ADVISORY NEIGHBORHOOD COMMISSION 4A

7600 Georgia Avenue, N.W.
Washington, D.C. 20012

June 6, 2001

VIA FACSIMILE 2 pages
202-727-6072

Board of Zoning Adjustment
441 4th Street, N.W , Second floor
Washington, D.C. 20001

Re: BZA Appeal - 16752
Issuance of Certificate of Occupancy
5511 - 14th Street, N.W.

Dear Ladies and Gentlemen:

As your records will show, Appeal #16752 was filed earlier today, June 6, 2001. Transmitted herewith is an attachment that was inadvertently separated form the entire filing. Please insert the attachment pages behind form BZA-1.

I request expedited scheduling of the BZA hearing as the issues involved are the regulatory and historical requirement to provide on site parking spaces when there has been a change in use from one permitted use to another permitted use that has a higher requirement for on site parking spaces such as moving from a general office use to a church. The instant matter is from a general office use of 2,800 sq. ft. on one floor to undefined Other use (Day Treatment Program) on two floors, on two separate lots in three buildings, with over 7650 sq. ft. occupied, partially in new construction built in 1987, with as many as 76 clients, sufficient full time and part-time teachers and employees to serve 76 clients and not one parking space on site. It is well established that when there is an enlargement in space occupied, change in use, increase in the intensity of the use or an increase in the occupancy load additional on site parking spaces are required to satisfy the zoning requirements to obtain a certificate of occupancy. The Zoning Administrator has failed to make the necessary inquiries and was mislead by an incomplete and incorrect application for a certificate of occupancy. Upon learning of the errors and omissions the Zoning Administrator concluded that no action would be taken as of June 5, 2001.

Appellant ANC 4A files this appeal as the Zoning Administrator did not take action to remedy the errors and omissions in a timely manner and it is unknown if he will ever take such remedial action upon further investigation

Please advertise the scheduled hearing date for the first available date where the above case would be the first case to be heard on the scheduled date. The entire contested case can likely be decided on the submissions if there are no set of circumstances that would allow the Zoning Administrator's decision to stand.

If you have any questions, please to do not hesitate to call me at 202-722-1922.

Yours truly,

John J. Chagnon
ANC 4A BZA Representative

BZA
Case No. 16752
Exhibit No. 2

Board of Zoning Adjustment
District of Columbia
CASE NO.16752
EXHIBIT NO.2

ATTACHMENT

Error in Administrative Decision:

Attached hereto is a copy of the original BZA Appeal filed six years ago for substantially similar terms relative the errors of the Zoning Administrator. Also attached is a complete copy of the BZA decision that established that a day treatment program was not a general office use.

The Zoning Administrator has clearly chosen to ignore the mandatory requirements to provide on site parking when a use is changed, expanded or intensified, all of which have occurred at the subject site, prior to the issuance of a certificate of occupancy. The prior appeal of the issuance of a certificate of occupancy resulted in a full contested case before the BZA and an appeal to the D.C. Court of Appeals which left the BZA decision undisturbed. The Zoning Administrator has now read the BZA decision post issuance of a certificate of occupancy and has failed to see the relevance of a change in use at the site which was the core claim in the contested case by the former applicant, Better Treatment Centers, former owner Marvin Stein, attorney Leonard McCants (McCants, Dunbar), attorney Allison Prince (Wilkes Artis Hendricks & Lane) attorney Eric Jaffe (Law Office of Eric Jaffe). The sole and only purpose for the applicant's unwillingness to accept the change in use from one permitted use to another is specifically that the new use would require on site parking in order to be issued a certificate of occupancy. The Zoning Administrator has erred in ignoring the obvious requirement for on site parking as mandated by 11 DCMR §2101. I bring to the BZA's attention that many store front churches in my jurisdiction have failed to obtain certificates of occupancy or sought variances from the parking requirements when a change in use occurs at the subject site for the elementary reason that an intensified permitted use requires additional parking spaces to accommodate the intensified use. The Zoning Administrator seems to maintain that one permitted use in a C-2-A zone automatically allows any permitted matter of right use and that a change in use has no relationship to required parking spaces. The Zoning Administrator is mistaken and wrong.

The Zoning Administrator has failed to perform his duty in revoking the certificate issued which on it's face states that "... ANY CHANGE in the type of business, or part of premises used interior, will render this certificate VOID and a NEW Certificate must be obtained." Zoning Inspector Rocket has concluded that the applicant did not disclose the use of 5507 or 5509 - 14th Street, NW and is in fact using the aforementioned space without a certificate of occupancy. Again, the Zoning Administrator has chosen to ignore his duty to Void the certificate issued.

Further the Zoning Administrator nor his staff sought or obtained an inspection of the premises for zoning purposes prior to the issuance of a certificate of occupancy. The most cursory review of the Zoning records would have alerted the Zoning Administrator that a change in use had occurred and the applicant had misrepresented the prior use. In addition, the applicant

appears to have misrepresented the information on occupancy as an ownership change. The former occupant was in bankruptcy with the former operator charged by the U.S. Attorney's Office (Asst. U.S. Atty. Mark Duebester prosecuted the case) with wrongdoing in the operation of PDA-Better Treatment Centers that resulted in a plea agreement or conviction. It is highly unlikely that three years after the Court Appeal decision, that a company in bankruptcy three years earlier, transferred ownership to Metro Day Treatment Center. The applicant did not disclose the BZA decision or BZA No. (16066) on the application which would have alerted the Zoning administrator of the change in use. The prior use is not adequately disclosed and even then misrepresented. The prior use was that of a general office on the first floor and limited to 2,800 sq. Ft. at 5511 - 14th Street NW. No portion of the second floor was in commercial service and the applicant appears to represent that the only change was that of ownership. Please note that there is no indication of partial occupancy, use change, load change or that the square footage occupied exceeds the prior use. As with the original application the buildings occupied in total have not been disclosed nor has the gross square footage of the entire site been disclosed under information on the entire building.

Even upon being made aware of misrepresentation of the use change, the Zoning Administrator has taken no action to void the certificate of occupancy issued. Further, the Zoning Administrator has yet to establish the occupancy load at the site, obtain a plat of the site, identify the number of full and part-time employees, identify the square footage occupied on each site and each floor, identify the space converted from residential rental property to commercial occupancy (no commercial occupancy has previously occurred above the first floor), identify the sites occupied that were constructed after 1958, the gross square footage of the entire sites occupied including the basement or calculate the required on site parking for the occupancy of the site.

The present Zoning Administrator, Michael Johnson, issued a certificate of occupancy for a day treatment program. Glady Hicks, the former Zoning Administrator issued a virtually identical certificate of occupancy for the same purpose and was found to be in error. The principles of *res judicata* are applicable and this matter has been heard and decided. By definition, as a result of the BZA Order there is a change in use at the subject site. The ANC hereby requests an immediate hearing to determine if the Zoning Administrator had the jurisdictional authority to disturb the conclusion of the BZA in case 16066