons entering the premises was not able to be defined by the owner the Board held that patrons enter to dance and to be entertained, as occurs in public halls, in addition to the purpose of obtaining refreshments or meals as in restaurants. The Board further concluded that the nature of the activities and mode of operation of the subject premises are a public hall and a restaurant, requiring both certificates of occupancy. The decision of the Zoning Administrator was reversed and the appellant upheld.

19. Advisory Neighborhood Commission 3E by letter dated May 7, 1985, reported that it voted to support revocation of the subject certificate of occupancy. The reasons for the ANC recommendation were based on the appellant's proceedings before the Alcoholic Beverage Control Board, the asserted parking problems caused by the appellant and BZA Order No. 14098, dated May 4, 1984, referencing a parking lot to the rear of the subject site used for the employees of Friendship Station.

The Board is required by statute to give "great weight" to the issues and concerns of the ANC reduced to writing and on which issues and concerns a recommendation is based. The Board found that the report of the ANC did not address itself to the legal issue presented by this appeal namely the issue of whether the appellant was operating a public hall.

20. At the public hearing the Board granted party status to Ms. Merriam Wilson of 4215 Elicolt Street party status. The witness lives in the subject square. The alley to the rear of her premises is the parking lot to the rear of the subject premises. Ms. Wilson supported the revocation of the certificate of occupancy. Her reasons were based on the adverse affect of the subject facility with crowds, noise, litter, and disturbances in the parking lot. The Board again found that the witness did not address herself to the legal issue involved in the appeal namely whether the subject premises was used as a public hall.

21. The witness also testified to the existence of handbills scattered throughout the neighborhood in which live entertainment was advertised for the second floor of the site and on which handbills an admission fee was listed. Such announcements, according to the witness, were distributed after March 3, 1985. The appellant rebutted that said

announcements were not prepared by it and that it gave no permission for their issuance.

22. The appellant argued that Appeal of Citizens Association of Georgetown did not purport to establish a definition for public hall. Rather, that decision merely held that three considerations, provision of music for dancing, random customer seating, and patronage for purposes of dancing and entertainment, in addition to food and beverage consumption, combined to establish public hall use in that particular instance.

23. The appellant further argued that the District of Columbia Court of Appeals has held that comparison of the proportion of revenues derived from different uses is an appropriate means of determining whether a particular use is principal, or merely accessory or incidental. Association for Preservations of 1700 Block of N Street, N.W. and Vicinity V. District of Columbia BZA 384 A 2nd 688, 673-674 (D.C. 1978). The appellant argued that the validity of appellant's certificate of occupancy for its consistent and ongoing use of the premises as a restaurant is undisputed. Rather, its offense, if any, was to utilize a portion of its premises for an additional, albeit related, purpose.

24. The Board finds that the contentions of the appellant that the Zoning Administrator did not consider patron motivation for entering the establishments and whether a particular use is principal, accessory or incidental are without merit. The Zoning Administrator did not testify to such matters on his direct testimony. The appellant accordingly cannot on cross-examination exceed the scope of the direct testimony of the Zoning Administrator.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and the evidence of record, the Board concludes that the Board's Order No. 10150, dated September 23, 1969, the Appeal of the Citizens Association of Georgetown is controlling in the subject appeal, the appellant's contention not WITHSTANDING. The sole issue before the Board is whether the appellant was operating a public hall for which it had no Certificate of Occupancy. The questions of an adverse affect on the neighborhood because of noise, litter, crowds and parking problems is not properly before the Board. The Board is persuaded by the evidence of the nature of the activities and the mode of operation that the appellant is conducting a public hall on the subject premises and so concludes. Accordingly, it is ORDERED that the appeal is DENIED and the decision of the Zoning Administrator is UPHeld.

The Board concludes that it has afforded the ANC the "great weight" to which it is entitled.

VOTE: 4-0 (Maybelle T. Bennett, Charles R. Norris, William F. McIntosh and Carrie L. Thornhill to deny; Douglas J. Patton not present, not voting).

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

ATTESTED BY:



CECIL B. TUCKER  
Acting Executive Director

FINAL DATE OF ORDER: 19 FEB 1986

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

APPEAL NO. 14287/DON17