

Government of the District of Columbia

ZONING COMMISSION



Appeal No. 14752 of Gloria McQueen Johnson, and Joseph and Ramona Blacknall, pursuant to 11 DCMR 3200.2 and 3105.1, from the decision of the Director of the Department of Consumer and Regulatory Affairs made on November 3, 1987 to the effect that it is believed to be inappropriate to revoke the Certificate of Occupancy B138861 issued on May 30, 1984, which authorized a 4-unit apartment house in an R-5-C District at premises 1838 16th Street, N.W. (Square 177, Lot 5).

HEARING DATE: March 16, 1988

DECISION DATE: April 6, 1988

FINDINGS OF FACT:

1. The property is located on the west side of 16th Street, between S and T Streets and, is known as premises 1838 16th Street, N.W. It is zoned R-5-C.
2. The property is improved with a four-story brick apartment building. The premises has been occupied as an apartment building since 1947.
3. Certificates of Occupancy No. 112912, dated March 19, 1947; B-79960, dated September 22, 1972; and B-116840, dated October 11, 1979 evidence the use of the premises as a five-unit apartment building.
4. On May 29, 1984, Lustine Realty Co., Inc. filed an application for a Certificate of Occupancy for a four-unit apartment building on behalf of Marlyne L. Klawans. The issuance of Certificate of Occupancy No. B-138861 is the subject of this appeal, which was filed on December 14, 1987.
5. The 1984 application for Certificate of Occupancy requested an "Ownership Change" for the subject premises. The application form did not contain a request for an "Occupancy Use Change." The floors to be occupied for the proposed use were listed as the first and second floors. The proposed use was listed as "apartment rentals - four units". The proposed occupancy was of four units. The prior use was listed as "Same - four units, first floor office/owner occupied." The application was incorrect

insofar as it suggested that the prior certificate of occupancy authorized only four apartment units, as to the floors on which the apartments were located, and indicating "no basement.

6. No re-inspection of the premises took place during review of the 1984 application for a Certificate of Occupancy. Based on the information provided on that application, Certificate of Occupancy No. B-138861, dated May 30, 1984, was issued for an apartment building, four units.

7. There is no evidence of any Certificate of Occupancy permitting office use of any type at the premises.

8. On September 25, 1987, counsel for the appellants requested the Director, Department of Consumer and Regulatory Affairs, to revoke Certificate of Occupancy No. B-138861.

9. By letter dated November 3, 1987, the Director, Department of Consumer and Regulatory Affairs, advised counsel for the appellants that the premises should have been inspected before issuance of Certificate of Occupancy B-138861, but that it would be inappropriate to revoke that Certificate of Occupancy because of the "time frame" and absence of structural violations.

10. At least one floor of the premises, in addition to the first and second floors, is in active occupancy by a dwelling unit.

11. There is no evidence before the Board which suggests any practical barrier to requiring Certificate of Occupancy B-138861 to be replaced by one which corrects the errors on that Certificate of Occupancy.

12. In 1982, the Advisory Neighborhood Commission 1C, several citizens associations, and neighboring residents began advising District of Columbia government officials and departments of the existence of an illegal office operating at the subject premises and requesting enforcement of the Zoning Regulations.

13. The Board received a resolution in support of the appeal from Advisory Neighborhood Commission 1C, on March 22, 1988, pursuant to the Board's waiver of the seven day filing requirement. Representatives of the Dupont Circle Citizens Association, the Midway Civic Association, the Residential Actial Coalition, the ANC and nearby residents, by letter and by testimony at the public hearing, supported the appeal and confirmed statements as to the actual

configuration and previous uses of the building which were misrepresented in the application for Certificate of Occupancy, the previous existence and subsequent discontinuance of an illegal office use on the first floor of the premises, and citizen efforts to obtain enforcement regarding the discontinuance of the illegal office use since approximately 1982.

14. The issues and concerns of Advisory Neighborhood Commission 1C, as set forth in its written submission, may be summarized as follows:

- A. The occupancy of the premises has not been correctly reduced from five units to four units.
- B. Commercial use of a portion of the premises for an office violates the R-5-C use regulations.
- C. Since 1982, neighborhood civic groups and residents have been actively complaining to District officials about the building.
- D. The 1984 application for a Certificate of Occupancy contained false information in the nature of misrepresentations about (1) an "owner-occupied office", (2) the floors in use; (3) the basement; and (4) the gross floor area of the occupied units.
- E. The owner has used the "illegally obtained" certificate of occupancy to secure an exemption from the application of rent control legislation, and to increase the rent of the apartment units at the premises. The owner should not be allowed to benefit in this way.
- F. The Board's function is to oversee the activities of District agencies and direct them to comply with applicable laws.

