

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



Appeal No. 20232 of ANC 6C, pursuant to 11 DCMR Subtitle Y § 302, from the decision made on November 13, 2019 by the Zoning Administrator, Department of Consumer and Regulatory Affairs, to issue Certificate of Occupancy CO2000481 permitting a non-residential floor area ratio exceeding the maximum permitted in the NC-10 Zone at 337 H Street N.E.(Square 777, Lot 52).¹

HEARING DATE: July 1, 2020

DECISION DATE: July 8, 2020

PROPOSED ORDER DENYING APPEAL

This appeal was filed on January 9, 2020 by Advisory Neighborhood Commission 6C (“ANC” or “Appellant”) to challenge a decision made by the Zoning Administrator at the Department of Consumer and Regulatory Affairs (“DCRA”) to issue a certificate of occupancy that allegedly permitted a non-residential floor area ratio (“FAR”) in excess of the maximum permitted in the NC-10 zone at 337 H Street, N.E. (Square 777, Lot 52). Following a public hearing, the Board voted to deny the appeal.

PRELIMINARY MATTERS

Notice of Appeal and Notice of Hearing. By memoranda and letters dated February 19, 2020, the Office of Zoning provided notice of the appeal and of the public hearing to ANC 6C, as the Appellant and the ANC in which the property that is the subject of the appeal is located; Single Member District 6C04; the Zoning Administrator; Lois Jones, the owner of the property that was the subject of the appeal (“Property Owner”); the Office of Planning; the Office of Advisory Neighborhood Commissions; and the Councilmember for Ward 6 as well as the Chairman and three at-large members of the D.C. Council.² Notice was published in the *D.C Register* on February 14, 2020. (67 DCR 1497).

¹ As of October 1, 2022, the zoning functions formerly performed by the Department of Consumer and Regulatory Affairs were assumed by the new Department of Buildings. See D.C. Official Code § 10-561.01 *et seq.*

² The public hearing was originally scheduled for April 8, 2020. On March 11, 2020, Mayor Muriel Bowser declared a state of emergency due to the coronavirus as part of a continued effort to slow the spread of coronavirus infections. The Board suspended all public meetings and hearings scheduled through April 25, 2020 to a later date to be determined once public meetings resumed. (Exhibit 17.) The public hearing on this appeal was rescheduled as a virtual public hearing on July 1, 2020. (Exhibits 19, 20).

Party Status. Pursuant to Subtitle Y § 501.1, the Appellant, DCRA, and the Property Owner were automatically parties in this proceeding. The Board received no requests to intervene.

Appellant's Case. ANC 6C argued that a certificate of occupancy approved by the Zoning Administrator and issued by DCRA improperly permitted a commercial use of an existing building in excess of the applicable limit on nonresidential uses.

DCRA. The Department of Consumer and Regulatory Affairs asked the Board to deny the appeal because the issuance of the certificate of occupancy was consistent with zoning requirements.

Property Owner. The Property Owner urged the Board to dismiss the appeal as untimely or to deny it because issuance of the certificate of occupancy did not violate any zoning requirements. (Exhibit 22.)

FINDINGS OF FACT

1. The property that is the subject of this appeal is a corner lot located at the southwest corner of 4th and H Streets N.E. with the address 337 H Street, N.E. (Square 777, Lot 52).
2. The subject property has a lot area of 1,640 square feet and was improved with a two-story building, with a basement, built around 1939. (Exhibits 18, 23.)
3. A certificate of occupancy, No. A23833, was issued on November 12, 1955 to authorize the use of the first floor of the building at the subject property as "Restaurant seating less than seventy five persons." (Exhibit 23A.)
4. On July 11, 1985, DCRA received an application for a certificate of occupancy to allow a business use at the subject property. The planned use was described as "delicatessen-no seating." The application stated the "square feet occupied" by the planned use as 100 on the first and second floors. (Exhibit 22B.)
5. On August 9, 1985, DCRA issued a certificate of occupancy, No. B142969, that authorized use of the first and second floors of the building at the subject property as "Delicatessen – no seating." (Exhibit 22B.)
6. On January 2, 1990, DCRA received an application for a certificate of occupancy to allow a business use at the subject property. The planned use was stated as "Deli" without seating. The application stated the "square feet occupied" by the planned use as 100 on the first floor. (Exhibit 22C.)
7. On February 6, 1990, DCRA received an application for a certificate of occupancy to allow a business use at the subject property. The planned use was stated as "Deli no seating." The application stated the "square feet occupied" by the planned use as 100 on the first floor. (Exhibit 22C.)

