

BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

Appeal by ANC 8(E) from an April 1, 2010, decision)
by the Director of DCRA to issue a building permit)
(No. B1002975) for interior renovation of an apartment) BZA No. 18103
building, for Peaceoholics, Inc., in the R-5-A District at)
premises 1300 Congress Street, S.E. (Square 5915, Lot 12))
_____)

2011 OCT 29 PM 2:33

INTERVENORS' POST-HEARING BRIEF

Intervenors Brian Townes, Tonette Sivells, and Shayla Edgerton hereby submit the following post-hearing brief in support of the above-captioned appeal filed by Advisory Neighborhood Commission ("ANC") 8E from an April 1, 2010, decision by the Director of the Department of Consumer and Regulatory Affairs ("DCRA"), to issue a building permit (No. B1002975) for interior renovation of an "apartment building," to Peaceoholics, Inc., in the R-5-A District at premises 1300 Congress Street, S.E. (Square 5915, Lot 12). As discussed herein, the evidence presented at the hearing held on September 28, 2010, demonstrates that Peaceoholics intends to use the building to operate a Community-Based Residential Facility ("CBRF").

Argument

I. The Fact that No Zoning Review Occurred At the Building Permit Stage Does Not Require Dismissal of the Appeal.

As Zoning Administrator Matthew LeGrant conceded on the hearing on September 28, 2010, the building permit application at issue here underwent no zoning review whatsoever before it was issued: neither the Zoning Administrator nor anyone on his staff reviewed or approved the building permit for a "13 unit apartment building" to determine whether the building was in fact intended for the designated use. DCRA thus contends that the appropriate

time to address Peaceoholics' use of the premises is either at the Certificate of Occupancy ("C of O") stage, or in "an enforcement action" if, "after the issuance of a Certificate of Occupancy, DCRA finds that the use of the property is inconsistent with the permitted use." DCRA Prehearing Statement, at 2 (Sept. 23, 2010). DCRA also appears to suggest that any determination by this Board about whether Peaceoholics' intended use of the building is, in fact, a CBRF, should be based solely on the documents that were in the DCRA permitting file – the permit application, the building plans, and the prior C of O for the building. As we now discuss, this Board must address the zoning issue of whether the building will be used as a CBRF in the context of the instant appeal. Moreover, this determination must be based on all of the evidence admitted at the hearing on September 28, 2010, all of which demonstrates that Peaceoholics intended, at the time the permit application was filed, to use the building as a CBRF.

A. The Issuance of the Building Permit is Implicitly A Determination that the Building Complies with the Zoning Regulations That Has Potentially Preclusive Consequences To Rights To Appeal Any Certificate of Occupancy That May Be Issued to Peaceoholics.

Although a building permit typically undergoes a zoning review at the building permit stage to determine whether the use of the property is as stated in the application, the Zoning Administrator testified that in this case, DCRA opted not to undertake a zoning review of at the building permit application stage. Transcript of Hearing in Appeal No. 18193 ("Transcript") , at 270, 294 (Sept. 28, 2010). However, that does not alter the fact that the DCRA's issuance of the building permit constitutes a determination that the construction complies with the Zoning Regulations. *See* 12A DCMR § 105.3.1.8 (The Code official's signature attached to a building permit "shall not be construed as indicating that the construction complies with any other

requirement of District law or regulation *other* than the Construction Code *and the Zoning Regulations.*”) (emphasis added).

For this reason, as this Board’s precedents make clear, the ANC had an obligation to file this appeal within 60 days of the issuance of a building permit for a “13-unit apartment,” since any appeal of any subsequent certificate of occupancy (“C of O”) for a “13-unit apartment” may be found to be untimely. *See, e.g.,* Appeal No. 17830 of L. Napoleon Cooper, at 3 (served Feb. 18, 2009) (dismissing appeal of C of O allowing grocery store to sell alcohol for off-premise consumption on the grounds that the appellant should have appealed the building permit, reasoning that “[a]lthough the sale of alcoholic beverages for off premises consumption was not affirmatively stated as an accessory use on the face of the building permit, its authorization was implicit in the building permit”); *see also* Appeal No. 17411 of Paul A. Basken and Joshua S. Meyer, at 2 (served March 23, 2006), *aff’d*, *Basken v. D.C. Bd. of Zoning Adjustment*, 946 A.2d 356 (D.C. 2008) (dismissing appeal of C of O for conversion of 3- to 7-unit apartment on grounds that appellants should have appealed from issuance of a building permit, even though the building permit on its face expressly withheld zoning approval as to the “number of units in zone.”)

