GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Corporation Counsel

Commercial Division
Land Use and Public Works Section

MEMORANDUM

TO: **Jerrily R. Kress, Director**
Office of Zoning

FROM: **Alan Bergstein, Chief**
Commercial Division, Land Use and Public Works Section

DATE: **November 9, 2001**

SUBJECT: **BZA Appeal No. 16752**
BZA Appeal No. 16066 – Court of Appeals No. 97-AA-2022
5507 - 5511 14th Street, N.W. (Square 2800, Lots 9 and 10)
Appeals Relating to Certificates of Occupancy

This memorandum is in response to questions raised during the November 6, 2001, Board of Zoning Adjustment hearing on BZA Appeal No. 16752 relating to the status of the related Court of Appeals case, Case No. 97-AA-2022, and BZA Appeal No. 16066. We have since reviewed the Court of Appeals case file.

On November 25, 1997, the Board issued a final order in BZA Appeal No. 16066 involving the subject property, reversing the decision of the Zoning Administrator to approve the issuance of a certificate of occupancy (No. 171610) on May 1, 1995, to Psychological Development Associates, Inc. (PDA), for an adult "day treatment program." The property owner, Janet Stein, petitioned the Court of Appeals in Case No. 97-AA-2022 to review the Board's order. Subsequently, PDA ceased operating and vacated the premises.

On appeal, the Board requested the Court to dismiss the petition as moot since PDA no longer occupied the premises, but to allow the Board's November 25, 1997, order to stand. The property owner agreed that most of the issues raised by the petition were moot, but requested the Court to vacate the Board's order since the owner did not want to bound by the Board's determination that the "day treatment program" use was not an "office" use.

The Court agreed with the property owner, and in its order dated April 16, 1999, dismissed the appeal as moot and vacated the Board's order. The Court remanded the case to the Board for appropriate action in BZA Appeal No. 16066 in compliance with the Court's order. The Court

BZA
Case No. 16752
Exhibit No. 28

Board of Zoning Adjustment
District of Columbia
CASE NO.16752
EXHIBIT NO.28

order was missing from the Board's files, and no action was taken pursuant to the Court's instructions.

An order that is vacated is deprived of all conclusive effect. 46 Am. Jur. 2d § 499 *Judgments* (1994). Therefore, the Board's November 25, 1997, order cannot provide a basis for applying doctrines such as *res judicata*, direct or collateral estoppel, or law of the case, whether in BZA Appeal No. 16066, or the related appeal presently pending before the Board, BZA Appeal No. 16752.

As PDA is no longer using the subject premises and the Department of Consumer and Regulatory Affairs has issued a new Certificate of Occupancy to Metropolitan Day Treatment Center, Inc., the Board should issue an order dismissing Appeal No. 16066 as moot. A draft order and mailing attestation sheet are attached.

Further, the Department of Consumer and Regulatory Affairs (DCRA) issued a new Certificate of Occupancy (No. 18366) to Metropolitan Day Treatment Center on August 31, 2001, to occupy 7,652 square feet on the first and second floors of **5507** 14th Street, N.W. (Square 2800, Lot **10**), for purposes of operating a child/elderly development center for 30 persons, ages 22 to 95 years old, and 7 staff members. DCRA had previously issued Metropolitan Day Treatment Center a Certificate of Occupancy (No. 190720) on May 7, 2001, to occupy 7,652 square feet on the first and second floors of **5511** 14th Street, N.W. (Square 2800, Lot **9**), for purposes of operating a day program for 76 mentally retarded persons, adult development, the certificate on appeal in BZA Appeal No. 16752.

If the Board finds that, notwithstanding the discrepancies in the street address and lot numbers, the new Certificate No. 18366 replaced the old Certificate No. 190720, then the Board should also dismiss BZA Appeal No. 16752 as moot, without prejudice to ANC 4A's rights to file an appeal of the new certificate. It should be noted that ANC 4A first learned of the new certificate at the Board's November 6, 2001, public hearing, such that the time for filing a new appeal, which must be filed within a reasonable time of notice of the administrative decision to be appealed, would begin to run on November 6, 2001.[1] A draft order and mailing attestation sheet are attached.

If you require further assistance with respect to this matter, please do not hesitate to contact Assistant Corporation Counsel Marie Sansone at 724-6657.

AB:ms

cc: Sheri M. Pruitt
Alberto P. Bastida
Office of Zoning

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[1] In *Waste Management of Maryland, Inc. v. District of Columbia Board of Zoning Adjustment*, 775 A.2d 1117, 1122 (D.C. 2001), the Court of Appeals recently held that in the absence of exceptional circumstances substantially impairing the ability of an aggrieved party to appeal – circumstances outside of the party's control – a reasonable period of time in which to appeal an administrative decision is two months from notice of the decision.

DRAFT – November 9, 2001

Appeal No. 16066 of John J. Chagnon, on behalf of FZC, pursuant to 11 DCMR §§ 3105.1 and 3200.2, from the administrative decision of Gladys Hicks, Acting Zoning Administrator, made on or prior to May 5, 1995, to the effect that a certificate of occupancy was issued for a day treatment program in a C-2-A District at premises 5511 14th Street, N.W. (Square 2800, Lot 9).

