

JOHN J. CHAGNON
5603 - 14th Street, NW
Washington, DC 20011

December 14, 2004

VIA FACSIMILE
727-6072

Jerrily R. Kress, FAIA Director
Board of Zoning Adjustment
441 4th Street, NW, 210-S
Washington, D.C. 20001

RECEIVED
D.C. OFFICE OF ZONING
2004 DEC 14 PM 5:28

Re: BZA Matter 16839
Court of Appeals - No 02-AA-1279
Vacated and Remanded

Dear Ms. Kress:

As you know, the DC Court of Appeals ruled on March 8, 2004 vacating the decision of the BZA to issue a certificate of occupancy to Metro Day Treatment Centers located at 5507 to 5511 14th Street, NW as a child/elderly development center. The Court in so vacating remanded the matter back to the BZA for actions not inconsistent with the order issued.

As you know the record to the above matter is closed pursuant to 11 DCMR 3326.8. No documents can be accepted by your office in this matter and should have been returned to the filer. I specifically note that there has been no motion filed to submit the Zoning Administrator's letter out of time. There is nothing for the BZA to act upon. The BZA is confined to the administrative record exclusively pursuant to 11 DCMR 3333.2 and cannot entertain any out of time submissions without the appropriate motions being filed.

It is my view that the BZA's unilateral calling of the case on Remand November 2, 2004 without notice to the parties is inappropriate as is the unilateral decision to reopen the record without notice or the opportunity to be heard.

The submission sent by the Office of the Zoning Administrator should be returned and the Notice issued by the BZA rescinded.

I also request that the BZA instruct the Zoning Administrator to proceed with enforcement of the Zoning Regulations. It is clear that the Office of the Zoning Administrator has not been to the site as there are no parking spaces on site and none of the spaces represented to be built have been constructed.

BZA
Board of Zoning Adjustment
District of Columbia
Case No. 16839
Exhibit No. 49
CASE NO. 16839
EXHIBIT NO. 49

Jerrily R. Kress, FAIA Director
December 14, 2004
Page 2.

It is also evident that the Zoning Administrator has failed to review the Court's Order. The Zoning Administrator does not have the authority to invent categories of use such as "Therapy/Counseling Center". The Court of Appeals was clear in stating "Although the BZA and the Zoning Administrator contend that, in the interests of efficient administration, that they may interpret defined uses in the Zoning Regulations to encompass other uses that are functionally comparable even if they are outside the definition, they cite no authority for that position and we cannot agree with it."

The Zoning Administrator appears to imply that the use is that of a clinic but makes no mention that definition of clinic is inconsistent with the operation. Again the Court of Appeals has made it clear the Zoning Administrator does not have the authority to invent categories to suit a purpose. Even utilizing the definition of a Office - Medical/Dental clinic the parking requirements based only on what is shown 7,652 square feet would require 10.42 parking spaces allowing for three grand fathered spaces still puts the parking requirement at least seven more parking spaces. The space occupied is much greater than the amount reported. Please refer back to the Stein appeal matter and the space calculation was over 6,800 square feet on the first floor alone without the basement or any second floor space. The parking requirement is likely double since the square footage of the entire structure is not reflected but just from observing a three story building it seems that there is not doubt that more than 25% of the structure would be the presumed clinic.

The BZA has already ruled that use is not a general office use. See decision 11/27/1997 case 16066. Accordingly items #1 and #2 of the Zoning Administrator's list of comparable uses are incompatible with the defined uses under the zoning regulations. Item #3 Public Bath, Physical Culture or Health Services do not appear to be recognized uses for a parking computation. The intended use does not appear comparable in any fashion to the uses enumerated but would be required to provide one parking space for each 600 square feet. Again, even if these uses were consistent the required number of parking spaces would be 13 less 3 grand fathered or 10 on site parking spaces. The Zoning Administrator in #4 refers to Optician and Optometrist as comparable which is inexplicable. The final comparable is a public hall of sorts which is not appropriate as the operation is not open to the public but even if it were comparable the parking requirement would be 1,093 parking spaces based on the square footage.

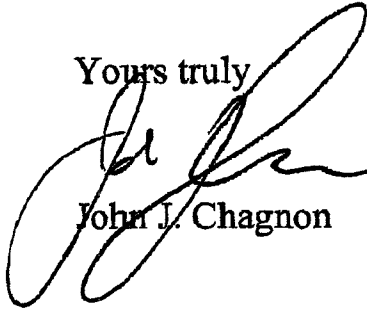
The Zoning Administrator states that the number of participants or staff are not relevant to the parking assessment. It has been the District's position that the shared characteristics of the operation are that of a child/elderly development center which for zoning purposes is under a school heading. The parking requirement under an other school category is two spaces for each three employees along with 1 space for each 10 students of capacity: 55 students = 6 spaces, 15 employees = 10 spaces less three grand fathered = 13 parking spaces required.

Jerrily R. Kress, FAIA Director
December 14, 2004
Page 3.

I would appreciate being notified that the BZA has rescinded the Notice dated November 4, 2004. The BZA is under an obligation to carry out the Order of the Court of Appeals as well as the duty to see to it that the Zoning Administrator enforces the municipal regulations as written. In this case, it is my observation that there has been no such effort and I will seek the assistance of the Court of Appeals again if this matter is not brought close with a final Order by year end.

If you have any questions, please call me at 202-722-1922.

Yours truly

A handwritten signature in black ink, appearing to read "John J. Chagnon", written over the typed name.

John J. Chagnon