



District Department of Transportation



Public Space Management Branch
1100 4th Street SW / 2nd Floor
Washington, DC 20024

Tel. (202)442-4670 Fax (202)442-4867 Inspections: (202)671-7050

January 28, 2015

ANC 2A
ANC 2A03

DDOT Tracking Number 10174349

Dear ANC2:

This is to notify you of an application to occupy public space for the purpose of New Sidewalk Cafe Un-Enclosed at the premises at 924 25TH STREET NW.

Enclosed are plans showing the proposed work. Please review the application and plan and return this letter to the Public Space Management Branch (PSMB) advising it whether or not ANC2 has any objections to the application. The response must be received at the PSMB no later than thirty (30) days from the postmarked date of this letter, excluding Saturdays, Sundays, and legal holidays. If a response is not received within that period it is assumed that ANC2 has no objections to the application. If ANC2 has objections, they must be provided to the PSMB in writing and with supporting details. Please provide ANC2's response in the space below and return this letter with any correspondence pertaining to this application to:

District Department of Transportation
Public Space Management Branch
1100 4th Street S.W. / 2nd Floor,
Washington DC 20024,

Please Note: For 2's response to carry "Great Weight", this request must be voted on by the commission as a whole at a properly noticed meeting that is open to the public.

If you have any questions, please feel free to contact the assigned technician at kisha.allen@dc.gov or call (202) 442-4670 with questions. (FAX: 202-535-2221)

Attachment(s)

PLEASE COMPLETE THIS & RETURN TO THE PUBLIC SPACE MANAGEMENT BRANCH

Date of ANC Vote: 3/18/2015 (please attach any resolution, if available)

ANC2 has no objection to this application.

ANC2 has the following objections to this application:

See attached.

(Please attach additional pages if necessary)

Name: Patrick Kennedy Title: Chair

Signature: [Handwritten Signature] Date: 4/10/2015



Advisory Neighborhood Commission 2A

"Serving the Foggy Bottom and West End communities of Washington, D.C."

April 6, 2015

Mr. Matthew Marcou, Chairperson
DDOT Public Space Committee
1100 4th Street, S.W. – 3rd Floor
Washington, DC 20024
publicspace.committee@dc.gov

RE: Application by River Inn/DISH for a Public Space Rental: Unenclosed Sidewalk Café (924 25th Street, NW; Tracking No.: 10174349)

Dear Chairperson Marcou,

At its regular meeting on March 18, 2015, Advisory Neighborhood Commission 2A ("**ANC 2A**" or "**Commission**") considered the above-referenced matter. With seven of eight commissioners present, a quorum at a duly-noticed public meeting, the Commission voted to object to this application by a vote of **(6-0-1)**, based on the Commission's belief that the determination by the Zoning Administrator that this café is permitted by-right was made in error. The Commission believes that outdoor service at this location, in a rowhouse residential area where no other commercial establishments are nearby, would be unprecedented and potentially create deleterious impacts on peace, order, and quiet in the neighborhood.

Please see attached, our appeal of the Zoning Administrator's November 2014 determination in this case for further information on the basis of our objection. Also attached is the Zoning Administrator's determination from 2002 which had proscribed the issuance of a sidewalk café permit at this location, prior to the Applicant seeking and receiving a different opinion last year.

Commissioners Patrick Kennedy (Patrick.Kennedy@anc.dc.gov) and John Williams (2A03@anc.dc.gov) are the Commission's representatives in this matter.

ON BEHALF OF THE COMMISSION.

Sincerely,

Patrick Kennedy
Chairperson



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



FORM 125 - APPEAL

Before completing this form, please review the instructions on the reverse side.
Print or type all information unless otherwise indicated.

Pursuant to §§ 3100 and 3101 of the Zoning Regulations of the District of Columbia, an appeal is hereby taken from the

administrative decision of: Name of administrative officer and title
the Zoning Administrator for the District of Columbia

made on Date of decision
November 24, 2014 **that states**

the expansion of the River Inn at 924 25th Street with a sidewalk cafe would be permitted as a matter of right, in violation of the prohibition of expansion of hotels in residential zones in 11 DCMR § 350.4(e).

