

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

BZA Appeal No. 18999

Hearing Date: May 12, 2015

PROPERTY OWNER'S STATEMENT IN OPPOSITION

2307 Ontario Rd NW LLC ("**Developer**") hereby urges the Board of Zoning Adjustment ("**BZA**" or "**Board**") to deny the appeal of Advisory Neighborhood Commission 1C ("**ANC**" or "**Appellant**"). Under § 3199(a)(3) of the Zoning Regulations, the Developer is automatically a party to this proceeding since it is the owner of the subject property in this appeal.

The ANC appealed Building Permit No. B1408491, which permits the conversion of two adjacent residential buildings into one eight-unit multifamily building at premises 2305 & 2307 Ontario Road NW (Square 2567, Lots 45 & 46) ("**Properties**"). The appeal should be denied because the ANC incorrectly interprets the Zoning Regulations with respect to parking credits, and it miscalculates lot occupancy and FAR.

I. BACKGROUND

The Properties are located in the Adams Morgan/Washington Heights neighborhood and are zoned R-5-B. They are not in a historic district, and they do not contain historic landmarks. Together, the Properties contain approximately 3,854 square feet of land area. The Properties are bounded to the north by a two-story residential building, to the south by a two-story residential building, to the east by a 20-foot public alley, and to the west by Ontario Road.

The Properties are improved with two buildings constructed circa 1905. Both buildings were constructed as single family dwellings. The building at 2305 Ontario Road has a one-story rear addition constructed sometime after the original building. As shown on the official survey attached as Exhibit A, the building at 2307 Ontario Road NW ("**2307 Property**") also has a one-story rear addition built sometime after the original construction. At the rear of the 2307

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Property, behind the addition, is a brick patio, a fence, a dirt area, and a concrete pad. The concrete pad measures 16.33 ft. wide and approximately 11.67 ft. deep. Based on the survey date of June 8, 2005, the 2307 Property has had this configuration for at least 10 years.

The Developer plans to combine the Properties into one lot, connect the buildings, and add to the combined building to create an eight unit multifamily residential building with three surface parking spaces at the rear (the “**Project**”). The Project will retain the original buildings on the Properties, but it will remove the later rear additions and replace them with a new rear addition.

The Project does not require relief from the Zoning Regulations and may be constructed as a matter-of-right. The Project conforms to all height and bulk standards of the Zoning Regulations, which DCRA affirmed through the issuance of a permit. The Project also provides the required number of parking spaces, which includes a credit of one parking space correctly granted by the Zoning Administrator.

II. THE PARKING CREDIT WAS APPROPRIATELY GRANTED

The Zoning Administrator (“**ZA**”) granted a credit of one parking space for the 2307 Property, and this credit will be used for the Project. This is the only parking credit at issue; no parking credit was granted for 2305 Ontario Road. The parties do not disagree that the single family house at the 2307 Property was constructed prior to 1958 or that parking is not required for the single family house because it was constructed prior to 1958. Since the current parking requirement for a single family house in the R-5-B zone is one space and no legal parking is provided, the ZA granted a parking credit of one space. The Developer presented evidence, attached as Exhibit B, to the ZA that the existing rear yard condition cannot accommodate a conforming parking space, so the ZA appropriately granted one parking credit.

The Board must uphold the ZA's decision to grant the parking credit as long as it is "neither erroneous nor inconsistent with the Zoning Regulations as a whole." *Wallick v. D.C. Bd. of Zoning Adj.*, 486 A.2d 1183, 1184 (D.C. 1985). In this case, the ZA's decision to grant a parking credit clearly is not in error and is consistent with the Zoning Regulations as a whole.

A. Parking Credits Have Long Been Accepted by the Zoning Administrator and the Board.

Parking credits are a concept that the Zoning Administrator, the Board, and the Court of Appeals have endorsed on many occasions. *See, e.g., Appeal No. 17526 of ANC 6A* (2006) (attached as Exhibit C); *Gladden v. D.C. Bd. of Zoning Adj.*, 659 A.2d 249, 253-54 (D.C. 1995). The credit amount is based on the use of a building immediately preceding May 12, 1958; namely, "a grandfathered [pre-1958] building should be credited with the number of parking spaces that would have been required were it subject to the parking schedule of § 2100.1." *Appeal No. 17526*.

However, neither the Zoning Administrator nor the Board has required that a property owner prove the exact condition of a property in 1958 or the entire property history since 1958 to grant a parking credit. Typically, records back to 1958 do not exist for most buildings. On many occasions, the ZA has granted – and the Board has affirmed – parking credits based on the property's existing condition as presented by the property owner.¹ Therefore, the Zoning Administrator's standard, as affirmed by the Board, is whether the granting of the parking credit is reasonable given the evidence presented. *See Appeal No. 16839 of Advisory Neighborhood Commission 4A* (2002) (attached as Exhibit D). In *Appeal No. 16839*, the ZA approved – and the Board affirmed – three parking credits for a pre-1958 building when records were unclear,

¹ In *Appeal No. 17526*, the plat of the property did not show any parking, and DCRA accepted this plat as the basis for granting the parking credit. *See* FoF 5-6.

incomplete, and extended only to 1972.² In affirming the parking credits in that case, the Board found that “the Zoning Administrator’s parking calculations are not unreasonable given the records that do exist.” *Appeal No. 16839*, FoF 24.

B. A Parking Credit is Based on Whether Legal Parking is Provided.

Consistent with the Zoning Regulations, the only clear basis for a parking credit is whether a legally conforming 9 ft. x 19 ft. space was provided on the 2307 Property. The Appellant incorrectly asserts that no parking credit should be given because a car can be shown parked on the concrete pad. However, it is geometrically impossible to fit a conforming parking space on the concrete pad. In addition, even the larger area between the fence and the rear property line is approximately 16.67 feet long, so a conforming parking space still would not fit. Just because a car can be shown on the property or that the rear yard area was identified as “parking” by any other person does not mean that it is a parking space that satisfies the requirements of the Zoning Regulations.

The Zoning Administrator and any property owner must have a bright line test for determining when parking does and does not exist on the site of a building constructed prior to 1958. Under §§ 2115.1 and 2117.3 of the Zoning Regulations, a legal parking space must be 9 feet wide and 19 feet long and on a surface of durable, all-weather materials. The only bright line is whether a legal parking space can be accommodated on the property given the existing condition and reasonable proof of the history of that condition. If a legal space cannot be accommodated, then a credit is warranted. There is no gray area and no ambiguity under this

² The D.C. Court of Appeals vacated this Order, and the Board subsequently granted the appeal. However, the issue on appeal to the Court of Appeals was the use classification, not the parking credits. The reasoning for and granting of the parking credits was not challenged.

rule. This bright-line rule makes the administration of parking credits reasonable, predictable, and consistent.

If the standard for administering parking credits were just whether a car can be parked on the property, as the Appellant proposes, then there would be considerable opportunity for property owner manipulation and inconsistent interpretation by the ZA. Without a clear rule, there would be no way to understand when an area is large enough for parking to “exist.” Should it be if an SUV can fit or if a sedan can fit? What if the area could fit only a Smart Car (5.17 feet wide and 8.83 feet long)? Clearly, it would be unacceptable to consider such a small area as “existing” parking, but there is no way to know when a space is too small to be unacceptable without a clear rule.

For new construction, anything less than 9 ft. x 19 ft. on an all-weather surface is not acceptable as a parking space under the Zoning Regulations. Similarly, if the Developer in this case were to propose using the existing concrete pad as one of the required parking spaces, then it similarly would not be acceptable under the Zoning Regulations, even if the architect, realtor, or anyone else identified it as “parking.” Calling something parking does not legally make it parking. Thus, there is no reasonable basis that providing anything less than a conforming space should be acceptable for a parking credit.

The Zoning Administrator has consistently applied this bright-line rule when determining parking credits, and the Board has accepted it. For example, in *BZA Case Nos. 15458 and 13775*, the Zoning Administrator granted parking credits for pre-1958 buildings since 9 ft. x 19 ft. parking spaces could not be accommodated on the properties, even though there was some open space at the properties’ rears.

The bright-line rule of requiring a regulation-sized space to count as “existing” parking is necessary to avoid the different treatment of property owners, which is a concern raised by the Appellant. If a property owner can reasonably prove that a pre-1958 building’s condition has been in existence without providing a legal parking space, then she is entitled to a parking credit. If she cannot reasonably prove it, then she is not entitled to a parking credit. This bright-line rule ensures equal treatment of different property owners. In this case, the ZA correctly applied this bright line rule and granted a credit of one parking space.

C. The Existing Condition that Cannot Accommodate a Legal Parking Space Should Determine the Parking Credit.

As described above, the dimensions of the existing condition should be the only basis for determining whether legal parking exists at the 2307 Property because it is a bright-line rule. It is nearly impossible to know the entire history of the 2307 Property since 1958. Whether the concrete pad, fence, or other features of the 2307 Property *could* have changed since 1958 is not relevant because it is merely speculation. Without any verifiable evidence, we cannot know the property’s history, and the Zoning Administrator’s decision should not be based on a theoretical past condition. The burden is on the Appellant to prove the history of the rear yard of the 2307 Property, and the Appellant has not produced any such evidence. Therefore, the Appellant has not satisfied its burden.