Dismissal of this appeal simply because DCRA opted not to undertake a zoning review at the building permit stage would be prejudicial to all the parties, including Peaceholics. As DCRA pointedly stated at the hearing, “Peaceholics has a building permit” and it is “entitled to some certainty as to whether it’s valid or not.” Transcript, at 185. If in fact, this Board believes that Peaceholics intends to operate a CBRF at this location, which the evidence clearly shows that it does, then this determination should be made now rather than at the C of O stage, so that

Peaceholics can promptly proceed with filing an application for a special exception, as required by the Zoning Regulations.

Likewise, it would be fundamentally unfair to the ANC and to the intervenors to dismiss this appeal based on DCRA's stated intention that the issue of use should be addressed at the C of O stage, particularly given DCRA's opposition to Intervenor's motion to defer this hearing to the C of O stage. Addressing the merits of the instant appeal will therefore conserve the time and resources of all the parties and this Board. Indeed, it is entirely possible that DCRA's review at the C of O stage will be equally *pro forma*, and any evidence presented in the context of an appeal of the C of O will be virtually identical to the evidence presented in the instant appeal. Moreover, if any appeal of the C of O is found to be untimely, the public will have been wholly deprived of its right to seek review by this Board of DCRA's zoning determination.

More importantly, this Board is the ultimate decision-maker on the interpretation and application of the Zoning Regulations, and has "all the powers of the officer or body from whom the appeal is taken." D.C. Code § 6-441.07. After having proceeded, over Intervenor's objections, with a full evidentiary hearing on whether or not DCRA made a zoning error in issuing a building permit to Peaceholics for an "apartment building" rather than a CBRF, it would be fundamentally unfair to the parties to dismiss this appeal simply because DCRA chose not to undertake a zoning compliance review at the building permit stage. DCRA had a full and fair opportunity at the hearing to present any and all evidence and arguments in support of its implicit determination that Peaceholics' intended use of the building was as an "apartment building." This Board has all the information that it needs to make a decision about whether

Peaceholics' intended use of the building is an "apartment building" or a CBRF, and should do so in the context of this appeal.

B. This Appeal Must Be Resolved Based on the Evidence Presented at the Hearing and Not Based Solely on the Information That Was Presented to DCRA At the Time the Permit Was Issued.

DCRA also suggests that this appeal must be dismissed because "DCRA has not received any information from Peaceholics indicating the Property will be used for any thing other than an apartment building." DCRA Prehearing Statement, at 3. However, there is absolutely no legal authority for the proposition that, in hearing an appeal of DCRA's determination that Peaceholics' intended use of the Congress Street building is an "apartment building," this Board is limited to the evidence that was in DCRA's permitting file. Rather, this Board must make a determination of whether the use is an apartment building or a CBRF based on all the evidence admitted at the September 28, 2010 hearing, which was limited to material that was in existence at the time the building permit was issued. While DCRA made a choice at the building permit stage not to undertake any zoning review to determine whether Peaceholics' intended use of the building was, indeed, as a "13-unit apartment building," DCRA's failure to undertake a zoning compliance review cannot limit this Board's review of the evidence adduced at the hearing, which, as discussed below, shows that at the time the building permit was issued, Peaceholics intended to use the building as a CBRF.

