

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

ADVISORY NEIGHBORHOOD
COMMISSION 4A,

Appellant

v.

DEPARTMENT OF CONSUMER AND
REGULATORY AFFAIRS

Appellee.

BZA Appeal No.: 16839

Appeal of Issuance of
Certificate of Occupancy
18366

D.C. OFFICE OF ZONING
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Appeal No. 16839, ANC 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 seven (7) staff in a C-2-A District at premises 5511 14th Street, N.W. (Square 2800, Lot 9).

**APPELLEE'S PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER**

PROCEDURAL AND PRELIMINARY MATTERS

This appeal was initiated on January 3, 2002, by appellant, Advisory Neighborhood Commission 4A seeking the revocation of a certificate of occupancy issued on August 31, 2001 permitting the operation of a child/elderly development center in a building located at 5511 14th Street, N.W., Square 2800, Lot 9. The contested case hearing occurred on March 26, 2002.

By notices dated January 14, 2002, the Board apprised the City Council Member for Ward Four, David Clark, Director of the Department of Consumer and Regulatory Affairs ("DCRA"), Advisory Neighborhood Commissions 4A and 4C, the Office of

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Exhibit No. 32

Board of Zoning Adjustment
District of Columbia
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EXHIBIT NO.32

Planning Development Review and Coordination, and the property owner of the filing of the appeal. The Board also apprised all of the parties of the date of the public hearing.

ANC Report. ANC 4A did not submit a report.

FINDINGS OF FACT

1. Mr. Toye Bello qualifies as an expert witness. (Zoning Administrator's Supplemental Evidence Filing ("Sup. Filing"), Attachment A (Resume of Toye Bello)).
2. The definition of the term "elderly" in the Merriam-Webster dictionary used by Mr. Bello does not refer to age. (Sup. Filing, Attachment B).
3. 5511 14th Street was erected prior to May 12, 1958.
4. The prior predominant use of 5511 14th Street, N.W. was retail. (Sup. Filing, Attachment D).
5. The previous certificates of occupancy ("C of O") for 5511 14th Street were for an upholstery shop, February 12, 2001 and a used car lot, February 7, 1972. Prior to the used car lot, the premises were used for a gas station. (Sup. Filing, Attachment D).
6. The Zoning Administrator calculated that 5511 14th Street, N.W. is entitled to a credit of three (3) parking spaces. (Transcript ("tr.") at 293, 330-331)).
7. The Zoning administrator issued the holder of C of O #18366 a building permit to establish three (3) additional parking spaces.
8. The application for C of O #18366 was filed by the Intervenor, Metro Day Treatment Center, but was subsequently lost when the Zoning Administrator sent it to be scanned into the public record. (Tr. at 222-228).
9. The Zoning Administrator is not responsible for the missing application for C of O #18366. (Tr. at 222-228).

10. In zoning, the concept of “like use” permits the Zoning Administrator to treat an adult development center for severely retarded persons as a “child/elderly development center” for parking calculations. (Tr. at 277-280, 326-327). (*See* Exhibit 25, Zoning Administrator’s Parking Assessment).
11. The clients of the Intervenor at 5511 14th Street, N.W., are severely handicapped and cannot drive automobiles. (Tr. at 281).
12. The Zoning Administrator issued two citations to the holder of C of O #18366. The citations were for exceeding the number of persons permitted by C of O #18366. (Sup. Filing, Attachment C).
13. The Board invited the appellant to review the record of Appeals 16066 and 16752 and to file with the Board by May 13, 2002, whatever portions it deemed to be relevant and probative. (Tr. at 354-355, 367).
14. The appellant failed to submit to the Board any portions of the record from Appeals 16066 and 16752.

CONCLUSIONS OF LAW

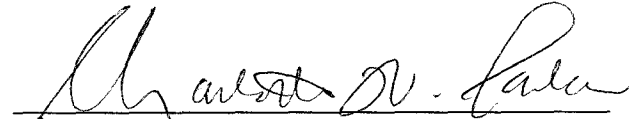
1. The Board of Zoning Adjustment has jurisdiction over this appeal and over the parties, pursuant to D.C. Code § 5-424(f).
2. The burden of proof rests with the appellant, pursuant to 11 DCMR § 3119.2.
3. Appellant must meet its burden of proof by a preponderance of the evidence.
4. ANC 4A is a party pursuant to 11 DCMR § 3112.7, because the lot is located in its district.
5. All parties received proper notice of the appeal and the public hearing.

6. 11 DCMR § 2100.6 provides for parking space credits based on the predominant use of buildings in effect on May 12, 1958 for buildings that were erected prior to May 12, 1958.
7. 5511 14th Street, N.W. is entitled to a parking credit of three (3) parking spaces.
8. The Zoning Administrator has the authority to issue C of Os for uses that are not specifically defined. The parking space calculation shall be based on the established principle of "like use."
9. Citations issued again persons for violations of restrictions in a C of O are not relevant to the issue of whether the Zoning Administrator properly issued the C of O.
10. Appellant failed to meet its burden of proof that C of O #18366 was issued in error.

Respectfully submitted,

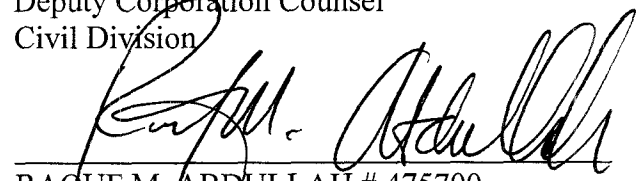
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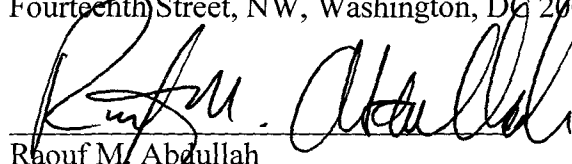
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing District of Columbia's Findings of Fact, Conclusions of Law, and Proposed Decision and Order were mailed postage prepaid this 17th day of June, 2002 to John J. Chagnon, ANC 4A07, 5603 Fourteenth Street, NW, Washington, DC 20011.


Raouf M. Abdullah
Special Assistant Corporation Counsel