Address(es) of Affected Premises	Square(s)	Lot(s)	Zone Districts
924 25th Street NW	0016	0884	R-5-B

Present use of Property: hotel

Proposed use of Property: hotel

Name of Owner of Property: ALAMAC, LLC

Address: 1660 L Street NW, Suite 600 Washington DC 20036

Phone No(s): 2024192460 **Fax No.:** **E-Mail:**

Name of Lessee:

Address:

Phone No(s): **Fax No.:** **E-Mail:**

Name of Appellant, if other than Owner: Advisory Neighborhood Commission 2A

Address: 2020 Pennsylvania Ave NW Suite 393 Washington DC

Phone No(s): 2024299000 **Fax No.:** **E-Mail:** 2a01@anc.dc.gov

I/We certify that the above information is true and correct to the best of my/our knowledge, information and belief. Any person(s) using a fictitious name or address and/or knowingly making any false statement on this appeal is in violation of D.C. Law and subject to a fine of not more than \$1,000 or 180 days imprisonment or both. (D.C. Official Code § 22-2405)

Date: 4/9/2015 **Signature of Appellant*:** Patrick Kennedy, Chair

Waiver of Fee - Status of Appellant

ANC DC Government Agency NCPC Citizens' Association/Association created for civic purposes that is not for profit

To be notified of hearing and decision (Appellant or Authorized Agent*):

Name: Kinley R. Bray, Esq. Griffin, Murphy, Moldenhauer & Wiggins, LLP

Address: 1912 Sunderland Place NW, Washington DC 20036

Phone No(s): 2024299000 **Fax No.:** **E-Mail:** kbray@washlaw.com

* If an appeal is filed by the agent of the Appellant, Form 125 - Appeal shall be accompanied by a letter signed by the Appellant authorizing the agent to act on its behalf in this appeal.

ANY APPLICATION THAT IS NOT COMPLETED IN ACCORDANCE WITH THE INSTRUCTIONS ON THE BACK OF THIS FORM WILL NOT BE ACCEPTED.

Board of Zoning Adjustment
CITY OF WASHINGTON
CASE NO. 18023
EXHIBIT NO. 1



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



FORM 125 - APPEAL

Before completing this form, please review the instructions on the reverse side.
Print or type all information unless otherwise indicated.

Pursuant to §§ 3100 and 3101 of the Zoning Regulations of the District of Columbia, an appeal is hereby taken from the

administrative decision of: Name of administrative officer and title
Matthew LeGrant, Zoning Administrator

made on Date of decision **that states**

November 24, 2014 stating that the expansion of the River Inn with a sidewalk cafe would be permitted as a matter of right, in violation of the prohibition of expansion of hotels in residential zones pursuant to 11 DCMR 350.4(e).

Address(es) of Affected Premises	Square(s)	Lot(s)	Zone Districts
924 25th Street NW	16	884	R-5-B

Present use of Property: hotel

Proposed use of Property: hotel

Name of Owner of Property: ALAMAC, LLC

Address: 1660 L Street NW, Suite 600 Washington DC 20036

Phone No(s): **Fax No.:** **E-Mail:**

Name of Lessee:

Address:

Phone No(s): **Fax No.:** **E-Mail:**

Name of Appellant, if other than Owner: Advisory Neighborhood Commission 2A

Address: 2020 Pennsylvania Avenue NW #293

Phone No(s): **Fax No.:** **E-Mail:**

I/We certify that the above information is true and correct to the best of my/our knowledge, information and belief. Any person(s) using a fictitious name or address and/or knowingly making any false statement on this appeal is in violation of D.C. Law and subject to a fine of not more than \$1,000 or 180 days imprisonment or both. (D.C. Official Code § 22-2405)

Date: 04/09/2015 **Signature of Appellant*:**

Waiver of Fee - Status of Appellant

ANC DC Government Agency NCPD Citizens' Association/Association created for civic purposes that is not for profit

To be notified of hearing and decision (Appellant or Authorized Agent*):

Name: Kinley R. Bray Griffin, Murphy, Moldenhauer & Wiggins, LLP

Address: 1912 Sunderland Place NW, Washington DC 20036

Phone No(s): 202-429-9000 **Fax No.:** **E-Mail:** kbray@washlaw.com

* If an appeal is filed by the agent of the Appellant, Form 125 - Appeal shall be accompanied by a letter signed by the Appellant authorizing the agent to act on its behalf in this appeal.