As the Zoning Administrator testified, there are numerous situations in which the building plans, alone, do not provide DCRA with sufficient information to enable a determination as to what the use of the building will be. Transcript, at 270-1. The Zoning Administrator further acknowledged that CBRFs constitute such a use: a CBRF can be located in

a building whose plans resemble numerous other uses, including an apartment building. Transcript, at 276-7. Therefore, in order to determine whether such a use is in fact, a CBRF, the Zoning Administrator's review must go beyond the physical layout of the building plans, and must undertake an inquiry into the applicant's intended operations, as DCRA does in the case of food establishments. The Construction Code requires the permit applicant to provide any "information necessary to determine compliance with the Zoning Regulations." 12A DCMR § 106.1.12.

Had there been a zoning compliance review of the permit application file, such a review would have allowed DCRA to undertake a further inquiry into the operational characteristics of Peaceoholics' use of the Congress Street building, particularly in light of the red flags presented by the permit application. For example, the building plans associated with the building permit referenced an office in the basement for the "SHIP," a term that the Zoning Administrator conceded is not commonly associated with an apartment building. Transcript, at 267-9. The environmental intake form submitted to DCRA with the permit application answers "no" to Question # 4: "Is this project only an interior renovation with no building use or capacity change?" DCRA Prehearing Statement, Exhibit C. Further, the Applicant's name was "Peaceoholics," a name that the Zoning Administrator was not familiar with. Transcript, at 266. A very quick "google" search for "Peaceoholics" would have identified the Peaceoholics website which prominently states that the mission of Peaceoholics is to "provide services to youth involved in juvenile justice systems in an effort to offer programs to serve as alternatives to detention and prevention of entry into the adult correctional system." www.peaceoholics.org. The website further states that Peaceoholics' current programs and services include numerous

services that would be fully consistent with the types of services typically offered in a CBRF, including “gang and neighborhood intervention,” “substance abuse prevention,” and completion of incarceration re-entry.” *Id.* The website does not identify operating a rental apartment building or providing affordable housing as part of Peaceoholics’ program.

Nonetheless, this appeal is not a referendum on DCRA’s internal operating procedures, nor is it necessary to find that DCRA was derelict in its responsibilities in reviewing Peaceoholics’ permit application order to sustain this appeal. This appeal process exists to allow aggrieved parties to challenge building permits on grounds of a zoning error, regardless of whether the error arose because of an error by DCRA or because a property owner incorrectly identified the intended use of a property on the permit application. The appeal process affords all the parties a “contested case” proceeding to provide a detailed examination into the facts of a permit applicant’s intended use and to allow this Board to apply the Zoning Regulations to the evidence adduced at this hearing.

Here, such a contested case hearing took place on September 28, 2010. A knowledgeable representative of Peaceoholics testified at this hearing, and all parties had a full and fair opportunity to present evidence concerning Peaceoholics’ intended use of the Congress Street building. This Board therefore has all the information it needs to make a determination, based on all the evidence admitted and adduced at the hearing on whether Peaceoholics’ intended use of the building is an “apartment building” or a CBRF, as those uses are defined by the Zoning Regulations and this Board.

II. The Evidence in the Record Demonstrates that Peaceoholics' Intended Use of the Building Is As a CBRF.

A. The Evidence in the Record Shows that Residents of the Building Will Have a Common Need for Treatment, Rehabilitation, Assistance, or Supervision in their Daily Living.

1. Standard of Review

A CBRF is defined by the Zoning Regulations as “a residential facility for persons who have a common need for treatment, rehabilitation, assistance, or supervision in their daily living. This definition includes but is not limited to, facilities covered by the Community Residence Facilities Licensure Act of 1977 . . . and facilities formally known as convalescent or nursing home, residential halfway house, or social service center,” 11 DCMR § 199.1 (definition of CBRF). “If an establishment is a community-based residential facility as defined in this section, it shall not be deemed to constitute any other use under the authority of these regulations.” *Id.* Accordingly, if Peaceoholics intends to use the Congress Street building as a CBRF, the building cannot be an “apartment building” under the Zoning Regulations, and the building permit for a 13-unit apartment building was therefore wrongfully issued.