Based on solid evidence, the history we know is that the rear yard condition of the 2307 Property as presented to the Zoning Administrator has existed for at least 10 years and likely longer. The Sanborn Plat from 1999, attached as Exhibit E, shows that the one story addition was already constructed, so the known rear yard condition likely was in existence for at least 16 years. According to the survey prepared in 2005, the area between the fence and the rear

property line is 16.33 feet wide and approximately 16.27 feet long. In addition, as attested by the prior owner of the 2307 Property, the condition of the rear yard did not change from at least 2005 to 2014, consistent with the 2005 survey (see prior owner's affidavit in Exhibit F). Furthermore, the "existing condition" depicted on the plan that the Developer presented to the ZA in December 2014 is consistent with the survey and the prior owner's attestation. The only reasonable conclusion is that the rear yard configuration and improvements have been in existence for at least 10 years.

Therefore, the ZA reasonably determined that the configuration of the rear yard of the 2307 Property has not changed since at least 2005, and the Developer clearly has not manipulated the rear yard. The Appellant has not produced any evidence to prove that the existing rear yard condition has been other than shown on the survey or that it otherwise has been manipulated. Ten years of a verifiable property condition is a reasonable amount of time for the Zoning Administrator to consider it an "existing condition," so the ZA was correct in determining that the 2307 Property did not provide a legal parking space. Following the standard of "reasonableness" based on known records, the ZA's granting of the parking credit for the 2307 Property was reasonable given the records presented by the Developer.

D. Use of the Rear Yard for Parking Does Not Equate with "Existing" Parking for Zoning Purposes

The Appellants incorrectly argue that since the area at the rear of the 2307 Property has been used as parking, it is "grandfathered" as a parking space that eliminates a parking credit. As previously discussed, this standard creates too much ambiguity based on the size of a particular car that can fit. Also, the Appellants confuse the concept a "grandfathered" condition and a conforming condition.

A “grandfathered” condition is one that may remain despite it not conforming to the current Zoning Regulations. However, a “grandfathered” condition is not conforming despite it being allowed to remain, and it may not be used to satisfy the Zoning Regulations for any future development. This reasoning applies to any development standard in the Zoning Regulations. For example, if a building constructed before 1958 has a nonconforming rear yard, then it may remain as a “grandfathered” condition. However, a new building or an addition on the same site could not be constructed with the same nonconforming rear yard just because it was “grandfathered.”

In this case, the concrete pad is “grandfathered” in that it may remain as a nonconforming parking area only for the existing building. However, it cannot not be used to satisfy the parking requirements under §§ 2100.1 and 2100.2 for an entirely new building, or for an addition under § 2100.7. Therefore, since the concrete pad cannot satisfy the parking requirements in the Zoning Regulations, it is “grandfathered” but not conforming, and the Developer does not lose its right to a parking credit.

E. The Subdivision Does Not Eliminate the Right to a Parking Credit

The subdivision of the Properties into one lot does not affect the existing improvements on the Properties. The intent of § 101.6 of the Zoning Regulations is to prevent the creation of *new* nonconforming conditions through a subdivision, not to require the elimination of a grandfathered nonconforming conditions. This intent is confirmed by the last phrase of that section: “... applicable to that lot or any lot *created*” (emphasis added). In this case, the subdivision just redraws the lot lines, but it does not change the existing parking conditions on either property after the lots are combined. The “grandfathered” condition of no conforming parking space existing on the 2307 Property (and, thus, the parking credit) has not been eliminated by redrawing lot lines.

By the Appellant's erroneous reasoning, any time a nonconforming building is combined with another property through a subdivision, that nonconforming condition cannot remain as "grandfathered." That interpretation is simply not correct and has never been the ZA's practice. Properties with nonconforming rear yards, side yards, parking spaces, etc. are subdivided all the time with other properties, but that does not mean that those nonconforming conditions are no longer "grandfathered." Those grandfathered conditions are permitted to remain after a subdivision, but they just cannot be eliminated and re-established with new construction. The Appellant fails to provide any evidence to show that the District has ever required the elimination of a grandfathered condition with a subdivision to combine lots; thus, the parking credit remains valid after the subdivision of the Properties into one lot.

Furthermore, the Determination Letter (1310 Q Street NW) that the Appellant cites says the opposite of what the Applicant asserts. In that letter, the ZA determined that the project that will result from the subdivision complies with the Zoning Regulations. The determination that that project will comply with parking is based solely on the existing condition of a historic building and the proposed project, but the ZA's parking calculus was unaffected by the actual subdivision.

III. THE PROJECT'S FAR AND LOT OCCUPANCY CONFORM TO THE ZONING REGULATIONS

The Zoning Administrator correctly affirmed that the Project's FAR and lot occupancy conform to the Zoning Regulations. The Appellant's estimated calculations do not contravene the exact building dimensions and calculations approved as part of the Building Permit. The correct calculations included in the approved plans are described in greater detail below.

A. The Project's FAR was Correctly Calculated and Approved, and it is Permitted by the Zoning Regulations.

The illustrations and calculations attached as Exhibit G demonstrate the Project's conforming FAR that the ZA approved. The Project's computed FAR is based on the Memorandum of James J. Fahey dated September 11, 1990 (attached as Exhibit H), which is the long-accepted standard for FAR calculation. *See, e.g., Appeal No. 18615 of 5333 Connecticut Neighborhood Coalition, et al.* (2013). Based on the accepted standard, the Appellant makes several errors in its estimate of the FAR calculation. First, the Appellant incorrectly counts the area under the atrium three times. There will be one floor under atrium, so its area counts only once.

Second, the Appellant incorrectly counts the area of the areaways. An areaway is a "common and efficient method of maximizing light and ventilation to dwelling units partially below grade in an urban environment routinely approved by DCRA," but its area does not count toward FAR. *Appeal No. 18615*. In *Appeal No. 18615*, the Board upheld the ZA's determination that the areaways do not have to count toward FAR. In this case, the areaways in the Project are intended to provide light and ventilation to the cellar units, so the ZA correctly determined that the finished grade is not at the bottom of the areaways and does not count toward FAR. The Appellant has not proven that the finished grade for the Project should be the bottom of the areaways. Therefore, the ZA correctly determined that the Project's calculated FAR of 1.78 complies with the Zoning Regulations.³

B. The Project's Measured Lot Occupancy is Permitted by the Zoning Regulations

The approved wall check attached as Exhibit I provides an exact measurement of the Project's lot occupancy that the ZA approved. The Appellant incorrectly adds the porch into the

³ The maximum permitted FAR is 1.8.

lot occupancy calculation. The porch is uncovered and is less than four feet above grade. Therefore, under § 2503 of the Zoning Regulations, it does not count toward lot occupancy, and the Appellant fails to provide any evidence why it should.

As shown on the wall check, the measured building length is 71 feet. This equates to a lot occupancy of 60.16%. This lot occupancy is within the minor flexibility allowed by the Zoning Administrator under § 2522.1(a) of the Zoning Regulations. The ZA approved this lot occupancy under his flexibility, so the Project complies with the lot occupancy limit in the Zoning Regulations.

IV. THE ALLEGED PLAN INCONSISTENCIES ARE NOT ZONING ISSUES PROPERLY BEFORE THE BOARD

Under § 3112.2 of the Zoning Regulations, the role of the Board is to hear appeals of decisions regarding “the administration or enforcement of the Zoning Regulations.” The Appellant makes assertions about plan inconsistencies that were not decisions regarding the administration of the Zoning Regulations, so they are not properly before the Board. First, the Project does not include a roof deck, but roof decks are permitted under the Zoning Regulations in any event. Second, steps leading to the cellar units will be provided; however, such steps are both permitted and not required under the Zoning Regulations in any event. Finally, the measured building length is 71 feet, as the approved wall check shows. Thus, none of the Appellant’s assertions about inconsistencies are relevant parts of this appeal.

V. CONCLUSION

The Appellant has not met its burden of proof in this appeal that the ZA’s decisions were clearly erroneous or inconsistent with the Zoning Regulations as a whole. Rather, the ZA correctly determined that the Developer is entitled to one parking credit, based on a bright-line rule that the existing condition of the 2307 Property cannot accommodate a conforming parking

space. The use of this bright-line rule is much more consistent with the Zoning Regulations as a whole than a subjective assessment if a car can fit. The ZA made a reasonable decision in this case given the evidence presented that the 2307 Property does not and has not, for at least 10 years, provided a conforming parking space. Furthermore, the ZA correctly approved the FAR and lot occupancy calculations for the Project, based on the appropriate methods for calculating both. For all of these reasons, the appeal should be DENIED.

