

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



November 4, 2004

Participants in BZA Appeal No. 16839  
(See attached attestation sheet)

Re: BZA Appeal No. 16839 (D.C. Court of Appeals Remand) Chagnon

Dear Participants in BZA Appeal No. 16839:

On Tuesday, November 2, 2004, the Board of Zoning Adjustment (Board), at a publicly noticed meeting, discussed the above-referenced matter. Specifically, the Board, by unanimous consent, waived the timeline established to accept the Department of Regulatory and Consumer Affairs (DCRA) October 29, 2004, response (see attached). The Board instructed the Office of Zoning to serve a copy of DCRA's response on the parties in the case.

The Board has set a deadline of 3:00 P.M. on Tuesday, December 14, 2004, to receive your written response to the DCRA submission. (All correspondence should be sent to the Office of Zoning located at 441 4<sup>th</sup> Street, N.W., Suite 210-S, Washington, D.C. 20001.) All responses must be served on all participants. The Board has scheduled a public meeting to decide this matter at 9:30 AM on Tuesday, January 4, 2005.

Please contact Richard S. Nero, Jr., Chief, Support Services and Quality Control at (202) 727-6311, if you have any questions relative to the foregoing.

SINCERELY,



**JERRILY R. KRESS, FAIA**  
Director, Office of Zoning

Attestation Sheet  
rsn

BOARD OF ZONING ADJUSTMENT  
District of Columbia

CASE NO. 16839  
EXHIBIT NO. 46

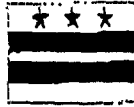
441 4th Street, N.W., Suite 210-S, Washington, DC 20001 (202) 727-6311

Board of Zoning Adjustment  
District of Columbia  
CASE NO. 16839  
EXHIBIT NO. 46

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GOVERNMENT OF THE DISTRICT OF COLUMBIA  
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

Building and Land Regulation Administration  
Office of the Zoning Administrator



October 29, 2004

*BY FACSIMILE AND FIRST CLASS MAIL*

Jerrily R. Kress, FAIA  
Director, District of Columbia Office of Zoning  
441 4th Street, N.W., Suite 201  
Washington, D.C. 20001

Dear Ms. Kress:

This is in response to your letter of September 16, 2004, in which the Board of Zoning Adjustment (BZA) requested a determination from the Office of the Zoning Administrator as to whether the Metro Day Treatment Center, Inc.'s (Metro Day) use of premises at 5507-5511 14<sup>th</sup> Street, N.W. in Washington, D.C. (subject property) qualifies as a 'matter of right' use in a zoning use category other than a Child/Elderly Development Center.

The issue centers on two integral points: (a) whether Metro Day's operational activities are compatible with, and comparable to, other uses permitted as a matter of right in the underlying zone district; and, (b) whether the Zoning Administrator is authorized to permit other like or similar uses in the underlying zone district.

Metro Day is located in a C-2-A zone district. The C-2-A zone districts are mapped in close proximity to low-to-medium density residential districts with access to "main highways and rapid transit stops". In §720, 11 DCMR, the zoning regulations, the C-2-A districts are described as "Community Business Center Districts". As such, C-2-A districts are intended to serve as "office employment centers, shopping centers, and medium bulk mixed use centers." The apparent land use objective for these districts is to ensure the proximity of goods and services to their end users in residential neighborhoods.

In furtherance of this objective, the Zoning Regulations permit 'matter of right' uses like hospitals, sanitariums or clinic for humans from the residential R-4 district, and in less restrictive zones, including the C-2-A district. See, 11 DCMR § 330.5(f). The C-2-A district also permits all types of general office use, including the office of a medical practitioner, counseling office, psychologist/psychotherapist office, and physical therapist's office. See, 11 DCMR §§701.1, 721.1, 721.2 and 721.3. Additional permitted uses include all sundry of retail and service establishments, not sexually-oriented, ranging from retail grocery store, to automobile and truck sales, to a health service establishment.

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Ms. Kress  
October 29, 2004  
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Metro Day provides motor skills training and counseling services to individual clients with mental and/or physical developmental challenges. Based on the information provided by Metro Day and the record of the appeal case, Metro Day's clients are transported to the center for the purpose of training and counseling, and are returned to their respective residences each day at the end of the treatment program. Metro Day is not a residential facility. Metro Day's operational activity is comparable to the following uses permitted as a matter of right in the underlying zone district of the subject property:

1. General Office, Doctor's Office, Physical Therapist's Office;
2. Clinic for Humans, Hospital, or Sanitarium;
3. Public bath, Physical Culture, or Health Service;
4. Optician and Optometrist; and,
5. Assembly hall, Auditorium, or Public Hall.