Here, neither DCRA nor Peaceoholics offered any expert testimony indicating that the facility at 1300 Congress Street, S.E. was not a CBRF. While the Zoning Administrator acknowledged that a CBRF could be located in a building that resembled a different use (Transcript, at 276-7), he did not attempt to rebut or otherwise state an opinion on the evidence submitted by the ANC and Intervenors indicating that Peaceoholics intended to use the Congress Street building as a CBRF. Mr. Jauhar Abraham, CEO of Peaceoholics, Inc. merely testified that 1300 Congress Street, S.E. was not a “group home” and that the contract with DHCD did not

require Peacheaholics “to operate a CBRF at 1300 Congress Street.” Transcript at 302, 328. However, Mr. Abraham he did not articulate any opinion about whether the Congress Street facility was a CBRF per the Zoning Regulations, nor was he qualified to offer such an expert opinion in any event.

Accordingly, this Board must make its own determination, based on the evidence presented at the hearing on September 28, 2010, whether Peacheaholics intends to operate the Congress Street facility as a CBRF, as defined by the Zoning Regulations, as it is empowered to do under D.C. Code § 6-441.07. As we now discussed, that evidence makes clear that the “Extremely Low Income at-risk youths” who will be given priority for housing at 1300 Congress Street have a common need for treatment, rehabilitation, assistance, or supervision in their daily living. Therefore, Peacheaholics’ intended use of the Congress Street building satisfies the definition of a CBRF in the Zoning Regulations, and therefore cannot be an apartment building.

2. The At-Risk Youth Who Must Be Given Priority For Housing at 1300 Congress Street SE Have a Common Need For Assistance.

As this Board has previously ruled, the hallmark of a CBRF is that residents have a “common need” for assistance. *BZA Appeal No. 15639 of Robert Ebel*, at 11 (Feb. 9, 1994) (holding a facility that “gives renting preference to men with prison records” and provides them with “religious guidance and assistance with financial matters” have a common need for assistance, and that the building was therefore a CBRF and not a “rooming house.”). Here, Peacheaholics is contractually obligated to give priority to “Extremely Low-Income at-risk youths referred by the District of Columbia Child and Family Services Administration” as a result of the \$4.4 million loan in May 2009 from the D.C. Department of Housing and Community

Development (“DHCD”), as part of the Strategic Housing Intervention Program (“SHIP”), to acquire the 1300 Congress Street, S.E. property. DHCD Contract No. 2008-06, at 2 (attached as Exhibit 2 to Intervenor’s Request for Party Status).

Moreover, Peaceaholics’ own program material makes clear that these youths are “at-risk” because they live in communities characterized by “dysfunction and disconnect” and therefore require the “structural intervention in a controlled environment” and other “necessary support to literally pull them out of poverty” and “possible lives of crimes and/or public dependence.” Peaceaholic –SHIP Program Material, at 2-4 (attached as Exhibit 3 to Intervenor’s Request for Party Status). These youths will be selected because they “are either wards of the District of Columbia’s foster care system and or high-risk youth . . . who are under the supervision of the Department of Youth Rehabilitation Services (DYRS) or youth under the supervision of Court Social Services (CSS).” *Id.* at 3. As a result, their “need for such assistance arises as a result of “social circumstances” similar to the housing offered to ex-convicts in *BZA Appeal No. 15639 of Robert Ebel* (holding that ex-convicts need for assistance “arises as a result of social circumstances where former inmates are discriminated against in housing opportunities and where inmates are not taught to handle money upon release from incarceration.”)

The fact that the services provided by Peaceaholics to these “at-risk youths” may vary from individual to individual depending on their needs (Transcript, at 335) does not mean that these “at-risk youths” do not have “a common need for treatment, rehabilitation, assistance, or supervision in their daily living.” The definition of a CBRF requires that residents have a “common *need* for treatment, rehabilitation, assistance or supervision” not a “need for a common treatment, rehabilitation, assistance, or supervision.” For example, many CBRFs provide

housing for elderly persons, where the range of treatments or assistance provided to residents varies from individual to individual. Their common need for assistance arises from the fact that they are elderly, even though they receive different types of treatment or assistance. *See, e.g., BZA Application No. 17114 of Ingleside at Rock Creek*, at 1 (March 5, 2004) (granting special exception for CBRF that provided housing for elderly persons along with “increased levels of care . . . as needed).