VI. EXHIBITS

EXHIBIT A	Survey of 2307 Property
EXHIBIT B	Evidence presented to ZA in Support of Parking Credit
EXHIBIT C	Appeal No. 17526
EXHIBIT D	Appeal No. 16839
EXHIBIT E	Copy of Sanborn Plat
EXHIBIT F	Affidavit of Prior Owner
EXHIBIT G	FAR Calculation
EXHIBIT H	Memo from Jim Fahey, dated September 11, 1990
EXHIBIT I	Approved Wall Check

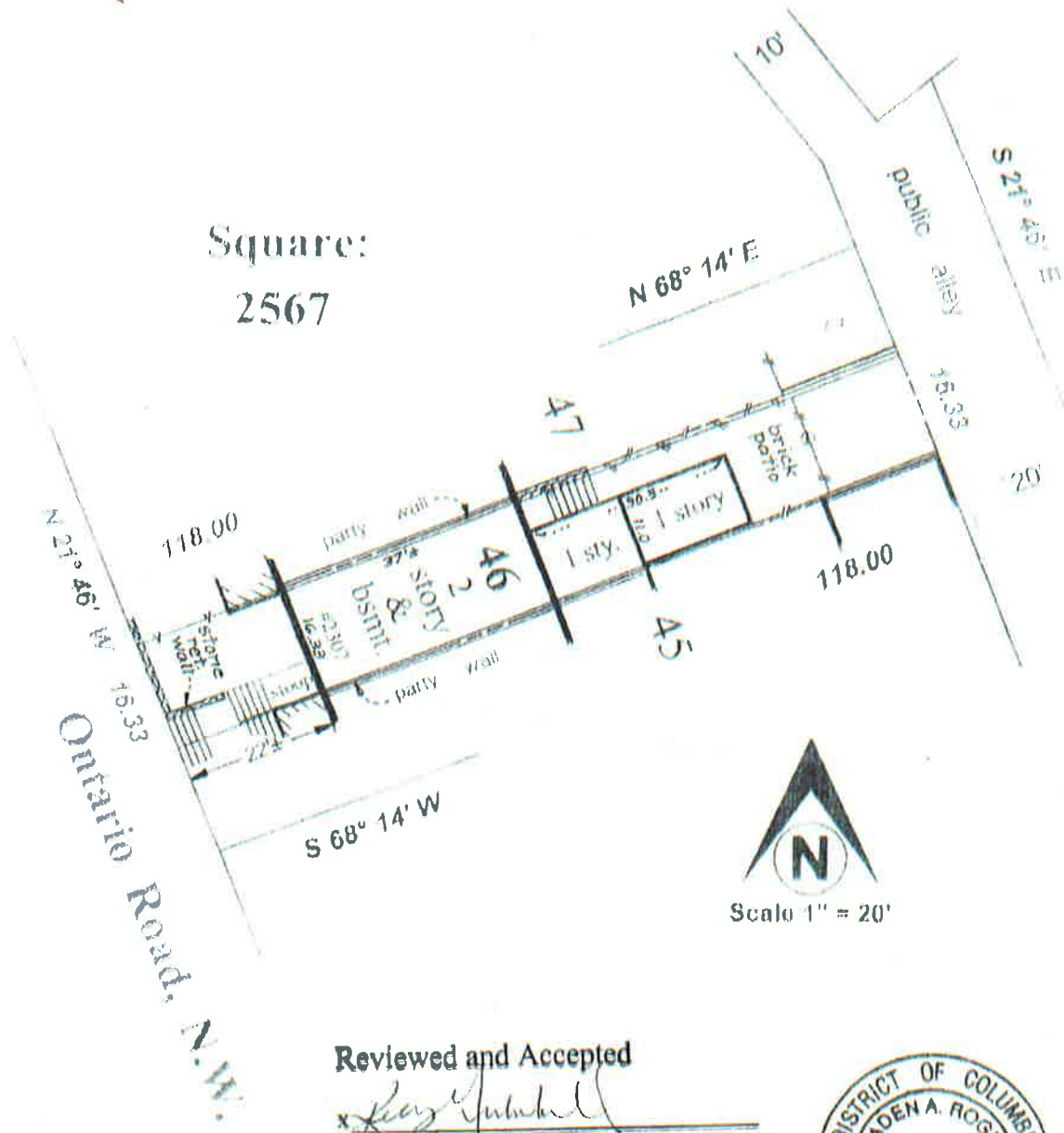
Respectfully submitted,
GOULSTON & STORRS, P.C.


Cary Kadlecek

EXHIBIT A

LANDTECH ASSOCIATES, INC.
 7807 BALTIMORE AVENUE SUITE 214
 COLLEGE PARK, MARYLAND 20740
 PH: (301) 277-8878 FAX: (301) 277-5866
 LANDTECHDC@VERIZON.NET

Square:
 2567



Scale 1" = 20'

Reviewed and Accepted

[Signature]
[Signature]



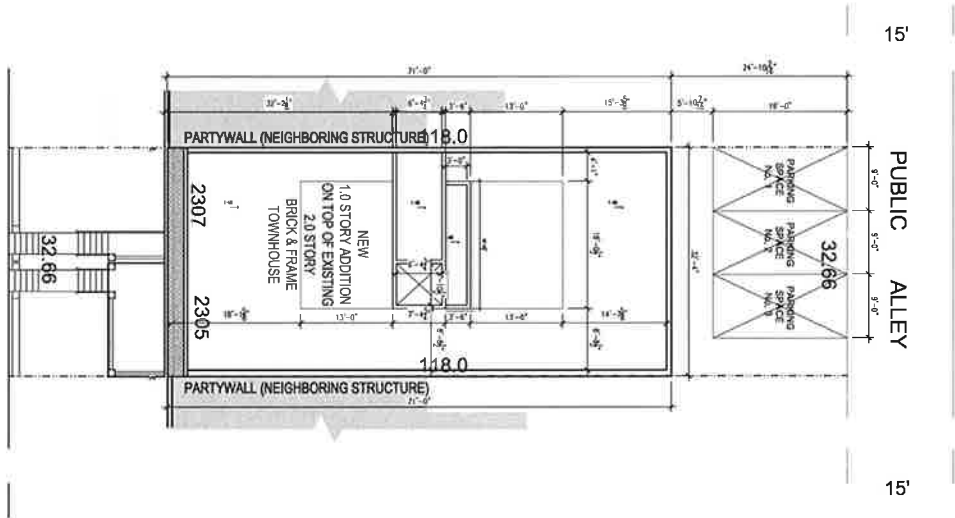
NO TITLE REPORT FURNISHED

LOCATION SURVEY OF 2307 Ontario Road, N.W. Washington, D.C.	LOT: 46	SQUARE: 2567
	LIBER: County 19	FOLIO: 110
	DATE: 6-8-05	SCALE: 1"=20'
	CASE NO: 050704	FILE NO: LT2051384

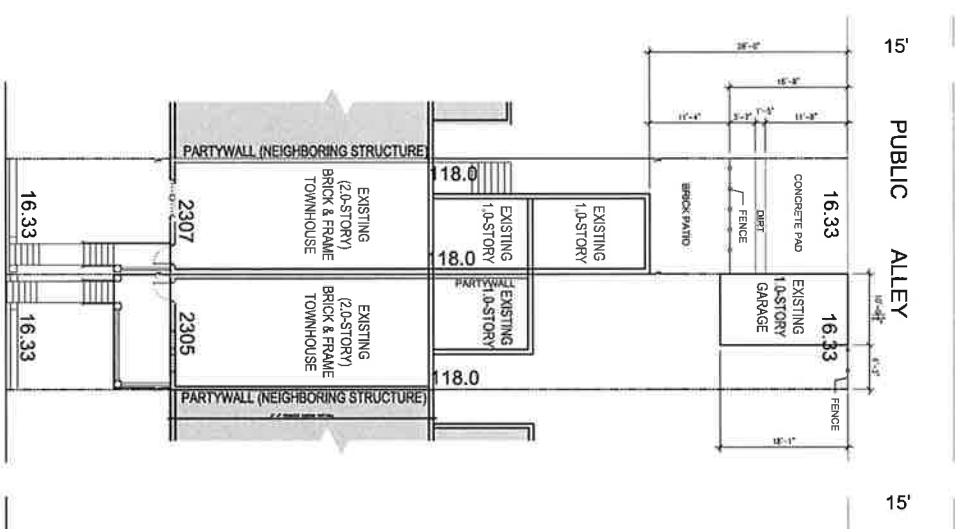
CERTIFICATION: I hereby certify that the position of all the existing visible improvements on the above described property has been carefully established in relation to the apparent true lines and that, unless otherwise shown, there are no visible encroachments. This is not a property line survey and should not be used for the erection of fences or any other improvements or for permit applications.