For purposes of the use classification of the zoning regulations, Metro Day's use may be ascribed a descriptive "Therapy/Counseling Center." To the extent that this use is comparable to other like uses listed above, and as such permitted as a matter of right, it cannot be deemed to be incompatible in the underlying zone district.

The zoning regulations anticipate the inherent authority of the Zoning Administrator to permit other like or similar uses in certain zone districts. The zoning regulations cannot be presumed to enumerate every use evolved by society therefore, they cannot be so rigidly interpreted to permit *only* those uses specifically listed. The regulations contemplate this practice where it expressly permits "other service or retail use similar to that permitted in §§721.2 and 721.3...." *Id.*, at §721.4.<sup>1</sup> In the Zoning Administrator's view, a therapy/counseling center is a service provider similar to a physical therapy office, a clinic for humans, or a health service establishment. They are similar facilities that are devoted to the medical, clinical, and/or therapeutic out-patient treatment of humans."

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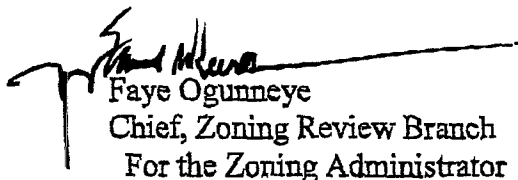
<sup>1/</sup> The determination that the Zoning Administrator may ascribe descriptive use classification for other similar uses, when specified, is further underscored by §2101.1, 11 DCMR, the parking schedule of the zoning regulations. The schedule provides for the parking requirement for other matter of right uses not listed in the use provisions under a catch-all; "all other uses, all districts."

For zoning purposes, and because Metro Day's establishment is no longer deemed a child/elderly development center, excepting for life and safety purposes under the building codes, the number of participants and the number of staff in the program are not

relevant to its parking assessment. It should be noted that the D.C. Court of Appeals, in its decision, did not disagree with the Board's assessment that no more than three parking spaces would be required of Metro Day's use, even if it was deemed a use other than a child/elderly development center. The Board's assessment was based on considering Metro Day's use under the "all other uses, all other districts" catch-all schedule, less parking credits accrued, pursuant to §§2101.1 and 2100.4, respectively.

In sum, the Office of the Zoning Administrator respectfully submits that Metro Day's use of subject premises as a "Therapy/Counseling Center" may be permitted as a matter of right in its underlying C-2-A district, provided Metro Day complies with its parking requirement of three (3) spaces. A new certificate of occupancy shall be issued for such purposes as the BZA orders. If the Zoning Administrator's office can be of further assistance in this matter, please contact Faye Ogunneye at 202-442-4576.

Sincerely,

  
Faye Ogunneye  
Chief, Zoning Review Branch  
For the Zoning Administrator

cc: David Clark, Director  
Julie Lee, Acting General Counsel

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



**BZA APPEAL NO. 16839 (REMAND)**

**NOV - 4 2004** As Director of the Office of Zoning, I hereby certify and attest that on a copy of the letter 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:

Denzil Noble, Acting Zoning Administrator  
Building and Land Regulation Administration  
Department of Consumer and Regulatory Affairs  
941 N. Capitol Street, N.E.  
Washington, D.C. 20002

Herman Broomfield  
Metro Day Treatment Center, Inc.  
5507 - 14<sup>th</sup> Street, N.W.  
Washington, D.C. 20011

John J. Chagnon representing ANC 4A  
5603 14<sup>th</sup> Street, N.W.  
Washington, D.C. 20011

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

Commissioner 4A07  
Advisory Neighborhood Commission 4A  
7600 Georgia Avenue, N.W.  
Washington, D.C. 20012

Pamela Coleman  
4200 Wisconsin Avenue, N.W.  
Washington, D.C. 20016

Ellen McCarthy, Deputy Director

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**Office of Planning**

801 North Capitol Street, N.E.

4<sup>th</sup> Floor

Washington, D.C. 20002

Alan Bergstein, Esq.

Sherry Glazer, Esq.

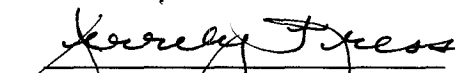
Office of the Attorney General

441 4<sup>th</sup> Street, N.W., 6<sup>th</sup> Floor

Washington, D.C. 20001

rsn

**ATTESTED BY:**

  
**JERRILY R. KRESS, FAIA**  
**Director, Office of Zoning**