Here, Peaceholics will develop for each of the at-risk youths who will be housed at 1300 Congress Street, SE an “Individual Service Plan . . . outlining their specific goals and needs.” SHIP Program Materials, at 4. While their individual plans will be different, their common need arises from their personal histories as wards of D.C.’s foster care or juvenile detention system, and their status as “extremely low income at-risk youth.” SHIP Program Material, at 3.

Peaceholics “will nurture these young male adults by providing case management and intensive intervention aimed at improving their adulthood outcomes and contribution to society.” *Id.* Each of the “at risk youths” will be assigned a case manager; and “[t]he staff team will meet with each resident weekly to evaluate the effectiveness of the services received.” *Id.* at 4. “Any youth upon initial screening with substance abuse issues must be actively engaged in treatment and/or maintenance and provide proof of participation.” *Id.*

This information was corroborated by Mr. Abraham at the hearing on September 28, 2010. Transcript, at 330. As Mr. Abraham further testified, the facility will have “24-hour residential monitors” and each of residents will receive the supportive services that they require. Transcript, at 321, 325, 335. Accordingly, the record demonstrates that the at-risk youth who

must be given priority for residing at 1300 Congress Street have a common need for assistance as a result of their social circumstances, personal history, and their extremely low income status.

Finally, the fact that Peaceoholics' contract with DHCD (DHCD Contract No. 2008-06, ¶ 3(b), at 2-3) permits Peaceoholics to rent a vacant unit to "low income households referred by the District of Columbia Housing Authority" (characterized by Mr. Abraham as "homeless families") does not mean that the facility is an apartment building. The Contract with DHCD clearly provides that priority must be give "first to Extremely Low-Income at-risk youths referred by the District of Columbia Child and Family Services Agency [CFSA]." *Id.* ¶ 3(a) and (b).

Peaceoholics presented no evidence at the hearing that it would be unable to fill all of the 13 units with "Extremely Low-Income at-risk youths" referred by CFSA. Rather, Mr. Abraham stated that this was simply a standard contractual provision to ensure that Peaceaoholics does not simply "fix up the property and then sell it to make money." Transcript, at 329. Therefore, the record is clear that Peaceoholics' intended use of the facility is to provide housing and services to Extremely Low-Income at-risk youths referred by CFSA. If, at any point in the future, the occupancy of the Congress Street building changes so to consist predominantly of "homeless families" or low-income households referred by the D.C. Housing Authority, Peaceoholics can apply for a new C of O for the changed use at that time.

Accordingly, the record demonstrates that Peaceoholics intends to provide "a residential facility for persons who have a common need for treatment, rehabilitation, assistance, or supervision in their daily living," which therefore meets the definition of a CBRF. 11 DCMR § 199.1 (definition of CBRF). It therefore cannot be an apartment building. *Id.*

B. The At-Risk Youth Residing in Peaceholics' CFSA-Licensed "Independent Living Program" Will Have A Common Need for Assistance.

At the hearing on September 28, 2010, Mr. Abrahams suggested that the building was not a CBRF simply because the program is "independent living" for homeless youths, and because "every person will have a key in his own unit." Transcript, at 299-300, 30, 311. However, the fact that the housing is provided as part of an "independent living program" for at-risk youths or that residents will have keys to their units is irrelevant to its status as a CBRF. The definition of a CBRF noted above does not preclude independent living programs. To the contrary, this Board has reviewed special exception applications for numerous CBRFs that are described as providing "independent living" arrangements for residents. *See, e.g. BZA Application No. 17114 of Ingleside at Rock Creek*, at 1 (March 5, 2004) (approving special exception under Sections 218 and 219 for 13 additional "independent living units" to existing CBRF); *BZA Application No. 17055 of the Army Distaff Foundation, Inc.*, at 1 (served April 18, 2005) (approving special exception to add "22 new independent living units under § 218" to existing CBRF). Presumably, in most, if not all of these cases, residents had keys to their own units.