15. In 1978, the owner began to use one first floor unit of the subject premises as an office. The configuration, in fact, of the building thereby became as follows: (a) first floor - office and one rental unit; and (b) second, third and fourth floors - one rental unit on each floor. No Certificate of Occupancy was applied for or issued to reflect or lawfully establish the use of the premises as a four-unit apartment building with an owner-occupied office.

16. Before the conversion of the first floor unit to office use, the configuration of the building had been as follows: (a) first floor - two rental units; and (b) second, third, and fourth floors - one rental unit on each floor.

17. In November, 1985, the Department of Consumer and Regulatory Affairs advised the owner that the use of the first floor unit as an office was illegal and had to be terminated. The office use was terminated in early 1986, and the unit is now being used for storage purposes, including storage which is not accessory to the apartment use, and which appears to be accessory to off-site uses.

18. The Director, Department of Consumer and Regulatory Affairs, determined that it was inappropriate to revoke the Certificate of Occupancy because of the length of time which had elapsed between its issuance and the request for revocation; because the illegal office use has been vacated; and because inspection of the property revealed no evidence that the misrepresentations on the application had a substantial bearing on the safety of the occupancy. The Zoning Administrator testified that the Certificate of Occupancy in question was issued erroneously, because there was no conducted re-inspection of the property prior to its issuance.

19. The most recent inspection of the property, on March 15, 1988, confirmed that the first floor unit previously used as office space was being used for storage purposes. The Zoning Administrator further testified that he was unaware of the differences between the information given on the application for Certificate of Occupancy regarding the number of floors and the square footage occupied relative to the actual occupancy, size and configuration of the building and he, therefore, did not address that issue.

20. Counsel for the owner argued that the District should be estopped from revocation of the Certificate of Occupancy based on the length of time which elapsed since the issuance of the Certificate of Occupancy. Other than the mere passage of time, the owner has submitted no evidence setting forth the elements of estoppel, as those elements could arguably apply to this case.

CONCLUSIONS OF LAW AND OPINION:

1. Although appellants are primarily concerned about the impact of the appeal on the applicability of District laws relating to rent stabilization, this Board has jurisdiction only over issues which arise under the Zoning Act and Regulations.

2. This Board is not the appropriate agency to determine whether the premises have been at any time or are currently a "housing accommodation of 4 or fewer rental units" as that term is set forth, together with other elements, in D.C. Code Sec. 45-2515(a)(3).

3. Insofar as the owner of the site limited the extent of the use authorized by valid Certificates of Occupancy B-79960 and B-116840, the owner did not violate the Zoning Act or Regulations. The Board has no authority to determine whether any other District law limits the power of an owner of housing accommodations to terminate the active use of any portion of those accommodations.

4. Although they appear in the Housing Regulations rather than the Zoning Regulations, that is in Title 14, DCMR, rather than Title 11, 14 DCMR 1402.3 and 1402.4 appear to have been adopted under the general authority of the Mayor and subordinate Executive Branch officers under D.C. Code Sec. 5-427 to administer the Zoning Regulations, including the provisions thereof relating to certificates of occupancy, and to make reasonable regulations about the process for the exercise of that administrative authority.

5. The Board agrees with the conclusion of the Zoning Administrator and the Director, Department of Consumer and Regulatory Affairs, that pursuant to 14 DCMR 1402.3 and 1402.4, the premises should have been reinspected before issuance of Certificate of Occupancy B-138861.

6. The Board disagrees with the conclusion that revocation of Certificate of Occupancy B-138861 was not appropriate. Whether the erroneous information in the application for that certificate of occupancy was submitted willfully or carelessly, the District had authority to require the owner to bear the burden resulting from the errors and the need to correct them. Further, there is no evidence that corrective action would have caused the owner any undue burden or expense.

7. Neither the Zoning Administrator nor the intervenor has contended that the appeal from the November, 1987 decision of the Director, Department of Consumer and Regulatory Affairs, was untimely or prejudicial, and the Board concludes that the appeal is timely, and that the Zoning Administrator and intervenor have been able to participate fully and effectively in the proceeding before the Board.

The Board concludes that it has accorded the great weight required by statute to the issues and concerns of the Advisory Neighborhood Commission. Accordingly, it is ORDERED that the appeal is GRANTED and the decision of the Director, Department of Consumer and Regulatory Affairs, is REVERSED.

VOTE: 4-0 (Charles R. Norris, William F. McIntosh,
Paula L. Jewell and Carrie L. Thornhill to
grant)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



APPLICATION No. 14752

As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that a copy of the Order of the Board in the above numbered case, said Order dated JUL 25 1988, has been mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

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EDWARD L. CURRY
Executive Director

DATE: JUL 25 1988