



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



APPEAL

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

Pursuant to Section (s) §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 August 13, 2010, to the effect that Office of the Zoning Administrator erred in its decision to grant 7-Eleven a C of O for use as a

"market", because a "market" use is not defined in the zoning regulations. The establishment also 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)).

Address(es) of Affected Premises	Square(s)	Lot(s)	Zoning Districts
801 H St NE	0912	055	HS/C-2-B

Present use of Property: grocery and fast-food establishment

Proposed use of Property: market

Owner of Property: Parcel 7 Associates Telephone No.: 301-736-6717

Address of Owner: c/o Mark R. Bradshaw, The Rappaport Companies Penn Mar Shopping Center, 3136 Donnell Drive, Forestville, MD 20747

Name, address and telephone number of lessee: 7-Eleven Corporation, c/o William Washington

5300 Shawnee Rd Alexandria, VA 22312-2311 (703) 642-0711

Name, address and telephone number of appellant, if other than owner: Drew Ronneberg, ANC 6A Representative,

646 11th St NE, Washington, DC 20002 Tel. (202) 431-4305

State specifically manner in which appellant is aggrieved by the administrative decision, the allegations of error in the administrative decision, and the relevant sections of the Zoning Regulations (see reverse for more detailed explanation).

Please use a separate piece of 8 1/2" x 11" to respond and attach it to the Form 125 Appeal.

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 application/petition 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: September 27, 2010 Signature: *[Signature]* Appellant*

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

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

Name: Drew Ronneberg

Address: 646 11th St NE, Washington, DC 20002

Phone No.: 202 431-4305 Fax No.: E-Mail: ronneberg6a02@gmail.com

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

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)). Accordingly, the C of O for the 7-Eleven at 801 H St. NE should be revoked.

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. As a result, that the current C of O should be revoked.

Our ANC also asserts that a C of O for a grocery store and a fast-food establishment must be issued for the store to operate legally. 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 item are cooked with roller grills, heat lamps and 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 it requires customers to pay for their food before it is consumed. Second, the establishment does not possess an on-premise dishwasher and uses disposable tableware.

Finally, this 7-Eleven's fast-food establishment use is not "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 exceeds 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, which requires a special exception under the H Street NE Neighborhood Commercial Overlay.

Department of Consumer and Regulatory Affairs

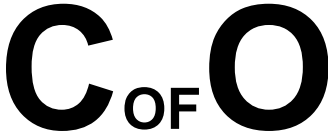
Permit Operations Division

1100 4th Street SW

Washington DC 20024

Tel. (202) 442 - 4589

Fax (202) 442 - 4862



CERTIFICATE OF OCCUPANCY

THIS CERTIFICATE MUST ALWAYS BE CONSPICUOUSLY DISPLAYED AT THE ADDRESS MAIN ENTRANCE

PERMIT NO. CO1002994

Date: **08/13/2010**

Address of Use: 801 H ST NE		Zone: HS/C-2-B	Ward: 6	Square: 0912	Suffix:	Lot: 0055
Description of Occupancy: 7-11 CONVENIENCE STORE.						
Permission Is Hereby Granted To: Charles Ray Smith	Trading As: 7-11	Floor(s) Occupied 1ST	PERMIT FEE: \$83.60			
Property Owner: Parcel 7 Associates	Previous Use(s): Retail or Wholesale Store - M	Occupant Load:	BZA Number:			
Type of Application: Use Change	Occupied Sq. Footage: 3000	Approved Use(1): Markets - M				
Conditions/ Restrictions: <p>As a condition precedent to the issuance of this Certificate, the owner agrees to conform with all conditions set forth herein, and to maintain the use authorized hereby in accordance with the approved application and plans on file with the District Government and in accordance with all applicable laws and regulations of the District of Columbia. The District of Columbia has the right to enter upon the property and to inspect all spaces whose use is authorized by this Certificate and to require any changes which may be necessary to ensure compliance with all the applicable regulations of the District of Columbia.</p>						
Director: Linda K. Argo		Permit Clerk: Stacie Williams	Expiration Date:			
<p>TO REPORT WASTE, FRAUD OR ABUSE BY ANY DC GOVERNMENT OFFICIAL, CALL THE DC INSPECTOR GENERAL AT 1-800-521-1639</p> <p>FOR CONSTRUCTION INSPECTION INQUIRIES CALL (202) 442-9557</p> <p>TO SCHEDULE INSPECTIONS PLEASE CALL (202) 442-9557.</p>						

**Certificate of Service for Appeal of Administrative Decision of DCRA on Certificate of Occupancy
#CO1002994**

I certify that on September 27th 2010, I emailed electronic copies of the Letter of Authorization, Statement of Appeal, Form 125 and Copy of Certificate of Occupancy #CO1002994 to the following parties:

Matthew Le Grant, Zoning Administrator
matthew.legrant@dc.gov

Linda Argo, DCRA Director
linda.argo@dc.gov

Mark Bradshaw, Parcel 7 Associates
mbradshaw@rappaportco.com

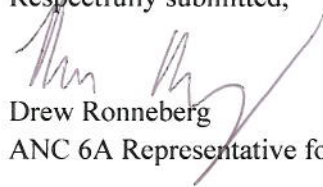
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Bob Martz, Franchisee
bobby.martz@fmfacilitymaintenance.com, bmartz67@gmail.com

Respectfully submitted,



Drew Ronneberg
ANC 6A Representative for appeal of CO #CO1002994