Indeed, in one similar case, this Board expressly rejected the argument presented by community members that the addition of "102 independent living" units to an existing CBRF was in fact, an "apartment" use, because the operator had represented that the residences were "for seniors who are ambulatory and able to perform the activities of daily living with minimal assistance." *BZA Application No. 16138 of the Presbyterian Home*, at 3 (served Sept. 30, 1997). Instead, this Board held, based on evidence of the supportive services provided to residents, that

“[t]he proposed use constitutes a Community Residence Facility and not an apartment building.”
Id. at 7.

Moreover, as a result of the loan agreement with DHCD, Peaceoholics is required to adhere “to licensing requirements for independent living programs for adolescents and young adults as established by the District’s Child and Family Services Agency. *See* 29 DCMR Chapter 63.” DHCD Contract No. 2008-06, at 4. Mr. Abrahams testified that he is bound by this contract, and intends to comply with any licensing requirements set forth in this agreement in operating the independent living facility at 1300 Congress Street, S.E. Transcript, at 325. These licensing requirements demonstrate that, notwithstanding the fact that the housing is called “independent living,” each of the at-risk youth residing at the Congress Street facility will receive an extensive array of assistance and services that characterize a CBRF.

Specifically, the regulations promulgated by CFSA implementing the Youth Residential Facilities Licensure Act of 1986 provide that “An independent living program shall recruit and hire staff members who have the specialized knowledge, skills, and cultural competency necessary to provide for the residents’ safety and developmental needs.” 29 DCMR § 6323.1. “An independent living program must designate a clinical director who is responsible for the development, implementation, and supervision of programmatic services provided by or through the independent living program,” and employ at least one social worker who is “responsible for the daily implementation of the social services provided to residents.” *Id.* §§ 6323.5, 6323.7. “An independent living program shall educate a resident concerning life skills.” *Id.* § 6330.7. The staff of the independent living program “shall monitor each resident and residence, including through at least twice monthly inspections of each residence,” through “announced and

unauthorized inspections.” *Id.* § 6331. Residents must be given a monthly stipend and weekly allowance, and provided with household supplies, furniture, furnishings, and equipment. *Id.* §§ 6329, 6332.

Accordingly, while residents of CFSA-licensed independent living programs must “have sufficient maturity to live without *regular* and *continuous* supervision and monitoring,” they must be “provided with monitoring and services.” 29 DCMR §6399 (definition of “independent living program”) (emphasis added). These at-risk youths will clearly be provided with substantial supportive services, including but going well beyond the financial management assistance that were the sole supportive services provided to residents in *BZA Appeal No. 15639 of Robert Ebel*. Accordingly, there is no support for Peaceaholics’ suggestion that because the Congress Street facility is called an “independent living program” it cannot be a CBRF.

Finally, while Peaceaholics currently provides similar supportive services to persons residing in low-income housing facilities, such as Barry Farms, this does not mean that the facility that Peaceaholics intends to operate at 1300 Congress Street S.E. is not a CBRF, as Mr. Abraham suggests. Transcript, at 331. The zoning regulations only regulate the use of property, not services provided by individuals or organizations. Thus, a single family dwelling is not a health care center simply because a home health care worker provides health services to persons in the home. Here, however, 1300 Congress Street S.E. is a CBRF because Peaceaholics is operating it is a *residential facility* intended for persons who have a common need for treatment, rehabilitation, assistance, or supervision in their daily living.

III. The Facility at 1300 Congress Street, S.E. Is Community Residence Facility, Which Is Not A Matter of Right Use in the R-5 Zone.