8. On March 26, 1991, DCRA received an application for a certificate of occupancy to allow a business use at the subject property. The planned use was stated as “Deli/Rest. Seating 25.” The application stated the “square feet occupied” by the planned use as 100 on the first floor. (Exhibit 22C.)
9. On April 11, 1991, DCRA issue a certificate of occupancy, No. B160734, that authorized use of the first floor of the building as “Deli/Restaurant seating 25.” (Exhibit 23A.)
10. On November 27, 1991, DCRA received an application for a certificate of occupancy to allow a business use at the subject property. The planned use was stated as restaurant and carryout. The application stated the “square feet occupied” by the planned use as 100 on the first floor. (Exhibit 22C.)
11. On December 8, 1992, DCRA received an application for a certificate of occupancy to allow a business use at the subject property. The planned use was stated as “Deli Rest 25.” The application stated the “square feet occupied” by the planned use as 100 on the first floor. (Exhibit 22C.)
12. On December 11, 1992, DCRA issued a certificate of occupancy, No. B164355, that authorized use of the first floor of the building as “Carryout/Restaurant seating 25.” (Exhibit 23A.)
13. On March 3, 1993, DCRA received an application for a certificate of occupancy to allow a business use at the subject property. The planned use was stated as “Deli & [convenience] store – no seats.” The application stated the “square feet occupied” by the planned use as 250 on the first floor. (Exhibit 22C.)
14. On April 5, 1993, DCRA issued a certificate of occupancy, No. B165172, that authorized use of the first floor of the building as “Retail Convenience Store/Delicatessen – no seating.” (Exhibit 23A.)
15. On November 9, 1993, DCRA issued a certificate of occupancy, No. B167067, that authorized use of the first floor of the building as “Delicatessen – no seats.” (Exhibit 23A.)
16. On March 8, 1994, DCRA received an application for a certificate of occupancy to allow a business use at the subject property. The planned use was described as “delicatessen-no seats & Retail [Convenience] Store.” The application stated the “square feet occupied” by the planned use as 250 on the first floor. (Exhibit 2B.)
17. On March 23, 1994, DCRA issued a certificate of occupancy, No. B168033, authorizing use of the first floor as “deli-no seats & Retail [Convenience] Store.” (Exhibit 2B.)

18. On April 15, 2019, DCRA issued Building Permit No. B1908278 to the Property Owner for the subject property. The Property Owner testified that the permit was obtained to repair damage to the building at the subject property caused by the partial collapse of a building on an adjoining lot. (Exhibit 22.)
19. The description of work stated on Building Permit No. B1908278 was: “Rebuild parapet wall along side/east of building. Work to include disassembling and reassembling existing [parapet] wall, as needed; new bricks to be chosen to match existing bricks as closely as possible.” The building permit reflected that the existing and proposed use of the subject property was as a fast-food establishment involving two floors of the building. (Exhibit 22A.)
20. On November 13, 2019, the Property Owner submitted an application for a certificate of occupancy for the subject property. The application indicated that 1,500 square feet on the first floor of the building at the subject property would be occupied by a “Retail / Deli-no seats – Convenience Store” use. (Exhibit 2A.)
21. On November 13, 2019, DCRA issued Certificate of Occupancy No. CO2000481 to the Property Owner for the subject property. The description of occupancy was stated as “retail convenience store.” The occupied space was stated as 1,500 square feet on the first floor of the building. (Exhibit 2A.)
22. The subject property is located in an H Street Northeast Neighborhood Mixed-Use zone, NC-10. The zone is intended to permit mixed-use development at a moderate- to medium-density with an emphasis on the provision of residential uses, particularly affordable units and reuse of upper floors. (Subtitle H § 900.)
23. The subject property is located within the Housing subdistrict of the NC-10 zone, which permits a maximum floor area ratio of 0.5 for non-residential uses. (Subtitle H § 902.1.)

