

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Appeal No. 16839-A of Advisory Neighborhood Commission 4A, pursuant to 11DCMR § 3100 and 3101 from the decision of the Zoning Administrator, for the issuance of a certificate of occupancy (#18366, dated August 31, 2001) for a child/elderly development center serving 30 persons, ages 22-85 years old and 7 staff, in a C-2-A District at premises 5511-14th Street, N.W. (Square 2800, Lot 9)¹

HEARING DATES: March 26, 2002, September 14, 2004, November 2, 2004
DECISION DATES: June 4, 2002, July 2, 2002, July 6, 2004, June 7, 2005,
December 6, 2005, May 1, 2007

SUMMARY ORDER ON REMAND

This appeal was remanded to the Board for further proceedings consistent with the District of Columbia Court of Appeals decision in *Chagnon v. District of Columbia Board of Zoning Adjustment*, 844 A.2d 345 (D.C. 2004). After conducting proceedings on remand, the Board voted to grant the appeal at a Public Meeting held on May 1, 2007. The following history is pertinent to the Board's consideration.

The Appeal

In Appeal No. 16839, filed January 4, 2002, the ANC challenged the issuance of a certificate of occupancy (C of O) to Metro Day Treatment Center, Inc. (Metro Day), for a "child/elderly development center". The ANC was represented by ANC 4A07 Single-Member District Commissioner John Chagnon. Mr. Chagnon alleged that the Zoning Administrator erred because the proposed use at the site did not qualify as a "child/elderly development center" under the definition for this use classification set forth at 11 DCMR §199. He argued, among other things, that Metro Day did not operate as a child/elderly development center under the definition because Metro Day served adults rather than children or the elderly, and the term "child/elderly development center" was defined to include only elderly individuals or individuals 15 years or younger. However, the Board disagreed and denied the appeal. The Board reasoned that Metro Day qualified

¹ The address, as stated on Certificate of Occupancy No. 18366, is 5507 – 14th Street, N.W. (Square 2800, Lot 10).

441 4th Street, N.W., Suite 200/210-S, Washington, D.C. 20001

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: dcoz@dc.gov

Web Site: www.dcoz.dc.gov

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 16839-A

EXHIBIT NO. 50

Board of Zoning Adjustment
District of Columbia
CASE NO.16839
EXHIBIT NO.50

BZA APPEAL NO. 16839-A
PAGE NO. 2

as a “child/elderly development center” because, as compared to a “child/elderly development center”, it functioned as a “similar program and facility”.

The Court of Appeals Decision

The Court rejected the Board’s reasoning and held that the Zoning Administrator may not “interpret defined uses in the Zoning Regulations to encompass other uses that are functionally comparable. . . if they are outside the definition”, 844 A.2d at 348. Thus, the Court found that the Board erred in denying the ANC’s appeal, and held that a C of O for a “child/elderly development center” could not be issued to a facility that only provided day care treatment for adults.

Although the Court vacated the order, the Court also indicated that the Board could determine if Metro Day was eligible for a C of O under a different use classification. At the conclusion of its order, the Court stated:

Although Metro Day does not qualify as a “child/elderly development center,” it may yet be eligible for a certificate of occupancy under a different use classification. Thus, in vacating the order of the BZA, we remand for further proceedings not inconsistent with this opinion.

844 A.2d at 349.

Proceedings on Remand

The Board conducted proceedings to determine eligibility under a different use classification, and sought comments from the parties to this end (See, Exhibits 45 and 49). Not finding any other classification that would clearly encompass this use, the Board decided to hold its proceedings in abeyance while the Zoning Commission considered a proposed text amendment to create a new “adult day treatment facility” as a matter-of-right use. The Commission took final action to adopt the text amendment at a public meeting on March 13, 2006, and the final rulemaking was effective on December 29, 2006 when it was published in the *DC Register*.² If Metro Day meets the definition of an adult day treatment facility, it will be eligible to receive a new certificate of occupancy to operate under that use classification.

² The Text Amendment is set out in Z.C. Order No. 05-01.

In accordance with the Court's remand, the Board may determine in this case whether Metro Day meets the new classification; or alternatively, the Board may grant the appeal on the basis that the Zoning Administrator erred in granting Metro Day a certificate of occupancy for use as a child/elderly development center. After carefully weighing these two options, the Board concludes that the better course is to grant the appeal and thereby adhere to the normal administrative process. Granting the appeal will require the Zoning Administrator to revoke Metro Day's current certificate of occupancy. Should Metro Day apply for a new certificate of occupancy the Zoning Administrator will then determine in the first instance based on current documentation and circumstances, whether Metro Day falls within the new classification.

Therefore, for the reasons stated above, it is hereby **ORDERED** that the appeal is granted.

Vote taken on May 1, 2007

VOTE: **5-0-0** (Ruthanne G. Miller, Curtis L. Etherly, Jr., John A. Mann II, Marc D. Loud and John G. Parsons (by absentee ballot) to grant)

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

Each concurring member has approved the issuance of this Decision and Order.

ATTESTED BY:


JERRILY R. KRESS, FAIA
DIRECTOR, Office of Zoning

FINAL DATE OF ORDER: DEC 20 2007

PURSUANT TO 11 DCMR § 3125.6, THIS DECISION AND ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.