GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Appeal No. 16066 of John J. Chagnon, on behalf of the 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 premise 5511 14th Street, N.W. (Square 2800, Lot 9).

Hearing Dates: **December 20, 1995 and April 24, 1996**
Decision Date: **June 5, 1996**

ORDER

SUMMARY OF EVIDENCE

The subject property is located at 5511 14th Street, N.W., Square 2800 Lots 9 and 10. The property fronts on 14th Street, Longfellow Street and Colorado Avenue, N.W. The site is zoned C-2-A.

The C-2-A District permits matter-of-right low density development including office, retail and all kinds of residential uses, to a maximum floor area ratio (FAR) of 2.5 with nonresidential uses limited to 1.5 FAR, a maximum height of 50 feet, and a maximum lot occupancy of 60 percent for residential uses.

The subject property is improved with a building that encompasses most of Square 2800. The building is used for a day treatment program, apartments, and a storage warehouse facility. There is an entrance on the Longfellow Street side for the apartments and a separate entrance for the day treatment program. There is another entrance on the 14th Street side for the day treatment program. The entire building consists of 24,438 gross square feet of floor space. Of this total, the day treatment program will use 6,220 square feet, of which 3,217 square feet is located on Lot 9 and 2,995 square feet is on Lot 10.

Marvin Stein, the property owner of 5511 14th Street, N.W., leased the site to the Psychological Development Associates (PDA) in February of 1995. PDA operates a Better Treatment Center at its main office located at 2437 15th Street, N.W. Mr. Stein filed the application for the certificate of occupancy (C of O) for

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PDA to operate its Better Treatment Program at the 14th Street site. The lease provides that PDA shall occupy the property in the square footage proportions indicated above.

On May 5, 1995, Gladys Hicks, Acting Zoning Administrator, issued Certificate of Occupancy No. B171610 to allow a "Day Treatment Program" at 5511 14th Street, N.W. On May 31, 1995, John C. Chagnon filed an appeal on behalf of FZC Corporation challenging the decision of the Acting Zoning Administrator to issue the C of O.

The appellant is a nonprofit corporation whose purpose is to, among other things, discourage the institutional or intensified commercial use of properties where such use would adversely or negatively impact an established community with regard to property values, public safety, traffic, noise and the general welfare of the community residents. FZC has three members, including Mr. Chagnon. The intervenors in this appeal are Mr. Stein and PDA.

Issues and Arguments:

By this appeal, the appellant maintains that the C of O was issued in error because there were material errors and omissions in the certificate of occupancy application of the PDA. These errors and omissions relate to the square footage of the structures, the square footage to be used, the intensity of the use, the change in use, and the buildings and lots to be occupied. The appellant also maintained that the Acting Zoning Administrator erred in issuing a C of O for a use that is not described in the Zoning Regulations.

1. Errors and Omissions

A. The actual address, buildings and lots: The appellant testified that a C of O was issued on or about May 5, 1995 to the PDA for a Day Treatment Program at 5511 14th Street, N.W. However, the subject site is actually located at 5509 5511 14th Street, N.W., as evidenced by the records of the Department of Finance and Revenue. Lot 9 is 5511 14th Street and Lot 10 is 5519 14th Street. The appellant testified that although the site was located on Lots 9 and 10 of Square 2800, occupancy of any portion of Lot 10 was not disclosed on the C of O application. The appellant testified that the gross square footage occupied at the site is inconsistent with the square footage reflected on the C of O application. The appellant submitted evidence as to the gross square footage being in excess of 6,000 square feet. A summary computation of square footage presented by PDA for 5507-5511 14th Street reflects that PDA occupies 3,217 square feet of Lot 9 (Clinic), and 3,602 square feet of Lot 10 (clinic and storage) both in Square 2800.

The total space occupied, by PDA's own calculation, is 6,819 square feet. The application for the C of O disclosed that only 2,800 square feet was to be occupied. PDA admits that occupancy is not restricted to Lot 9 and that substantially more than 2,800 square feet of space is occupied. The prior existing authorized use was for a home improvement contractor's office on a portion of Lot 9, occupying 2,800 square feet.