A. The Appropriate Subcategory of CBRF for Peaceoholics' Facility Is A "Community Residence Facility".

The Zoning Regulations identify seven subcategories of CBRFs and provide that “[a]ll community-based residential facilities shall be included in one (1) or more of the[se] . . . subcategories.” 11 DCMR § 199.1 (definition of CBRF). Since Mr. Abraham asserted that the at-risk youths who will reside in the facility will be between 18 and 21 years of age, the appropriate subcategory for the CBRF is a “Community Residence Facility” (“CRF”), which is defined by the Zoning Regulations as a “facility that meets the definition for and is licensed as a community residence facility under the Health Care Facilities and Community Residence Facilities Regulations, 22 DCMR § 3099.1 (1986) (superseded).” 11 DCMR § 199.1 (definition of CBRF). A CRF is defined by the Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983 as:

A facility that provides a sheltered living environment for individuals who desire or need such an environment because of their physical, mental, familial, social, or other circumstances, and who are not in the custody of the Department of Corrections. All residents of a community residence facility shall be 18 years of age or older except that, in the case of group homes for mentally retarded persons, no minimum age shall apply....

D.C. Code § 44-501(a)(4).

The Peaceoholics facility at 1300 Congress Street, S.E. satisfies this definition. As noted above, priority for housing must be given to “extremely low-income at-risk youths referred by [CFSA]” who have a common need as a result of their social, familial or other circumstances for the “intensive interventions aimed at improving their outcomes for sustained, healthy adult development.” DHCD Contract No. 2008-06, at 2; SHIP Program Material, at 2-3. As Mr.

Abraham testified, the independent living program that Peaceholics will operate at 1300 Congress Street SE is for at-risk youth who are over the age of 18. Transcript, at 324.

In *BZA Appeal No. 15639 of Robert Ebel* (served Feb. 9, 1994), this Board determined that a similar living program for ex-convicts, who paid for their own rent and board was a CRF, explaining “[b]ased on the Board's analysis of the facts and the applicable laws, the Board concludes that the proposed use is a community residence facility-type of CBRF.” *Id.* at 11. As noted above, the “social circumstances” establishing the at-risk youths’ common need for assistance is similar, and the level of services provided by Peaceholics to these at-risk youth is far greater. Accordingly, the appropriate subcategory of CBRF for the Congress Street facility is a CRF as defined in DCMR § 199.1.

B. A CRF Is Not A Matter of Right Use in the R-5-A Zone.

Under the Zoning Regulations, a CRF for seven to 15 persons is permitted as a matter of right in the R-5 zone only if “there is no property containing an existing community-based residential facility for seven (7) or more persons either in the same square or within a radius of five hundred feet (500 ft) from any portion of the subject property.” 11 DCMR § 350.4(f). Here, there are already three CBRF’s within the same square/500 feet of 1300 Congress Street, including a Community Residence Facility (“CRF”) for eight residents operated by Individual Development Corporation at 2030 Congress Street, S.E., and a CRF for 20 adults operated by Holy Comforter at 3323 13th Street, S.E. *See* Exhibit No. 16.

Intervenors believe that the clustering of social service agencies will adversely affect and aggrieve them by increasing noise and traffic and parking difficulties near their homes, and compromising their safety and security due to problems associated with inadequately supervised,

at-risk youths and the over-concentration of CBRFs in the same square/500-foot area. The issuance of the building permit for the facility as an “apartment” will evade the special exception review applicable to CBRFs by this Board, and the applicable zoning requirements that such facilities be operated so as not to adversely affect neighboring property. 11 DCMR § 3104.

For the foregoing reasons, the ANC’s appeal should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'A. Ferster', written over a horizontal line.

Andrea C. Ferster
2121 Ward Court, N.W., 5th Fl.
Washington, D.C. 20037
(202) 974-5142

CERTIFICATE OF SERVICE

I hereby certify that, on October 29, 2010, a copy of the foregoing Intervenor's Post-Hearing Brief was served by mail on the following:

Zoning Administrator
DCRA
1100 4th Street SW
Washington, DC 20024

Jauhar Abraham
Peaceoholics, Inc
606 Raleigh Place, S.E.
Washington, D.C. 20032

Commissioner Sandra Seegars, Chair
ANC 8E
1107 Savannah St., SE
Washington, D.C. 20032

Jay Surabian
Assistant Attorney General
DCRA
Office of the General Counsel
1100 4th Street, SW
Washington, DC 20024

A handwritten signature in black ink, appearing to read 'A. Ferster', written over a horizontal line.

Andrea C. Ferster