Before the Board of Zoning Adjustment, D. C.

Appeal No. 11496 of the Citizens's Association of Georgetown from the Zoning Administrator's issuance of a certificate of occupancy No. B-85762, June 19, 1973 for a restaurant seating 175 persons requiring no parking facilities, located at 2833 M Street, N. W., Lot 835, Square 1212.

HEARING DATES: November 14, 1973
December 12, 1973, March 20, 1973

EXECUTIVE SESSIONS: December 18, 1973
April 23, 1974

FINDING OF FACT:

1. The subject property is located in the C-2-A zone.

2. On March 20, 1973, the Board held a further hearing on this appeal on the issue of whether or not the appellee's plumbing facilities were adequate for 175 persons as required by the plumbing code.

a. At the hearing, Mr. Fahey, Zoning Administrator, and Mr. Spencer, D. C. Building Administrator, confessed error in the issuance of Certificate of Occupancy No. B-85762.

b. Both Mr. Spencer and Mr. Fahey tesitfied that Certificate of occupancy Number B-85762 would be revoked, and that the Plumbing Code of the District of Columbia would allow the appellee, with his present plumbing facilities to obtain a new certificate of occupancy for 74 persons seated inside the restaurant and 26 persons seated outside or any combination of 100 persons so long as no more than 74 persons are seated inside the restaurant.

c. The appellant did not register an appeal to Building Administrator's determination made at public hearing on March 20, 1974. (see Findings of Fact Number 2-b).

3. Two issues are involved in the filing of this appeal:

a. The issuance of a Certificate of Occupancy for 175 persons with existing plumbing.

b. Whether or not the Zoning Administrator's formulation of off-street parking based on gross floor area was in error.

4. The applicant proposes to operate a restaurant carry-out with seating on the terrace outside the building which contains kitchen, seating, and toilet facilities.

5. Section 7202 of the Regulations sets forth the "amount of parking spaces required" for "buildings containing retail or service establishments" at page 44 as follows:

> "No requirement for the first 2,000 square feet of gross floor area: in excess of 2,000 square feet of gross floor area as follows: one for each 200 square feet of gross floor area." (C-1, C-2-A, C-3-A)

6. The gross floor area of the subject building is 1460 square feet, therefore no parking is required.

7. Gross floor area is defined by the Zoning Regulations at Section 1202 as: "The sum of the Gross horizontal areas of the several floors of all buildings on the lot, measured from the exterior walls and from the center line of walls separating two buildings. The term gross floor area shall include basements, elevator shafts and stairwells at each story, floor space used for mechanical equipment (with structural headroom of six feet, six inches or more), penthouses, attic space (whether or not a floor has actually been laid, providing structural headroom of six feet, six inches or more), interior blaconies, and mezzanines. The term gross floor area shall not include cellars, and outside balconies which do not exceed a projection of 6 feet beyond the exterior walls of the building.

8. The terrace on the subject property which applicant proposes to use for seating customers does not come within the definition of gross floor area.

9. The opposition, alleges that the area of the subject terrace should be included in computing the gross floor area of the proposed use for the purpose of computing parking.

a. The appellant alleges that Section 7201.3 of the regulations gives the board authority to require additional parking based on the increase of intensity of use of the subject site as compared with its previous use.

b. Section 7201.3 of the Regulations states that: "When the intensity of use of a structure existing before the effective date of these Regulations is increased by an addition or additions of employees, dwelling units, gross floor area, seating capacity, or other unit of measurement, specified in Section 7202, parking spaces shall be provided for such addition or additions proved.

10. No facts were introduced at hearing or in the record regarding an increase by additions, additions of employees, gross floor area, seating capacity or other unit of measurement.

11. The Board takes notice that the use by applicant of the subject property is allowed as a matter of right by the Zoning Regulations.

12. The Board finds that no ambiguity exists between Section 7202 and Sections 7201.2, 7201.3, 7201.31.

CONCLUSIONS OF LAW:

Based upon the above Findings of Fact, the Board is of the the opinion that the Certificate of Occupancy appealed from was issued in error. As to the parking issue on appeal, the Board is of the opinion that no ambiguity exists in the Regulations between Section 7202 and 7201.2, 7201.3, 7201.31 as written. The Board concludes that no parking is required on the subject property because Section 7202 of the Regulations, requires no parking for "buildings containing retail or service establishment" having a gross floor area less than 2,000 square feet. The terrace adjoining the subject building does not come within the meaning of Gross floor area, therefore it is not included in the computation of gross floor area and the Zoning Administrator was correct in his determination that no off-street parking was required.

ORDERED:

That the Zoning Administrator be reversed as to his

decision to issue Certificate of Occupancy No. B-85762, and upheld as to the application of Sections 7201 and 7202 of the Regulations.

VOTE: 4-1 (Lilla Burt Cummings, Esq., dissenting.)

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

ATTESTED By: James E. Miller
JAMES E. MILLER
Secretary to the Board

FINAL DATE OF ORDER: MAY 30 1974