The appellant testified that PDA used more than one building for its operation. The appellant stated that PDA submitted a summary of building areas which lists the respective addresses as 5507-5511 14th Street, N.W., clearly indicating that the preparer of the summary was including the intervening address 5509 14th Street, N.W.

The appellant testified and submitted documentation to indicate that no C of O was ever issued for 5507-5509 14th Street, and that the former use of 5511 14th Street was the home improvement contractors business office. The appellant submitted documentation that the structure at 5509 14th Street was build in 1987 and is not eligible for any grandfathering provisions.

The appellant presented unrebutted testimony to the effect that the Acting Zoning Administrator was aware of the complaints filed regarding the use of 5511 14th Street and abutting structures prior to the issuance of a certificate of occupancy. The appellant presented testimony that was confirmed by the Acting Zoning Administrator that no zoning inspection was conducted despite the fact that complaints regarding the use had been filed.

The applicant stated that a visual inspection of the occupied property revealed that more than one building was occupied and that a portion of the occupancy was in new construction. The appellant introduced into evidence a photograph which reflected that 5509 14th Street was new construction. The appellant testified that before a C of O was issued, PDA was cited for operating at the subject site without an occupancy permit.

The property owner, Mr. Stein, testified about what information was to be placed on the C of O application and that he did not mean to mislead the Acting Zoning Administrator. In addition to providing information on the lots, the application for the C of O indicated that the proposed occupancy load was five to seven people and the space occupied was 2,800 square feet.

The Acting Zoning Administrator testified that there is no occupancy load for an office, and therefore the space for this information on the C of O application should have been left blank. Further, the application should have also stated that the total number of square feet occupied is 6,200 and not 2,800 square feet.

B. Parking: The appellant stated that 11 DCMR 2100 clearly establishes that " no certificate of occupancy shall be issued for the use of any structure built after May 12, 1958, that does not provide the required parking spaces for the structure and the use thereof." The appellant argued that the increased square footage on the site required off-street parking to receive an occupancy permit. He argued that the Acting Zoning Administrator erred by failing to require PDA to provide the parking required under the Zoning Regulations.

The Acting Zoning Administrator testified that there is no parking requirement for the subject property because the use of the building is going from one office use to another office use.

PDA testified that no parking facilities of any kind, exist on or off the site for the use of the structures. The new structure, 5509 14th Street, had no prior or existing use and does not qualify for any grandfathering provisions.

2. The Actual Use of the Site

The appellant argued that the Acting Zoning Administrator issued a C of O for a use that is not defined in the Zoning Regulations, specifically, a "day treatment program." The appellant presented testimony and documentation showing that PDA and the zoning inspector indicated that there had been a change in use of the structure. The appellant testified that the day treatment program was the functional equivalent of a child development center. The appellant presented unrebutted testimony that a Department of Consumer and Regulatory Affairs (DCRA) official acknowledged that the only difference between a child development center and the day treatment program was the age of the students. The appellant testified that the use was designed for providing education and training to mentally challenged adult students.

The appellant argued that the general office use that the Acting Zoning Administrator has attributed to the day treatment program lacks any foundation in the Zoning Regulations or written guidelines and the use is inconsistent with the defined general office use and well removed from the actual use. The appellant argued that the use is more appropriately defined as a clinic, day care center, development center, or school.

The Acting Zoning Administrator admitted that there is no definition of any kind, describing what constitutes a day treatment program. The Acting Zoning Administrator testified that a day treatment program for adults, while not defined in the Zoning Regulations, closely resembles the activities of an office use. She stated that the proposed use is compatible with a general office that has been

approved by the Zoning Administrator in the C-2-A zone in the past. However, she could not identify such a facility.

PDA's testimony supported the appellant's description of PDA's primary objective at the site, as does the Medicaid definition of a day treatment program, developmental disability, habilitation services and therapy services. PDA presented testimony about the programs and services performed at the site. PDA's testimony also indicated that operations conducted at the site were not that of an office.

