



Government of the District of Columbia
Advisory Neighborhood Commission
Box 75115
Washington, DC 20013



September 17, 2010

Mr. Clifford Moy
Secretary of the Board of Zoning Adjustments
Office of Zoning
441 4th St NW, Suite 210S
Washington, DC 20001

RE: Authorization for BZA Appeal for C of O at 801 H St NE

Dear Mr. Moy:

At a regularly scheduled and properly noticed meeting on September 9th, 2010, our Commission voted 5-0-0 (with 5 Commissioners required for a quorum) to appeal the administrative decision of the Department of Consumer and Regulatory Affairs Zoning Administrator to approve Certificate of Occupancy #CO1002994 for a “market” at 801 H St NE.

Please be advised that Commissioner Drew Ronneberg and Phil Toomajian are authorized to act on behalf of ANC 6A for the purposes of this appeal. Dr. Ronneberg can be reached at ronneberg6a02@gmail.com or (202) 431-4305.

On behalf of the Commission,

Kelvin J. Robinson
Chair, Advisory Neighborhood Commission 6A

Before the

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

APPEAL OF:)
Advisory Neighborhood Commission 6A for the)
Administrative Decision of DCRA on)
Certificate of Occupancy #CO1002994

Statement of the Applicant

Advisory Neighborhood Commission 6A (ANC 6A) hereby requests that the Board of Zoning Adjustment GRANT the Appeal from the administrative decision of the Department of Consumer and Regulatory Affairs Building and Land Use Regulation Administration approval of the Certificate of Occupancy (C of O) #CO1002994 for 801 H St NE on August 13th 2010 and in support of its appeal states:

SUMMARY OF APPEAL

The Department of Consumer and Regulatory Affairs (DCRA) erred in its decision to grant 7-Eleven a C of O for use as a “market”. The property which is subject to this appeal is located at 801 H St. NE, zoned C-2-B and located within the boundaries of the H Street NE Neighborhood Commercial Overlay District and ANC 6A. The requested reasons are because a “market” use is not defined in the zoning regulations and the establishment has a non-ancillary use which meets the definition of a “fast-food establishment.” Fast-food establishments are only permitted by special exception within the H Street NE NC Overlay (11 DCMR Section 1320.4(a)).

DISCUSSION

Certificate of Occupancy #CO1002994, a copy which is attached to this appeal, states that the applicant is permitted to operate a “market.” However, a “market” is a use that is neither defined in nor permitted by the zoning regulations. ANC 6A asserts that the current C of O should be revoked and a new C of O issued which permits uses defined in the zoning regulations.

Our ANC proffers that a C of O for a grocery store and a fast-food establishment must be issued for the store to legally operate. While the ANC agrees that one of the establishment’s uses is for a grocery store, it has a second non-ancillary use as a fast-food establishment. The store sells fast-food items including chicken wings, pizza, burritos and hot dogs for immediate off-premise consumption. This use cannot be classified as a “prepared food shop” because these items are cooked with roller grills, heat lamps by means other than “microwaves” or “toasters” (11 DCMR 199).

In addition, the establishment satisfies two of the conditions for designation as a fast-food establishment. First, the layout of the store has a service counter with no seating and customers must pay for their food before it is consumed. Second, the place does not possess an on-premise dishwasher and uses disposable tableware.

The last issue is whether the use of as a fast-food establishment is “clearly subordinate to its principal use.” In a BZA case #18027, the Zoning Administrator used the standard that an accessory use must be 15% or less of the primary use in order for it to be subordinate. Based on the ANC’s observations of items sold by the establishment and in-store advertisements, it is clear that the sale of fast food items is not less than 15% of its overall use. As such, the establishment meets the definition as a fast-food establishment and should be required to seek a Certificate of Occupancy for this use.

REQUEST FOR RELIEF

The appellant requests that the Board ORDER the Department of Consumer and Regulatory Affairs to revoke Certificate of Occupancy #CO1002994, because the establishment was issued a C of O for a use that is not permitted by zoning regulations and because it has a non-ancillary use that meets the definition of a fast-food establishment.