[Signature]
 GRADEN A. ROGERS D.C. LAND SURVEYOR
 LIC. NO. L9900374

EXHIBIT B



1 NEW SITE PLAN
SCALE: 1/8" = 1'-0"



1 EXISTING SITE PLAN
SCALE: 1/8" = 1'-0"

SITE LOCATION

2305 ONTARIO
2305 + 2307 ONTARIO ROAD
WASHINGTON, D.C. 20001
SQUARE 2587 LOT 0045 ZONER S-B

DESIGNER

workshop | t10

Working: T10 Design Studio
1423 Fifth Street NW
Washington, DC 20004
202-758-2930 | office
202-758-2931 | fax
OWNER

PROJECT TEAM

1. GENERAL NOTES: SEE ALL NOTES ON ALL SHEETS.
2. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE DISTRICT OF COLUMBIA DEPARTMENT OF PUBLIC WORKS (DPW) SPECIFICATIONS.
3. ALL UTILITIES SHALL BE LOCATED AND DEPT. BEFORE CONSTRUCTION.
4. ALL MATERIALS SHALL BE APPROVED BY THE DPW.
5. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED TIME FRAME.
6. ALL COSTS SHALL BE THE RESPONSIBILITY OF THE OWNER.
7. ALL PERMITS SHALL BE OBTAINED BEFORE CONSTRUCTION.
8. ALL NEIGHBORING PROPERTIES SHALL BE NOTIFIED OF THE PROJECT.
9. ALL TRAFFIC SHALL BE MAINTAINED DURING CONSTRUCTION.
10. ALL SITEWORK SHALL BE COMPLETED BEFORE FINAL GRADING.
11. ALL PLANTING SHALL BE INSTALLED AFTER GRADING IS COMPLETE.
12. ALL FENCING SHALL BE REMOVED AFTER CONSTRUCTION IS COMPLETE.
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PERMIT SET

SITE PLAN

A 051



EXHIBIT C

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Appeal No. 17526 of ANC 6A pursuant to 11 DCMR §§ 3100 and 3101, from the administrative decision of the Department of Consumer and Regulatory Affairs (DCRA) in the issuance of Building Permit No. 89703, for property located at 1411 Ames Place, N.E. (Lot 39, Square 1056).

HEARING DATE: November 14, 2006

DECISION DATE: November 14, 2006 (Bench Decision)

DECISION AND ORDER

This appeal was filed on June 6, 2006 with the Board of Zoning Adjustment (the Board). The appeal challenged DCRA's decision to issue a building permit that authorized the conversion of a one-family dwelling to a two-family dwelling (flat). The one-family dwelling was constructed prior to the promulgation of the current regulations that require an on-site parking space for this use. The Appellant claims that DCRA erred in issuing the building permit despite the lack of a parking space required for a flat. DCRA did not require the space because it had credited the property with already providing the parking space required of one-family dwellings constructed on or after May 12, 1958. After allowing the parties an opportunity to be heard, the Board found that the permit had been properly issued and that the appeal should be denied. A full discussion of the facts and law supporting this conclusion follows.

PRELIMINARY MATTERS

Notice of Public Hearing

The Office of Zoning scheduled a hearing on November 14, 2006. In accordance with 11 DCMR §§ 3112.13 and 3112.14, the Office of Zoning mailed notice of the hearing to the Appellant, ANC 6A (the ANC in which the subject property is located), the property owner, and DCRA.

Parties

The Appellant in this case is the Advisory Neighborhood Commission 6A (the ANC or the Appellant). ANC Commissioner Nicholas Alberti spoke for the ANC during the proceedings.

DCRA appeared during the proceedings and was represented by Matthew Green, Esq.

Persons in Support/Opposition

The Capitol Hill Restoration Society filed a letter supporting the appeal (Exhibit 20).

FINDINGS OF FACT

1. The subject property is a one-family dwelling located at 1411 Ames Place, NE, (Lot 39, Square 1056), in the R-4 zone district.
2. The building, owned by Charles Moore¹ (Owner), was constructed prior to May 12, 1958 without parking spaces. No such spaces existed on the date that the Owner applied for the building permit that is the subject of this appeal.
3. The application requested permission to convert the building from a one-family to a two-family dwelling, which is also defined by 11 DCMR § 199.1 as a “flat”. (Exhibit 5).
4. DCRA issued a building permit dated April 7, 2006, allowing for “complete interior alteration” at the premises, including a basement excavation and a height increase (Exhibit 3). The permit approval was consistent with the application for a conversion to two units and an interior renovation (Exhibit 5).
5. At the time it issued the permit, DCRA was aware that no parking spaces were shown on the proposed plans, and that the owner indicated he did not intend to provide a parking space at the property.
6. DCRA also reviewed the plat for the property. The plat showed no parking spaces on the property.
7. At a regularly scheduled and properly noticed meeting on June 8, 2006, the ANC (“Appellant”) voted unanimously to appeal DCRA’s decision to “approve the zoning discipline” and issue the building permit (Exhibit 14). The appeal was timely filed on June 6, 2006 (Exhibits 1 and 2).
8. The basis of the appeal is that the permit was issued in violation of 11 DCMR §2100. Specifically, the Appellant alleges that at least one parking spot was required.
9. Pursuant to § 2100.1, a one-family dwelling must provide one parking space for each dwelling unit and a flat is required to have one parking space for each two dwelling units.
10. The parties agree that, as of the date that the building permit was applied for, the one-family dwelling use on the subject property was not required to provide a parking space.
11. The ANC contends that since the current parking requirement is zero and the use is being changed to a flat for which one parking space is required, DCRA erred in issuing a building permit that did not require that space.

¹ Mr. Moore did not appear during the proceedings. However, he is listed as the owner on the renovation contract which is part of the administrative record in this case (Exhibit 4).

12. The Zoning Administrator contends that because of the grandfathering provision of 11 DCMR § 2100.1, the property should be deemed to already have satisfied the requirement of providing the single parking space required for a one-family dwelling, and since a flat also requires a single space, no additional parking is required.

CONCLUSIONS OF LAW

Pursuant to the Zoning Act, the Board has jurisdiction to hear appeals alleging "error in any order, requirement, decision, determination, or refusal made by ... any [District] administrative officer or body in the carrying out or enforcement of the Zoning Regulations. D.C. Official Code 6-641.07(g) (1) (2001). In this case, the Appellant alleges that DCRA erred in issuing the subject building permits because the parking requirements set forth in 11 DCMR § 2101 were not met.

Subject to certain exceptions not applicable here, all buildings or structures erected on or after May 12, 1958 must be provided with parking spaces to the extent specified in 11 DCMR § 2101.1. 11 DCMR §§2100.1, 2101. 1; § 2101. 1 provides that a single parking space is required for a single family dwelling or a flat.²

There is no disagreement that because this one-family dwelling was constructed prior to May 12, 1958, it does not have to provide the one-parking space required by § 2101.1 for one-family dwellings constructed on or after that date. The parties differ over whether the addition of another dwelling unit triggers a parking requirement. The Appellant offers two theories in support of the appeal.

First, Appellant claims that the proposed addition of the dwelling unit would result in a change of the building's use from a one-family dwelling to a flat. One-family dwellings and flats are identified as permitted uses within Residence districts and a one-family dwelling can be lawfully converted to a flat in the R-4 district as a matter of right.

Subsection § 2100.4, governs the circumstances when a change in use subjects the property to a different and more stringent parking schedule. It provides that, except for historic landmarks and buildings that contribute to a historic district:

when the use of a building or structure is changed to another use that requires more parking spaces than required for the use existing immediately prior to the change ... parking spaces shall be provided for the additional requirement in the amount necessary to conform to § 2101.1.

Appellant contends that this provision should apply to this one-family dwelling because the current parking requirement is zero in light of the grandfathering set forth in § 2101.1. It argues that since a flat requires the provision of one space, the proposed conversion to that use "requires more parking spaces than required for the use existing immediately prior to the change".

² Two parking spaces are required in the R-5-A District. In all other Residential Districts, only one is required.

BZA APPLICATION NO. 17526

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A similar argument was made before the District of Columbia Court of Appeals in *Gladden v. BZA*, 659 A.2d 249 (D.C. 1995). In that case, the BZA agreed with the Zoning Administrator that one, rather than two parking spaces, was required in order to convert a home built prior to May 12, 1958 to a youth rehabilitation home. Like the Appellant here:

The Petitioner's argument fail[ed] to take into account the "grandfathering" procedure established by 11 DCMR §§ 2100.1 and 2100.4. "The regulations exempt buildings built before May 12, 1958 -- the effective date of the parking regulations -- from [specific parking] requirements." *Woodley Park Comm. Ass'n v. District of Columbia Bd. of Zoning Adjustment*, 490 A.2d 628, 639 (D.C. 1985); see also *Page Associates v. District of Columbia Bd. of Zoning Adjustment*, 463 A.2d 649, 651 (D.C. 1983) (noting that buildings built before the regulations that are converted to another use must provide additional parking spaces in the amount not grandfathered).

...In sum, we conclude that of the two spaces required for a youth rehabilitation home under 11 DCMR § 2101.1 one space is supplied by the grandfathered credit for the pre-1958 structure and the applicant provided the other space with a standard nine by nineteen-foot space on the premises.

Id. at 253-254.

Based upon this precedent, the Board finds that the Zoning Administrator properly deemed the property as having already furnished the one space required for a one-family dwelling. After crediting this space against the one space required for a flat, the Zoning Administrator correctly found that no additional parking was required.