CONCLUSIONS OF LAW AND OPINION

The Board of Zoning Adjustment is authorized by § 8 of the Zoning Act to “hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision, determination, or refusal” made by any administrative officer or body in the carrying out or enforcement of the Zoning Regulations. (D.C. Official Code § 6-641.07(g)(1).) Appeals to the Board may be taken by any person aggrieved, or organization authorized to represent that person, or by any officer or department of the government of the District of Columbia or the federal government affected by any decision granting or refusing a building permit or granting or withholding a certificate of occupancy, or any other administrative decision based in whole or in part on any zoning regulation or map. (D.C. Official Code § 6-641.07(f).) *See also* Subtitle Y § 302.1.

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A zoning appeal may be taken only from the first writing that reflects the administrative decision complained of to which the appellant had notice. No subsequent document, including a building permit or certificate of occupancy, may be appealed unless the document modifies or reverses the original decision or reflects a new decision. (Subtitle Y § 302.5.)

In this case, the Appellant challenged the issuance of a certificate of occupancy by DCRA on November 13, 2019 that authorized use as a “retail convenience store” in 1,500 square feet of the first floor of the existing building at the subject property. According to the Appellant, the certificate of occupancy violated the Zoning Regulations by allowing a non-residential use at a floor area ratio of approximately 0.9, greater than the 0.5 FAR permitted as a matter of right at the subject property by provisions of the NC-10 zone.

The Property Owner argued that the appeal should be dismissed as untimely because the authorized use of the subject property was reflected in a building permit that was issued on April 15, 2019, before the certificate of occupancy was issued the following November. According to the Property Owner, the building permit constituted the “first writing” of the permitted use and therefore the appeal of the subsequently issued certificate of occupancy was untimely.

An appeal to the Board must be filed within 60 days from the date the person appealing the administrative decision had notice or knowledge of the decision complained of, or reasonably should have had notice or knowledge of the decision complained of, whichever is earlier. (Subtitle Y § 302.2.) In this case, ANC 6C “first learned of the issuance” of the certificate of occupancy in “early December 2019” when a member of the ANC “quer[ie]d DCRA’s Property Information Verification System (PIVS) at <https://pivs.dcra.dc.gov>.” (Exhibit 2.) The appeal was filed on January 9, 2020, within 60 days of the date in December 2019 when the ANC became aware of the certificate of occupancy issued on November 13, 2019.

Ordinarily, the building permit is the document that reflects a zoning decision about whether a proposed structure, and its intended use as described in the permit application, conform to the zoning regulations. *See, e.g., Basken v. District of Columbia Bd. of Zoning Adjustment*, 946 A.2d 356 (D.C. 2008). Under the circumstances of this appeal, however, the Board concluded that the building permit did not reflect a zoning decision and was not sufficient to put ANC 6C on notice of the authorized use of the building. The building permit was issued so that the Property Owner could make repairs to the exterior of the building; the description of work was limited to rebuilding a parapet wall. The building permit stated both the existing and proposed use as a non-residential use (fast-food establishment) on both floors of the building; however, that information was not consistent with the prior use of the building and was not sufficient to constitute notice to the ANC that DCRA had authorized a non-residential use of the entire building. The Property Owner did not demonstrate that the Zoning Administrator reviewed and approved the issuance of the building permit.³ The Property Owner did not show when or where the building permit was posted at the subject property, or indicate that ANC 6C knew or should have known about the use information

³ According to ANC 6C, “DCRA’s own permit records show clearly that this [building permit] application was never even reviewed by the Zoning Administrator.” (Exhibit 25.)

provided on the building permit. Accordingly, the Board concluded that the appeal was timely filed as a challenge to the issuance of the certificate of occupancy, the first writing of the zoning decision complained of to which the Appellant had notice.

With respect to the merits of the appeal, the Board concluded, based on the findings of fact, that ANC 6C did not meet its burden of proof to justify the granting of the appeal. (See Subtitle X § 1101.2.) The ANC asserted that the “sole issue presented in this appeal” was the non-residential floor area ratio permitted at the subject property. According to ANC 6C, the certificate of occupancy improperly authorized a non-residential FAR of 0.91 by allowing use of 1,500 square feet of space on the first floor of the building where a maximum of 0.5 FAR was permitted in the NC-10 zone under Subtitle H § 902.1. ANC 6C contended that the non-residential use of the entire first floor could not be permitted as a nonconforming aspect because “the most recent lawful nonresidential use of the property occupied far less floor area” and “there simply is no existing nonconformity.” (Exhibit 25.)