HEARING DATES: December 20, 1995 and April 24, 1996

DECISION DATES: June 5, 1996; November 20, 2001

FINAL ORDER ON REMAND

The Board of Zoning Adjustment issued a final order in the above-captioned case on November 25, 1997, reversing the decision of the Zoning Administrator to approve the issuance of Certificate of Occupancy No. 171610 for an adult "day treatment program." The owner of the subject property petitioned the District of Columbia Court of Appeals for review of the Board's order in Court of Appeals Case No. 97-AA-2022. On April 16, 1999, the Court dismissed the petition as moot and vacated the Board's November 25, 1997, order. The Court remanded the case to the Board to take appropriate action in compliance with the Court's order.

This appeal, BZA Appeal No. 16066, is moot since the recipient of the disputed Certificate of Occupancy, Psychological Development Associates, Inc., has long since ceased operating and vacated the subject premises. Further, the Department of Consumer and Regulatory Affairs has issued a new certificate of occupancy for the premises, which is the subject of a related appeal, BZA Appeal No. 16752. The old certificate that was the subject of BZA Appeal No. 16066 (Certificate No. 171610) is therefore void and of no legal effect. Pursuant to 11 DCMR § 3105.5, "Informal requests for advice or moot questions shall not be considered by the Board."

Accordingly, the Board hereby **ORDERS** BZA Appeal No. 16066 **DISMISSED** as moot.

VOTE: _-_-_ (_____, _____, _____, _____, _____, to dismiss the appeal).

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

Each concurring member has approved the issuance of this Order on Remand.

ATTESTED BY: _____

JERRILY R. KRESS, FAIA
Director

FINAL DATE OF ORDER: _____

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME EFFECTIVE 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.

BZA APPEAL NO. 16066

As Director of the Office of Zoning, I hereby certify and attest that on _____, a copy of the foregoing Order in BZA Appeal No. 16066 was mailed first class, postage prepaid, to each party and public agency who appeared and participated in the public hearing and who is listed below:

John J. Chagnon
FZC Corp.
5603 14th Street, N.W.
Washington, D.C. 20011

Leonard L. McCants
McCants, Dunbar & Associates LLC
8701 Georgia Avenue, Suite 801
Silver Spring, MD 20910

Eric S. Jaffe
5101 34th Street, N.W.
Washington, D.C. 20008

Allison C. Prince
ShawPittman
2300 N Street, N.W.
Washington, D.C. 20037-1128

Pamela Coleman
4200 Wisconsin Avenue, N.W.
Washington, D.C. 20060

Douglass Sloan, Chairman Pro Tem.
Advisory Neighborhood Commission 4A
7600 Georgia Avenue, N.W., Suite 404
Washington, D.C. 20012

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

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

Zoning Administrator
Building and Land Regulation Administration
Department of Consumer and Regulatory Affairs
941 North Capitol Street, N.E., Suite 2000
Washington, D.C. 20002

ATTESTED BY: _____

JERRILY R. KRESS, FAIA
Director

DRAFT – November 9, 2001

Appeal No. 16752 of Advisory Neighborhood Commission 4A, pursuant to 11 DCMR §§ 3100 and 3101 from the decision of Michael Johnson, Zoning Administrator, for the issuance of a certificate of occupancy (#190720, dated May 7, 2001) for an adult development day program for mentally retarded persons, allegedly not meeting the parking requirements (section 2100) in a C-2-A District at premises 5511 14th Street, N.W. (Square 2800, Lot 9).

HEARING DATES: September 4, 2001; November 6, 2001

DECISION DATE: November 20, 2001

FINAL ORDER DISMISSING APPEAL

This case involves the appeal of Certificate of Occupancy No. 190720, issued on May 7, 2001, to the Metro Day Treatment Center, Inc., for the purpose of a "day program for mentally retarded persons, adult development." At the November 6, 2001, public hearing on this appeal, the Office of the Zoning Administrator advised the Board of Zoning Adjustment that a new certificate of occupancy, No. 18366, had been issued to Metro Day Treatment Center on August 31, 2001, to replace Certificate No. 190720. The issuance of the new certificate of occupancy voided Certificate No. 190720. Therefore, the instant appeal is moot. Pursuant to 11 DCMR § 3105.5, "Informal requests for advice or moot questions shall not be considered by the Board."

Accordingly, the Board hereby **ORDERS** BZA Appeal No. 16752 **DISMISSED** as moot.

VOTE: _-_-_ (_____, _____, _____, _____, _____, to dismiss the appeal).

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

Each concurring member has approved the issuance of this Order.

ATTESTED BY: _____

JERRILY R. KRESS, FAIA
Director

FINAL DATE OF ORDER: _____

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME EFFECTIVE 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.

BZA APPEAL NO. 16752

As Director of the Office of Zoning, I hereby certify and attest that on _____ _, a copy of the foregoing Order in BZA Appeal No. 16752 was mailed first class, postage prepaid, to each party and public agency who appeared and participated in the public hearing and who is listed below:

John J. Chagnon
ANC 4A
5603 14th Street, N.W.
Washington, D.C. 20011

Douglass Sloan, Chairman Pro Tem.
Advisory Neighborhood Commission 4A
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Ra'ouf M. Abdullah
Federal Trade Commission, Financial Practices
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

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

Herman Broomfield
Metropolitan Day Treatment Center, Inc.
5507 14th Street, N.W.
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Honorable Adrian M. Fenty
Councilmember Ward 4
Council of the District of Columbia
1350 Pennsylvania Avenue, N.W., Room 506
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Ellen McCarthy, Deputy Director
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Building and Land Regulation Administration
Department of Consumer and Regulatory Affairs
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Washington, D.C. 20002

ATTESTED BY: _____

JERRILY R. KRESS, FAIA
Director