For its second theory, the Appellant claims that the addition of a dwelling unit will double the intensity of the use and therefore additional parking is required under 11 DCMR § 2100.6. That subsection requires additional parking "when the intensity of use of a building or structure existing before May 12, 1958 is increased by an addition of ... dwelling units" Subsection 2100.7 provides that such additional parking is not required "unless the addition increases the intensity of use of the building or structure by more than twenty-five percent (25%) of the aggregate."

The Board agrees with the Zoning Administrator that § 2100.6 should be read together with the general grandfathering provision of § 2100.1. Whether calculating the parking requirement resulting from a change of use (as was the circumstance in the *Gladden* case) or from an intensification of a use, a grandfathered building should be credited with the number of parking spaces that would have been required were it subject to the parking schedule of § 2100.1. The Zoning Administrator properly determined that the addition of the dwelling unit required no additional parking on the subject property.

THE ANC

The Board is required under § 13 of the Advisory Neighborhood Commission Act of 1975, effective October 10, 1975 (D.C. Law 1-21), as amended; D.C. Official Code § 1-9.10(d)(3)(A)), to give "great weight" to the issues and concerns raised in the affected ANC's recommendations. This opinion fully addresses why the Board does not find the ANC's views to be persuasive.

For reasons discussed above, it is hereby **ORDERED** that the appeal is **DENIED**.
Vote taken on November 14, 2006

VOTE: **4-0-1** (Geoffrey H. Griffis, Ruthanne G. Miller, John A. Mann II, and Anthony J. Hood in support of the motion to deny the appeal, Curtis L. Etherly, Jr. not voting, being necessarily absent)

ATTESTED BY:


JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: **AUG 23 2007**

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

SG

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



BZA APPEAL NO. 17526

As Director of the Office of Zoning, I hereby certify and attest that on **AUGUST 23, 2007**, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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ATTESTED BY:


JERRILY R. KRESS, FAIA
Director, Office of Zoning

TWR

EXHIBIT D

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Appeal No. 16839 of Advisory Neighborhood Commission 4A, pursuant to 11 DCMR §§ 3100 and 3101 from the decision of the Zoning Administrator, for the issuance of a certificate of occupancy (#18366, dated August 31, 2001) for an elderly development center serving 30 persons, ages 22 – 85 years old and 7 staff, in a C-2-A District at premises 5511 – 14th Street, N.W. (Square 2800, Lot 9).¹

HEARING DATE: March 26, 2002

DECISION DATES: June 4, 2002; July 2, 2002

DECISION AND ORDER

Advisory Neighborhood Commission (ANC) 4A filed an appeal with the Board of Zoning Adjustment on January 4, 2002, alleging that the Zoning Administrator erred in approving the issuance of Certificate of Occupancy Number 18366 dated August 31, 2001, to Metro Day Treatment Center, Inc., for a child/elderly development center for 30 persons, ages 22-85 years old, and 7 staff members, at 5507 – 14th Street, N.W. (Square 2800, Lot 10), in a C-2-A Zone District.

ANC 4A is represented in this appeal by ANC 4A07 Single-Member District Commissioner John J. Chagnon. Assistant Corporation Counsel Ra'ouf M. Abdullah represented the Zoning Administrator. Neither the owner of the subject property, Pamela Coleman, nor the lessee and facility operator, Metro Day Treatment Center, Inc., elected to participate in these proceedings.

The appellant argues first that given the ages of the individuals served, the facility is not a "child/elderly development center," a use permitted as a matter of right in the C-2 District; and, second, that the facility, which currently lacks parking spaces, does not comply with the zoning regulations requiring the provision of off-street parking spaces. After a public hearing, the Board denied the appeal, determining that the definition of the phrase "child/elderly development center" in 11 DCMR § 199.1 encompasses "similar programs and facilities"; and that Metro Day Treatment Center, which provides care and training for mentally retarded adults, qualifies as a "similar program and facility." The Board also concluded that the appellant had not met its burden of proving that the Zoning Administrator erred in determining that the property is entitled to a "parking credit" or

¹ The address, as stated on Certificate of Occupancy No. 18366, is 5507 – 14th Street, N.W. (Square 2800, Lot 10).

the grandfathering of three parking spaces, such that no additional spaces for the center (which, as a child/elderly development center, would otherwise require two spaces) are required.

PRELIMINARY AND PROCEDURAL MATTERS

Notice of Appeal and Notice of Public Hearing. By memoranda dated January 14 and 15, 2002, the Office of Zoning advised ANC 4A, the appellant; the Zoning Administrator, the appellee; the Office of the Corporation Counsel; Pamela Coleman, the owner of the property that is the subject of the appeal; Herman Broomfield, Metro Day Treatment Center, the lessee and operator of the facility that is the subject of the appeal; ANC 4C, a potentially affected ANC; the Ward 4 Councilmember; and the D.C. Office of Planning of the filing of the appeal.

The Office of Zoning scheduled a hearing on the appeal for March 26, 2002. Pursuant to 11 DCMR § 3113.14, the Office of Zoning on February 11, 2002, mailed ANC 4A and the Zoning Administrator notice of hearing. Ms. Coleman was copied on the Zoning Administrator's notice. Notice of hearing was also published in the *D.C. Register* on February 8, 2002, at 49 DCR 1088.

"Motion to Dismiss" Certificate of Occupancy. At the public hearing, the appellant requested the Board to "dismiss" the certificate of occupancy since the application for the certificate could not be found in Department of Consumer and Regulatory Affairs (DCRA) records. The regulations relating to an application form for a certificate of occupancy are found in the Construction Codes, 12A DCMR § 118.2. Under 12A DCMR § 122, any person aggrieved by DCRA's interpretation of the Construction Codes may appeal to DCRA. Since the Board's jurisdiction in an appeal is limited to determining whether there is an error in the decision of an administrative official in carrying out or enforcing the Zoning Regulations, Title 11 DCMR, the Board denied the motion. *See* § 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799; D.C. Code § 6-641.07(g)(1) (2001)).

Appellant's Case. In its report dated March 25, 2002, ANC 4A identified the following issues and concerns: (1) the Zoning Administrator failed to follow the Board's order in BZA Appeal No. 16066; (2) the Zoning Administrator erred in issuing a certificate of occupancy for an elderly development center when he had specific information that the operator did not operate as an elderly development center; (3) the Zoning Administrator erred in approving the issuance of a certificate of occupancy as an elderly development center, since the facility provides services to persons who are not elderly; (4) the Zoning Administrator failed to calculate the required parking spaces for the facility, with the site approved on the basis of no change in use at the site; (5) the Zoning Administrator failed to require off-street parking; (6) the Zoning Administrator failed to require that the

subject site be properly inspected for change in use from general office use; and (7) the Zoning Administrator failed to require proper inspections for the site's conversion from office and warehouse use to a new use that would require fire sprinkler systems. ANC 4A requested the Board to reverse the Zoning Administrator's decision to approve the issuance of Certificate of Occupancy No. 18366.

ANC 4A argued that a day treatment center does not fall within the use category "child/elderly development center," and that by approving the center as a matter-of-right use, the Zoning Administrator was creating law. The ANC argued that as an undefined use, the facility would require one parking space for every 600 square feet. The ANC also argued that Zoning Administrator's determination that a certain number of parking spaces were grandfathered was not based on sufficient information; specifically, the extent to which the building was constructed after the effective date of the 1958 Zoning Regulations. The ANC asserted that at best, one parking space could be considered grandfathered.

The appellant's case included testimony and arguments from ANC Commissioner John J. Chagnon, as well as testimony from Ana Escobar, Mr. Chagnon's wife and neighborhood resident, and Jason Washington, from Councilmember Adrian Fenty's staff.

Zoning Administrator's Case. Toye Bello, Acting Zoning Administrator, testified on behalf of the Office of the Zoning Administrator. He stated that based on the nature of its operations and traffic and parking impacts, Metro Day Treatment Center was properly categorized for purposes of zoning as a child/elderly development center. He based the parking space requirement on the child/elderly development center use category, and provided the Board with copies of DCRA's records relating to prior use of the property to substantiate his determination that the property was entitled to a parking credit of three spaces.

Closing of the Record. The record closed at the conclusion of the public hearing on March 26, 2002, with the exception of the following materials specifically requested by the Board from the Zoning Administrator: (1) Mr. Bello's resume; (2) a copy of the definition of the word "elderly" from *Webster's Dictionary*; (3) copies of the Notices of Infraction issued to the facility operator for alleged zoning violations; and (4) copies of previous certificates of occupancy issued for the subject property or a statement that would substantiate the Zoning Administrator's verification of the previous and/or predominant use of the site. The Zoning Administrator filed the requested materials on May 13, 2002. Also, the Board provided the appellant the opportunity to supplement the record with extracts from the records in BZA Appeal Nos. 16066 and 16752, related appeals;² however, the appellant did not file any materials. The Board, therefore, has not incorporated any documents from Appeal Nos. 16066 and 16752 into the record of this

² These appeals are discussed below in the Findings of Fact, under "Pertinent Zoning History of the Property."

appeal, other than the copies of documents already filed with the Board prior to the public hearing.