The ANC argued that notes by a DCRA employee, made on the last page of the Property Owner’s application for the certificate of occupancy, described the planned use as a continuation of a prior use under Certificate of Occupancy B168033, which was issued in 1994 and, according to the ANC, authorized a deli/convenience store use in 250 square feet on the first floor of the building. The ANC 6C contended that the authorized deli/retail use ceased at “some point between 1994 and 2009” and the building, “including the first floor, sat vacant for years thereafter,” as shown in photographs and DCRA vacancy inspection records. (Exhibits 2D, 2E, 2F, 18.) As a result, ANC 6C asserted that the 2019 certificate of occupancy created a new nonconforming structure or alternatively a nonconforming use.⁴ (Exhibit 2.)

According to ANC 6C, the 1994 certificate of occupancy had authorized a “250sf delicatessen with no seats, as clearly stated on the application form.” (Exhibit 25.) The Board was not persuaded that the application for the 1994 certificate of occupancy constituted an “unambiguous public record” that limited the non-residential use of the building at the subject property to 250 square feet. The notation about size was provided by the applicant, not DCRA. The 1994 certificate of occupancy itself authorized a non-residential use on the first floor, without stating any other restriction with respect to the area that could be occupied by the authorized use. The Board credited the testimony of the Zoning Administrator that an applicant for a certificate of occupancy “fills in the square footage figure” on the application and that information is not necessarily verified or confirmed by the Zoning Administrator’s office but can vary based on an applicant’s own knowledge. The Zoning Administrator also testified that the applications in the record of this appeal include some that were “filled out ... incorrectly historically.” (Transcript of July 1, 2020 at 156, 164.)

⁴ A nonconforming use or structure is one that was legally established in accordance with zoning requirements then in effect but which does not meet current zoning requirements. A use or structure that was not legally established (i.e. did not meet all applicable requirements when established) would not be permitted to remain as a nonconforming use or structure but would be considered non-compliant with zoning requirements.

The Board was not persuaded that the 2019 certificate of occupancy improperly “enlarged and expanded” the non-residential occupancy permitted by the 1994 certificate of occupancy in violation of Subtitle C § 201.1.⁵ Both certificates of occupancy authorized a non-residential use on the first floor of the building at the subject property, with the 2019 certificate also specifying a limit of 1,500 square feet as maximum area permitted for the specified non-residential use.⁶ With certain exceptions not relevant to this appeal, “no person shall use any structure, land, or part of any structure for any purpose until a certificate of occupancy has been issued to that person stating that the use complies with the provisions” of the Zoning Regulations and the D.C. Construction Codes Supplement, Title 12 DCMR. (Subtitle A § 302.1.) A certificate of occupancy must be “conspicuously posted in or upon the premises to which they apply so that they may be seen readily by anyone entering the premises.” (Subtitle A § 302.3.) The Board concluded that the information stated on each certificate of occupancy delineated the type and permissible location of the use then permitted at the subject property, without regard for whatever additional information was provided by an applicant in the application form. That is, the 1994 certificate of occupancy authorized the use of the first floor of the existing building as a “deli-no seats” and retail convenience store; the 2019 certificate of occupancy authorized the use of 1,500 square feet on the first floor of the existing building as a retail convenience store. Given that the area provided on the first floor of the existing building is 1,500 square feet, both the 1994 and 2019 certificates of occupancy authorized non-residential use of the same space in terms of both size and location.

The Board credited the testimony of the Zoning Administrator that the application form for a certificate of occupancy was used “universally for all uses,” and that information about square footage was more relevant in some zoning contexts than others and would be scrutinized more thoroughly when necessary. In this case, the zoning review did not require an analysis of whether the proposed use would exceed the current FAR limit because the entire ground floor historically has been approved and used for non-residential purposes and “there were no changes to that ground floor” that expanded the area that could be devoted to non-residential uses. (Transcript of July 1, 2020 at 163, 170.) The Board concluded that the first floor area that has existed since 1939 (i.e. 1,500 square feet) could be devoted to non-residential use as a continuation of the existing nonconforming structure (i.e. a building that is nonconforming with respect to floor area ratio) without necessitating an analysis to determine whether the proposed use would exceed the now applicable 0.5 FAR limit on non-residential use. The Board was not persuaded that any indication provided by an applicant in an application for a certificate of occupancy created a need for greater scrutiny before the certificate was approved, because in each case the applicant intended to use the entire first floor of the nonconforming 1939 building as a non-residential use.