Board of Zoning Adjustment
District of Columbia
CASE NO. 19023

ANY APPLICATION THAT IS NOT COMPLETED IN ACCORDANCE WITH THE INSTRUCTIONS ON THE BACK OF THIS FORM WILL NOT BE ACCEPTED.



Advisory Neighborhood Commission 2A

"Serving the Foggy Bottom and West End communities of Washington, D.C."

April 9, 2015

Mr. Lloyd Jordan
Chairman
District of Columbia Board of Zoning Adjustment
441 Fourth Street, N.W.
Suite 210 S
Washington, DC 20001

RE: Appeal by Advisory Neighborhood Commission 2A of the Zoning Administrator's November 24, 2014 Decision Allowing the Expansion of an Existing Hotel in the R-5-B Zone District at Premises 924 25th Street, N.W.

At its regular meeting on February 18, 2015, Advisory Neighborhood Commission 2A (**"ANC 2A"** or **"Commission"**) considered the above-referenced matter. With seven of eight commissioners present, a quorum at a duly-noticed public meeting, the Commission voted unanimously (**7-0-0**) to authorize the filing of an appeal in this case.

On behalf of the Commission, I hereby authorize Kinley R. Bray and the law firm of Griffin, Murphy, Moldenhauer & Wiggins, LLP to file an appeal of the November 24, 2014 decision of the Zoning Administrator allowing the expansion of an existing hotel in the R-5-B Zone District at premises 924 25th Street NW. Ms. Bray and her law firm are authorized to file this appeal and act as our agent in this matter.

Sincerely,

Patrick Kennedy
Chairperson

Board of Zoning Adjustment
District of Columbia

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

**Appeal of Advisory Neighborhood Commission 2A
Regarding 924 25th Street NW**

STATEMENT OF APPEAL

The Appellant, Advisory Neighborhood Commission 2A, by and through its undersigned counsel, respectfully submits this Statement of Appeal of the decision of Matthew LeGrant, Zoning Administrator, dated November 24, 2014 (the “Determination”), which authorized the construction of a sidewalk café expanding the existing hotel at 924 25th Street NW (the “Property”). The Determination erroneously permits the expansion of an existing hotel in the R-5-B Zone District in violation of 11 DCMR § 350.4(e). Therefore, for the reasons set forth above, the Determination should be REVOKED.

I. JURISDICTION

The Board of Zoning Adjustment is authorized to hear this appeal pursuant to The Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended, D.C. Official Code §§ 6-641.01 to 6-641.15 (formerly codified at D.C. Code §§ 5-413 to 5-432 (1994 Repl. & 1999 Supp.))) (the “Zoning Act”) and 11 DCMR § 3100.2.

II. STATEMENT OF FACTS.

The River Inn is a hotel located in the R-5-B Zone District at 924 25th Street N.W. Hotels are strictly regulated in Residence Zones, being only permitted if the hotel was first established prior to May 16, 1980 with a valid certificate of occupancy, and restricted only to the gross floor area approved as of such date. Additionally, “the total area within the hotel devoted to function rooms, exhibit space, and commercial adjuncts may not be increased.” 11 DCMR § 350.4(e).

In 2002, the owners of the Property sought to establish a sidewalk café in the public space adjacent to the hotel building. At that time, Zoning Administrator determined that a sidewalk café was not permitted because the establishment of such a commercial adjunct outside the boundaries of the existing hotel was an impermissible expansion of commercial adjuncts under 11 DCMR § 350.4(e). To our knowledge, and according to the publicly available records of the Board of Zoning Adjustment, the May 16, 2002 letter from Zoning Administrator Derrell Noble was not appealed.

On February 13, 2015, Advisory Neighborhood Commission 2A became aware of the Determination, issued by Zoning Administrator Matthew LeGrant, which determined, without any apparent change in circumstance of the Property or Property owner, that the establishment of a sidewalk café was permitted under the very same provision of the Zoning Regulations. The Determination, although issued in November 2014, was not published to the District of Columbia Department of Consumer and Regulatory Affairs Zoning Determination Letter Archive or otherwise publicly available until on or about February 13, 2015. Upon knowledge of the Determination, the Appellant immediately began investigating the decision and preparing to bring this appeal.