Decision Meeting. At the conclusion of the public hearing, the Board scheduled a decision meeting for June 4, 2002. At the appellant's request and with the appellee's concurrence, the Board postponed its decision meeting to July 9, 2002. On July 9, the Board, voting 3 – 0 – 2, with two members not voting, not having heard the case, denied the appeal.

FINDINGS OF FACT

Pertinent Zoning History of the Property

1. The property that is the subject of this appeal consists of the first and second floors of the building at 5507 – 14th Street, N.W. (Square 2800, Lot 10), located in a C-2-A District.
2. A portion of the building was erected before May 12, 1958, the date the current Zoning Regulations became effective. Neither party provided definitive evidence regarding the size or use of the building prior to May 12, 1958.
3. The oldest record provided to the Board is a copy of Certificate of Occupancy No. B-79833, dated February 7, 1972, for the first floor and lot at 5507 – 14th Street, N.W. (Square 2800, Lot 8), for a “used car lot and display – no junk – no repairing.” The application for this certificate indicates that the property was previously used as a gasoline station.
4. On May 5, 1995, the Zoning Administrator approved the issuance of Certificate of Occupancy No. B171610 to Marvin Stein, then owner of the subject property, on behalf of Psychological Development Associates, to allow use of the property as a “day treatment program.” The Zoning Administrator had approved the use as general office use.
5. John J. Chagnon, on behalf of FZC Corporation, appealed the Zoning Administrator's decision with respect to Certificate of Occupancy No. B171610. On November 25, 1997, the Board, in BZA Appeal No. 16066, determined that the Zoning Administrator erred in approving the issuance of the certificate, finding that the day treatment program, which provided education and training for mentally challenged students, did not comport with general office use.
6. Mr. Stein then petitioned the District of Columbia Court of Appeals in Case No. 97-AA-2022 for review of the Board's order. Psychological Development Associates

subsequently ceased operations and vacated the premises. The Court therefore, on April 16, 1999, dismissed the petition as moot and vacated the Board's order in BZA Appeal No. 16066. The Court remanded the case to the Board, with instructions to take appropriate action in compliance with the Court's order. On November 29, 2001, the Board dismissed BZA Appeal No. 16066 as moot, since the recipient of the disputed certificate of occupancy, Psychological Development Associates, Inc., had long since ceased operations and vacated the premises.

7. Meanwhile, on October 15, 1999, the zoning regulations relating to "child/elderly development centers" became effective. As a result, 11 DCMR § 721.1 permits use as a child/elderly development center in the C-2 District as a matter of right. *See* 46 DCR 8284, 8288 (1999). The regulations define the phrase "child/elderly development center" in 11 DCMR § 199.1, 46 DCR at 8286.

8. On May 7, 2001, DCRA issued Metro Day Treatment Center, Inc., Certificate of Occupancy No. 190720, allowing use of the first and second floors of the premises at 5511 – 14th Street, N.W. (Square 2800, Lot 9), for purposes of a "day program for mentally retarded persons, adult development, not sexually oriented."

9. ANC 4A appealed the issuance of Certificate of Occupancy No. 190720 to the Board in BZA Appeal No. 16752. On August 31, 2001, DCRA issued Metro Day Treatment Center Certificate of Occupancy No. 18366 to replace Certificate of Occupancy No. 190720. When DCRA issued Certificate No. 18366, Certificate of Occupancy No. 190720 became void by virtue of its own terms. In its final order dated December 21, 2001, the Board therefore dismissed Appeal No. 16752 as moot. At its public decision meeting on August 6, 2002, the Board denied the Appellant's motion to reconsider the dismissal.

10. On January 4, 2002, in the instant case, BZA Appeal No. 16839, ANC 4A appealed the issuance of Certificate of Occupancy No. 18366.

Certificate of Occupancy No. 18366

11. Certificate of Occupancy No. 18366 permits Metro Day Treatment Center to use 7,552 square feet on the first and second floors of 5507 – 14th Street, N.W., as a "child development center." It identifies both the previous use and the approved use as a "child development center," which is further described on the certificate as a "child/elderly development center / 30 persons / ages 22-85 years old and 7 staff members."

12. The Zoning Administrator testified that in reviewing applications involving uses that are not specifically listed in the Zoning Regulations, the Office of the Zoning Administrator applies a concept called "like use." That is, the Zoning Administrator

applies “standards of compatibility and likeness to determine use category.” Tr. at 277 (Mar. 26, 2002).

13. While the subject facility is designated as a “day treatment program” for purposes of Medicaid and Medicare, the Zoning Administrator categorized the facility as a “child/elderly development center” for purposes of zoning.

14. Metro Day Treatment Center provides care and training for mentally retarded adults.

15. Most of the clients served by the facility are well over age 40 and severely physically handicapped. They are unable to drive themselves to the facility.

16. The Zoning Regulations do not define the word “elderly.” In its Notice of Final Rulemaking relating to child/elderly development centers, the Zoning Commission specifically declined to adopt a definition of the word “elderly.” See 46 DCR 8284, 8285 (1999).

17. *Webster’s Third New International Dictionary* (1986) defines the word “elderly” as “somewhat old: rather advanced in years: past middle age” and “of, relating to, or characteristic of one past the prime of life.”³

18. The Zoning Administrator testified that he made a judgment call, based on the dictionary definition of the word “elderly” and the fact that the Zoning Commission had for some reason refused to define the elderly by age, that the Metro Day Treatment Center use is most like the use category, “child/elderly development center.”

19. The Zoning Administrator testified that he found the day treatment center to be a facility similar to a child/elderly development center in that it provides care and services to individuals who typically do not drive. He stated that Metro Day Treatment Center’s operations would therefore be comparable to a child/elderly development center in terms of traffic and parking impacts.

20. The Board finds that the use in question by Metro Day Treatment Center is similar to the programs and facilities specifically identified in the definition of the phrase “child/elderly development center” in § 199.1, both as to the nature of its operations in providing care and training for a segment of the population that typically does not drive and the likely impacts of its operations, particularly with regard to traffic and parking.

³ The Zoning Regulations provide in 11 DCMR § 199.2(g) that words not specifically defined in § 199 shall have the meanings given in *Webster’s Unabridged Dictionary*.

The Parking Space Requirements

21. Since the Board has determined that the Metro Day Treatment Center is appropriately categorized for purposes of zoning as a child/elderly development center, the Board also concludes that its parking requirement is based upon the child/elderly development center use category. As noted by the Zoning Administrator, basing the parking space requirement on number of employees and staff rather than gross floor area is appropriate, given that none of the clients served by the center drive.

22. Under § 2101.1, a child/elderly development center requires one parking space for every four staff. With seven staff as permitted by the certificate of occupancy, the Board concludes the facility requires two parking spaces.⁴

23. The Zoning Administrator determined that the premises are entitled to a credit of three parking spaces. The Zoning Administrator based his calculations on DCRA's records which indicate that the property had a history of retail use, using 7,600 square feet as the approximate gross floor area attributable to retail use.

24. While the appellant argued that the parking credit would be less if the building had been used for office purposes and if the amount of gross floor area used for office purposes before May 12, 1958, was less than 7,600 square feet, the appellant did not introduce any reliable evidence regarding the use of the building before May 12, 1958.

25. The Board finds that while records provided by DCRA relating to this property do not extend back to May 12, 1958, the Zoning Administrator's parking calculations are not unreasonable given the records that do exist.

26. On October 31, 2001, DCRA issued Metro Day Treatment Center Building Permit No. B439818 to "divide existing space to create lounge and parking for three vehicles" per submitted plans.

27. As of the date of the hearing on this appeal, the three parking spaces that were to be provided on the site pursuant to Building Permit No. B439818 were not yet accessible due to a barrier at the Colorado Avenue entrance.

CONCLUSIONS OF LAW AND OPINION

⁴ The Zoning Administrator testified that with 11 employees, the provision of the three spaces would meet the parking requirement for the category of use, child/elderly development center. However, the certificate of occupancy limits the facility to seven employees.

The Board is authorized under § 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799; D.C. Code § 6-641.07(f) and (g)(1) (2001)), to hear and decide appeals where it is alleged by an appellant that there is error in any decision by an administrative officer in the carrying out or enforcement of the Zoning Regulations. This appeal is properly before the Board pursuant to 11 DCMR §§ 3100.2, 3101.5, and 3200.2. The notice requirements of § 3112 for the public hearing on the appeal have been met.

The Child/Elderly Development Center Use

The subject property is located in the C-2-A District, the medium-density Community Business Center District. As described in 11 DCMR §§ 720.2 – 720.5, the C-2-A District is designed to provide facilities for shopping and business needs, housing, and mixed uses for large segments of the city outside of the central core. Areas zoned C-2-A are located in low and medium-density residential areas with access to main highways or rapid transit stops, and include employment centers, shopping centers, and medium bulk mixed-use centers. Matter-of-right uses in the C-2 District include dwellings, certain community-based residential facilities, various types of retail and service establishments, office uses, colleges and universities, private schools, hotels and inns, assembly halls, auditoriums, public halls, and theaters. *See* 11 DCMR § 721.