⁵ Pursuant to Subtitle C § 201.1, nonconforming structures or uses generally “may not be enlarged upon, expanded, or extended, nor may they be used as a basis for adding other structures or uses prohibited elsewhere in the same zone district.”

⁶ The certificates of occupancy issued in 1994 and earlier for the subject property were printed on forms that had blanks to be completed for “suites” or “floors” of the building but not square footage. The form used in 2019 contained blanks for more detailed information about where the use would be located within the building with respect to “floor(s) occupied,” “occupant load / number of seats,” and “occupied square footage.”

Similarly, the Board was not persuaded by the ANC's argument that any prior nonconforming aspect of the use of the first floor had been abandoned due to the lengthy period when the building was unused. The ANC cited Subtitle C § 201.2⁷ and photographs of the Property Owner's building in arguing that, even if "the nonresidential use of the Property may have exceeded the 0.5 FAR maximum in the past, no such nonconformity existed when DCRA issued the 2019 [certificate of occupancy]." According to ANC 6C, the building had been "an empty shell" since at least 2014. (Exhibits 2D, 25.) DCRA and the Property Owner disagreed, citing "a long history" of continuous use of the first floor for commercial purposes since the 1950s and a lack of evidence that the building had ever been enlarged or made smaller or that the first floor was ever devoted to residential use. (Exhibits 22, 23.)

The Board was not persuaded by the ANC's argument under the circumstances of this appeal. The specific non-residential uses authorized by the 2019 certificate of occupancy were permitted as a matter of right in the NC-10 zone and therefore were not nonconforming uses.⁸ The existing building at the subject property met the zoning definition of a "nonconforming structure" because "[r]egulatory standards that create nonconformity of structures include...floor area ratio."⁹ (Subtitle B § 100.2.) The building was lawfully existing at the time when the 0.5 FAR limit on non-residential uses went into effect. The entire first floor of the building has been used historically for non-residential purposes, was never converted to a residential use (which would have ended the nonconforming aspect), and was devoted to non-residential use at the time the FAR limit went into effect. The existing building became a nonconforming structure with respect to floor area ratio when the 0.5 FAR limit went into effect because the area on the first floor of the building that has been historically devoted to non-residential uses (approximately 1,500 square feet on the first floor, or 0.9 FAR) exceeded the newly enacted limit of 0.5 FAR for non-residential uses.

⁷ Pursuant to Subtitle C § 201.2, "[a]ny nonconforming use of a structure or of land, or any nonconforming structure lawfully existing on the effective date of this title that remains nonconforming, and any use or structure lawfully existing that became nonconforming on the effective date of this title, may be continued, operated, occupied, or maintained, subject to the provisions of this chapter."

⁸ The uses permitted as a matter of right in the NC-10 zone include "retail" and "prepared food shop." (Subtitle H §§ 1103.1(p), 1106.1(e).)

A nonconforming use is defined in Subtitle B § 100.2 as:

Any use of land or of a structure, or of a structure and land in combination, lawfully in existence at the time this title or any amendment to this title became effective that does not conform to the use provisions for the zone in which the use is located. A use lawfully in existence at the time of adoption or amendment of this title that would thereafter require special exception approval from the Board of Zoning Adjustment shall not be deemed a nonconforming use. That nonconforming use shall be considered a conforming use, subject to the further provisions of Subtitle X.

⁹ A "nonconforming structure" is defined for zoning purposes in Subtitle B § 100.2 as:

A structure lawfully existing at the time this title or any amendment to this title became effective that does not conform to all provisions of this title or such amendment, other than use, parking, loading, and penthouse or rooftop structure requirements. Regulatory standards that create nonconformity of structures include, but are not limited to, height of building, lot area, width of lot, floor area ratio, lot occupancy, setback, court, and residential recreation space requirements.

