

**OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS  
MONTGOMERY COUNTY, MARYLAND  
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**SPECIAL EXCEPTION OF JOAN SHIH CARDUCCI  
CASE NO. S.E. 85-4**

**ORDER OF REVOCATION**

**Background**

Special Exception 85-4 was granted to Petitioner Joan Shih Carducci by the Hearing Examiner, on December 24, 1985, to permit the operation of a Private Educational Institution to teach Chinese cooking, at 14209 Sturtevant Road, Silver Spring, Maryland. For the reasons outlined below, this order will revoke the special exception in accordance with the recommendation of the Department of Permitting Services (DPS).

On March 17, 2017, Jennyffer Vargas, DPS Permitting and Code Enforcement Inspector, sent a memorandum (Exhibit 4(c))<sup>1</sup> to the Board of Appeals referring the above-captioned case for revocation. On April 12, 2017, the Board of Appeals forwarded the matter to the Office of Zoning and Administrative Hearings (OZAH) for action (Exhibits 1, 2 and 3).

DPS based the revocation request on the following facts, as outlined in Ms. Vargas's email of April 28, 2017 (Exhibit 4):

. . . From my extensive research, I was not able to find any other contact information for Joan Shih, the last recorded SE holder for SE-85-4. However, I attempted multiple inspections and sent a letter to the listed SDAT owner back in December 2015 & November 2016, requesting confirmation of abandonment (attached; property was advertised for sale). I never received a response. When I returned to the property on 3/6/17, the new owners (per the SDAT you provided) were moved in. I spoke to Joanna Lopes who told me they just recently acquired the property and that they didn't know about the SE; there are unpaid fees as well. Mrs. Lopes later sent me an email requesting abandonment as they do not plan on operating the SE. I have also attached copies of a certified mail return receipt from 2015, and the certified mail receipt from the letter sent in 2016. . . .

The documents referenced by Ms. Vargas are in the record as Exhibits 4(a) through 4(e). Based on this documentation and Ms. Vargas's email of April 28, 2017, the Hearing Examiner finds that the registered holder of the special exception is no longer living at the subject site and cannot be located. He further finds that the current property owners seek to have the special exception revoked as abandoned. Given these facts, revocation of the special exception, based on abandonment, appears appropriate

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<sup>1</sup> The file in this ancient case could not be located in OZAH's records. Therefore, a new file was established to contain the revocation documents, and the Exhibit List references only the new exhibits regarding revocation.

### Opinion

Pursuant to Section 7.7.1.B.1. of the 2014 Zoning Ordinance, special exceptions approved before October 30, 2014 must be reviewed under the standards of the Zoning Ordinance in effect on October 29, 2014 (*i.e.*, under the old, 2004 Zoning Ordinance). Since the subject special exception clearly falls into that category, it will be reviewed under the old Ordinance.

Section 59-G-1.3(d) of the old Zoning Ordinance provides, in relevant part:

- (1) If, after making an inspection of a property governed by special exception, the Department finds that the special exception use as granted has been abandoned, it must forward written notice of its findings to the last recorded holder of the special exception and to the property owner, advising of the Department's finding and directing that they forward to the Department, within 60 days from the date of mailing of the notice, a written statement confirming the Department's finding that the special exception has been abandoned or challenging said finding and requesting that said special exception be continued.*
- (2) If the Department receives a written response from the special exception holder and the property owner acknowledges that the special exception has been abandoned, the Department must notify the Board of its findings, and the Board<sup>2</sup>, upon receipt of such notice, must adopt and issue a written resolution finding the special exception to have been abandoned and ordering the special exception revoked.*
- (3) If within the provided 60-day period, the Department receives a written statement from either the special exception holder or the property owner challenging the Department's findings and requesting that the special exception be continued, the Department must notify the Board, and the Board must convene a public hearing, in accordance with the provisions of subsection (e) of this section, to determine whether or not the special exception was abandoned and whether or not the special exception should be revoked.*
- (4) If after 60 days from the date of mailing of the Department's notice, the Department has received no response from either the special exception holder or the property owner, the Department must notify the Board of its findings, and the Board must issue to the special exception holder and the property owner an order to appear before the Board to show cause why the special exception should not be revoked.*
- (5) If neither the special exception holder nor the property owner appears before the Board to show cause why the special exception should not be revoked, the Board must adopt and issue a resolution finding the special exception to have been abandoned and ordering the special exception revoked. . . .*

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<sup>2</sup> Although this section refers to the "Board," meaning the Board of Appeals, the Hearing Examiner is authorized by Section 59-G-1.3(f) of the old Zoning Ordinance to conduct the same proceedings with regard to special exceptions, such as this one, that it has issued.

As detailed above, multiple DPS inspections have revealed that the special exception has been abandoned, and the current property owner has confirmed that the special exception has been abandoned. No response has been received from the special exception holder, and DPS has been unable to locate the special exception holder.

Under the statutory terms quoted above, if DPS receives a written response from both the special exception holder and the property owner acknowledging that the special exception has been abandoned, the Hearing Examiner must find the special exception to have been abandoned and order the special exception revoked. The Code further provides that if the Department has received no response from either the special exception holder or the property owner, a show cause hearing is required to determine whether the special exception should be revoked. The statutory language does not seem to cover a situation, like this one, where a response confirming abandonment has been received from the property owner, but no response has been received from a special exception holder who can no longer be located.

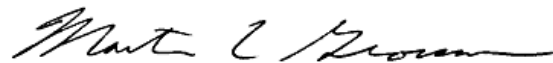
The Hearing Examiner concludes that it would be pointless to issue a notice and schedule a show cause hearing when the indisputable facts clearly establish that the special exception has been abandoned (for years at this point) and DPS cannot find the special exception holder in order to send her notice of the show cause hearing.

The Department of Permitting Services has met its obligations under Section 59-G-1.3(d)(2), and a reasonable reading of that section now requires the Hearing Examiner to issue a finding that the special exception has been abandoned and order the special exception revoked.

### Order

Based on this record, the Hearing Examiner hereby finds that the special exception granted in the above-captioned case has been abandoned. Accordingly, pursuant to Sections 59-G-1.3(d) and 59-G-1.3(f) of the 2004 Zoning Ordinance, Special Exception No. S.E. 85-4 is hereby REVOKED.

Dated: May 26, 2017



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Martin L. Grossman  
Director and Hearing Examiner  
Office of Zoning and Administrative Hearings

cc: Robert S and Joanna N Lopes  
Jennyffer Vargas, Department of Permitting Services  
Planning Department  
Board of Appeals