A “child/elderly development center” as defined in § 199.1 is also permitted in the C-2 District as a matter of right pursuant to § 721.1, which incorporates by reference any use permitted as a matter of right in the C-1 District under § 701. Subsection 701.2 in turn incorporates by reference any use permitted as a matter of right in the SP District under § 501, which includes under § 501.1(g), use as a child/elderly development center. *See* 46 DCR 8284, 8288 (1999).

The Zoning Regulations define the phrase “child/elderly development center” in 11 DCMR § 199.1 as:

a building or part of a building, other than a child development home or elderly day care home, used for the licensed care, education, counseling, or training of individuals fifteen (15) years of age or less and/or for care of elderly individuals, totaling six (6) or more persons, who are not related by blood or marriage to the caregiver and who are present for less than 24 hours per day. This definition encompasses facilities generally known as child care centers, pre-schools, nursery schools, before-and-after school programs, senior care centers, elder care programs, *and similar programs and facilities*. A child/elderly development center includes the following accessory uses: counseling, education, training and health and social services for the parents or principal guardians of children attending the center.

46 DCR 8284, 8286 (1999) (emphasis added).

The Metro Day Treatment Center offers care and training for mentally retarded adults. While some of the adults are “elderly” as that word is defined in the dictionary, others are young and middle-aged adults. Notwithstanding the age of the clients served, the Board concludes that Metro Day Treatment Center constitutes a “similar program and facility” to the programs and facilities specifically identified as encompassed within the definition of “child/elderly development center.”

The Zoning Regulations cannot realistically identify every potential use of property. A day treatment center for mentally retarded adults is similar to the programs and facilities encompassed within the definition of a “child/elderly development center,” both with respect to the nature of the use – the care, education, counseling, training, and other social services provided – and with respect to impacts of the use on the public. The Board in particular credits the testimony of the Zoning Administrator that the traffic and parking impacts of a day treatment center and a child or elderly development center would be similar, in that the clients served by these facilities typically do not drive themselves to the facility and park, but rather are dropped off and picked up. Accordingly, the Board concludes that the Zoning Administrator did not err in approving the issuance of a certificate of occupancy to Metro Day Treatment Center for use as a child/elderly development center.

The Parking Space Requirements

Since Metro Day Treatment Center is a child/elderly development center, the schedule of requirements for parking spaces in 11 DCMR § 2101.1 (without taking into account any “parking credits” or “grandfathering”) requires the provision of two parking spaces. To the extent that Metro Day Treatment Center is entitled to a parking credit, the credit derives from the long-standing administrative interpretation of §§ 2100.1 and 2100.4. Subsection 2100.4 provides that if the use of a building is changed to another use that requires more parking spaces than were required for the use existing immediately prior to the change, parking spaces shall be provided for the additional requirement in the amount necessary to conform to the schedule of required parking spaces in § 2101.1. Subsection 2100.1 requires that all buildings erected on or after May 12, 1958, be provided with the number of parking spaces specified in § 2101.1. Read together, these subsections provide a “parking credit,” the amount of which is based upon the use existing immediately prior to May 12, 1958.

The record is not clear as to the use existing before May 12, 1958. The appellant relies upon parking space calculations for general office use. However, the oldest records that DCRA was able to provide indicate that in 1972, DCRA issued a certificate of occupancy

for use as a "used car lot and display." None of the records indicate office use prior to May 12, 1958. The Zoning Administrator testified that based on the history of retail use, the property would be entitled to a parking credit of three spaces. While the history of use and the square footage involved is not as complete as might be desired, the Board concludes that the appellant has not met its burden of proving that the Zoning Administrator erred in approving the issuance of the certificate of occupancy without first requiring the provision of additional parking spaces. However, even if the Zoning Administrator erred in calculating a parking credit of three spaces, Metro Day Center's subsequent provision of three parking spaces will more than satisfy its obligation under § 2101.1 to provide two spaces. The reversal of the Zoning Administrator's decision under such circumstances is not warranted.

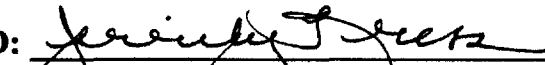
Finally, since the Court of Appeals vacated the Board's decision in BZA Appeal No. 16066, rendering it of no legal effect, the Zoning Administrator did not err in failing to follow the Board's decision that a day treatment center use should not be classified for purposes of zoning as general office use. To the extent the appellant has raised concerns about the inspection of the facility and its fire sprinkler system, those concerns, which involve the interpretation and application of the Construction Codes, Title 12A DCMR, fall within DCRA's purview. Any appeal of these issues must be addressed to DCRA pursuant to 12A DCMR § 122.

For the reasons stated above, it is hereby **ORDERED** that the appeal is **DENIED** and that the decision of the Zoning Administrator to approve the issuance of Certificate of Occupancy No. 18366 is **AFFIRMED**.

VOTE: 3 - 0 - 2 (Geoffrey H. Griffis, John G. Parsons, and Anne M. Renshaw, to affirm; Curtis L. Etherly, Jr., and David A. Zaidain, not voting, not having heard the case)

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

Each concurring member has approved the issuance of this Decision and Order.

ATTESTED: 
JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: OCT 15 2002

PURSUANT TO 11 DCMR § 3125.6, THIS DECISION AND ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA Appeal No. 16839

As Director of the Office of Zoning, I hereby certify and attest that on OCT 15 2002, a copy of the Decision and Order entered on that date in this matter was mailed first class, postage prepaid, or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning this matter and that is listed below:

James H. Jones, Chairman
Advisory Neighborhood Commission 4A
7600 Georgia Avenue, N.W., Suite 404
Washington, D.C. 20012

John J. Chagnon, Commissioner
ANC Single-Member District 4A07
5603 – 14th Street, N.W.
Washington, D.C. 20011

Charlotte W. Parker, Deputy Corporation Counsel
Ra'ouf M. Abdullah, Special Assistant Corporation Counsel
Office of the Corporation Counsel
441 – 4th Street, N.W., Suite 450-N
Washington, D.C. 20001

Pamela Coleman
4200 Wisconsin Avenue, N.W.
Washington, D.C.

Herman Broomfield
Metro Day Treatment Center, Inc.
5507 – 14th Street, N.W.
Washington, D.C. 20060

Honorable Adrian M. Fenty
Councilmember Ward 4
Council of the District of Columbia
1350 Pennsylvania Avenue, N.W., Room 506
Washington, D.C. 20004

William Kelly, Zoning Administrator
Building and Land Regulation Administration
Department of Consumer and Regulatory Affairs
941 North Capitol Street, N.E.
Washington, D.C. 20002

Ellen McCarthy, Deputy Director
Development Review Division
Office of Planning
801 North Capitol Street, N.E., Suite 4000
Washington, D.C. 20002

Alan Bergstein, Section Chief
Land Use and Public Works Section
Commercial Division
Office of the Corporation Counsel
441 – 4th Street, N.W., 6th Floor
Washington, D.C. 20001

ATTESTED BY:

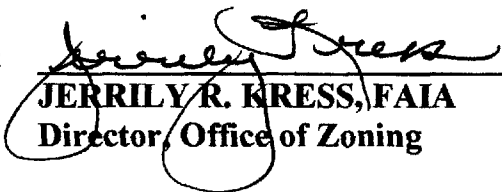

JERRILY R. KRESS, FAIA
Director, Office of Zoning

EXHIBIT E

RD. N.W.

ONTARIO

34

ONTARIO RD. N.W.

ST. N.W.

17TH

RD. N.W.

MÉRIDIEN

BELMONT



EXHIBIT F

Affidavit of James Mulvihill

The undersigned, being duly sworn according to law, deposes and says:

1. I am the prior owner of 2307 Ontario Road NW, Washington, DC (the "**Property**").
2. The current owner of the Property, 2307 Ontario Rd NW LLC, purchased the Property from me in 2014.
3. I owned and resided at the Property from 2005 to 2014.
4. While I owned and resided at the Property, the location and configuration of the improvements at the Property's rear were as shown on the site plan attached hereto as Exhibit 1.
5. While I owned and resided at the Property, I never reduced or otherwise altered the size of the rear concrete pad.
6. While I owned and resided at the Property, I never reduced or otherwise altered the size of the area between the rear fence and the concrete pad.
7. While I owned and resided at the Property, I never changed the location of the rear fence or otherwise reduced the area to the east of the rear fence.

JAMES MULVIHILL



Subscribed and sworn to before me this 29 day of April 2015.