The Zoning Regulations specify that any nonconforming structure lawfully existing on the effective date of the Zoning Regulations that remains nonconforming and any use or structure lawfully existing that became nonconforming on the effective date of the Zoning Regulations may be continued, operated, occupied, or maintained. (Subtitle C § 202.1.) The newly enacted 0.5 FAR limit would apply only to a new building or enlargement of the existing building at the subject property. The Appellant did not demonstrate that the building was ever enlarged such that the area devoted to non-residential use would exceed the size permitted before the 0.5 limit went into effect.

The Board credited the testimony of the Zoning Administrator that the 2019 certificate of occupancy did not improperly increase the area on the first floor of the building that could be devoted to non-residential use because (a) the commercial retail use authorized by the certificate of occupancy was permitted as a matter of right in the NC-10 zone and (b) the permitted FAR was based on the gross floor area of the building, which had not changed in size. The Zoning Administrator explained that because the use of the subject property was conforming and the structure was nonconforming, the fact that the building had not been occupied in a number of years was not relevant; the fact that a building might be vacant is not an issue in respect to conforming uses.¹⁰ (Transcript of July 1, 2020 at 159.) The Board concurred that, pursuant to Subtitle C § 202.4, discontinuance may be considered evidence of a lack of intent to resume active operation as a nonconforming use, but was not relevant to the status of a nonconforming structure. The Board concluded that the Zoning Administrator reasonably determined, based on the history of certificates of occupancy issued for the subject property, that the first floor of the existing building was devoted to non-residential use when the 0.5 FAR limit went into effect, thereby creating a nonconforming structure with respect to floor area ratio because the area of the existing first floor resulted in a FAR of 0.9, greater than the 0.5 now permitted. *Accord*, Appeal No. 19370 (Historic Mount Pleasant, Inc.; September 24, 2018).¹¹ The nonconforming aspect of the structure may continue because the building has not been enlarged, no residential use of the first floor has ever been established, and a nonconforming structure is not subject to the provisions on abandonment or discontinuance of a nonconforming use.

¹⁰ “Any nonconforming use of a structure or of land, or any nonconforming structure lawfully existing on the effective date of this title that remains nonconforming, and any use or structure lawfully existing that became nonconforming on the effective date of this title, may be continued, operated, occupied, or maintained, subject to the provisions of this chapter.” (Subtitle C § 202.1.)

“Discontinuance for any reason of a nonconforming use of a structure or of land, except where governmental action impedes access to the premises, for a period of more than three (3) years, shall be construed as *prima facie* evidence of no intention to resume active operation as a nonconforming use. Any subsequent use shall conform to the regulations of the district in which the use is located.” (Subtitle C § 202.1.)

¹¹ In that case, the Board affirmed the Zoning Administrator’s decision to allow a four-unit apartment house in an existing building in the R-4 zone where two units were permitted as a matter of right, because evidence indicated that the building was previously used as a legally established four-unit apartment house pursuant to a certificate of occupancy. The failure of a subsequent, interim owner to obtain permits or a certificate of occupancy to allow configuration as three units did not discontinue the nonconforming use of the property as a four-unit apartment house, in part because the long-standing practice of the Zoning Administrator has been to recognize the original certificate of occupancy as a baseline statement of the lawful use of the property.

Great weight. The Board is required to give “great weight” to the issues and concerns raised by an affected Advisory Neighborhood Commission. (Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)).) In this case, the affected ANC is the Appellant. The Board fully considered the ANC’s position in this case, but, for the reasons discussed above, did not agree that the appeal should be granted.

Exceptions to the Proposed Order. Because a majority of the Board members participating in the issuance of this order did not personally hear the evidence in this appeal, a proposed order was provided to the parties to afford them an opportunity to present written exceptions, in accordance with D.C. Official Code § 2-509(d).

Based on the findings of fact and conclusion of law, the Board concludes that the Appellant has not shown an error in the decision on November 13, 2019 by the Department of Consumer and Regulatory Affairs to issue Certificate of Occupancy CO2000481 permitting a non-residential floor area ratio exceeding the maximum permitted in the NC-10 zone at 337 H Street N.E.(Square 777, Lot 52). Accordingly, it is therefore **ORDERED** that the **APPEAL** is **DENIED**.

VOTE: 3-1-1 (Frederick L. Hill, Lorna L. John, and Peter A. Shapiro to DENY; Carlton E. Hart opposed; one Board seat vacant)

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

A majority of the Board members approved the issuance of this order.

ATTESTED BY: _____
SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: _____