3. The Intensity of the Use:

The appellant provided testimony on the increased intensity of the use at the site. He testified that that the intervenor's claim of the occupancy load of five to seven people was grossly inconsistent with his observation of employees and students at the site. He testified that he estimated up to 60 students with one staff member for each three students.

PDA testified that the intensity of the use reported as five to seven persons was incorrect. PDA further admitted that 17 full time employees are present daily with additional part-time employees providing specific services. PDA also testified that as many as 40 students are authorized, although the present enrollment is at 35.

The Acting Zoning Administrator testified that there is no occupancy load for an office use. stated that if a use is a day care center, a child development center, a church or a public hall, then an applicant is required to indicate a standing or seating capacity. She stated further that line 12 on the application requesting occupancy load should have been left blank.

Advisory Neighborhood Commission (ANC) 4A submitted a letter dated March 11, 1996, in support of the appeal. The ANC stated that a day treatment program was not a general office use, that the PDA is serving the entire City and that the present use of 5511 14th Street, exacerbated noise, litter and traffic congestion in the community. ANC 4A passed a resolution requesting that the Board rescind the C of O issued to PDA for use of the site as a day treatment program.

FACTUAL ISSUES

The appeal raises the following factual issues:

1. Whether there were errors and omissions in the certificate of occupancy application affecting the decision to issue the permit?

2. Whether there was a proper determination of the lots and square footage involved in the use before the certificate of occupancy was issued?

3. What were the Acting Zoning Administrator's views in deciding to issue the certificate of occupancy?

4. Whether the activities of PDA are consistent with what is normally considered an office use?

FINDINGS OF FACT

Based on the evidence of record, the Board makes the following findings of fact:

1. There were a number of errors and omissions in the certificate of occupancy application related to the actual property affected, the square footage to be used, etc.

2. The Acting Zoning Administrator failed to clarify these erroneous matters prior to deciding to issue the occupancy permit.

3. While the Acting Zoning Administrator issued an occupancy permit for a day treatment program, a use that is not defined in the Zoning Regulations, she considered the use to be that of a general office.

4. The activities that take place at PDA's day treatment program include educating and training mentally challenged students. These activities are not considered normal for a general office use.

CONCLUSIONS OF LAW AND OPINION

Based on the evidence of record, the appellant is appealing the decision of the Acting Zoning Administrator to issue a certificate of occupancy for a day treatment program as a general office use in a C-2-A District.

The Board is of the opinion that the appellant has demonstrated that this decision was made in error. The Board concludes that there were substantial errors and omissions in the certificate of occupancy application that should have been examined more closely by the Acting Zoning Administrator. The Board

concludes that the Acting Zoning Administrator could have clarified these matters by inspecting the property or by requiring proper documentation. She did neither of these.

The Board concludes that the certificate of occupancy was issued on the basis of the use being for general office. However, the Board concludes that a change of use occurred at the site. Finally, the Board concludes that the day treatment program activities that are engaged in by the Psychological Development Association do not comport with what normally occurs in a general office. Therefore, the Board concludes that the Acting Zoning Administrator erred in deciding to issue the certificate of occupancy.

In light of the foregoing analysis, the Board hereby **ORDERS** that the appeal be **GRANTED** and the decision of the Acting Zoning Administrator be **REVERSED**.

VOTE: 3 – 0 (Laura M. Richards, Susan Morgan Hinton and Sheila Cross Reid to grant and reverse; Angel F. Clarens not voting, not having heard the case)

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

ATTESTED BY: Madeliene H. Dobbins
MADELIENE H. DOBBINS
DIRECTOR

FINAL DATE OF ORDER: NOV 25 1997

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on NOV 25 1997 a copy of the order entered on that date in this matter was mailed postage prepaid to each person who appeared and participated in the public hearing concerning this matter, and who is listed blow:

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Attested By: Madeliene H. Dobbins
MADELIENE H. DOBBINS
Director

Date: NOV 25 1997