Notary Public

My Commission expires: August 31, 2015
[Notarial Seal]

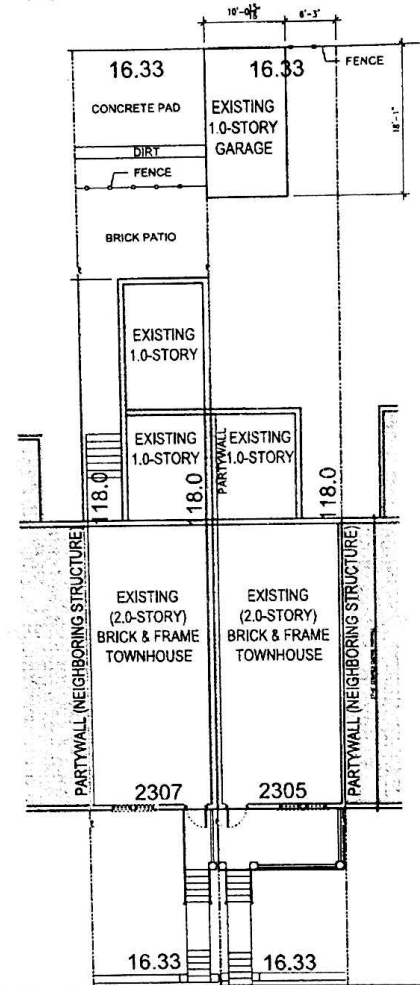
RENELDA SHAW
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires August 31, 2015



15'

PUBLIC ALLEY

15'



ONTARIO ROAD, N.W.

SITE LOCATION

2305 ONTARIO
2305 + 2307 ONTARIO ROAD
WASHINGTON, D.C. 20001
SQUARE 2607 LOT 046 ZONER-S-B

DESIGNER

workshop | t10

Workshop T10 Design Studio
1429 Fifth Street NW
Washington, DC 20001
202-758-2930 | office
202-758-2993 | fax

OWNER

PROJECT TEAM

NOTES	
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PERMIT SET

DATE: 10/1/01

SITE PLAN

DATE: 10/1/01

A 051

1 EXISTING SITE PLAN
SCALE: 1/8" = 1'-0"

EXHIBIT G

EXHIBIT H

MEMORANDUM

FAR
CALCULATIONS

TO: Steven E. Sher
FROM: Jim Fahey *Jim Fahey*
DATE: September 11, 1990
RE: Outline of What Is and Is Not Included in Gross Floor Area

=====

As requested, the following is an outline of what is and is not included in gross floor area, for purposes of determining the maximum floor area ratio allowed under the D.C. Zoning Regulations.

Gross floor area is the sum of the gross horizontal areas of the several floors of all buildings on a lot, measured from the exterior faces of exterior walls and from the center line of party walls separating two buildings. This is achieved by simply multiplying the length by the width of each floor excluding those areas listed on pages 2 and 3 and adding up the totals. Keep in mind to include all exterior walls and to the center line of party walls when taking measurements.

In the case of a building that has a difference in grade, resulting in floors that are by definition part basement and cellar; you use the following method for obtaining the floor area charged to gross floor area:

1. First measure the total perimeter of the floor in question.
2. Then, measure that portion of the perimeter of the floor, the ceiling of which is four feet or more above the adjacent finished grade, and what percentage this is of the total perimeter of the floor in question.
3. The answer to the above will be the percentage of the floor area chargeable to gross floor area.

The term gross floor area includes:

1. All floors of the building above grade.
2. Basements; by definition a basement is that portion of a story partly below grade, the ceiling of which is four feet or more above the adjacent finished grade.
3. Elevator shafts and stairwells at each story; however, this does not include elevator shafts or stairwells that are located in the cellar area of a building.
4. Mechanical equipment rooms with a structural headroom of six feet six inches or more.

5. Interior balconies.
6. Mezzanines
7. Attic space (whether or not a floor has actually been laid), providing structural headroom of six feet six inches or more.
8. Overhangs, including covered entrances, canopies, marquises, etc.
9. Open arcades in the "C-5", Downtown SHOP and proposed Downtown Development Overlay Districts.
10. Atriums; ground floor only.
11. Vent shafts and pipe chaser shafts; ground floor only.
12. That portion of an outside balcony projecting more than six feet beyond the exterior wall of a building.
13. All floors of accessory buildings, the ceiling of which is four feet or more above the adjacent finished grade.

Other areas of the building that are included in gross floor area but are given an increase in allowable floor area ratio solely for the following uses:

1. Under sub-section 411.7, penthouses housing mechanical equipment and elevator penthouses are allowed an increase of .37.
2. Except in the "C-5", Downtown SHOP and proposed Downtown Development Overlay Districts, an open arcade complying with Section 2515 is allowed a floor area credit not to exceed 25% of the gross floor area of the floor adjacent to the arcade.

The following are exclusions from gross floor area:

1. Cellars; by definition is that portion of a story, the ceiling of which is less than four feet above the adjacent finished grade.
2. Mechanical equipment rooms with a structural headroom of less than six feet six inches.
3. Outside balconies that do not exceed a projection of six feet beyond the exterior wall of the building.
4. All projections beyond the lot line that may be allowed by other Municipal Codes. *public space*

5. In Residential Districts, the first floor or basement areas designed and used for parking space or for recreation space, provided that not more than 50% of the perimeter of the space may be comprised of columns, piers, walls, or windows, or similarly enclosed.
6. Vent shafts and pipe chaser shafts above the ground floor.
7. Atriums above the ground floor.
8. Ramps on the ground floor leading to a parking garage on a lower level.

EXHIBIT I

DISTRICT OF COLUMBIA GOVERNMENT
Office of the Surveyor

SP
3-16-15

Wall Report for SQUARE 2567 LOT 88

Scale: 1 inch = 20 feet

Recorded in Book 209 Page 127

S.O. SEAL

S.O. Receipt No. SR15-50-03599

Received by

Robert D. Smith
Surveyor, D.C.

Date:

April 2, 2015



REGISTERED LAND SURVEYOR'S CERTIFICATION

I certify that the wall locations shown hereon have been determined by me or under my direction, in accordance with Chapter 28 of Title 10 DCMR, and that I have not engaged in the construction layout on this site.

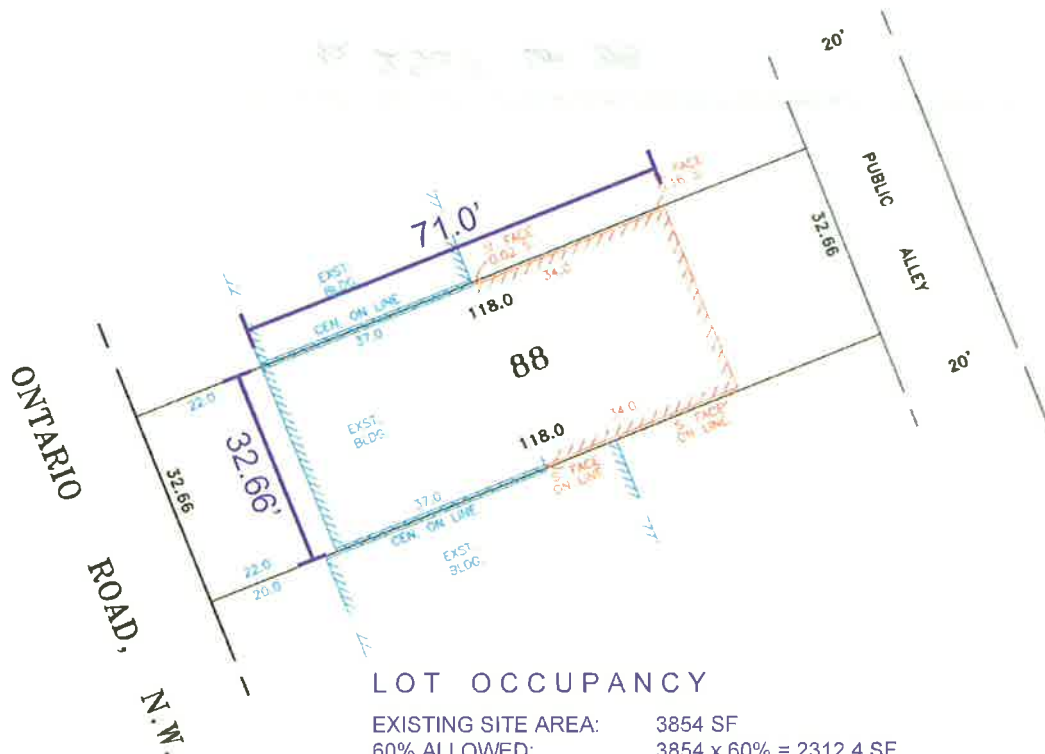
Robert D. Smith
Signature

3-3-15
Date

RLS SEAL



DCRA/OFFICE OF THE ZONING
ADMINISTRATOR COMPLIES
WITH REQUIREMENTS OF
DC ZONING REGULATIONS (DDCMR)
4-7-15



LOT OCCUPANCY

EXISTING SITE AREA: 3854 SF
60% ALLOWED: 3854 x 60% = 2312.4 SF
PROVIDED: 32.66' x 71' = 2318.86 SF
*PER APPROVED WALL CHECK
DIFFERENCE: 2318.86 SF - 2312.4 SF = 6.46 SF

PERCENTAGE OVER LOT OCCUPANCY: 6.46 / 3854 SF = 0.16 %

PERCENTAGE WITHIN 2%: 3854 SF x 62% = 2389.48 SF
DIFFERENCE OF: 77.08 SF

CINDER BLOCK WALLS LOCATED