GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Appeal No. 18114-A of Ward 5 Improvement Association, pursuant to 11 DCMR §§ 3100 and 3101, from decisions of the Zoning Administrator, Department of Consumer and Regulatory Affairs, to issue Certificate of Occupancy No. 1001838 on April 21, 2010, Certificate of Occupancy No. 1002471 on June 22, 2010, and Certificate of Occupancy No. CO1101152 on June 24, 2011, all for a restaurant with nightclub (not a sexually oriented business establishment), in the C-M-2 District at premises 2127 Queens Chapel Road, N.E. (Square 4258, Lot 34).

HEARING DATES:	October 26, 2010 and September 27, 2011
DECISION DATES:	December 7 and 14, 2010, and February 8, March 29, July 12, September 20, and November 8, 2011
DATE OF COURT DECISION REMANDING TO BOARD:	August 21, 2014

BRIEFING ORDER ON REMAND

On August 24, 2012, the Board of Zoning Adjustment ("Board") issued its order in Appeal No. 18114, in which the Appellant Ward 5 Improvement Association challenged the certificates of occupancy that authorized the Stadium Club to operate as "Nightclub and Restaurant with accessory parking (Not a Sexually Oriented Business Establishment)." In addition to the Appellant, the parties to the appeal were the Appellee Department of Consumer and Regulatory Affairs, the Intervener Stadium Group LLC, and Advisory Neighborhood Commission ("ANC") 5B. As a result of redistricting that occurred subsequent to the date of the Board's order, ANC 5C is now the "ANC for the area within which the property that is the subject of the appeal is located" and is therefore substituted for ANC 5B as a party to this proceeding. (*See* 11 DCMR § 3199.1(a)(4), definition of "Party".)

That order was subsequently vacated and remanded by the District of Columbia Court of Appeals, in *Ward 5 Improvement Association v. District of Columbia Board of Zoning Adjustment*, 98 A.3d 147 (D.C. 2014). The Court of Appeals' opinion included the following remand instruction:

> On remand, the BZA is directed to consider whether the ZA erred in granting Stadium Club the second permanent certificate of occupancy on June 24, 2011, given the information available to the ZA at that time.[17] In particular, the BZA shall consider whether the kind of dancing featured at Stadium Club involves "fondling," "erotic touching," or acts of "sexual stimulation or arousal," as the BZA interprets those terms in light of its precedent. The BZA may consider whether these activities occur despite Stadium Club's "Rules and Regulations for Dancers" that purport to ensure compliance with zoning requirements.

98 A.3d at 156 (D.C. 2014).

The Board's deliberations on this remand are scheduled for June 9, 2015.

The Board hereby directs the Appellant, Appellee, and Intervenor to submit to the Office of Zoning, and serve upon the other parties by 3:00 p.m. on June 2, 2015, a memorandum of no more than 20 pages in length double-spaced advising the Board as to how it should fulfil the remand instructions. ANC 5C may provide such comments as it sees fit.

Each memorandum must address the following issues raised in the Court of Appeals' opinion:

1. What information was available to the Zoning Administrator ("ZA") at the time of issuance of the second permanent certificate of occupancy on June 24, 2011?

2. How should the Board define key terms in the regulation listing "specified sexual activities," particularly "fondling," "other erotic touching of human genitals, pubic region, buttock or breast," and acts of "sexual stimulation or arousal," considering both the ZA's interpretation and that "[w]ords not defined" in the Zoning Regulations "shall have the meanings given in Webster's Unabridged Dictionary." (11 DCMR § 199.2.)

3. How should the Board distinguish "fondling" from "other erotic touching of the human genitals, pubic region, buttock, or breast"?

4. Whether the Zoning Administrator reasonably made determinations regarding erotic touching at the Stadium Club, including whether the activities described by witnesses who attended the Stadium Club were consistent with the ZA's determinations, and whether the "Rules and Regulations for Dancers" and other measures implemented by the managers at the Stadium Club were effective to ensure compliance with zoning requirements.

5. Whether evidence in the record adequately supports a determination by the ZA that the type of activity occurring at the Stadium Club does not promote "sexual stimulation or arousal" and therefore would not constitute a "specified sexual activity," considering especially the Board's decision in Appeal No. 13967 (Nov. 22, 1983, California Steak House, Inc.).

6. Whether the Board should evaluate potential acts of sexual stimulation or arousal by considering the intent of the provider of a specific type of nude dancing or some other metric such as a "reasonable person" standard.

The memoranda shall be based solely upon the record in this case and shall not include any materials not before the Board in the original proceedings. All factual assertions shall be followed by citations to the transcript page(s) or exhibit(s) that support the contention. No replies shall be permitted.

This Briefing Order on Remand is not a final order of the Board and is therefore not the proper subject of a motion for reconsideration.

Accordingly, it is **ORDERED** that the Board **APPROVES** the issuance of this Order.

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
The majority of the Board members approved the issuance of this order.

(Lloyd J. Jordan, Marnique Y. Heath, Jeffrey L. Hinkle, and Robert E. Miller to approve issuance)

ATTESTED BY: _____

SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: May 21, 2015