III. ALLEGED ERRORS

The Determination overruled a decision of a previous Zoning Administrator, dated May 16th 2002, but does not appear to be based on any change in fact or circumstance. Zoning Administrator Determination letters have the force of law, represent appealable decisions, and are relied upon by ANC's and community organizations for planning purposes. The owner of the River Inn did not appeal the 2002 determination letter. Absent a change in fact, circumstance, or the law being applied, the decision should stand. The appeal process exists to allow property owners to

allege error in such decisions; failure of the property owner to appeal should end the inquiry. It is important for the community to be able to rely on the decisions of the Zoning Administrator, in an administrative capacity, and the Board of Zoning Adjustment, as a quasi-judicial body interpreting those decisions.

Faced with two contradictory letters from two different Zoning Administrators with no change in fact or circumstance, the ANC consulted first with the Zoning Administrator, and then with outside counsel to determine whether the second letter was an attempt to correct a clear cut mistake in the first. The Appellant has come to the conclusion that the two letters were based on a fundamentally different interpretation of the law and the Zoning Administrator's role as it relates to interpreting 11 DCMR, Chapter 3 governing the expansion of activities by Commercial Adjuncts to hotels, specifically, the expansion of activities into public spaces. The Appellant submits that this issue has the potential for wide-ranging community impact and determined that it was in the community interest to establish both clarity of procedure and clarity of law in this case.

The language of 11 DCMR § 350.4(e) is clear; there are three restrictions on hotels located in the Residence zones. First, only grandfathered hotels are permitted – the hotel must have been in existence as of May 16, 1980 in order to be permitted. Second, the *gross floor area* of the hotel may not be increased. And third, the *total area within the hotel* devoted to function rooms, exhibit space, and commercial adjuncts may not be increased. The establishment of a sidewalk café is an expansion of the existing dining facility, which is in fact a restaurant open to the public, and therefore a commercial adjunct. A sidewalk café does not impact the gross floor area of the hotel, but it is an expansion of the existing commercial adjunct and will remain under the operation and

control of the hotel; therefore, it is an impermissible expansion of the total area within the hotel devoted to a commercial adjunct, and violates 11 DCMR § 350.4(e).

IV. EXHIBITS

Exhibit A Determination

Exhibit B May 16, 2002

V. CONCLUSION

For the foregoing reasons, and for reasons that will be set forth in the Appellant's Prehearing Statement and at the hearing in this appeal, the Appellant urges the Board to grant the appeal and revoke the Determination.

Respectfully submitted,

GRIFFIN, MURPHY,
MOLDENHAUER & WIGGINS, LLP

By:



Kinley R. Bray
1912 Sunderland Place NW
Washington DC 20036
(202) 429-9000
kbray@washlaw.com

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS



Building and Land Regulation Administration
Office of the Administrator

May 16, 2002

Elizabeth B. Elliott
Chair
Advisory Neighborhood Commission 2A
725 24th Street NW
Washington DC 20037

Ref: 924 25th Street NW

Dear Chairman Elliott:

Your May 16, 2002 letter to David Clark, Director, Department of Consumer and Regulatory Affairs (DCRA), regarding an application for a Public Space rental for a sidewalk café at the referenced address has been referred to me for response.

The referenced address is zoned R-5. 11DCMR, Chapter 3, 351.2 (c) states that as a condition for commercial adjuncts as accessory uses to a hotel in an R-5 district that contains 100 or more rooms or suites, "No part of the adjunct or the entrance to the adjunct shall be visible from a sidewalk...". Further, pursuant to 350.4 (d), in a hotel that was in existence as of May 16, 1980, "...commercial adjuncts may not be increased". Therefore, a sidewalk café is prohibited at 924 25th Street NW unless the Board of Zoning Adjustment approves an exception.

I have alerted staff of the Public Space Committee regarding this issue. Please note that while DCRA is a member of the Public Space Committee, the committee is staffed and managed by the District Division of Transportation.

Thank you for bringing this matter to our attention. Do not hesitate to call me at 442-4560 if you have additional questions.

Sincerely,

Derral Noble
Acting Zoning Administrator

cc: David Clark
Theresa Lewis
Leila Franklin
J. Gregory Love
Toye Bello
Anthony Downing

42

941 North Capitol Street, N.E., Suite 2000, Washington, D.C. 20002
Phone: (202) 442-4455 Fax: (202) 442-4863

Board of Zoning Adjustment
District of Columbia
CASE NO. 19023
EXHIBIT NO. 4B